TEXAS REGISTER

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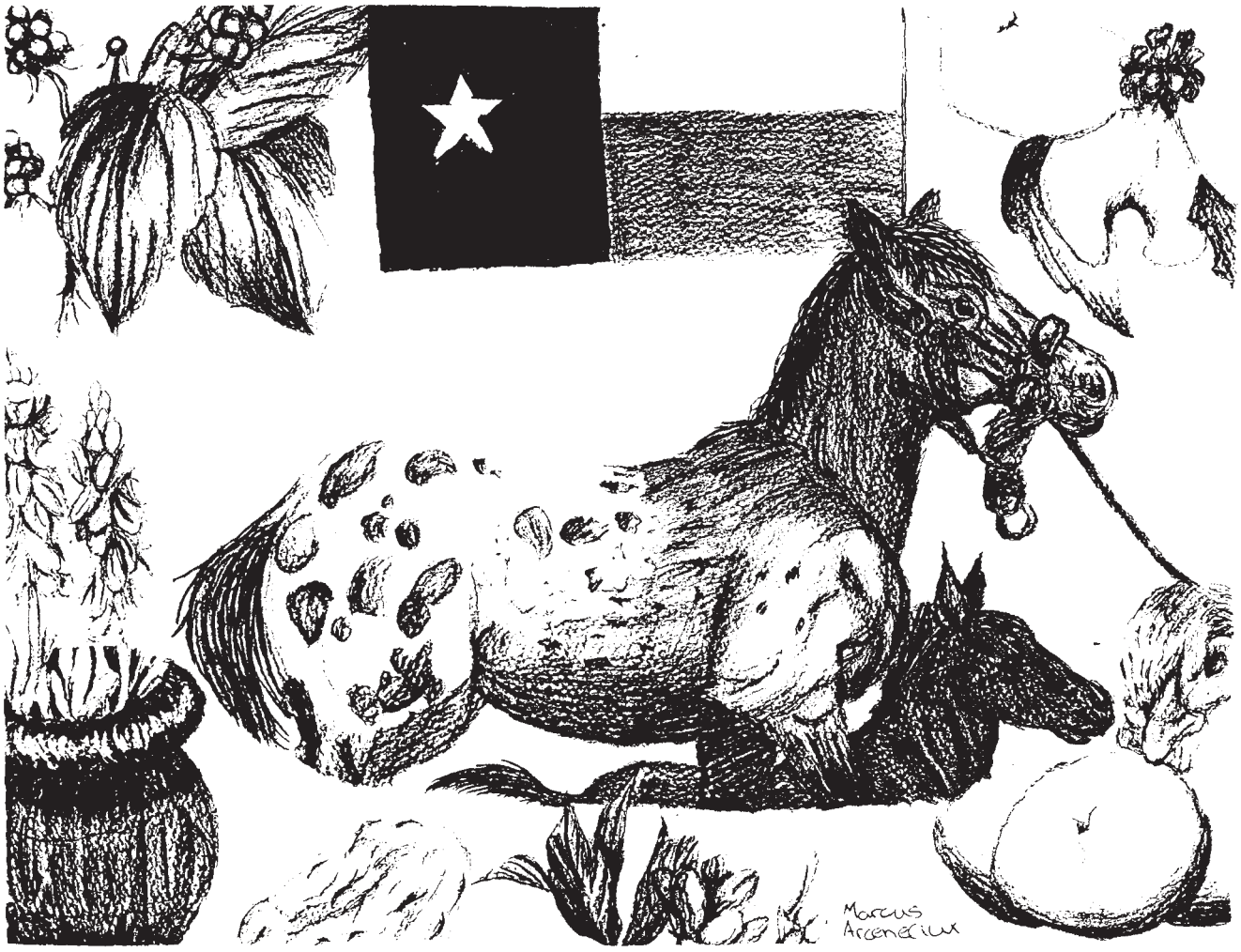

This month's front cover artwork:

Artist: *Marcus Arceneaux*

7th Grade

Johnston Middle School

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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

The artwork is published on what would otherwise be blank pages in the *Texas Register.* These blank pages are caused by the production process used to print the *Texas Register.* The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register.*

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

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ATTORNEY GENERAL

EMERGENCY RULES

PROPOSED RULES

WITHDRAWN RULES

ADOPTED RULES

Public Utility Commission of Texas

Texas Department of Transportation

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.

Requests for Opinions

RQ-0073 Requested by: The Honorable Judith Zaffirini Chair, Human Services Committee Texas State Senate P.O. Box 12068, 1E.5 Austin, Texas 78711-2068 Re: Authority of a county to provide law enforcement services in a municipality in the absence of an interlocal cooperative agreement (Request Number 0073-JC) Briefs requested by July 28, 1999.

RQ-0074 Requested by: The Honorable Jeff Wentworth Chair, Nominations Committee Texas State Senate P.O. Box 12068, 1E.9 Austin, Texas 78711-2068 Re: Whether a state license held by a corporation is automatically transferred when the corporation converts to another type of business entity under article 5.17 of the Texas Business Corporation Act (Request Number 0074-JC) Briefs requested by July 28, 1999.

RQ-0075 Requested by: The Honorable Ron Wilson Chair, Licensing and Administrative Procedures Committee Texas House of Representatives P.O. Box 2910, 1W.2 Austin, Texas 78768-2910 Re: Authority to orally contract on behalf of the State of Texas (Request Number 0075-JC) Briefs requested by July 28, 1999.

RQ-0076 Requested by: The Honorable Pete P. Gallego Chair, General Investigating Committee Texas House of Representatives P.O. Box 2910, GN.7 Austin, Texas 78768-2910 Re: Removal of a veterans county service officer who does not meet the requisite statutory qualifications (Request Number 0076-JC) Briefs requested by July 28, 1999.

RQ-0077 Requested by: The Honorable Sonya Letson Potter County Attorney 500 South Fillmore, Room 303 Amarillo, Texas 79101 Re: Whether a tax abatement may be awarded on behalf of property that has previously been the subject of a tax abatement, and related questions (Request Number 0077-JC) Briefs requested by July 28, 1999.

RQ-0078 Requested by: The Honorable Yolanda de Leon Cameron County District Attorney 974 East Harrison Street Brownsville, Texas 78520 Re: Whether a county may waive taxes on real property that houses a nonprofit organization but is owned by an individual (Request Number 0078-JC) Briefs requested by July 29, 1999.

TRD-9903858
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 29, 1999

♦ ♦ ♦

EMERGENCY RULES

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

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Subchapter B. Placement Planning

37 TAC §85.33

Texas Youth Commission (TYC) adopts on an emergency basis an amendment to §85.33, concerning Program Completion and Movement of Sentenced Offenders. Sentenced offenders have been grouped by offense for the purpose of establishing certain internal review procedures. To the group named "category 1 sentenced offenders", the offense aggravated sexual assault is being added and the offense aggravated assault is being removed.

This amendment is adopted on an emergency basis to ensure that youth who may pose greater risk to the public receive the highest level of internal review prior to any decision concerning a sentenced offender's movement.

The amendment is adopted on an emergency basis under the Human Resources Code, §61.081, concerning Release Under Supervision, which provides the Texas Youth Commission authority to release a youth under supervision, who is committed to the commission under a determinate sentence, and §61.084, concerning Termination of Control, which provides TYC authority to discharge sentenced offender youth from its custody.

The adopted rule implements the Human Resource Code, §61.034.

§85.33. Program Completion and Movement of Sentenced Offenders.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a sentenced offender youth has completed a program, is eligible to be moved to another program, released home, placed on parole status, or may be transferred to the Texas Department of Criminal Justice (TDCJ).

(b) Applicability.

(1) This rule does not address all types of disciplinary movements. See (GAP) Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(2) This rule does not apply to youth committed to TYC on indeterminate commitments. See (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(c) Explanation of Terms Used.

(1) Program completion criteria - See the term explanation in (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(2) Administrative transfer-See the term explanation in (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(3) Transition movement - See the term explanation in (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(4) Parole status - See the term explanation in (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(5) Category 1 offenses - The offenses, specifically the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit: murder, capital murder, sexual assault, or aggravated sexual assault, the commission of which was on or after January 1, 1996, and for which a youth has been given a determinate sentence.

(6) Category 2 offenses - The offenses, except category 1 offenses, committed on or after January 1, 1996, for which a youth has been given a determinate sentence.

(d) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. See (GAP) §85.23 of this title (relating to Classification).

(2) Initial Placement. On initial placement, all sentenced offenders shall be assigned to high restriction facilities unless the deputy executive director waives such placement for a particular youth.

(e) Program Completion Processes.

(1) Program staff will explain completion criteria to every youth during orientation to each placement.

(2) Prior to a transition movement, a youth may request and in doing so will be granted a level II hearing.

(3) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(4) Progress toward successful completion of criteria shall be evaluated at specific regular intervals.

(A) If, at the review, it is determined the youth has completed criteria required for transition, movement is considered. A transition placement is always to a placement of equal or less restriction than the youth's current placement.

(B) If, at the review, it is determined the youth has not completed criteria required for a transition or release movement, the youth may be continued in the placement or considered for transfer to TDCJ under legal requirements and procedures herein.

(5) TYC program staff where the youth is assigned shall determine when program completion criteria have been met.

(f) Youth sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996.

(1) General Requirements.

(A) Minimum Period of Confinement. The minimum period of confinement is ten years for youth sentenced for capital murder; three years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two years for a felony of the second degree; one year for a felony of the third degree; or completion of the sentence, whichever occurs first.

(B) Placement. Sentenced offenders shall serve the entire minimum period of confinement applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(i) transferred to TDCJ earlier in accordance with legal requirements or committing court approval; or

(ii) transitioned or released earlier under provisions in this section.

(C) Parole. Sentenced offenders shall not attain parole status at any time prior to completion of serving the minimum period of confinement unless approved by the committing court.

(D) Administrative Transfer. Administrative transfer movements may be made among programs of equal restrictions without a due process hearing. An administrative movement shall not be made in lieu of a movement for which a due process hearing is mandatory.

(E) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ (by age 21) or his/her sentence is complete (except as specified in subparagraph (F) of this paragraph). All sentenced offender youth in TYC custody at age 21 are transferred to TDCJ for completion of their sentence.

(F) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders both commitment orders will be given effect, with the determinate sentence order having precedence. Any movement and transfer options available under the determinate sentence order and determined to be appropriate must occur prior to completion of the determinate sentence. Other exceptions are as follows:

(i) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(ii) Both orders are given effect, i.e., the minimum period of confinement under the determinate sentence and the Minimum Length of Stay (MLS) associated with the indeterminate commitment will run concurrently. If the applicable minimum period of confinement under the determinate sentence is completed before the applicable MLS under the indeterminate commitment, the youth will not be considered for release until the MLS has also been completed.

(iii) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met. Under this rule, the youth may remain under TYC supervision until age 21, regardless of the expiration date of the determinate sentence.

(2) Program Completion Criteria and Movement.

(A) Youth Whose Classifying Offense is a Category 1 Offense.

(i) Criteria. A category 1 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met:

(I) no major rule violations within 90 days prior to the transition/release review; and

(II) completion of the minimum period of confinement, except as provided in clause (A)(iii) of this subparagraph; and

(III) completion of phase 4 resocialization goals; and

(IV) completion of Individual Case Plan (ICP) objectives:

(-a-) completion of required ICP objectives for transition to medium restriction, except objectives which cannot be completed in the current placement, but which may be completed in a medium restriction placement; or

(-b-) completion of all ICP objectives for release on parole to home level restriction.

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. Staff must also develop a release packet of information.

(II) The supervising program administrator must review and approve the release packet for quality and make a recommendation regarding the release.

(III) The Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria. The Committee must review and approve the release packet and recommend the release.

(IV) The superintendent/quality assurance administrator must approve and recommend the release and forward the release packet to the juvenile corrections department in central office.

(V) The assistant deputy executive director for rehabilitation services will review the release packet for quality assurance of information presented and adequacy of the release plan.

(VI) The assistant deputy executive director for juvenile corrections (final release authority) will approve and confirm the release to the facility administrator.

(iii) Exceptions for Youth Whose Classifying Offense Is Capital Murder. A youth sentenced for capital murder may be considered for transition/release prior to completion of the minimum period of confinement when the following criteria have been met.

(I) Criteria. Criteria as listed in paragraph (2)(A)(i) of this subsection, with one exception: the youth has completed at least three (3) years of the minimum period of confinement.

(II) Procedure. Procedures for transition/release from a high restriction facility as listed in paragraph (2)(A)(ii) of this subsection, with the following additional requirements:

(-a-) The superintendent/quality assurance administrator must approve release and submit to central office a release packet and recommendation that an early release hearing be requested.

(-b-) The executive director (final TYC approval authority) must approve the release request and staff requests for a hearing by the committing juvenile court for early release.

(-c-) The facility administrator must request a hearing by the court.

(-d-) The court (final release authority) must approve the early transition/release.

(B) Youth Whose Classifying Offense is a Category 2 Offense.

(i) Criteria. A category 2 sentenced offender youth will be eligible for transition/release to a placement of less than high restriction when the following criteria have been met.

(I) no major rule violations within 90 days prior to the transition/release review; and

(II) completion of the minimum period of confinement; and

(III) completion of phase requirements:

(-a-) phase 3 resocialization goals for transition to medium restriction; or

(-b-) phase 4 resocialization goals for release to home level restriction; and

(IV) completion of ICP objective requirements:

(-a-) completion of required ICP objectives for transition to medium restriction, except objectives which cannot be completed in the current placement, but which may be completed in a medium restriction placement; or

(-b-) completion of all ICP objectives for release to home level restriction.

(ii) Procedure. The release of a qualified youth from a high restriction facility to either medium restriction or home level restriction may occur as follows:

(I) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. Staff must also develop a release packet of information.

(II) The supervising program administrator must review and approve the release packet for quality and make a recommendation regarding the movement.

(III) The Special Services Committee must conduct an exit interview with the youth to determine whether the youth meets criteria and must review and approve the release packet, and recommend the release.

(IV) The superintendent/quality assurance administrator (final release authority) must approve the release.

(C) Youth Who Have Been Disciplinarily Returned to Residential Placement.

(i) Following the youth's completion of the minimum period of confinement and release on parole to home level restriction, a sentenced offender is subject to TDCJ transfer rules and TYC policies where specifically addressed, but is otherwise governed by rules for the classification he would have received if not a sentenced offender.

(ii) Should a youth be returned to a high or medium restriction placement via a level I or II disciplinary hearing, the youth's eligibility criteria for transition to medium restriction or release on parole to home level restriction from that placement, is the criteria stated in (GAP) §85.29 of this title (relating to Program Completion and Movement of Other Than Sentenced Offenders).

(3) Transfer From TYC High Restriction To TDCJ, Institution Division. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institutional Division may occur as described in this paragraph.

(A) Criteria For Certain Capital Murder Youth. A transfer shall occur (court approval is not required) for a youth, at age 21, who:

(i) was sentenced for capital murder; and

(ii) has not completed the minimum period of confinement applicable to the youth's classifying offense (10 years) or the sentence if less than 10 years.

(B) Criteria For Youth Whose Parole Has Been Revoked. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for a youth whose parole has been revoked and the following criteria have been met:

(i) youth is at least age 16; and

(ii) youth's parole was revoked for:

(I) felony, Class A misdemeanor, or a high risk offense; or

(II) any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress; and

(iii) youth has not completed his/her sentence; and

(iv) youth's conduct indicates that the welfare of the community require the transfer.

(C) Criteria For Other Youth. A transfer shall occur if ordered by the juvenile court. TYC may request a juvenile court hearing for any other youth if the following criteria have been met:

(i) youth is at least age 16; and

(ii) youth has spent at least six months in a high restriction facility; and

(iii) youth has not completed his/her sentence; and

(iv) youth has met at least one of the following behavior criteria:

(I) youth has committed a felony or Class A misdemeanor while assigned to residential placement; or

(II) youth persistently has committed major rule violations (on three or more occasions); or

(III) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(IV) youth has demonstrated an inability to progress in his/her resocialization program due to persistent non compliance with treatment objectives; and

(v) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(vi) youth's conduct indicates that the welfare of the community requires the transfer.

(D) Procedures. Procedures for effecting a transfer requiring court approval in accordance with subparagraphs (B) and (C) of this paragraph are as follows:

(i) The staff must prepare an early transfer request packet that identifies risk factors and a treatment summary and review of alternative interventions tried.

(ii) The supervising program administrator must review and approve the transfer packet for quality and make a recommendation regarding the transfer.

(iii) The Special Services Committee must determine whether the youth meets criteria, and must approve packet and recommend transfer.

(iv) The superintendent/quality assurance administrator must approve and recommend transfer and forward the packet to the juvenile corrections department in central office.

(v) The assistant deputy executive director for rehabilitation services will review the packet for quality assurance of information presented and the youth's eligibility for transfer, and will make a recommendation to the deputy executive director.

(vi) The assistant deputy executive director for juvenile corrections will review the packet and make a recommendation to the deputy executive director.

(vii) The deputy executive director (final TYC approval authority) must approve all early transfers and staff requests for a hearing by the committing juvenile court hearing.

(viii) The juvenile corrections department will confirm final transfer decision to the superintendent/quality assurance administrator who may request a hearing.

(ix) The court (final transfer authority) must approve the early transfer.

(4) Transfer From TYC High or Medium Restriction To TDCJ, Pardons and Paroles Division. Transfer from a medium or high restriction facility to the Texas Department of Criminal Justice, Pardons and Paroles, shall occur (court approval is not required).

(A) Age 19 Factor.

(i) Criteria. A youth who reached age 19 while in a high restriction facility will be transferred to TDCJ, Parole Division when he becomes eligible for parole release.

(ii) Procedure.

(I) Staff must develop a release plan that identifies risk factors and is adequate to ensure public safety and positive reintegration. The plan should reflect communication with a TDCJ parole officer regarding available resources. Staff must develop a release packet of information.

(II) The supervising program administrator must review and approve packet for quality and make a recommendation regarding the release.

(III) Special Services Committee (or equivalent committee) must conduct an exit interview with the youth to determine whether the youth meets criteria, and must review and approve the packet, and recommend the release.

(IV) The superintendent/quality assurance administrator must approve and recommend the release.

(-a-) The superintendent/quality assurance administrator must send required documentation to the TDCJ, Pardons and Paroles Division. Within 90 days of receipt TDCJ will process the information and set conditions for release to TDCJ, Pardons and Paroles Division.

(-b-) The superintendent/quality assurance administrator will insert the conditions specified by TDCJ, Pardons and Paroles Division into the release packet and forward the packet to the juvenile corrections department in central office.

(V) The assistant deputy executive director for rehabilitation services will review the packet for quality assurance of information presented and adequacy of the plan, while considering the availability of resources within TDCJ.

(VI) The assistant deputy executive director for juvenile corrections will review the release packet and make a recommendation to the deputy executive director.

(VII) The deputy executive director (final TYC release authority) must approve the release.

(VIII) The final arrangements for the transfer are made by either the high or medium restriction administrator depending on whether youth went to a medium restriction facility or went directly to TDCJ, Parole. The superintendent/quality assurance administrator will contact TDCJ - Pardons and Paroles Division to confirm transfer date. TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from the Texas Youth Commission and transferred to the Texas Department of Criminal Justice, Pardons and Parole Division.

(B) At Age 21.

(i) Criteria.

(I) At age 21, a youth who was sentenced for any offense other than capital murder and who has not completed the sentence will be transferred to TDCJ, Parole.

(II) At age 21, a youth sentenced for capital murder, who has not completed the sentence and who has not been transferred to TDCJ or released under supervision (movement from high restriction) by juvenile court order will be transferred to:

(-a-) TDCJ-Institution Division, if he has not completed the 10-year minimum confinement period under paragraph (f)(3) of this subsection; or

(-b-) TDCJ-Pardons and Parole Division, if he has completed the 10-year minimum confinement period.

(ii) Procedure.

(I) Prior to 90 days before the youth's 21st birthday, staff must develop a transition plan. The plan should reflect communication with a TDCJ parole officer regarding available resources. Staff must develop a transfer packet of information.

(II) At 90 days before the youth's 21st birthday, the superintendent/ quality assurance administrator must send required documentation to the TDCJ, Pardons and Parole Division. Within 90 days of receipt, TDCJ will process the information and set conditions for release to parole.

(III) The superintendent/quality assurance administrator will contact TDCJ, Pardons and Paroles Division to confirm the transfer date (youth's 21st birthday). TDCJ personnel will serve the Order of Transfer in person on that day, at which time the sentenced offender youth is discharged from TYC and Transferred to TDCJ, Pardons and Paroles.

(5) Transfer From TYC Home Parole To TDCJ, Pardons and Parole.

(A) Criteria. Transfer from TYC parole at home level restriction to TDCJ, Pardons and Paroles, shall occur (court approval not required) at age 21 if the youth has not completed his/her sentence.

(B) Procedure.

(i) Prior to 90 days before the youth's 21st birthday, parole supervision staff must develop a continuing parole plan. The plan should reflect communication with a TDCJ parole officer regarding available resources. Staff must develop a continuing parole packet of information.

(ii) At 90 days before the youth's 21st birthday, the parole/quality assurance supervisor must send required documentation to the TDCJ, Pardons and Paroles Division. Within 90 days TDCJ will process the information and set conditions for release to parole.

(iii) The parole/quality assurance supervisor will contact TDCJ, Pardons and Paroles Division to confirm transfer date (youth's 21st birthday), at which time the youth will be discharged from TYC and transferred to TDCJ, Pardons and Paroles Division.

(g) Youth sentenced to commitment in TYC for offenses committed before January 1, 1996.

(1) Movement and Parole. Sentenced offenders who meet program completion criteria for transition or parole shall not be released without proper authorization:

(A) When a juvenile court orders that a sentenced offender be released under supervision, the youth shall be transitioned or paroled, as appropriate to the youth's progress at the time of the court's order.

(B) When the juvenile court orders that a sentenced offender be recommitted to TYC without a determinate sentence, the youth's eligibility for release on parole or transition or disciplinary movements shall be governed by the release criteria and procedures for the classification the youth would have received if not a sentenced offender.

(2) Disciplinary Movement. A sentenced offender may be assigned to any appropriate placement, including a high restriction facility, following a level I or II disciplinary hearing.

(h) Notification. Parents or guardians will be notified of all movements.

Filed with the Office of the Secretary of State,on June 22, 1999.

TRD-9903699
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: June 22, 1999
Expiration date: October 20, 1999
For further information, please call: (512) 424–6244

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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 V. General Services Commission

Chapter 123. Facilities Construction and Space Management Division

Subchapter B. Building Construction Administration

1 TAC §123.18

The General Services Commission proposes an amendment to §123.18 concerning bidding procedures for state construction contracts. The amendment is being proposed to streamline the bidding procedure by eliminating the requirement for a contractor to receive permission from the Commission to obtain bidding documents.

Mr. Bobby Huston, Director of Facilities Construction and Space Management, has determined for the first five year period the rule is in effect, there will be no adverse effect to state or local government as a result of enforcing the rule.

Mr. Bobby Huston, Director of Facilities Construction and Space Management, further determines that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the rule will be more efficient administration of bidding procedures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Judy Ponder, General Counsel, General Services Commission, P.O. Box 13047, Austin, TX 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §123.18 is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, Chapter 2166, §2166.062, which provides the General Services Commission with the authority to promulgate rules consistent with the code.

The following code is affected by the proposed amendment: Government Code, Title 10, Subtitle D, Chapter 2166.

§123.18. Bidding Procedures.

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

~~[(d) To eliminate the expense of bid preparation by a contractor not qualified to perform the work, a contractor must have permission of the commission to obtain bidding documents.]~~

(d) ~~[(e)]~~ All bids submitted must be accompanied by either a bid bond, cashier's check, or certified check in the amount of 5.0% of the bid submitted.

(e) ~~[(f)]~~ Bid proposal must be submitted on the form, or clear reproduction thereof, provided with the bid documents.

(f) ~~[(g)]~~ Failure to identify sealed envelopes containing bid proposal(s) will not disqualify a bid but may increase the possibility of bids being inadvertently misdirected and not officially received in proper time. It is the sole responsibility of bidders to deliver the bid proposal(s) to the commission at the designated bid receipt location prior to the time they are scheduled to be open and read. Any bid not received at the designated location or received after the designated time will be returned unopened to the bidder.

(g) ~~[(h)]~~ Bidding documents shall include the plans and specifications, including all addenda issued thereto. Bidders are assumed to have given full consideration to the entire content thereof when they submit a proposal.

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

Filed with the Office of the Secretary of State, on June 28, 1999.

TRD-9903808
Judy Ponder
General Counsel
General Services Commission
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–3960

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TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 3. State Bank Regulation

Subchapter B. General

7 TAC §§3.36–3.38

The Finance Commission of Texas (the commission) proposes to amend §§3.36-3.38, concerning the imposition and collection of ratable and equitable fees from state banks, foreign bank branches, foreign bank agencies, and foreign bank representative offices, to provide for recovery of the cost of maintenance and operation of the Texas Department of Banking (the department) and the cost of enforcing Finance Code, Title 3, Subtitles A and G, during the 2000-2001 biennium.

Changes are proposed to increase the annual assessment fees for all banks, foreign bank branches, and foreign bank agencies, and to impose annual assessment fees for all foreign bank representative offices. In addition, changes are proposed to clarify the procedure for the billing and payment of such fees. A minor change is proposed to clarify the method in which all banks, foreign bank branches, and foreign bank agencies will calculate average off-book assets in computing assessable assets. Finally, changes are proposed to prepare for the implementation of new Finance Code, Title 3, Subtitle G, Chapters 201-204, enacted by House Bill 2066, §1.001, 76th Legislature, effective September 1, 1999.

Discussion of §3.36 and reasons for proposed changes.

Section 3.36 specifies the manner in which assets are adjusted from call report data to determine the assessment base, to which the calculations and rates specified in existing §3.37, with respect to a state bank, and §3.38, with respect to a foreign bank agency, are applied to derive the annual assessment fee. Section 3.36 also categorizes banks in classes, based on public risk and relative financial health, for purposes of applying higher rates to banks that require more frequent examination and regulatory supervision. The rule also specifies the manner in which adjustments are made during the assessment cycle based on changed circumstances, and details the method of billing and collecting assessments in installments. Finally, §3.36 authorizes the department to charge and collect examination fees based on hourly or daily rates for specialty examinations unrelated to routine safety and soundness supervision, such as for investigations related to requested business combinations or changes in corporate structure, or for examination of other regulated entities that do not pay basic assessment fees.

Section 3.36 is proposed to be amended in several respects. First, the commission proposes an amendment to §3.36(c) relating to the calculation of average off-book assets by all banks, foreign bank branches, and foreign bank agencies in computing assessable assets. Since the adoption of the existing section there have been changes to Schedule RC-L, promulgated by the FDIC, which is used by the department to base its calculation of off-book assets. The new definition provides for exclusions from the calculation based on the revised FDIC schedule.

Second, with regard to the manner of billing and payment of annual assessment fees, the commission proposes to amend §3.36(d) to give the department the option of requiring banks, foreign bank branches, and foreign bank agencies to pay through electronic funds transfer. At present, the department believes the cost of collecting assessments by electronic funds transfer would exceed the benefits, but in accordance with Senate Bill 801, 76th Legislature, effective September 1, 1999, the department will be required to include in its agency strategic plan a plan for receiving such assessments through electronic means.

In addition, the commission proposes to amend §3.36(f)(1) to provide that a change in the size, condition, or other characteristics of a bank that affects the relative assessment rate by changing the examination frequency of the bank will cause the annual assessment to be adjusted effective as of the first billed quarterly installment after the change. Similarly, the commission proposes to amend §3.36(f)(2) to provide that an acquisition or merger involving a surviving state bank, foreign bank branch, or foreign bank agency will cause the annual assessment to be adjusted effective as of the first billed quarterly installment after the acquisition or merger. This proposed amendment will conform to the department's actual practice; the prior adjustment method has proved to be unworkable.

New Finance Code, Title 3, Subtitle G, Chapters 201-204, enacted by House Bill 2066, §1.001, 76th Legislature, provides for interstate banking and branching, and new authority for foreign banks in this state, effective September 1, 1999. Under Finance Code, §201.005(a)(5), the banking commissioner may assess supervisory and examination fees to be paid by (1) a bank holding company that controls a Texas bank, (2) an out-of-state, state-chartered bank with an interstate branch in this state, and (3) a foreign bank with a branch, agency, or representative office in this state, in connection with performance of duties under Subtitle G.

Finance Code, §202.005(a)(1), authorizes examination of a bank holding company, and Finance Code, §203.007(a), authorizes examination of an interstate branch in this state of a state-chartered bank. Because such examinations will be rare, the commission proposes an amendment to §3.36(h) to provide that these examinations will be performed for a daily rate in lieu of the assessment.

Pursuant to Finance Code, Chapter 204, foreign banks may establish branches, agencies, and representative offices in this state. Finance Code, §204.003, authorizes the department to examine foreign bank branches, agencies, and representative offices in this state, and requires the foreign bank to pay fees for examination. Under existing §3.36(h), foreign bank representative offices are billed a fee for examinations at a uniform rate of $500 per examiner per day, plus travel expenses incurred. The commission proposes to amend §3.36(h) to remove foreign bank representative offices from the special examination provisions of that section, and to add a new subsection (j) to provide that foreign bank representative offices will be billed an annual assessment fee of $2,500 on September 1 of each year to cover examinations and all associated expenses.

For both legal and economic reasons, it is unlikely that a foreign bank will establish a branch in this state in the foreseeable future. However, if one is established, it will be very similar in function and operation to a foreign bank agency, differing only with respect to the types of deposits that can be accepted as provided by Finance Code, §204.105(b). The commission is therefore proposing amendments throughout §3.36 to provide for assessing a foreign bank branch, if any, in the same manner as a state bank or foreign bank agency.

Discussion of §3.37 and §3.38 and reasons for proposed changes.

Existing §3.37 and §3.38 specify calculations and rates for assessment fees imposed on state banks and foreign bank agencies, respectively. The department has been able to avoid increasing assessment fees since converting from an examination fee structure to an annual assessment structure in 1994. However, due to a reduction in the number of state banks and foreign bank agencies in the state banking system and the associated redistribution of assets among these entities, these assessment rates must be increased for the 2000-2001 biennium to meet Finance Code mandates that the department be self-supporting through industry fees. The proposed amendments to §3.37 and §3.38 are designed to meet this goal without generating excessive revenue, and the department has worked diligently to keep the required fee increase to a minimum.

A bank's assessment is currently calculated using three factors: (1) a base assessment amount; (2) a percentage rate factor; and (3) the examination frequency. The assessment for a foreign bank agency is currently calculated using a base assessment amount and a percentage rate factor.

The commission proposes to amend §3.37 relating to the calculation of the annual assessment for banks by revising the manner in which the three factors are used to compute such fees. The commission proposes to increase the starting base assessment amount from $1,000 to $1,250. In addition, the commission proposes to increase the incremental rates charged to each assessment group. Finally, the commission proposes to reduce the discount applied to banks on an 18-month examination cycle from 15% to 12.5%, and increase the premium charged to banks on a 6-month examination cycle from 62% to 100%. These proposed changes have been compiled in Figure: 7 TAC §3.37 listing the steps to calculate a bank's annual assessment fee, proposed to replace the table in existing §3.37.

Likewise, the commission proposes to amend §3.38 relating to the calculation of the annual assessment for foreign bank agencies to include foreign bank branches, and by revising the manner in which the factors are used to compute such fees. The commission proposes to reduce the number of assessment groups from eight to three, and to increase the base assessment amount to $10,000 for all foreign bank branches or agencies. In addition, the commission proposes to impose an incremental rate factor for foreign bank branches or agencies with assessable assets exceeding $70 million. These proposed changes have been compiled in Figure: 7 TAC §3.38 listing the steps to calculate a foreign bank branch or agency's annual assessment fee, proposed to replace the table in existing §3.38.

In determining the proposed base assessment amounts and incremental rate factors used in §3.37 and §3.38, the department conducted an extensive review of current and projected staffing needs in accordance with the statutory mandate to periodically examine banks and foreign bank offices, and to safeguard the safety and soundness of the state banking system. The department projected the cost of maintaining and operating the department and enforcing the statute to arrive at the aggregate annual assessment fees required to be collected during the 2000-2001 biennium. The department then projected the aggregate annual assessment fees estimated to be collected during this period based on the existing calculations and rates in §3.37 and §3.38. In order to meet the projected shortfall in revenue, the department determined to increase the annual assessment fees for all banks, foreign bank branches, and foreign bank agencies, and to impose annual assessment fees for all foreign bank representative offices.

Fiscal implications of proposed changes.

Randall S. James, Deputy Commissioner, Texas Department of Banking, has determined that, for each year of the first five years the section is in effect, there will be fiscal implications for state government as a result of enforcing or administering these sections but no fiscal implication for local government. Mr. James estimates that the amount of revenue the sections will generate for state government for each of the first five fiscal years the proposed sections are in effect, assuming the department fully utilizes its spending authority for the 2000-2001 biennium and that its spending authority in future bienniums is unchanged, will be $9,029,000 for 2000, $8,879,000 for 2001, $8,729,000 for 2002, $8,579,000 for 2003, and $8,429,000 for 2004.

Mr. James 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 these sections is the economic self-sufficiency of the department with respect to regulation of the banking industry. The probable economic cost to persons required to comply with these sections will consist of the payment by affected banks and foreign bank branches, agencies, and representative offices, of assessment fees in accordance with the revised calculations and rates provided for herein. There will be no adverse effect on small businesses or micro-businesses, except that a regulated entity affected by these sections will likely be required to pay a higher annual assessment fee for the same amount of assessable assets than in previous years. To ameliorate the effect of the annual assessment on smaller, well-run state banks, in 1995 the department adopted an extended examination cycle of eighteen months for such institutions (Policy Memorandum–1003).

Comments on the proposed section may be submitted in writing to Jeffrey L. Schrader, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed pursuant to Finance Code, §§11.301, 31.003(a)(4), and 39.002. The amendment is also proposed pursuant to Finance Code, §201.003(a)(4), as added by House Bill 2066, §1.001, 76th Legislature (1999), effective September 1, 1999. These statutes authorize the commission to adopt rules providing for the recovery of the cost of maintenance and operation of the department and the cost of enforcing Finance Code, Title 3, Subtitles A and G, through the imposition and collection of ratable and equitable fees for notices, applications, and examinations. Pursuant to 1997 Appropriations Act, Article IX, §77, the agency informs prospective payers of the fee that the fees covered by these sections were set by the agency and not mandated by the Legislature.

Finance Code, §§31.003(a)(4), 31,005-31.007, 32.004(b), 32.502(c), 39.002, 201.005, 202.005(a)(1), 203.007(a), and 204.003, are affected by the proposed amendment.

§3.36. Annual Assessments and Specialty Examination Fees.

(a) Authority. The assessment schedule contained in this section is made under the authority contained in Finance Code, §31.003(a)(4) and §204.003(b).

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

(1) Assessable assets–The sum of on-book assets and average off-book assets of a bank, foreign bank branch, or foreign bank agency.

(2) Average off-book assets–The average of the off-balance sheet items reported by a bank in its most recent March 31st call report and the three immediately preceding call reports, as adjusted under subsection (c) of this section and pursuant to the instructions accompanying the assessment form applicable to and submitted by the bank, foreign bank branch, or foreign bank agency.

(3) Call report–The quarterly, consolidated report of condition and income (including domestic and foreign subsidiaries) promulgated in a form by the Federal Financial Institutions Examination Council and prepared and filed by a bank, foreign bank branch, or foreign bank agency under state and federal law.

(4) (No change.)

(5) On-book assets–The total assets reported by a bank, foreign bank branch, or foreign bank agency on the balance sheet contained in its most recent March 31st call report.

(c) Calculation of average off-book assets. A bank, foreign bank branch, or foreign bank agency must calculate a four-quarter average of off-book assets, as adjusted under this subsection, using the most recent March 31st call report and the three preceding call reports, as a component of assessable assets. In general, the bank, foreign bank branch, or foreign bank agency must sum all line items for which values are included on "Schedule RC-L-Off Balance Sheet Items," which could result in assets of the institution, with the exception of:

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

(3) Participations in acceptances conveyed to others by the reporting bank, foreign bank branch, or foreign bank agency; and

(4) All line items related to derivative products as identified by the department [~~Gross commitments to sell~~].

(d) Annual assessment for banks, foreign bank branches, and foreign bank agencies. The department will establish the annual assessment for each bank, foreign bank branch, and foreign bank agency effective September 1 of each year. Each bank, foreign bank branch, and foreign bank agency must pay to the department the annual assessment fee, in quarterly installments as billed effective September 1, December 1, March 1, and June 1 of each year, except that an installment may be adjusted under subsections (f) and (g) of this section. To facilitate collection, the department may require each bank, foreign bank branch, and foreign bank agency to pay quarterly installments through electronic funds transfer on each effective billing date. Assessments will be calculated on the total assessable assets. The assessment will be calculated on the basis of the factors identified in and in the manner described in §3.37 of this title (relating to Calculation of Annual Assessment for Banks) or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Branches and Agencies).

(e) Review of assessment factors. The department will review all appropriations authorities, expenditure patterns, and other costs related to bank, [~~or~~] foreign bank branch, or foreign bank agency examination and supervision functions, and present to the finance commission no less frequently than once each biennium such information and a calculation chart that sets forth the annual assessment factors.

(f) Interim adjustments.

(1) If the [~~a bank or foreign bank agency's~~] size, condition, or other characteristics of a bank change sufficiently during a year to cause the bank [~~or foreign bank agency~~] to fall into a different category of examination frequency, the department will adjust the annual assessment to the appropriate rate beginning with the first billed quarterly installment after the change in [~~in the quarter of the change to reflect only the quarter or quarters of the year in which the bank or foreign bank agency falls into a different~~] examination frequency.

(2) In the event of an acquisition or merger involving a surviving state bank, [~~or~~] foreign bank branch, or foreign bank agency, the department will adjust the annual assessment to reflect the result of the acquisition or merger beginning with the first billed quarterly installment after the consummation of the transaction [~~in the quarter of the acquisition or merger to reflect only the quarter or quarters of the year in which the bank or foreign bank agency falls into a different asset group as a result of the acquisition or merger~~]. The asset group will be calculated on the basis of the combined assessable assets, including branches, of the surviving bank, [~~or~~] foreign bank branch, or foreign bank agency.

(3) (No change.)

(4) Each bank, [~~or~~] foreign bank branch, and foreign bank agency, on the due date of an assessment installment, must pay to the department the full quarterly installment of the assessment for the next three-month period without proration for any reason.

(g) Adjustment of an installment. The commissioner may, after review and consideration of actual expenditures to date and projected expenditures for the remainder of the fiscal year, lower the aggregate amount of an installment and bill each bank, foreign bank branch, and foreign bank agency a proportionally lower amount [~~due from banks or foreign bank agencies~~], without the prior approval of the finance commission.

(h) Specialty examination fees.

(1) Examinations of fiduciary activities and other special examinations and investigations, including but not limited to examinations of bank holding companies, interstate branches of state banks in Texas as host state [~~representative offices of foreign bank agencies~~], affiliates, and third-party contractors, are subject to a separate charge to cover the cost of time and expenses incurred in these examinations.

(2) The [~~bank or foreign bank agency shall pay to the department a~~] fee for an examination under this subsection will be calculated at a uniform rate of $500 per examiner per day to cover the cost of the examinations including the salary expense of examiners plus a proportionate share of department overhead allocable to the examination function. The commissioner may lower the uniform rate without the prior approval of the finance commission.

(3) In connection with an examination under this subsection, the regulated entity or other legally responsible party [~~a bank or foreign bank agency~~] shall pay to the department the examination fee set forth in paragraph (2) of this subsection, and shall also pay to the department an amount for actual travel expenses incurred by the examiners, including mileage, public transportation, food, and lodging[~~, in addition to paying the examination fee set forth in paragraph (2) of this subsection~~].

(i) (No change.)

(j) Annual assessment for foreign bank representative offices. The annual assessment fee for foreign bank representative offices will be $2,500, and will cover the cost of examinations and all associated expenses. Each foreign bank representative office must pay to the department the annual assessment fee effective September 1 of each year. To facilitate collection, the department may require each foreign bank representative office to pay the annual assessment fee on September 1 of each year through electronic funds transfer.

§3.37. Calculation of Annual Assessment for Banks.

The annual assessment for a state bank is calculated as described in §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table:

Figure: 7 TAC §3.37

§3.38. Calculation of Annual Assessment for Foreign Bank Branches or Agencies.

The annual assessment for a foreign bank branch or agency is calculated as described in §3.36 of this title (relating to Annual Assessments and Specialty Examination Fees), based on the values in the following table:

Figure: 7 TAC §3.38

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

Filed with the Office of the Secretary of State, on June 25, 1999.

TRD-9903801
Everette D. Jobe
General Counsel
Texas Department of Banking
Earliest possible date of adoption: August 20, 1999
For further information, please call: (512) 475–1300

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.90

(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 Railroad Commission of Texasor in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §3.90, relating to production factors. Section 3.90 concerns the use of production factors to establish production allowables in oil fields. A portion of the rule was declared invalid by the Austin Court of Appeals in *Railroad Commission of Texas v. ARCO Oil & Gas Company*, 876 S.W.2d 473 (Tex. App. - Austin 1994, writ denied). The Commission has not used production factors to set allowables in any oil fields since that decision.

Colin Lineberry, Assistant Director, Oil and Gas Section, Office of General Counsel, has determined that for each year of the first five years the repeal as proposed will be in effect, there will be no fiscal implications for state and local governments as a result of the repeal.

Mr. Lineberry also has determined that the public benefit anticipated as a result of the repeal will be clarification of Commission requirements through the removal of a rule which is obsolete. There is no anticipated economic cost to small businesses or to individuals.

Comments on the proposal may be submitted to Colin Lineberry, Assistant Director, Oil and Gas Section, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 14 days after publication in the *Texas Register* and should refer to Docket No. 20-0221145. For more information, contact Mr. Lineberry at (512) 463-7051.

The Commission has not requested a local employment impact statement, pursuant to Texas Government Code, §2001.022(h).

The commission proposes the repeal pursuant to Texas Natural Resources Code, §§81.052, 85.042, 85.046, 85.201, 86.042, 89.001, 89.121, and 91.101, which authorize the Commission to prevent waste of oil and gas, to protect correlative rights and to prevent the pollution of surface and subsurface water within the state.

Texas Natural Resources Code, §§81.052, 85.042, 85.046, 85.201, 86.042, 89.121, and 91.101 are affected by the proposed repeal.

§3.90. Production Factors.

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

Filed with the Office of the Secretary of State, on June 22, 1999.

TRD-9903730
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–7008

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Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §§9.4, 9.15, 9.20

The Railroad Commission of Texas proposes amendments to §§9.4, 9.15, and 9.20, relating to licenses and related fees; registration and transfer of LP-gas transports or container delivery units; and filings required for stationary LP-gas installations. The sections include various fees to be paid to the commission for licenses, renewals, examinations, transport registration, and other items.

The commission proposes the amendments in response to legislative directives that the commission recover its costs for providing various services. The proposed amendments increase the current fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities. Some of the fees currently in effect are set at about half the statutory maximum, and most have not been increased in several years (in some cases, more than 20 years).

The commission proposes in §9.4 to increase original and renewal license fees, for the most part, to the current statutory

maximum. The table is proposed to be removed from the rule, and the text concerning the fees added to the language about each specific license category. New §9.4(d) raises the fees for management-level rules examinations, currently set at $25, to $50, and raises the employee-level examination fee from $10 to $20. The language in §9.4(e) concerning the general installers and repairman exemption has been moved from another rule; therefore, most of the language is shown as new language, although the only substantive change is the increase of the fees.

Also, in §9.15(c)(4), (d), and in the table, the commission proposes add the new $270 transport registration fee and to delete language referring to proration of the transport registration fee. Section 9.15(d) is shown as deleted; this language is being moved to a new rule, §9.13 relating to decals and fees, which will be proposed in a separate but concurrent rulemaking. In §9.20, the commission proposes to increase the filing fees for certain forms from a range of $5.00 to $25, to a range of $10 to $50.

One fee which the commission does not propose to increase at this time is the $25 annual renewal fee which funds the commission's new LP-gas training program, to be proposed in a separate rulemaking. However, the commission will propose in that rulemaking to increase the late-renewal fee from $10 to $20 to address an estimated 28% late renewal problem.

Other proposed nonsubstantive amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period is reasonable in order to comply with legislative instructions to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The commission anticipates that increasing fees to the proposed amounts will meet the legislative mandate that the cost of administering the LP-gas, CNG, and LNG safety programs will be financed by the regulated industries rather than from general revenue. All fiscal information is presented using fiscal year 1998 numbers. Although the commission recognizes that fee increases may reduce the number of licenses, registrations, exams, etc., it is not possible to calculate that effect. There will be no effect on local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be the assurance that the commission is adequately funded to protect the health, safety, and welfare of the general public, while providing for consistent safety standards for persons in the LP- gas industry. There will be some anticipated economic cost to small businesses or to individuals based on the proposed increase in the fees. Currently, the commission has 2,618 LP-gas licensees with fees ranging from $50 to $500 annually. Based on the proposed increase, the new fees will range from $100 to $1,000 annually, resulting in an anticipated revenue increase of $194,455 for licenses. Currently, the commission has 1,600 LP- gas transports and 2,333 LP-gas bobtails registered at $156 and $96 annually, respectively; the proposed fee increase will result in an anticipated revenue increase of $560,286 annually for transport registration. In fiscal year 1998, the commission administered 621 management and 3,561 employee examinations at $25 and $10 respectively; the proposed fee increase will result in an anticipated revenue increase of $31,050 and $71,220 respectively. In fiscal year 1998, the commission received 2,385 forms or resubmissions with fees ranging from $5.00 to $25 each; the proposed fees for these forms will range from $10 to $50, resulting in an anticipated revenue increase of $17,812. In fiscal year 1998, the commission received 344 new general installer and repairman exemption requests and 1,371 exemption renewals, at $15 and $10 each respectively; the proposed fee increase to $30 and $20 respectively will result in an anticipated revenue increase of $18,870.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5:00 p.m. on July 28, 1999, and should refer to LP-Gas Docket No. 1613. For more information, contact Thomas D. Petru at (512) 463-6949.

The commission will conduct a public comment hearing on Tuesday, July 27, 1999, at 2:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress, Austin, Texas 78701. In addition, to help ensure that all affected persons have a reasonable opportunity to participate in this rulemaking, the commission has sent a letter to LP-gas licensees to notify them of the proposed fee increases and of the public comment hearing.

The amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §113.051, is affected by the proposed amendments.

Issued in Austin, Texas, on June 29, 1999.

§9.4. ~~Categories of~~] Licenses and Related Fees.

(a) A prospective licensee may apply to the commission for one or more licenses [~~a license to engage in one or more of the categories~~] specified in subsection (c)(1)-(16) [~~(d)(1)-(16)~~] of this section. Fees required to be paid shall be those established by the commission and in effect at the time of licensing or renewal[~~, as specified in Table 1 of this section~~].
[~~Figure: 16 TAC §9.4(a)~~]

[~~(b) License and renewal fees shall be prorated as specified in §9.5(d) of this title (relating to Licensing Requirements).~~]

(b) [~~(c)~~] An original manufacturer of a new motor vehicle powered by LP-gas, or a subcontractor of a manufacturer who produces a new LP-gas powered motor vehicle for the manufacturer, is not subject to the licensing requirements of this title, but shall comply with all other LP-Gas Safety Rules.

(c) [~~(d)~~] The license categories and fees are as follows.

(1) A Category A license for container manufacturers and/or fabricators authorizes the manufacture, fabrication, assembly, repair, installation, subframing, testing, and sale of LP-gas containers, including LP-gas motor or mobile fuel containers and systems, and the repair and installation of transport and transfer systems. The original license fee is $1,000; the renewal fee is $600.

(2) A Category B license for transport outfitters authorizes the subframing, testing, and sale of LP-gas transport containers, the

testing of LP-gas storage containers, the installation, testing, and sale of LP-gas motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems. The original license fee is $400; the renewal fee is $200.

(3) A Category C license for carriers authorizes the transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems. The original license fee is $1,000; the renewal fee is $300.

(4) A Category D license for general installers and repairmen authorizes the sale, service, and installation of containers, excluding motor fuel containers, and the service, installation, and repair of piping, certain appliances as defined by rule, excluding recreational vehicle appliances and LP-gas systems, and motor fuel and recreational vehicle systems. The service and repair of an LP-gas appliance not required by the manufacturer to be vented to the atmosphere is exempt from Category D licensing. The installation of these unvented appliances to LP-gas systems by means of LP-gas appliance connectors is also exempt from Category D licensing. The original license fee is $100; the renewal fee is $70.

(5) A Category E license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LP-gas at retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LP-gas containers, and except the sale and installation of LP-gas motor or mobile fuel systems that have an engine with a rating of more than 25 horsepower. The original license fee is $750; the renewal is $300.

(6) A Category F license for cylinder filling authorizes the operation of a cylinder filling facility, including cylinder filling, the sale of LP-gas in cylinders, and the replacement of cylinder valves. The original license fee is $100; the renewal fee is $50.

(7) A Category G license for dispensing stations authorizes the operation of LP-gas dispensing stations filling ASME containers designed for motor or mobile fuel. The original license fee is $100; the renewal is $50.

(8) A Category H license for cylinder dealers authorizes the transportation and sale of LP-gas in cylinders. The original license fee is $1,000; the renewal is $300.

(9) A Category I license for service stations and cylinder filling authorizes any service station and cylinder activity set out in Category F and Category G of this section. The original license fee is $150; the renewal is $70.

(10) A Category J license for service stations and cylinder facilities authorizes the operation of a cylinder filling facility, including cylinder filling and the sale, transportation, installation, and connection of LP-gas in cylinders, the replacement of cylinder valves, and the operation of an LP-gas service station as set out in Category G. The original license fee is $1,000; the renewal is $300.

(11) A Category K license for distribution systems authorizes the sale and distribution of LP-gas through mains or pipes, and the installation and repair of LP-gas systems. The original license fee is $1,000; the renewal is $300.

(12) A Category L license for engine fuel authorizes the sale and installation of LP-gas motor or mobile fuel containers, and the sale and installation of LP-gas motor or mobile fuel systems. The original license fee is $100; the renewal is $50

(13) A Category M license for recreational vehicle installers and repairmen authorizes the sale, service, and installation of recreational vehicle containers, and the installation, repair, and service of recreational vehicle appliances, piping, and LP-gas systems, including recreational vehicle motor or mobile fuel systems and containers. The original license fee is $100; the renewal is $70.

(14) A Category N license for manufactured housing installers and repairmen authorizes the service and installation of containers that supply fuel to manufactured housing, and the installation, repair, and service of appliances and piping systems for manufactured housing. The original license fee is $100; the renewal is $70.

(15) A Category O license for testing laboratories authorizes the testing of LP-gas containers, LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, and repair of LP-gas motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is $400; the renewal is $100.

(16) A Category P license for portable cylinder exchange authorizes the operation of a portable cylinder exchange service, where the sale of LP-gas is within a portable cylinder with an LP-gas capacity not to exceed 21 pounds, where the portable cylinders are not filled on site, and where no other LP-gas activity requiring a license is conducted. The original license fee is $100; the renewal fee is $50.

~~[(e) All prior LP-gas licenses authorizing portable cylinder exchange activities under new Category P shall be converted to a Category P license upon an applicant's compliance with the renewal procedures set forth in §9.6 of this title (relating to Examination Requirements and Renewal of Certified Status).]~~

(d) Fees for rules examinations.

(1) Individuals wishing to take a management-level rules examination (for company representatives or operations supervisors) shall pay a nonrefundable fee of $50 before taking any such examination.

(2) Individuals wishing to take an employee-level rules examination (for employees other than company representatives or operations supervisors) shall pay a nonrefundable fee of $20 before taking any such examination.

(e) General Installers and Repairmen Exemption.

(1) Any individual who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category D training or continuing education requirements, and any service and installation employee training or continuing education requirements for Categories D, E, K, or N only by submitting to the commission the following:

(A) LPG Form 16B;

(B) a $30 original filing fee; and

(C) any information the commission may reasonably require.

(2) This exemption does not become effective until the examination exemption card is issued by the commission.

(3) An individual who holds a general installers and repairmen exemption shall not perform LP-gas related activities unless:

(A) that individual works for a properly licensed Category D, E, K, or N licensee;

(B) the individual successfully completes the applicable employee-level training or continuing education required to work for a licensee in a category other than D, E, K, or N; or

(C) the individual successfully completes all training or continuing education requirements for a category of license other than Category D, E, K, or N.

(4) The examination exemption accrues to the individual and is nontransferable.

(5) Any individual granted such exemption shall maintain certified status at all times. Upon failure to maintain certified status, the individual shall immediately cease all affected LP-gas activities until proper status has been regained.

(6) In order to maintain certified status, each individual issued an examination exemption card shall pay a $20 annual renewal fee to the commission on or before May 31 of each year. Failure to pay the annual renewal fee by May 31 shall result in a lapsed certification. If an individual's certification lapses, that individual shall cease all LP-gas activities until certified status has been renewed. To renew a lapsed certification, the applicant shall pay the $20 annual renewal fee plus a $20 late- filing fee. Failure to do so shall result in the expiration of the examination exemption. If an individual's examination exemption has been expired for more than two years, that individual shall complete all requirements necessary to apply for a new exemption.

(7) Each applicant for exemption who plans to substitute an individual as noted in §9.8(a)(3) of this title (relating to designation and responsibilities of company representatives and operations supervisors (branch managers)) for its company representative or operations supervisor may do so provided that individual complies with all of the other requirements.

(8) Any individual who is issued this exemption agrees to comply with the current edition of the LP-gas safety rules. In the event the exempt individual surrenders, fails to renew, or has the licensed revoked either by the Texas State Board of Plumbing Examiners or the Department of Licensing and Regulation, that individual shall immediately cease performing any LP-gas activities granted by this section. The examination exemption card shall be returned immediately to the commission and all rights and privileges surrendered.

(9) Individuals who comply with the general installers and repairmen exemption are not required to participate in the continuing education or training requirements specified in §§9.41, 9.43, and 9.45 of this title (relating to general requirements for training and continuing education; requirements for applicants for a new license; and requirements for applicants for a new certificate, respectively).

§9.15. Registration and Transfer of LP-Gas Transports or Container Delivery Units.

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

(c) The operator of the unit shall pay all registration fees in full and shall properly complete other requirements specified in Table 1 before registering any unit and placing it into LP-gas service.

(1) To register a unit previously unregistered in Texas, the operator of the unit shall:

(A) pay to the commission the appropriate registration fee; and

(B) file a properly completed LPG Form 7 and other materials specified in Table 1. [~~, the DOT certification or any other documentation (such as a pencil rubbing of the applicable nameplate) indicating that the unit was built to MC-330/MC-331 specifications; and~~]

[~~(C) submit test results as shown in Table 1 of this section.~~]

(2)-(3) (No change.)

[~~(4) Registration fees to be paid shall be calculated as follows:~~]

[~~(A) If a unit is to be registered under the name or names of an operator who has other units already registered with the commission, commission staff shall prorate the appropriate registration fee in order to maintain the same registration renewal period by:~~]

[~~*(i)* dividing the applicable registration fee by 12; and~~]

[~~*(ii)* multiplying that amount by the number of months remaining on the operator's existing annual license or annual registration, whichever is applicable.~~]

[~~(B) If a unit is the first unit to be registered under the name or names of an operator who is not licensed by the commission or does not have other units already registered with the commission, the operator shall pay the appropriate registration fee in full. The registration renewal date shall be the date on which the commission confirms that all registration requirements are met.~~]

[~~(d) Transfer fees shall be $50 for each applicable LP-gas vehicle, regardless of size or time remaining on any current license or registration period. The new operator of the LP-gas transport or container delivery unit shall pay this fee in full to the commission before placing such unit into LP-gas service in Texas. Transfer fees shall not be prorated.~~]

(d) [~~(e)~~] LP-gas transports shall comply with the requirements indicated in Table 1 of this section.
Figure: 16 TAC 9.15(d)[~~(e)~~]

(e) [~~(f)~~] The commission may also request that an operator registering or transferring any unit:

(1) file a copy of the Manufacturer's Data Report; or

(2) have the unit tested by a test other than those required by §9.1753 of this title (relating to Testing Requirements).

(f) [~~(g)~~] At least once every five years, the commission may inspect currently registered LP-gas transports for compliance with the LP-Gas Safety Rules prior to the commission issuing LPG Form 4. The commission shall notify the licensee of the date and time for inspection at least 24 hours in advance.

(1) If the unit does not comply, the commission may not register or transfer the unit until it is brought into compliance.

(2) If a commission inspection reveals that an LP-gas transport is unsafe for LP-gas service, the commission shall not issue LPG Form 4 until the operator makes the required corrections and notifies the commission, and the commission determines that the unit is in compliance.

[(h) If an LPG Form 4 decal on a unit currently registered with the commission is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LPG Form 18B with the commission.]

§9.20. Filings Required for Stationary LP-Gas Installations.

(a) Aggregate water capacity of 10,000 gallons or more.

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

(5) Fee. A nonrefundable fee of $50 [$25] shall be submitted with each LPG Form 500. A nonrefundable resubmission fee of $30 [$15] shall be included with each incomplete or revised set of plans and specifications resubmitted.

(b) Aggregate water capacity of less than 10,000 gallons.

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

(3) A nonrefundable [non-refundable] fee of $10 [$5.00] for each LP-gas container (including cylinders) listed on the form shall be submitted with each LPG Form 501 required to be filed by the applicable subsection(s) of this section. A non-refundable resubmission fee of $20 [$11] shall be included for each LPG Form 501 resubmitted.

(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.

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TRD-9903859
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463-7008

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16 TAC §9.13, §9.29

The Railroad Commission of Texas proposes new §9.13 relating to decals and fees, and amendments to §9.29, relating to application for an exception to a safety rule. The sections include various fees to be paid to the commission for transport registration and applications for exceptions to safety rules.

The commission proposes the new section and amendments in response to legislative directives that the commission recover its costs for providing various services. The proposed new section and amendments add some new fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities.

In new §9.13, the commission proposes to add a $50 decal replacement fee for truck decals which have been lost, damaged, or destroyed; the text of new §9.13 is being moved from current §9.15(h) and the new fee added. In §9.29, the commission proposes to add a $50 application fee and a $30 resubmission fee for staff review of applications for an exception to a safety rule. Both services require extensive staff time for research and processing.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the new section and amendments as proposed will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The commission anticipates that the proposed fee amounts will meet the legislative mandate that the cost of administering the LP- gas, CNG, and LNG safety programs will be financed by the regulated industries rather than from general revenue. All fiscal information is presented using fiscal year 1998 numbers. Although the commission recognizes that fee increases may reduce the number of licenses, registrations, exams, etc., it is not possible to calculate that effect. There will be no effect on local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be the assurance that the commission is adequately funded to protect the health, safety, and welfare of the general public, while providing for consistent safety standards for persons in the LP- gas industry. There will be some anticipated economic cost to small businesses or to individuals based on the proposed fees. In fiscal year 1998, the commission administered 4,182 LP-gas examinations; if all 4,182 individuals transferred to new companies, the anticipated revenue increase would be $41,820. In fiscal year 1998, the commission issued about 175 replacement decals; based on the proposed new fee, this will result in an anticipated revenue increase of $8,750. In fiscal year 1998, the commission granted about six exceptions to LP-gas safety rules; the proposed new fee for exceptions will result in an anticipated revenue increase of $300.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5:00 p.m. on July 28, 1999, and should refer to LP-Gas Docket No. 1613. For more information, contact Thomas D. Petru at (512) 463-6949.

The commission will conduct a public comment hearing on Tuesday, July 27, 1999, at 2:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress, Austin, Texas 78701. In addition, to help ensure that all affected persons have a reasonable opportunity to participate in this rulemaking, the commission has sent a letter to LP-gas licensees to notify them of the proposed fee increases and of the public comment hearing.

The new section and amendments are proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §113.051, is affected by the proposed new section and amendments.

Issued in Austin, Texas on June 29, 1999.

§9.13. Decals and Fees.

If an LPG Form 4 decal on a unit currently registered with the commission is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LPG Form 18B and a $50 replacement fee with the commission.

§9.29. Application for an Exception to a Safety Rule.

(a) Any person may apply for an exception to the provisions of this chapter by filing LPG Form 25 and a $50 filing fee with the commission.

(b)-(d) (No change.)

(e) The commission shall review the application within 21 calendar days of receipt of the application. If the commission does not receive any objections from any affected parties as defined in subsection (d) of this section, the commission may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the commission declines to grant the exception, the applicant shall be notified of the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a $30 resubmission fee, or may request a hearing on the matter.

(f)-(k) (No change.)

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

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Mary Ross McDonald
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Railroad Commission of Texas
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Chapter 12. Coal Mining Regulations

The Railroad Commission of Texas proposes repeals of §12.379, relating to air resources protection for surface mining; §12.389, relating to regrading or stabilizing rills and gullies for surface mining; §12.546, relating to air resources protection for underground mining; and §12.554, relating to regrading or stabilizing rills and gullies for underground mining. The Railroad Commission also proposes new §12.389, relating to stabilization of surface areas for surface mining; and §12.554, relating to stabilization of surface areas for underground mining. The Railroad Commission also proposes amendments to §12.143, relating to air pollution control for surface mining; §12.145, relating to the general requirements of the reclamation plan for surface mining; §12.187, relating to the general requirements of the reclamation plan for underground mining; §12.199 relating to an air pollution control plan for underground mining; and §12.651, relating to coal processing plants performance standards.

Amendments to §§12.143, 12.145, 12.187, 12.199, and 12.651 are nonsubstantive and update internal references.

Section 12.379 and §12.546 are proposed to be repealed because the federal counterparts to these state regulations have been repealed. Air resources protection is generally subject to regulation by the United States Environmental Protection Agency at the federal level and the Texas Natural Resource Conservation Commission at the state level. Overlapping regulations for air resource protection within the coal mining regulatory program is unnecessary.

Section 12.389 and §12.554 are proposed to be repealed and replaced with new §12.389 and §12.554 to offer more general performance standards to provide operators with more flexibility in meeting the goal of surface stabilization.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed repeals, amendments, and new sections are in effect, there will be no fiscal impacts to state or local governments as a result of their adoption. The new requirements applicable to the commission will impose no new costs on the commission.

Mr. Hodgkiss has determined that for each year of the first five years the proposed repeals, amendments, and new sections are in effect, there will be decreased costs of compliance with the amended rules. The new surface stabilization requirements allow industry greater flexibility in meeting land stabilization standards. The repeal of specific dust control requirements eliminates the need to comply with overlapping requirements of the commission and the TNRCC. The cost savings resulting from these changes will vary from operator to operator and cannot be reliably predicted.

Mr. Hodgkiss has also determined that the public benefit from the adoption of the proposed repeals, new sections, and amendments will be continued adherence to environmental protection standards in a more cost effective fashion.

The commission has not requested a local employment impact statement, pursuant to Texas Government Code, §2002.022.

Comments on the proposed repeals, amendments and new sections should be submitted to Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas, 78711-2967. Comments will be accepted until 5:00 p.m. on the 15th day after publication in the *Texas Register.*

Subchapter G. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems

Division 6. Surface Mining Permit Applications–Minimum Requirements for Reclamation and Operation Plan

16 TAC §12.143, §12.145

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed amendments sections.

Issued in Austin, Texas on June 22, 1999.

§12.143. Air Pollution Control Plan for Surface Mining.

(a) For all surface mining activities with projected production rates exceeding 1 million tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution control plan which includes the following:

(1) (No change.)

(2) a plan for fugitive-dust control practices as required under §12.389 of this title (relating to Stabilization of Surface Areas for Surface Mining) [~~§12.379 of this title (relating to Air Resources Protection)~~].

(b) For all other surface mining activities the application shall contain an air-pollution control plan which includes the following:

(1) an air-quality monitoring program, if required by the Commission, to provide sufficient data to evaluate the effectiveness

of the fugitive-dust control practices under paragraph (2) of this subsection [~~(b)(2) of this section~~] to comply with applicable federal and state air-quality standards; and

(2) a plan for fugitive-dust control practices[~~,~~] as required under §12.389 of this title (relating to Stabilization of Surface Areas for Surface Mining) [~~§12.379 of this title (relating to Air Resources Protection)~~].

§12.145. Reclamation Plan: General Requirements for Surface Mining.

(a) (No change.)

(b) Each plan shall contain the following information for the proposed permit area:

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

(3) a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with §§12.384-12.389 of this title (relating to Backfilling and Grading: General Requirements, to Backfilling and Grading: General Grading Requirements, to Backfilling and Grading: Covering Coal and Acid- and Toxic- Forming Materials, to Backfilling and Grading: Thin Overburden, to Backfilling and Grading: Thick [~~Grading: thick~~] Overburden, and to Stabilization of Surface Areas for Surface Mining [~~Regrading or Stabilizing Rills and Gullies)~~];

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

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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Division 9. Underground Mining Permit Application–Minimum Requirements for Reclamation and Operation Plan

16 TAC §12.187, §12.199

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

Issued in Austin, Texas on June 22, 1999.

§12.187. Reclamation Plan: General Requirements for Underground Mining.

(a) (No change.)

(b) Each plan shall contain the following information for the proposed permit area:

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

(3) a plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with §§12.551-12.554 of this title (relating to Backfilling and Grading: General Requirements, to Backfilling and Grading: General Grading Requirements, to Backfilling and Grading: Covering Coal and Acid- and Toxic- Forming Materials, and to Stabilization of Surface Areas for Underground Mining [~~Regrading or Stabilizing Rills and Gullies)~~];

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

§12.199. Air Pollution Control Plan for Underground Mining.

For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(1) (No change.)

(2) a plan for fugitive-dust control practices as required under §12.554 of this title (relating to Stabilization of Surface Areas for Underground Mining) [~~§12.546 of this title (relating to Air Resources Protection)~~].

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

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Subchapter K. Permanent Program Performance Standards

Division 2. Permanent Program Performance Standards-Surface Mining Activities

16 TAC §12.379, §12.389

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

The repeals are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed repeals.

Issued in Austin, Texas, on June 22, 1999.

§12.379. Air Resources Protection.

§12.389. Regrading or Stabilizing Rills and Gullies.

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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16 TAC §12.389

The new section is proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new section.

Issued in Austin, Texas, on June 22, 1999.

§12.389. Stabilization of Surface Areas for Surface Mining.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either disrupt the approved postmining land use or the reestablishment of the vegetative cover or cause or contribute to a violation of water-quality standards for receiving streams shall be filled, regraded, or otherwise stabilized. Topsoil shall be replaced and the areas shall be reseeded or replanted.

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

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Mary Ross McDonald
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Division 3. Permanent Program Performance Standards-Underground Mining Activities

16 TAC §12.546, §12.554

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

The repeals are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed repeals.

Issued in Austin, Texas, on June 22, 1999.

§12.546. Air Resources Protection.

§12.554. Regrading or Stabilizing Rills and Gullies.

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

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16 TAC §12.554

The new section is proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed new section.

Issued in Austin, Texas, on June 22, 1999.

§12.554. Stabilization of Surface Areas for Underground Mining.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either disrupt the approved postmining land use or the reestablishment of the vegetative cover or cause or contribute to a violation of water-quality standards for receiving streams shall be filled, regraded, or otherwise stabilized. Topsoil shall be replaced and the areas shall be reseeded or replanted.

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

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Division 7. Special Permanent Program Performance Standards–Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine

16 TAC §12.651

The amendments are proposed under §134.013 of the Texas Natural Resources Code, which provides the commission the authority to promulgate rules pertaining to surface coal mining operations.

The Texas Natural Resources Code, §134.013, is affected by the proposed amendments.

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§12.651. Coal Processing Plants: Performance Standards.

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by §12.650 of this title

(relating to Applicability) and this section shall comply with the following:

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

(9) erosion and pollution attendant to erosion shall be controlled in accordance with §12.389 of this title (relating to Stabilization of Surface Areas for Surface Mining) [~~air- pollution control measures associated with fugitive-dust emissions shall comply with §12.379 of this title (relating to Air Resources Protection)~~];

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

(13) reclamation shall include proper topsoil-handling procedures, revegetation, and abandonment, in accordance with §12.354 of this title (relating to Hydrologic Balance: Postmining Rehabilitation of Sedimentation Ponds), §§12.383- 12.389 of this title (relating to Contemporaneous Reclamation, to Backfilling and Grading: General Requirements, to Backfilling and Grading: Covering Coal and Acid- and Toxic-Forming Materials, to Backfilling and Grading: Thin Overburden, to Backfilling and Grading: Thick Overburden, and to Stabilization of Surface Areas for Surface Mining [~~to Regrading or Stabilizing Rills and Gullies~~)], §§12.390-12.393 and 12.395 of this title (relating to Revegetation: General Requirements, to Revegetation: Use of Introduced Species, to Revegetation: Timing, to Revegetation: Mulching and Other Stabilizing Practices, and to Revegetation: Standards for Success) and §§12.397-12.399 of this title (relating to Cessation of Operations: Temporary, to Cessation of Operations: Permanent, and to Postmining Land Use);

(14)-(15) (No change.)

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

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Mary Ross McDonald
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Chapter 13. Regulations for Compressed Natural Gas (CNG) and Liquefied Natural Gas (LNG)

The Railroad Commission of Texas proposes amendments to §§13.25, 13.61, 13.69, and 13.70, relating to filings required for stationary CNG installations; licenses, related fees, and licensing requirements; registration of CNG transports; and examination requirements and renewals. These sections include various fees to be paid to the commission for licenses, renewals, examinations, transport registration, and other items.

The commission proposes the amendments in response to legislative directives that the commission recover its costs for providing various services. The proposed amendments increase the current fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities. Some of the fees currently in effect are set at about half the statutory maximum, and most have not been increased in several years (in some cases, more than 14 years).

In §13.25, the commission proposes to increase the nominal filing fees for certain forms, ranging from $6 to $26, to $10 to $50. The commission proposes in §13.61 to increase original and renewal license fees, currently ranging from $50 to $500, to a range of $100 to $1,000. The table is proposed to be removed from the rule, and the text in the table concerning the fees added to the language about each specific license category. Also, in §13.69, the commission proposes to add a new table to specify registration and transfer fees; these fees previously were not specified in the rule, but the newly proposed fees increase the current fees from $96 and $156 to $270 for all vehicle types.

Proposed new language in §13.70(a)(1)(A) and (B) raises the fees for management-level rules examinations, currently set at $26, to $50, and raises the employee-level examination fee from $11 to $20. Section 13.70(a)(4) is shown as deleted; this language is being moved to a new rule, §13.73 relating to other fees for employee transfer and decal replacement, which will be proposed in a separate but concurrent rulemaking. The language in §13.70(b) concerning the general installers and repairman exemption also includes fees which are proposed to be doubled. In the table, the employee's annual renewal fee is proposed to increase from $10 to $20. Also in §13.70(e), late renewals will increase from $10 to $20.

Other proposed amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period is reasonable in order to comply with legislative directives to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the amendments as proposed will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The commission anticipates that increasing fees to the proposed amounts will meet the legislative mandate that the cost of administering the LP-gas, CNG, and LNG safety programs will be financed by the regulated industries rather than from general revenue. All fiscal information is presented using fiscal year 1998 numbers. Although the commission recognizes that fee increases may reduce the number of licenses, registrations, exams, etc., it is not possible to calculate that effect. There will be no effect on local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be the assurance that the commission is adequately funded to protect the health, safety, and welfare of the general public, while providing for consistent standards for persons in the CNG industry. There will be some anticipated economic cost to small businesses or to individuals based on the proposed increase in the fees. Currently, the commission has 113 CNG licensees with fees ranging from $50 to $500 annually. Based on the proposed increase, the new fees will range from $100 to $1,000, resulting in an anticipated revenue increase of $25,340 for licenses. Currently, the commission has no CNG transports registered. In fiscal year 1998, the commission administered 12 management and 25 employee examinations at $25 and $10 respectively; the proposed fee increase will result in an anticipated revenue increase of $600 and $500 respectively. In fiscal year 1998, the commission received no forms which required filing fees.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5:00 p.m. on July 28, 1999, and should refer to LP-Gas Docket Number 1613. For more information, contact Thomas D. Petru at (512) 463-6949.

The commission will conduct a public comment hearing on Tuesday, July 27, 1999, at 2:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress, Austin, Texas 78701. In addition, to help ensure that all affected persons have a reasonable opportunity to participate in this rulemaking, the commission has sent a letter to CNG licensees to notify them of the proposed fee increases and of the public comment hearing.

Subchapter B. General Rules for Compressed Natural Gas (CNG) Equipment Qualifications

16 TAC §13.25

The amendments are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed amendments.

Issued in Austin, Texas, on June 29, 1999.

§13.25. Filings Required for Stationary CNG Installations.

(a) Aggregate storage capacity in excess of 240 standard cubic feet water volume.

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

(4) A nonrefundable fee of $50 [~~$26~~] shall be submitted with each CNG Form 1500. A nonrefundable fee of $30 [~~$16~~] shall be submitted for each resubmitted CNG Form 1500.

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

(d) Aggregate storage capacity of less than 240 standard cubic feet water volume.

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

(3) A nonrefundable fee of $10.00 [~~$6.00~~] for each ASME container or DOT cylinder cascade listed on the form shall be submitted with each originally filed CNG Form 1501. A nonrefundable fee of $20 [~~$12~~] shall be submitted with each resubmitted CNG Form 1501.

(e)-(k) (No change.)

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

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–7008

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Subchapter C. Classification, Registration, and Examination

16 TAC §§13.61, 13.69, 13.70

The amendments are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed amendments.

§13.61. [~~Categories of~~] Licenses, [~~and~~] Related Fees, and Licensing Requirements.

(a) A prospective licensee may apply to the commission for one or more licenses [~~a license to engage in one or more of the categories~~] specified in subsection (c)(1)-(6) of this section. Fees required to be paid shall be those established by the commission and in effect at the time of licensing or renewal[~~, as specified in Table 1 of this section~~]. A person may not engage in CNG activities unless that person has obtained a license as specified in this section. If a license expires or lapses, the person shall immediately cease CNG operations.
[~~Figure: 16 TAC §13.61(a)~~]

(b) (No change.)

(c) The license categories and fees are as follows.

(1) A Category 1 license for manufacturers of CNG cylinders authorizes the manufacture, assembly, repair, testing, sale, installation, or subframing of CNG cylinders. The original license fee is $1,000; the renewal fee is $600.

(2) A Category 2 license for general installers and repairmen authorizes the sale, installation, service, or repair of CNG systems, including cylinders. The original license fee is $300; the renewal fee is $150.

(3) A Category 3 license for retail and wholesale dealers authorizes the sale, storage, transportation for delivery, or dispensing of CNG for use other than by an ultimate consumer, and the sale, installation, service, or repair of CNG systems as set out in Categories 2, 5, and 6. The original license fee is $750; the renewal fee is $300.

(4) A Category 4 license for testing laboratories authorizes the testing of CNG cylinders. The original license fee is $400; the renewal fee is $200.

(5) A Category 5 license for service stations or cylinder exchangers authorizes the operation of a CNG service station, including filling CNG cylinders, or the operation of a cylinder exchange dealership, including filling CNG cylinders, the sale of CNG in cylinders, the sale of CNG cylinders, and the replacement of cylinder valves. The original license fee is $150; the renewal fee is $70.

(6) A Category 6 license for equipment dealers authorizes the sale of CNG cylinders or systems. The original license fee is $100; the renewal fee is $50.

(d)-(k) (No change.)

(l) [~~When the commission assigns a new staggered license renewal date to a licensee, the commission shall notify the licensee of the new date at least 30 days in advance. For all subsequent renewals, the commission shall notify the licensee of the impending license~~

~~expiration at least 15 days prior to the expiration date.~~] Renewals shall be submitted to the commission along with the license renewal fee specified in subsection (c) [~~Table 1~~] of this section on or before the last day of the month in which the license expires in order for the licensee to continue CNG activities. Failure to meet the renewal deadline set forth in this section shall result in expiration of the license. If a person's license expires, that person shall immediately cease performance of any CNG activities.

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

(m)-(n) (No change.)

§13.69. Registration of CNG Transports.

A licensee or ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this subchapter shall register each such unit with the commission in the name of the licensee or ultimate consumer prior to the use of such unit for the transport or delivery of CNG in Texas.

Figure: 16 TAC §13.69

§13.70. Examination Requirements and Renewals [~~and Notification Generally~~].

(a) Examination general provisions.

(1) No person may work or be employed in any capacity which requires contact with CNG or CNG systems until that person has submitted to and successfully completed a commission examination which measures the competency of that person to perform the CNG related activities anticipated, and tests working knowledge of the Texas Natural Resources Code and the regulations for compressed natural gas related to the type of CNG work anticipated. Table 1 [~~Subsection (f) (Table 1)~~] of this section sets forth specific requirements for examination for each category of license. This section applies to all licensees and their employees who perform CNG related activities, and also applies to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport by this chapter and any employee of such ultimate consumer if that employee drives or in any way operates such a CNG transport. Driving a motor vehicle powered by CNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute CNG related activities. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision.

Figure: 16 TAC §13.70(a)(1)

(A) Individuals wishing to take a management-level rules examination (for company representatives or operations supervisors) shall pay a nonrefundable fee of $50 before taking any such examination.

(B) Individuals wishing to take an employee-level rules examination (for employees other than company representatives or operations supervisors) shall pay a nonrefundable fee of $20 before taking any such examination.

Figure: 16 TAC §13.70(a)(1)

(2)-(3) (No change.)

~~[(4) A licensee shall notify the commission when a previously certified person is hired, by immediate filing of a CNG Form 1016A with the commission. Notification must include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous licensee-employer, and CNG related work to be performed.]~~

(4)[~~(5)~~] All examinations will be administered in Austin and at other selected sites, when appropriate, unless an applicant demonstrates good cause for administering the examination elsewhere. Good cause includes, but is not limited to, severe economic hardship.

(5)[~~(6)~~] Successful completion of any required examination shall be credited to and accrue to the individual.

(6)[~~(7)~~] Failure of any examination shall immediately disqualify the person from performing any CNG related activities covered by the examination which is failed. Any person who fails an examination administered by the commission may not re-take that examination for a period of at least 24 hours.

(7)[~~(8)~~] Dates and locations of examinations shall be listed in a schedule made annually by the commission. The schedule shall be prepared no later than November 15th of each year. The commission shall post the schedule in its Austin office and make a copy of it available to any person who requests it.

(b) General installers and repairmen exemption.

(1) Any person who is currently licensed as a master or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B air conditioning and refrigeration contractors license issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category 2 and 3 service and installation employee examination requirements by submitting to the commission the following information:

(A) CNG Form 1016B;

(B) a $30 [~~$15~~] original filing fee; and

(C) any information the commission may reasonably require.

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

(5) In order to maintain certified status, each person issued an examination exemption card shall submit a $20 [~~$10~~] fee annually to the commission on or before the 31st day of May of each year. If both of these items are not received by the deadline, that person shall cease performing all CNG related activities granted by this exemption and may not resume such activities until that person is in receipt of his or her examination exemption card. Late renewals are permitted for a period not to exceed two years by paying a late filing penalty plus the yearly renewal fee(s) as follows:

(A) the applicant's exemption has been expired for not longer than 92 days, the applicant's penalty fee is $20 [~~$10~~] plus a $20 [~~$10~~] annual fee;

(B) the applicant's exemption has been expired for greater than 92 days, but not longer than two years, the applicant's penalty fee is $50 [~~$25~~] plus a $20 [~~$10~~] annual fee. If an applicant's exemption has been expired for longer than two years, the applicant cannot renew his exemption and must apply for a new original exemption.

(6) (No change.)

(c) (No change.)

(d) Examination fees. Each applicant shall pay to the commission the examination fee specified in subsection (a)(1)(A) and (B) [~~subsection (f) (Table 1)~~] of this section in advance for each required examination. The fee is nonrefundable, and if an

applicant fails an examination, the applicant [they] shall pay the full examination fee for each subsequent examination.

(e) Renewal of certified status.

(1) In order to maintain certified status, each person who has been certified by examination shall pay the annual fee specified in subsection (a)(1)(A) and (B) [subsection (f) (Table 1)] of this section to the commission on or before the 31st day of May of each year.

(2) (No change.)

(3) Any lapsed renewals submitted after May 31st of each year shall include a $20 [$10] late filing penalty in addition to the renewal fee, proof of successful completion of the examination required for certification, and be received in the commission's Austin office no later than midnight of the 31st day of August of each year. Upon receipt of the renewal fee and late filing penalty, the commission shall verify that the person's certification has not been suspended, revoked, or expired for more than two years. After verification, the commission shall renew the certification and the person may resume CNG activities.

(f) Expired certification(s). Any renewal submitted after the August 31 deadline shall be considered expired. If a person wishes to renew a certification that has been expired for less than two years, that person shall submit the annual renewal fee and late filing penalty, and proof of successful completion of the examination required for certification. Upon verification that the person's certification has not been suspended, revoked, or expired for more than two years, the commission shall renew the person's certification and the person may resume CNG activities.

[Figure: 16 TAC §13.70(f)]

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

Filed with the Office of the Secretary of State, on June 29, 1999.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Subchapter B. General Rules for Compressed Natural Gas (CNG) Equipment Qualifications

16 TAC §13.35

The Railroad Commission of Texas proposes an amendment to §13.35, relating to application for an exception to a safety rule, and proposes new §13.73, relating to other fees for employee transfers and decal replacement. These sections include various fees to be paid to the commission for applications for exceptions to safety rules, transport registration, and other items.

The commission proposes the amendment and new section in response to legislative directives that the commission recover its costs for providing various services. The proposed amendment and new section add some new fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities.

In new §13.73, the commission proposes to add a $50 decal replacement fee for truck decals which have been lost, damaged, or destroyed. A new $10 filing fee is also added for employee transfers. In §13.35, the commission proposes to add a $50 application fee and a $30 resubmission fee for staff review of applications for an exception to a safety rule. These services require extensive staff time for research and processing. Other proposed amendments include changes in wording or punctuation to provide clarity.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the amendment as proposed will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the section. The commission anticipates that increasing fees to the proposed amounts will meet the legislative mandate that the cost of administering the LP-gas, CNG, and LNG safety programs will be financed by the regulated industries rather than from general revenue. All fiscal information is presented using fiscal year 1998 numbers. Although the commission recognizes that fee increases may reduce the number of licenses, registrations, exams, etc., it is not possible to calculate that effect. There will be no effect on local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be the assurance that the commission is adequately funded to protect the health, safety, and welfare of the general public, while providing for consistent safety standards for persons in the CNG industry. There will be some anticipated economic cost to small businesses or to individuals based on the proposed new fees. In fiscal year 1998, the commission administered 37 CNG examinations; if all 37 individuals transferred to new companies, the anticipated revenue increase would be $370. In fiscal year 1998, the commission issued no replacement decals or exceptions to safety rules.

Comments on the proposals may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5:00 on July 28, 1999, and should refer to LP-Gas Docket Number 1613. For more information, contact Thomas D. Petru at (512) 463-6949.

The commission will conduct a public comment hearing on Tuesday, July 27, 1999, at 2:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress, Austin, Texas 78701. In addition, to help ensure that all affected persons have a reasonable opportunity to participate in this rulemaking, the commission has sent a letter to CNG licensees to notify them of the proposed new fees and of the public comment hearing.

The amendment and new section are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed amendment and new section.

Issued in Austin, Texas on June 29, 1999.

§13.35. Application for an Exception to a Safety Rule.

(a) Filing. Any person, firm, or corporation may apply for an exception to the provisions of this chapter by filing an application for exception along with a $50 filing fee with the commission.

(b)-(d) (No change.)

(e) Commission review. The commission shall review the application within 21 calendar days of receipt of the exception request. The commission must mail written notification to the applicant within the 21 calendar days of whether the request is complete or incomplete. If the commission has received no objections from any affected parties, it may grant the exception, unless it determines the exception would be hazardous to the health, safety, or welfare of the general public. If the commission declines administratively to grant the exception, it shall notify the applicant by certified mail, return receipt requested, of the reasons and of any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a $30 resubmission fee, or may request a hearing on the matter.

(f)-(j) (No change.)

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

Filed with the Office of the Secretary of State, on June 29, 1999.

TRD-9903863
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–7008

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Subchapter C. Classification, Registration, and Examination

16 TAC §13.73

The new section is proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed new section.

§13.73. Other Fees for Employee Transfer and Decal Replacement.

(a) A licensee shall notify the commission when a previously certified person is hired, by immediately filing CNG Form 1016A along with a $10 filing fee with the commission. Notification must include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous licensee-employer, and CNG related work to be performed.

(b) If a CNG Form 1004 decal on a unit currently registered with the commission is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing CNG Form 1018B and a $50 replacement fee with 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.

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Mary Ross McDonald
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For further information, please call: (512) 463–7008

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Subchapter G. General Applicability and Requirements

16 TAC §§13.2013, 13.2016, 13.2019, 13.2040

The Railroad Commission of Texas proposes amendments to §§13.2013, 13.2016, 13.2019, 13.2040, and 13.2704, relating to licenses and related fees; licensing requirements; examination and course of instruction; filings and notice requirements for stationary LNG installations; and registration of LNG transports. These sections include various fees to be paid to the commission for licenses, renewals, examinations, transport registration, and other items.

The commission proposes the amendments in response to legislative directives that the commission recover its costs for providing various services. The proposed amendments increase the current fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities. Some of the fees currently in effect are set at about half the statutory maximum, and have not been increased since these rules were first adopted effective October 1, 1996.

The commission proposes in §13.2013 to increase original and renewal license fees, for the most part, to the current statutory maximum. The table is proposed to be removed from the rule, and the text in the table concerning the fees added to the language about each specific license category. Section 13.2016 includes only a change to an internal reference. Section 13.2019(a)(4) is shown as deleted; this language is being moved to a new rule, §13.2020 relating to employee transfers, which will be proposed in a separate but concurrent rulemaking. Proposed language in §13.2019(c) raises the fees for management-level rules examinations, currently set at $27, to $50, and raises the employee-level examination fee from $12 to $20. In §13.2040, the commission proposes to increase the filing fees for certain forms from $27 to $50 and from $17 to $30.

In §13.2704(a), the commission proposes to delete language in the current table referring to proration of the transport registration fee. Also, in the table in §13.2704(a), the commission proposes to add specific registration and transfer fees; these fees previously were not specified in the rule, but the newly proposed fees will be $270 for transport registration (all vehicle types) and $100 for transfer.

Other proposed nonsubstantive amendments include changes in wording or punctuation to provide clarity. The commission believes the comment period is reasonable in order to comply with legislative directives and to file with the comptroller's office information to support a finding of fact by the comptroller that the commission will recover its costs from the industries it regulates.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the

first five years the amendments as proposed will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The commission anticipates that increasing fees to the proposed amounts will meet the legislative mandate that the cost of administering the LP-gas, CNG, and LNG safety programs will be financed by the regulated industries rather than from general revenue. All fiscal information is presented using fiscal year 1998 numbers. Although the commission recognizes that fee increases may reduce the number of licenses, registrations, exams, etc., it is not possible to calculate that effect. There will be no effect on local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be the assurance that the commission is adequately funded to protect the health, safety, and welfare of the general public, while providing for consistent safety standards for persons in the LNG industry. There will be some anticipated economic cost to small businesses or to individuals based on the proposed increase in the fees. Currently, the commission has 15 LNG licensees with fees ranging from $52 to $502 annually. Based on the proposed increase, the new fees will range from $100 to $1,000 annually, resulting in an anticipated revenue increase of $2,955 for licenses. Currently, the commission has eight LNG transports registered at $156 annually; the proposed fee increase will result in an anticipated revenue increase of $2,160 for transport registration. In fiscal year 1998, the commission administered 16 management and 19 employee examinations at $27 and $12 respectively; the proposed fee increase will result in an anticipated revenue increase of $800 and $380 respectively. In fiscal year 1998, the commission received four LNG filings with fees ranging from $7 to $27 each; the proposed fees for these forms will range from $10 to $50.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5:00 p.m. on July 28, 1999, and should refer to LP-Gas Docket Number 1613. For more information, contact Thomas D. Petru at (512) 463-6949.

The commission will conduct a public comment hearing on Tuesday, July 27, 1999, at 2:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress, Austin, Texas 78701. In addition, to help ensure that all affected persons have a reasonable opportunity to participate in this rulemaking, the commission has sent a letter to LNG licensees to notify them of the proposed fee increases and of the public comment hearing.

The amendments are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed amendments.

Issued in Austin, Texas, on June 29, 1999.

§13.2013. [~~Categories of~~] Licenses and Related Fees.

(a) A prospective licensee may apply to the commission for one or more licenses [~~a license to engage in one or more of the categories~~] specified in subsection (b)(1)-(8) of this section. Fees required to be paid shall be those established by the commission and in effect at the time of licensing or renewal[~~, as specified in Table 1 of this section~~].
[~~Figure: 16 TAC §13.2013(a)~~]

(b) The license categories and fees are as follows:

(1) A Category 15 license for container manufacturers and/or fabricators authorizes the manufacture, fabrication, assembly, repair, installation, testing, and sale of LNG containers, including LNG motor or mobile fuel containers and systems, and the repair of transport and transfer systems for use in Texas. The original license fee is $1,000; the renewal fee is $600.

(2) A Category 20 license for transport outfitters authorizes the subframing, testing, and sale of LNG transport containers, the testing of LNG storage containers, and the installation, testing, and sale of LNG motor or mobile fuel containers and systems, and the installation and repair of transport systems and motor or mobile fuel systems for use in Texas. The original license fee is $400; the renewal fee is $200.

(3) A Category 25 license for carriers authorizes the transportation of LNG by transport, including the loading and unloading of LNG. The original license fee is $1,000; the renewal fee is $300.

(4) A Category 30 license for general installers and repairmen authorizes the sale, repair, service, and installation of stationary containers and LNG systems. The original license fee is $100; the renewal fee is $70.

(5) A Category 35 license for retail and wholesale dealers authorizes the storage, sale, transportation, and distribution of LNG to both retail and wholesale dealers, and all other activities included in this section, except the manufacture, fabrication, assembly, repair, subframing, and testing of LNG containers. The original license fee is $750; the renewal fee is $300.

(6) A Category 40 license for general public dispensing stations authorizes the storage, sale, and dispensing of LNG into motor and mobile fuel containers. The original license fee is $150; the renewal fee is $70.

(7) A Category 45 license for motor fuel authorizes the sale and installation of LNG motor or mobile fuel containers, and the sale, repair, and installation of LNG motor or mobile fuel systems. The original license fee is $100; the renewal fee is $50.

(8) A Category 50 license for testing laboratories authorizes the testing of LNG containers, LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems for the purpose of determining the safety of the containers or systems for LNG service, including the necessary installation, disconnection, reconnection, testing, and repair of LNG motor fuel systems or mobile fuel systems, transfer systems, and transport systems involved in the testing of containers. The original license fee is $200; the renewal fee is $100.

(c)-(d) (No change.)

§13.2016. Licensing Requirements.

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

(f) The commission shall notify the licensee at the last filed address on LNG Form 2001 of the impending license expiration at least 30 days prior to the expiration date. Renewals shall be submitted to the commission along with the renewal fee specified [~~in Table 1 of~~] §13.2013 of this title (relating to [~~categories of~~] licenses and related fees) before the renewal date in order for the licensee to continue LNG activities. Failure to meet the renewal deadline shall result in

expiration of the license. If a person's license expires, that person shall immediately cease performance of any LNG activities authorized by that license.

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

§13.2019. Examination and Course of Instruction.

(a) This section applies to all licensees and their employees who perform LNG activities, and to any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined by this chapter as an LNG transport, including any employee of such ultimate consumer if that employee drives or in any way operates such an LNG transport. Only paragraph (2) of this subsection applies to an employee of a state agency or institution, county, municipality, school district, or other governmental subdivision. Driving a motor vehicle powered by LNG or fueling of motor vehicles for an ultimate consumer by the ultimate consumer or its employees do not in themselves constitute LNG activities.

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

(3) An individual wishing to submit to examination by the commission shall file LNG Form 2016 along with the appropriate fee listed in subsection (c) of this section with the commission prior to examination. The commission shall notify the individual in writing of acceptance of LNG Form 2016.

~~[(4) When a previously certified individual is hired, the licensee shall notify the commission by filing a properly completed and signed LNG Form 2016A, which shall be received by the commission or postmarked within ten calendar days of such hiring.]~~

(4)~~[(5)]~~ Examinations will be administered in Austin and at other selected sites, unless an applicant demonstrates good cause for administering the examination elsewhere. Good cause includes but is not limited to severe economic hardship.

(5)~~[(6)]~~ Successful completion of any required examination shall be credited to the individual.

(6)~~[(7)]~~ Any individual who fails an examination is immediately disqualified from performing any LNG activities covered by that examination and shall not retake the same examination for at least 24 hours, unless approved by the assistant director for the LP-Gas Section, Gas Services Division, or another designated commission employee.

(7)~~[(8)]~~ Dates and locations of examinations shall be listed in a schedule prepared annually by the commission by September 1st each year. The schedule shall be posted in the Austin office of the Gas Services Division and made available upon request and through electronic media.

(b) (No change.)

(c) The applicant shall pay to the commission a $50 [~~$27~~] examination fee for each management-level examination [~~examinations~~] and a $20 [~~$12~~] fee for each employee-level examination [~~examinations~~] in advance of each required examination. Examination fees are nonrefundable. An applicant who fails an examination shall pay the full examination fee for each subsequent examination.

(d) To renew certified status, an individual who has been qualified by passing an examination shall pay the $20 [~~$12~~] annual renewal fee to the commission on or before the renewal deadline.

(1) (No change.)

(2) Any lapsed or expired renewals submitted after the renewal deadline shall include a $20 [~~$12~~] late-filing penalty in addition to the renewal fee and proof of successful completion of the examination required for the certification. Upon receipt of the renewal fee, late-filing penalty, and proof of successful completion of the examination required for the certification, the commission shall verify that the person's certification has not been suspended, revoked, or expired for more than two years. After verification, the commission shall renew the certification and the person may resume LNG activities.

(e) (No change.)

§13.2040. Filings and Notice Requirements for Stationary LNG Installations.

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

(f) When an LNG container is replaced with a container of the same or less overall diameter and length or height, and installed in the identical location of the existing container at an LNG storage installation of 15,540 gallons aggregate water capacity or more, the applicant shall file LNG Form 2501 with the commission.

(1) (No change.)

(2) A nonrefundable fee of $50 [~~$27~~] shall be submitted with each LNG Form 2500. A nonrefundable resubmission fee of $30 [~~$17~~] shall be included with each incomplete or revised set of plans and specifications resubmitted.

(3) (No change.)

(g)-(h) (No change.)

(i) A nonrefundable fee of $10 [~~$7~~] for each LNG container listed on LNG Form 2501 shall be submitted with each LNG Form 2501 required to be filed by the applicable subsections of this section. A nonrefundable resubmission fee of $20 [~~$12~~] shall be included for each LNG Form 2501 resubmitted.

(j)-(l) (No change.)

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

Filed with the Office of the Secretary of State, on June 29, 1999.

TRD-9903865
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–7008

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Subchapter N. LNG Transports

16 TAC §13.2704

The amendments are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed amendments.

§13.2704. Registration of LNG Transports.

(a) Transport trucks, trailers, or other motor vehicles equipped with an LNG transport tank shall be registered with the commission according to the requirements of Table 1 of this section. Figure: 16 TAC §13.2704(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.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Subchapter G. General Applicability and Requirements

16 TAC §13.2020, §13.2052

The Railroad Commission of Texas proposes new §§13.2020 and 13.2705 relating to employee transfers, and decals and fees, and proposes an amendment to §13.2052, relating to application for an exception to a safety rule. These sections include various fees to be paid to the commission for transport registration, employee transfers, and applications for exceptions to safety rules.

The commission proposes the new sections and amendment in response to legislative directives that the commission recover its costs for providing various services. The proposed new sections and amendment add new fees to provide the commission with an adequate budget to protect the health, safety, and welfare of the general public, and to otherwise fulfill its statutory responsibilities.

In new §13.2020, the commission proposes to add a $10 filing fee for employee transfers. In §13.2052, the commission proposes to add a $50 application fee and a $30 resubmission fee for staff review of applications for an exception to a safety rule. The commission proposes new §13.2705 to add a $50 decal replacement fee for truck decals which have been lost, damaged, or destroyed; the text of new §13.2705 is being moved from current §13.2704 and the new fee added. These services require extensive staff time for research and processing.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the new sections and amendments as proposed will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the sections. The commission anticipates that adding these fees will meet the legislative mandate that the cost of administering the LP-gas, CNG, and LNG safety programs will be financed by the regulated industries rather than from general revenue. All fiscal information is presented using fiscal year 1998 numbers. Although the commission recognizes that fee increases may reduce the number of licenses, registrations, exams, etc, it is not possible to calculate that effect. There will be no effect on local government.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the sections will be the assurance that the commission is adequately funded to protect the health, safety, and welfare of the general public, while providing for consistent safety standards for persons in the LNG industry. There will be some anticipated economic cost to small businesses or to individuals based on the proposed new fees. In fiscal year 1998, the commission administered 35 LNG examinations; if all 35 individuals transferred to new companies, the anticipated revenue increase would be $350. In fiscal year 1998, the commission issued no replacement decals or exceptions to safety rules.

Comments on the proposals may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted until 5:00 p.m. on July 28, 1999, and should refer to LP-Gas Docket Number 1613. For more information, contact Thomas D. Petru at (512) 463-6949.

The commission will conduct a public comment hearing on Tuesday, July 27, 1999, at 2:00 p.m. in room 1-111 of the William B. Travis Building, 1701 North Congress, Austin, Texas 78701. In addition, to help ensure that all affected persons have a reasonable opportunity to participate in this rulemaking, the commission has sent a letter to LNG licensees to notify them of the proposed fee increases and of the public comment hearing.

The new sections and the amendment are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed new sections and the proposed amendment.

Issued in Austin, Texas, on June 29, 1999.

§13.2020. Employee Transfers.

When a previously certified individual is hired, the licensee shall notify the commission by filing a properly completed and signed LNG Form 2016A along with a $10 filing fee, which shall be received by the commission or postmarked within ten calendar days of such hiring. Notice shall include the employee's name as recorded on a current driver's license or Texas Department of Public Safety identification card, employee social security number, name of previous licensee-employer, and LNG related work to be performed.

§13.2052. Application for an Exception to a Safety Rule.

(a) Any person may apply for an exception to the provisions of this chapter by filing an application for exception, along with a $50 filing fee, with the commission using LNG Form 2025.

(b)-(d) (No change.)

(e) The commission shall review the application within 21 calendar days of receipt of the application. If the commission does not receive any objections from any affected persons as defined in subsection (d) of this section, the commission may grant administratively the exception if it will neither imperil nor tend to imperil the health, welfare, or safety of the general public. If the commission declines to grant administratively the exception, the applicant shall be notified of the reasons and any specific deficiencies. The applicant may modify the application to correct the deficiencies and resubmit the application along with a $30 resubmission fee, or

may request a hearing on the matter in accordance with the General Rules of Practice and Procedure of the Railroad Commission of Texas.

(f)-(k) (No change.)

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

Filed with the Office of the Secretary of State, on June 29, 1999.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–7008

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Subchapter N. LNG Transports

16 TAC §13.2705

The new section is proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

The Texas Natural Resources Code, §116.012, is affected by the proposed new section.

§13.2705. Decals and Fees.

If an LNG Form 2004 decal on a unit currently registered with the commission is destroyed, lost, or damaged, the operator of that vehicle shall obtain a replacement decal by filing LNG Form 2018B and a $50 replacement fee with 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.

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Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Part IX. Texas Lottery Commission

Chapter 401. Administration of State Lottery Act

Subchapter D. Lottery Game Rules

16 TAC §401.302

The Texas Lottery Commission proposes an amendment to §401.302, relating to instant tickets. The proposed amendments will clarify and identify additional types of play styles used in instant ticket formats, determine the eligibility of prize winning instant tickets, and define the remedies available in the event of a defective ticket, as well as clarify the Commission's obligations to withhold taxes and other offsets from lottery prizes.

Mr. Richard F. Sookiasian, Budget Analyst, has determined that for the first five-year period the section as proposed will be in effect that there will be no fiscal impact for the state and local governments as a result of enforcing or administering the rule.

Ms. Linda Cloud, Executive Director has determined that the public benefits anticipated as a result of adoption of the proposed rule are clarifying the types of play styles used in instant tickets and identifying the additional types of play styles for instant ticket formats. Ms. Cloud has also determined that a public benefit anticipated as a result of adoption of the proposed rule is to ensure the integrity and security of the lottery instant ticket games. Ms. Cloud has also determined that it is beneficial to define the remedies available in the event of a defective ticket. Additionally, Ms. Cloud has determined that the public benefits as a result of adoption of the proposed rule is to make certain that the rule conforms with current law regarding the commission's responsibility to deduct taxes, offsets and other lawful withholdings from a prize payment.

Mr. Sookiasian has also determined that there will be no cost to small businesses or individuals that are required to comply with the section as proposed, and no effect on local employment is anticipated.

Comments on the proposed section may be submitted to Diane Weidert Morris, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by fax at (512) 344-5189.

The section is proposed under Texas Government Code, Section 466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery.

Texas Government Code, Chapter 466 is affected by the proposed amendment.

§401.302. Instant Game Rules.

(a) (No change.)

(b) Game procedures.

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

(3) The play style for an individual game shall be fully described in the game procedures and may take the form of one of the following methods of play:

(A) match up [~~three~~];

(B) add up [~~match three with specific variant~~];

(C) three in a line [~~match three~~];

(D) key number/symbol match [~~add up~~];

(E) yours beats theirs [~~three in line~~];

(F) prize legend [~~key number match~~];

(G) cards [~~yours beats theirs~~];

(H) bingo [~~three consecutive numbers in sequence; or~~];

(I) directional arrows through maze; [~~any other play style developed by the Texas Lottery.~~]

(J) bonus game features; or

(K) any other approved play style or bonus game feature developed by the Texas Lottery.

(c) Determination of prize winner.

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

(3) For each individual game, the player shall rub off the latex covering on the front of the ticket to reveal the play symbols. Eligibility to win a prize is based on the approved play style as follows.

(A) Match up [~~three~~]. If the designated number of [~~three~~] identical play symbols is [~~are~~] revealed on the ticket, the player shall win the prize indicated.

(B) Add up [~~Match three with specific variant~~]. If the player adds up all of the play symbols printed on the ticket and the amount is greater than or equal to the required total amount printed on the ticket, the player shall win the prize indicated. [~~The player shall win the prize indicated in either of the following ways:~~]

~~*(i)* the player matches three identical play symbols; or~~]

~~*(ii)* the player matches two identical play symbols and the variant as specified in the game procedures].~~

(C) Three in a line [~~match three~~]. If the player reveals three identical play symbols [~~are revealed across one of the three lines~~], either diagonally, vertically, or horizontally, on the same ticket, the player shall win the prize indicated.

(D) Key number/symbol match [~~Add up~~]. If the player reveals [~~adds up all of the~~] a play symbol [~~symbols printed on the ticket and the amount is greater than or equal to the required total amount printed on the ticket~~] that matches the designated key play symbol, the player shall win the prize indicated.

(E) Yours beats theirs [~~Three in line~~]. If the player reveals a play symbol designated as yours that is greater than the play symbol(s) designated as theirs [~~finds three identical play symbols, either diagonally, vertically or horizontally, on the same ticket~~], the player shall win the prize indicated.

(F) Prize legend [~~Key number match~~]. If the player reveals the designated number of play symbols, the player wins the prize amount that corresponds to the legend [~~finds a play symbol that matches the designated key play symbol, the player shall win the prize indicated~~].

(G) Cards [~~Yours beats theirs~~]. If the player reveals the [~~finds a~~] play symbol needed for that particular card game in a winning combination [~~designated as yours that is greater than the play symbol(s) designated as theirs~~], the player shall win the prize indicated.

(H) Bingo [~~Three consecutive numbers in sequence~~]. If the player matches their Bingo card numbers with all of the Caller's Card numbers and reveals certain patterns as specified on the ticket [~~finds three play symbols in a specified consecutive order among the play symbols~~], the player shall win the prize indicated for that Bingo card and pattern.

(I) Directional arrows through maze. If the player follows the directional arrows to make a path or paths through a maze and the path(s) leads to a prize amount, the player shall win that prize.

(J) Bonus game features. These features are added to the game for extra play value and entertainment. The specific variants, as described below, are used for a particular game and are described in the individual game procedures:

(i) Doubler. If the player reveals the designated play symbol as part of the winning combination of the game, the player doubles their prize. The player may also reveal the "doubler" play symbol in a prize box, in which case the prize amount that the player won is doubled.

(ii) Wild card. The player may use this designated play symbol as part of the winning combination of the game.

(iii) Double and Double Doubler. If the player reveals one of these designated play symbols as part of the winning combination of the game, the player either doubles or quadruples their prize respectfully, as stated in the game card itself. The player may also reveal the "double" or "double doubler" play symbols in a prize box, in which case the prize amount that the player won is either doubled or quadrupled respectfully, as stated in the game card itself.

(iv) Tripler. If the player reveals the designated play symbol as part of the winning combination of the game, the player triples their prize. The player may also reveal the "tripler" play symbol in a prize box, in which case the prize amount that the player won is tripled.

(v) Auto win. If the player reveals the designated play symbol, the player wins the corresponding prize automatically.

(vi) Entry ticket. If the player reveals the designated play symbol, the player may use the ticket as a means of entering a drawing, subject to the game procedures for each game.

(K) Any other approved play style or bonus game feature developed by the Texas Lottery. If the player reveals the designated play symbols or bonus play features, the player shall win the prize(s) as indicated.

(d) Ticket validation requirements.

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

(4) If a defective ticket is purchased, the sole remedy available against the Texas Lottery and the Texas Lottery's sole [~~only~~] liability shall be, at the executive director's sole discretion, reimbursement for the cost of the void ticket, or replacement of the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Game).

(e) (No change.)

(f) Payment of high-tier prizes.

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

(4) All prizes shall be subject to tax withholding, offsets, and other withholdings as provided by law. [~~The Texas Lottery shall deduct from prizes paid by the Texas Lottery a sufficient amount from the winnings of a person who has been finally determined to be:~~]

~~[(A) delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, state treasurer, or Texas Alcoholic Beverage Commission;~~]

~~[(B) delinquent in making child support payments administered or collected by the attorney general; or~~]

~~[(C) in default on a loan guaranteed under the Education Code, Chapter 57.~~]

(5)-(9) (No change.)

(g)-(l) (No change.)

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

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TRD-9903754
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 344–5113

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16 TAC §401.304

The Texas Lottery Commission proposes an amendment to §401.304, relating to on-line games rules (general). The proposed amendments will clarify the commission personnel responsible for oversight of on-line game drawings and allow the executive director to terminate an on-line game.

Mr. Richard F. Sookiasian, Budget Analyst, has determined that for the first five-year period the section as proposed will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. Linda Cloud, Executive Director has determined that the public benefits anticipated as a result of the proposed amendments are ensuring the integrity and security of the drawings for the on-line lottery games and establishing an orderly procedure to allow the executive director to terminate an on-line game when that action is warranted.

Mr. Sookiasian has also determined that there is no economic cost to small businesses or individuals that are required to comply with the section as proposed and no effect on local employment is anticipated.

Comments on the proposed section may be submitted to Diane Weidert Morris, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630 or by fax at (512) 344-5189.

The section is proposed under Texas Government Code, Section 466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery.

Texas Government Code, Chapter 466 is affected by the proposed amendment.

§401.304. On-Line Game Rules (General).

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

(d) Drawings and end of sales prior to drawings.

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

(5) The executive [~~marketing division~~] director shall designate a drawing supervisor who shall oversee each drawing and may also serve as the lottery security representative. The drawing supervisor, along with a lottery security representative and an independent certified public accountant shall be responsible for conducting the drawing in compliance with the lottery's drawing procedures. The drawing supervisor, along with a lottery security representative and an independent certified public accountant, shall attest whether the drawing was conducted in accordance with proper drawing procedures at the end of each drawing.

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

(i) Game termination and prize claim period.

(1) The executive director or his/her designee, at any time, may announce the termination date for an on-line game. If this occurs, no on-line tickets for that game shall be sold past the termination date.

(2) On-line game prizes shall be claimed no later than 180 days after the termination date of the on-line game.

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

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 344–5113

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16 TAC §401.309

The Texas Lottery Commission proposes an amendment to §401.309, relating to assignment of lottery installment prize payments. The proposed amendments will establish the procedures to be followed if a lottery installment prize winner or its assignee chooses to assign lottery installment prizes.

Mr. Bart Sanchez, Director of Financial Administration, has determined that for the first five-year period the section as proposed will be in effect the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule is, as follows: FY 2000, $102,500.00; FY 2001, $52,500.00; FY 2002, $55,000.00; FY 2003, $56,500.00; and FY 2004, $57,500.00. This increase is due to the administrative expense to the commission as a result of processing the assignments submitted pursuant to this section. The administrative expense is calculated based on salaries and expenses related to the employment of employees expected to be responsible for implementing the provisions of this section. Out of the current approximate 326 installment winners, it is estimated that approximately one fourth of installment winners will assign prizes in the first year. Each year of payments may be assigned to generate no more than three different payments. After informally surveying other lotteries and finance companies, it is estimated that the initial assignment will include 3 or 4 years of payments. In years two and three, a decrease from one fourth to approximately one eighth of installment winners, is estimated. In years four and five, a leveling between one eighth and one fourth of installment winners, is estimated. The number of installment payments should only grow at a rate of approximately ten per year given the choice of cash value option currently available to players.

Ms. Linda Cloud, Executive Director, has determined that the public benefits anticipated as a result of the proposed amendments to the rule are allowing the specific prize winners to make individual decisions regarding their installment prize payments and allowing those, who choose, the opportunity to assign a portion of their installment payments.

Mr. Sanchez has also determined that for each year of the first five-year period the section as proposed will be in effect the probable economic cost to persons required to comply with the

rule is, as follows: FY 2000, $102,500.00; FY 2001, $52,500.00; FY 2002, $55,000.00; FY 2003, $56,500.00; and FY 2004, $57,500.00. This is an estimate because prize winners are not required to assign their prizes, but if they choose to do so, they must comply with the commission's statutes and this section. The commission will charge the administrative fee only if the choice is made by the prize winner or the assignee of the prize winner to assign the prize.

Mr. Sanchez has also determined that there will be no cost to small businesses or individuals that are required to comply with the section as proposed, and no effect on local employment is anticipated.

A public hearing will be held at 10:00 a.m. on July 22, 1999 in the auditorium of the Texas Lottery Commission, first floor auditorium, 611 E. 6th Street, Austin, Texas 78701, to accept oral and written comments concerning the proposed rule. Persons requiring any accommodation for a disability should notify Diane Weidert Morris, Assistant General Counsel, Texas Lottery Commission at (512) 344-5132 at least 72 hours prior to the public hearing.

Comments on the proposed section may be submitted to Diane Weidert Morris, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The section is proposed under Texas Government Code, §466.015 which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery.

Texas Government Code, Chapter 466 is affected by the proposed amendment.

§401.309. Assignability of Prizes.

(a) Definitions.

(1) "Prize Winner" - The name of the person who presented a valid ticket, claimed a lottery prize and was and is recognized by the Texas Lottery as the person entitled to receive the lottery prize payments and who is not an assignee of the lottery prize. In the event of any conflict between a person who presented a ticket and a person who is recognized by the Texas Lottery as the person entitled to receive the lottery prize payments, a "prize winner" is the person recognized by the Texas Lottery as the person entitled to receive lottery prize payments.

(2) "Request to Assign Specific Installment Payments" - The form provided by the Texas Lottery to be completed by the prize winner or the assignee of a prize winner when requesting the Texas Lottery to accept an assignment of installment payments pursuant to Texas Government Code, §466.410.
Figure: 16 TAC 401.309(a)(2)

(b) Prizes in the lottery are not assignable except:

(1) if the prize winner dies before the prize is paid, the director shall pay the prize as required by law; [~~or~~]

(2) pursuant to an appropriate judicial order under Texas Government Code, §466.406(c) that resolves a bona fide underlying controversy involving the prize winner, which order shall not include an order issued to enforce or approve an agreement between a prize winner and any third party where the prize winner has agreed to transfer future prize payments to a third party in exchange for consideration; or

(3) pursuant to an order under Texas Government Code, §466.410 obtained by a prize winner or an assignee of a prize winner.

(c) An order entered pursuant to Texas Government Code, §466.406(c). An order entered pursuant to Texas Government Code, §466.406(c) must contain, in addition to any provisions required by law, the following:

(1) Recitation that the judicial order comports with the requirements of Texas Government Code, §466.406 (c), as follows: It is ordered and decreed that this (Order/Judgment) affecting the payment of the lottery winnings comports with the requirements of Texas Government Code, §466.406(c) and constitutes an "appropriate judicial order" authorizing the Texas Lottery Commission to make the (identified) payments of lottery installment proceeds, less any taxes and/or other offsets or mandatory withholdings required by law, to (give name and amount).

(2) Discharge of Liability provision, as follows: It is further ordered and decreed that upon payment of each installment of lottery proceeds to (Name and amount), pursuant to (Order/Judgment), less any taxes and/or other offsets or mandatory withholdings required by law, the Texas Lottery Commission will be discharged of all further liability with respect to that installment of lottery proceeds in accordance with Texas Government Code, §466.402(d).

(3) Release of the Texas Lottery Commission and Indemnification provision, as follows: Upon entry of this (Order/Judgment), pursuant to Texas Government Code, §466.406, (Name of prize winner or assignee of prize winner), on behalf of themselves, their agents, heirs, and representatives hereby waive and release any and all claims, whatsoever, known or unknown, they may have against the Texas Lottery Commission, its members, employees, agents, representatives, or successors, as of the date of this (Order/Judgment) relating to the installment payments assigned by this (Order/Judgment). In addition, (Name of prize winner or assignee of prize winner) on behalf of themselves, their agents, heirs, and representatives shall indemnify and hold harmless the Texas Lottery Commission, its members, employees, agents, representatives, or successors, from any claim whatsoever, known or unknown, made as a result of the Texas Lottery Commission's compliance with this (Order/Judgment).

(d) An order entered pursuant to Texas Government Code, §466.410. An order entered pursuant to Texas Government Code, §466.410 must contain, in addition to any provisions required by law, the following:

(1) Recitation that the judicial order comports with the requirements of Texas Government Code, §466.410, as follows: It is ordered and decreed that this (Order/Judgment) affecting the payment of the lottery winnings comports with the requirements of Texas Government Code, §466.410 directing the Texas Lottery Commission to make the (identified) payments of lottery installment proceeds, less any taxes and/or other offsets or mandatory withholdings required by law, to (give name and amount).

(2) Discharge of Liability provision, as follows: It is further ordered and decreed that upon payment of each installment of lottery proceeds to (Name and amount), pursuant to (Order/Judgment), less any taxes and/or other offsets or mandatory withholdings required by law, the Texas Lottery Commission will be discharged of all further liability with respect to that installment of lottery proceeds in accordance with Texas Government Code, §466.402(d).

(3) Release of the Texas Lottery Commission and Indemnification provision, as follows: Upon entry of this (Order/Judgment) and the Commission's acknowledgement of this (Order/Judgment), pursuant to Texas Government Code, §466.410, (Name of assignor), on behalf of themselves, their agents, heirs, and representatives hereby waive and release any and all claims, whatsoever, known or unknown,

they may have against the Texas Lottery Commission, its members, employees, agents, representatives, or successors, as of the date of this (Order/Judgment) relating to the installment payments assigned by this (Order/Judgment). In addition, (Name of assignor) on behalf of themselves, their agents, heirs, and representatives shall indemnify and hold harmless the Texas Lottery Commission, its members, employees, agents, representatives, or successors, from any claim whatsoever, known or unknown, made as a result of the Texas Lottery Commission's compliance with this (Order/Judgment).

(e) Procedures for a prize winner or an assignee of a prize winner regarding assignments. All of the following requirements must be met before the Texas Lottery will complete the assignment process for specific installment payments.

(1) The prize winner or assignee of a prize winner must file the "Request to Assign Specific Installment Payments" with the Texas Lottery.

(2) The "Request to Assign Specific Installment Payments" must contain a notarized signature of the person with legal authority to bind the prize winner or the assignee of the prize winner, and state that person's official capacity.

(3) The prize winner or the assignee of a prize winner must pay the Texas Lottery an administrative fee of $500.00 for each assignment request and the fee must be attached to the "Request to Assign Specific Installment Payments" at the time of filing.

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

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 344–5113

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Chapter 402. Bingo Regulation and Tax

16 TAC §402.572

The Texas Lottery Commission proposes new §402.572, relating to Temporary Capital Equipment Acquisition. The proposed rule sets out the equivalent of a 25% increase in license application fees for conductor and lessor licenses, classes E through J. The increased fee may be paid, at the licensee's option, either over two years at the rate of 12.5% per year or over one year at the rate of 25%.

Richard F. Sookiasian, Budget Analyst, has determined that, for each of the first five years that the rule will be in effect, there will be no additional cost or reductions in cost to the state or local government as a result of enforcing or administering the rule.

Mr. Sookiasian, has also determined that, for each year of the first five years that the rule will be in effect, the estimated increase in revenue to state or local governments as a result of enforcing or administering the rule is as follows: Fiscal Year 2000, $377,512.50; Fiscal Year 2001, $377,512.50; Fiscal Year 2002, $0.00; Fiscal Year 2004, $0.00.

Mr. Sookiasian, has also determined that, for each year of the first five years that the rule will be in effect, there will be a foreseeable economic costs to person or small businesses required to comply with the rule. The rule will result, under certain circumstances, in a 25% license fee increase for certain classes of bingo licensees.

Billy Atkins, Director of the Charitable Bingo Division, has determined that the public benefits expected as a result of the adoption of the rule are that the revenue generated from the limited increase in fees for certain classes of licensees will be used for the replacement of the 18 year-old Charitable Bingo System. The Charitable Bingo System no longer adequately supports all of the business functions of the Bingo Division. The system suffers from many access, reporting, reliability and maintenance problems. These problems have negatively affected the service that the public receives. The improvements will better serve the public by restoring the functionality and integrity of the Charitable Bingo System.

The rule should not adversely affect any local economy.

A public hearing will be held at 10:00 a.m. on July 21, 1999, in the auditorium of the Texas Lottery Commission, 611 East 6th Street, Austin, Texas, 78701, to accept oral and written comments concerning the proposed rule. Persons requiring an accommodation for a disability should notify Katherine Minter Cary, Assistant General Counsel, Texas Lottery Commission, at (512) 344-5109 at least 72 hours prior to the public hearing.

Comments on the proposal may be submitted to Katherine Minter Cary, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6330 or may be faxed to (512) 344-5189.

The rule is proposed under Texas Revised Civil Statutes, Article 179d, Sections 13(d) and 16(a) which authorize the Texas Lottery Commission to adopt rules for the enforcement and administration of the Bingo Enabling Act and the Texas Government Code, Section 467.102 which authorizes the Texas Lottery Commission to adopt rules for the enforcement and administration of Texas Government Code Chapter 467 and the laws under the Commission's jurisdiction.

Texas Revised Civil Statutes, Article 179d, will be affected by the rule.

§402.572. Temporary Capital Equipment Acquisition.

The minimum license fee set by the Bingo Enabling Act, Texas Civil Statutes, Article 179d, §13 (d) is increased by a total of 25% for one year or 12.5% each year for a two year period for license to conduct bingo Classes E-J and commercial license to lease bingo premises, Classes E-J. The licensee has the option of paying the 25% increase in the license fee in one payment or two payments, the total shall be paid prior to August 31, 2001 or the next license renewal date, whichever is sooner. This fee increase shall only be in effect September 1, 1999 until August 31, 2001.

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

Filed with the Office of the Secretary of State on June 23, 1999.

TRD-9903757
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: August 8, 1999

For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 291. Pharmacies

Subchapter B. Community Pharmacy (Class A)

22 TAC §§291.31, 291.32, 291.36

The Texas State Board of Pharmacy proposes amendments to §291.31, concerning Definitions, §291.32, concerning Personnel, and §291.36, concerning Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendments, if adopted, will: (1) define the terms "certified pharmacy technician," "pharmacy technician," and "pharmacy technician trainee"; (2) update the term "supportive personnel" to the term "pharmacy technician"; (3) clarify the qualifications, duties, and ratio to pharmacists after the requirement for certification of pharmacy technicians becomes effective; and (4) update identification requirements for pharmacy personnel.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has also determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be increased safety of the prescription drug supply by clarifying the qualifications, duties, and supervision of pharmacy technicians. Since certification is required by current rule, there are no additional economic costs anticipated for individuals who are required to comply with the rule. No additional economic costs are anticipated for small or large businesses.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Compliance, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942.

The amendments are proposed under sections 4, 16(a), 17(b), and 17(o) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b) as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy. The Board interprets section 17(o) as authorizing the agency to adopt rules relating to the use, duties, training, and supervision of pharmacy technicians.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§291.31. Definitions.

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

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

(7) Certified Pharmacy Technician–A pharmacy technician who has:

(A) completed the pharmacy technician training program of the pharmacy;

(B) taken and passed the National Pharmacy Technician Certification Exam; and

(C) maintains a current certification with the Pharmacy Technician Certification Board.

(8) [~~(7)~~] Component–Any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product.

(9) [~~(8)~~] Compounding–The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(10) [~~(9)~~] Confidential record–Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication order.

(11) [~~(10)~~] Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(12) [~~(11)~~] Dangerous drug–Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) [~~(12)~~] Data communication device–An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(14) [~~(13)~~] Deliver or delivery–The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(15) [~~(14)~~] Designated agent–

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug

order for dangerous drugs under the Medical Practice Act, §3.06(d)(5) or (6) (Texas Civil Statutes, Article 4495b).

(16) [~~(15)~~] Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(17) [~~(16)~~] Dispensing pharmacist–The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(18) [~~(17)~~] Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(19) [~~(18)~~] Downtime–Period of time during which a data processing system is not operable.

(20) [~~(19)~~] Drug regimen review–An evaluation of prescription drug orders and patient medication records for:

(A) known allergies;

(B) rational therapy-contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(21) [~~(20)~~] Electronic prescription drug order–A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(22) [~~(21)~~] Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or, if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(23) [~~(22)~~] Hard copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(24) [~~(23)~~] Manufacturing–The production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of the container and the promotion and marketing of such drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons but does not include compounding.

(25) [~~(24)~~] Medical Practice Act–The Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, as amended.

(26) [~~(25)~~] Medication order–A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(27) [~~(26)~~] New prescription drug order–A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(28) [~~(27)~~] Original prescription–The:

(A) original written prescription drug order; or

(B) original verbal or electronic prescription drug order reduced to writing either manually or electronically by the pharmacist.

(29) [~~(28)~~] Part-time pharmacist–A pharmacist who works less than full-time.

(30) [~~(29)~~] Patient counseling–Communication by the pharmacist of information to the patient or patient's agent in order to improve therapy by ensuring proper use of drugs and devices.

(31) [~~(30)~~] Pharmaceutical care–The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(32) [~~(31)~~] Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(33) Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians and pharmacy technician trainees.

(34) Pharmacy technician trainee–a pharmacy technician participating in a pharmacy's technician training program.

(35) [~~(32)~~] Physician assistant–A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under the Medical Practice Act, §3.06(d), and issued an identification number by the Texas State Board of Medical Examiners.

(36) [~~(33)~~] Practitioner–

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Texas Pharmacy Act.

(37) [~~(34)~~] Prepackaging–The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(38) [~~(35)~~] Prescription drug order–

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to the Medical Practice Act, §3.06(d)(5) and (6).

(39) [~~(36)~~] Prospective drug use review–A review of the patient's drug therapy and prescription drug order or medication order prior to dispensing or distributing the drug.

~~[(37) Supportive personnel/Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.]~~

(40) [~~(38)~~] Texas Controlled Substances Act–The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(41) [~~(39)~~] Written protocol–A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act, (Texas Civil Statutes, Article 4495b).

§291.32. Personnel.

(a) Pharmacist-in-charge.

(1) (No change.)

(2) Responsibilities. The pharmacist-in-charge shall have responsibility for, at a minimum, the following:

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

(F) education and training of pharmacy technicians; [~~supportive personnel;~~]

(G)-(N) (No change.)

(b) Pharmacists.

(1) General.

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

(C) Pharmacists are solely responsible for the direct supervision of pharmacy technicians [~~supportive personnel~~] and for designating and delegating duties, other than those listed in paragraph (2) of this subsection, to pharmacy technicians. [~~supportive personnel.~~] Each pharmacist:

(i) shall verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians; [~~supportive personnel;~~] and

(ii) shall be responsible for any delegated act performed by pharmacy technicians [~~supportive personnel~~] under his or her supervision.

(D)-(E) (No change.)

(2)-(3) (No change.)

(c) Pharmacy technicians. [~~Supportive personnel/pharmacy technician.~~]

(1) Qualifications.

(A) General.

(i) All pharmacy technicians [~~Supportive personnel~~] shall:

(I) [~~(i)~~] have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) [~~(ii)~~] complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

~~[(B) supportive personnel employed in a pharmacy before March 1, 1996, are not required to comply with the education requirements listed in subparagraph (A)(i) of this paragraph, but must complete the training program specified in subparagraph (A)(ii) of this paragraph by January 1, 1997, or cease performing the duties of a supportive person.]~~

~~[(C) All supportive personnel employed in a pharmacy on or after March 1, 1996, must meet the education requirements listed in subparagraph (A)(i) of this paragraph and complete the training program specified in subparagraph (A)(ii) of this paragraph by January 1, 1997, or cease performing the duties of a supportive person.]~~

(III) [~~(D)~~] Effective January 1, 2001, all pharmacy technicians [~~supportive personnel~~] must have taken and passed the National Pharmacy Technician Certification Exam or be a pharmacy technician trainee.

(ii) [~~(E)~~] For the purpose of this subsection, pharmacy technicians [~~supportive personnel~~] are those persons who perform nonjudgmental technical duties associated with the dispensing of a prescription drug order.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam.

(ii) A person may be designated a pharmacy technician trainee for no more than one year or until the trainee fails, or fails to take, the next regularly-scheduled exam to become a certified pharmacy technician after completion of training.

(C) Certified Pharmacy Technicians. All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam and maintain a current certification with the Pharmacy Technician Certification Board.

(2) Duties.

(A) General.

(i) pharmacy technicians [~~Supportive personnel~~] may not perform any of the duties listed in subsection (b)(2) of this section.

(ii) [~~(B)~~] A pharmacist may delegate to pharmacy technicians [~~supportive personnel~~] any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(I) [~~(i)~~] a pharmacist conducts in-process and final checks; and

(II) [~~(ii)~~] pharmacy technicians [~~supportive personnel~~] are under the direct supervision of and responsible to a pharmacist.

(B) Labeling.

(i) [~~(C)~~] A pharmacist may not delegate the act of affixing a label to a prescription container unless the pharmacy technician [~~supportive person/pharmacy technician~~] has completed the education and training requirements outlined in paragraphs (1) and (4) of this subsection.

(ii) Effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(3) Ratio of pharmacist to pharmacy technicians. [~~supportive personnel.~~]

(A) The ratio of pharmacists to pharmacy technicians [~~supportive personnel~~] may not exceed [~~shall be no greater than~~] 1:2

(B) Effective January 1, 2001, the ratio of pharmacists to pharmacy technicians may be 1:3 provided no more than two of the technicians are pharmacy technician trainees. [~~For the purposes of this paragraph, supportive personnel are those persons who perform nonjudgmental technical duties associated with the preparation of a prescription drug order.~~]

(4) Training.

(A) pharmacy technicians [~~Supportive personnel~~] shall complete initial training as outlined by the pharmacist-in-charge in a training manual.[~~, prior to the regular performance of their duties.~~] Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician [~~supportive person~~] works certifies that the pharmacy technician [~~supportive person~~] is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affix a label to a prescription container;

(ii) may be designated a pharmacy technician trainee for no longer than one year or as specified in paragraph (1)(B) of this subsection; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(C) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians [~~supportive personnel~~] through in-service education and training to supplement initial training.

(D) [~~(C)~~] The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians [~~supportive personnel~~] completing the training. A written record of initial and in-service training of pharmacy technicians [~~supportive personnel~~] shall be maintained and contain the following information:

(i)-(iii) (No change.)

(iv) a statement or statements that certifies that the pharmacy technician [~~supportive person~~] is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician [~~supportive person~~] and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians. [~~supportive personnel.~~]

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. Pharmacy technician [~~Supportive personnel~~] training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians [~~supportive personnel~~]. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians [~~supportive personnel~~] will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians; [~~supportive personnel;~~] and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians [~~supportive personnel~~] in the pharmacy:

(i)-(xi) (No change.)

(xii) Written policy and guidelines for use of and supervision of pharmacy technicians. [~~supportive personnel.~~]

(d) Identification of pharmacy personnel. All pharmacy personnel [~~Supportive personnel and pharmacist interns~~] shall be identified as follows.

(1) Pharmacy technicians. [~~Supportive personnel.~~] All pharmacy technicians [~~supportive personnel~~] shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician. [~~supportive person.~~]

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

(a) (No change.)

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

(1)-(12) (No change.)

(13) Certified Pharmacy Technician – A pharmacy technician who has:

(A) completed the pharmacy technician training program of the pharmacy;

(B) taken and passed the National Pharmacy Technician Certification Exam; and

(C) maintains a current certification with the Pharmacy Technician Certification Board.

(14) [~~(13)~~] Clean room–A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(15) [~~(14)~~] Clean zone–A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(16) [~~(15)~~] Compounding–The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(17) [~~(16)~~] Confidential record–Any health related record maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication drug order.

(18) [~~(17)~~] Controlled area–A controlled area is the area designated for preparing sterile pharmaceuticals.

(19) [~~(18)~~] Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(20) [~~(19)~~] Critical areas–Any area in the controlled area where products or containers are exposed to the environment.

(21) [~~(20)~~] Cytotoxic–A pharmaceutical that has the capability of killing living cells.

(22) [~~(21)~~] Dangerous drug–Any drug or device that is not included in Penalty Groups 1-4 of the Controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(23) [~~(22)~~] Data communication device–An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch or gateway).

(24) [~~(23)~~] Deliver or delivery–The actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consideration.

(25) [~~(24)~~] Designated agent–

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) an advanced practice nurse or physician assistant authorized by a practitioner to carry out or sign a prescription drug order for dangerous drugs under Medical Practice Act, Article 4495b, §3.06(d)(5) or (6).

(26) [~~(25)~~] Device–An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(27) [~~(26)~~] Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(28) [~~(27)~~] Dispensing pharmacist–The pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(29) [~~(28)~~] Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(30) [~~(29)~~] Downtime–Period of time during which a data processing system is not operable.

(31) [~~(30)~~] Drug regimen review–An evaluation of prescription drug or medication orders and patient medication records for:

(A) known allergies;

(B) rational therapy–contraindications;

(C) reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) drug-drug interactions;

(G) drug-food interactions;

(H) drug-disease interactions;

(I) adverse drug reactions; and

(J) proper utilization, including overutilization or underutilization.

(32) [~~(31)~~] Electronic prescription drug order–A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(33) [~~(32)~~] Expiration date–The date (and time, when applicable) beyond which a product should not be used.

(34) [~~(33)~~] Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(35) [~~(34)~~] Hard copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc.).

(36) [~~(35)~~] Medical Practice Act–The Texas Medical Practice Act, Texas Civil Statutes, Article 4495b, as amended.

(37) [~~(36)~~] New prescription drug order–A prescription drug order that:

(A) has not been dispensed to the patient in the same strength and dosage form by this pharmacy within the last year;

(B) is transferred from another pharmacy; and/or

(C) is a discharge prescription drug order. (Note: furlough prescription drug orders are not considered new prescription drug orders.)

(38) [~~(37)~~] Original prescription–The:

(A) original written prescription drug orders; or

(B) original verbal or electronic prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(39) [~~(38)~~] Part-time pharmacist–A pharmacist who works less than full-time.

(40) [~~(39)~~] Patient counseling–Communication by the pharmacist of information to the patient or patient's agent, in order to improve therapy by ensuring proper use of drugs and devices.

(41) [~~(40)~~] Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(42) [~~(41)~~] Pharmaceutical care–The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(43) Pharmacy technicians–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians and pharmacy technician trainees.

(44) Pharmacy technician trainee–a pharmacy technician participating in a pharmacy's technician training program.

(45) [~~(42)~~] Physician assistant–A physician assistant recognized by the Texas State Board of Medical Examiners as having the specialized education and training required under the Medical Practice Act, §3.06(d), and issued an identification number by the Texas State Board of Medical Examiners.

(46) [~~(43)~~] Practitioner–

(A) a physician, dentist, podiatrist, veterinarian, or other person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state;

(B) a person licensed by another state in a health field in which, under Texas law, licensees in this state may legally prescribe dangerous drugs or a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current federal Drug Enforcement Administration registration number, and who may legally prescribe Schedule II, III, IV, or V controlled substances in such other state; or

(C) a person licensed in the Dominion of Canada or the United Mexican States in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(D) does not include a person licensed under the Texas Pharmacy Act.

(47) [~~(44)~~] Prepackaging–The act of repackaging and relabeling quantities of drug products from a manufacturer's original commercial container into a prescription container for dispensing by a pharmacist to the ultimate consumer.

(48) [~~(45)~~] Prescription drug–

(A) a substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) a drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) "Caution: federal law prohibits dispensing without prescription"; or

(ii) "Caution: federal law restricts this drug to use by or on order of a licensed veterinarian"; or

(C) a drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(49) [~~(46)~~] Prescription drug order–

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order pursuant to the Medical Practice Act, §3.06(d)(5) or (6).

(50) [~~(47)~~] Process validation–Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(51) [~~(48)~~] Quality assurance–The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(52) [~~(49)~~] Quality control–The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(53) [~~(50)~~] Sample–A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(54) [~~(51)~~] Sterile pharmaceutical–A dosage form free from living micro-organisms.

[(52) Supportive personnel/Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.]

(55) [(53)] Texas Controlled Substances Act–The Texas Controlled Substances Act, Health and Safety Code, Chapter 481, as amended.

(56) [(54)] Unit-dose packaging–The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(57) [(55)] Unusable drugs–Drugs or devices that are unusable for reasons such as they are adulterated, misbranded, expired, defective, or recalled.

(58) [(56)] Written protocol–A physicians order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act (Texas Civil Statutes, Article 4495b).

(c) Personnel.

(1) (No change.)

(2) Pharmacists.

(A) General.

(i)-(ii) (No change.)

(iii) Pharmacists are solely responsible for the direct supervision of pharmacy technicians [supportive personnel] and for designating and delegating duties, other than those listed in subparagraph (B) of this paragraph, to pharmacy technicians [supportive personnel]. Each pharmacist:

(I) shall verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians [supportive personnel]; and

(II) shall be responsible for any delegated act performed by pharmacy technicians [supportive personnel] under his or her supervision.

(iv)-(vi) (No change.)

(B) (No change.)

(3) Pharmacy technicians. [Supportive personnel/pharmacy technicians.]

(A) Qualifications.

(i) General.

(I) All pharmacy technicians [Supportive personnel] shall:

(-a-) [(I)] have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(-b-) [(II)] complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in subparagraph (D) of this paragraph [(E) of this subsection].

[(ii) supportive personnel employed in a pharmacy before March 1, 1996, are not required to comply with the education requirements listed in clause (i)(I) of this subparagraph, but must complete the training program specified in clause (i)(II) of this subparagraph by January 1, 1997, or cease performing the duties of a supportive person.]

[(iii) All supportive personnel employed in a pharmacy on or after March 1, 1996, must meet the education requirements listed in clause (i)(I) of this subparagraph and complete the training program specified in clause (i)(II) of this subparagraph by January 1, 1997, or cease performing the duties of a supportive person.]

(-c-) [(iv)] Effective January 1, 2001, all pharmacy technicians [supportive personnel] must have taken and passed the National Pharmacy Technician Certification Exam or be a pharmacy technician trainee.

(II) [(v)] For the purpose of this section, pharmacy technicians [supportive personnel] are those persons who perform nonjudgmental technical duties associated with the dispensing of a prescription drug order.

(ii) Pharmacy Technician Trainee.

(I) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam.

(II) A person may be designated a pharmacy technician trainee for no more than one year or until the trainee fails, or fails to take, the next regularly-scheduled exam to become a certified pharmacy technician after completion of training.

(iii) Certified Pharmacy Technicians. All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam and maintain a current certification with the Pharmacy Technician Certification Board.

(B) Duties.

(i) General.

(I) pharmacy technicians [supportive personnel] may not perform any of the duties listed in paragraph (2)(B) of this subsection.

(II) [(ii)] A pharmacist may delegate to pharmacy technicians [supportive personnel] any nonjudgmental technical duty associated with the preparation and distribution of prescription drugs provided:

(-a-) [(I)] a pharmacist conducts in-process and final checks; and

(-b-) [(II)] pharmacy technicians [supportive personnel] are under the direct supervision of and responsible to a pharmacist.

(III) A pharmacist may not delegate the act of affixing a label to a prescription container unless the pharmacy technician has completed the education and training requirements of subparagraph (A) and (D) of this paragraph.

(ii) Certified pharmacy technicians. Effective January 1, 2001, only certified pharmacy technicians may:

(I) affix a label to a prescription container; and

(II) compound sterile pharmaceuticals.

[(iii) A pharmacist may not delegate the act of affixing a label to a prescription container unless the supportive person/pharmacy technician has completed the education and training requirements outlined in subparagraphs (A) and (D) of this paragraph.]

(C) Ratio of pharmacist to pharmacy technicians. [~~supportive personnel.~~]

(i) The ratio of pharmacists to pharmacy technicians [~~supportive personnel~~] may not exceed [~~shall be no greater than~~] 1:2 provided that only one pharmacy technician [~~supportive person~~] may be engaged in the compounding of sterile pharmaceuticals.

(ii) Effective January 1, 2001, the ratio of pharmacists to pharmacy technicians may be 1:3 provided no more than two of the technicians are pharmacy technician trainees and only one may be engaged in the compounding of sterile pharmaceuticals.

(D) Training.

(i) pharmacy technicians [~~Supportive personnel~~] shall complete initial training as outlined by the pharmacist-in-charge in a training manual which includes training and experience as outlined in subparagraph (E) of this paragraph prior to the regular performance of their duties. Such training:

(I) shall include training and experience as outlined in subparagraph (E) of this paragraph; and

(II) may not be transferred to another pharmacy unless:

(-a-) the pharmacies are under common ownership and control and have a common training program; and

(-b-) the pharmacist-in-charge of each pharmacy in which the pharmacy technician [~~supportive person~~] works certifies that the pharmacy technician [~~supportive person~~] is competent to perform the duties assigned in that pharmacy.

(ii) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(I) may perform all of the duties of a pharmacy technician except affix a label to a prescription container and effective January 1, 2001, compound sterile pharmaceuticals;

(II) may be designated a pharmacy technician trainee for no longer than one year or until the trainee fails, or fails to take, the next regularly-scheduled exam to become a certified pharmacy technician after completion of training; and

(III) shall be counted in the pharmacist to pharmacy technician ratio.

(iii) [~~(ii)~~] The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians [~~supportive personnel~~] through-in-service education and training to supplement initial training.

(iv) [~~(iii)~~] The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians [~~supportive personnel~~] completing the training. A written record of initial and in-service training of pharmacy technicians [~~supportive personnel~~] shall be maintained and contain the following information:

(I)-(III) (No change.)

(IV) a statement or statements that certifies that the pharmacy technician [~~supportive person~~] is competent to perform the duties assigned;

(V) name of the person supervising the training; and

(VI) signature of the pharmacy technician [~~supportive person~~] and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians [~~supportive personnel~~].

(v) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(E) Training program. Pharmacy technicians [~~Supportive personnel~~] training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(i) written procedures and guidelines for the use and supervision of pharmacy technicians [~~supportive personnel~~]. Such procedures and guidelines shall:

(I) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians [~~supportive personnel~~] will supervise such personnel and verify the accuracy and completeness of all acts, task and functions performed by such personnel; and

(II) specify duties which may and may not be performed by pharmacy technicians [~~supportive personnel~~]; and

(ii) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians [~~supportive personnel~~] in the pharmacy:

(I)-(XI) (No change.)

(XII) Written policy and guidelines for use of and supervision of pharmacy technicians [~~supportive personnel~~].

(4) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(A) General.

(i)-(ii) (No change.)

(iii) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may temporarily compound sterile pharmaceuticals and supervise pharmacy technicians [~~supportive personnel~~] compounding sterile pharmaceuticals without process validation provided the pharmacist:

(I)-(II) (No change.)

(iv)-(v) (No change.)

(B) Pharmacists.

(i) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians [~~supportive personnel~~] compounding sterile pharmaceuticals shall:

(I) [~~effective March 1, 1996,~~] complete through a single course, a minimum of 20 hours of instruction and experience

in the areas listed in subparagraph (A) of this paragraph. Such training may be through:

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

(II) (No change.)

(ii) [~~Pharmacists shall discontinue preparation of sterile pharmaceuticals if the training specified in clause (i) of this subparagraph is not completed by March 1, 1996. Such pharmacists may continue to compound sterile pharmaceuticals and supervise supportive personnel compounding sterile pharmaceuticals during the interim between the effective date of these rules and March 1, 1996, if they comply with the previous requirements of these rules and maintain documentation of completion of 20 hours of on-the-job training in the preparation, sterilization, and admixture of sterile pharmaceuticals.~~]

[~~(iii)~~] The required experiential portion of the training programs specified in this subparagraph must be supervised by an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(C) Pharmacy technicians. [~~Supportive personnel/ pharmacy technicians.~~] In addition to the qualifications and training outlined in paragraph (3) of this subsection, all pharmacy technicians [~~supportive personnel~~] who compound sterile pharmaceuticals shall:

(i)-(ii) (No change.)

(iii) shall discontinue preparation of sterile pharmaceuticals if the technician has not taken and passed the National Pharmacy Technician Certification Exam by January 1, 2001. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in clause (ii) of this subparagraph.

(iv) [~~(iii)~~] acquire the required experiential portion of the training programs specified in this subparagraph under the supervision of an individual who has already completed training as specified in subparagraph (B) or (C) of this paragraph.

(D) (No change.)

(5) Identification of pharmacy personnel. Pharmacy personnel shall be identified as follows.

(A) Pharmacy technicians [~~Supportive personnel~~]. All pharmacy technicians [~~supportive personnel~~] shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician. [~~supportive person.~~]

(B) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(C) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

(d) Operational standards.

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

(8) Prepackaging of drugs and loading bulk drugs into automated compounding or drug dispensing systems.

(A) Prepackaging of drugs.

(i) Drugs may be prepackaged in quantities suitable for internal distribution only by a pharmacist or by pharmacy technicians [~~supportive personnel~~] under the direction and direct supervision of a pharmacist.

(ii)-(iv) (No change.)

(B) Loading bulk drugs into automated compounding or drug dispensing systems.

(i) Automated compounding or drug dispensing systems may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians [~~supportive personnel~~] under the direction and direct supervision of a pharmacist.

(ii)-(iv) (No change.)

(9) (No change.)

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

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

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

TRD-9903769
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 305-8028

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Subchapter C. Nuclear Pharmacy (Class B)

22 TAC §291.52, §291.53

The Texas State Board of Pharmacy proposes amendments to §291.52, concerning Definitions, and §291.53, concerning Personnel. The amendments, if adopted, will: (1) define the terms "certified pharmacy technician," "pharmacy technician," and "pharmacy technician trainee"; (2) update the term "supportive personnel" to the term "pharmacy technician"; (3) clarify the qualifications, duties, and ratio to pharmacists after the requirement for certification of pharmacy technicians becomes effective; and (4) require certification of pharmacy technicians effective January 1, 2001.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has also determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be increased safety of the prescription drug supply through the certification of pharmacy technicians and by clarifying the qualifications, duties, and supervision of pharmacy technicians. Economic costs anticipated for individuals who are required to comply with the rule include a $105 fee for the national pharmacy technician certification exam and depending on individual choices, $50 to $300 for training manuals and/or training courses. No additional economic costs are anticipated for small or large businesses unless the business chooses to share in the costs to an individual required to comply with the rule.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Compliance, Texas State Board of Pharmacy,

333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942.

The amendments are proposed under sections 4, 16(a), 17(b), and 17(o) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b) as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy. The Board interprets section 17(o) as authorizing the agency to adopt rules relating to the use, duties, training, and supervision of pharmacy technicians.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§291.52. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §5.

(1)-(10) (No change.)

(11) Certified Pharmacy Technician–A pharmacy technician who has taken and passed the National Pharmacy Technician Certification Exam and maintains a current certification with the Pharmacy Technician Certification Board.

(12) [~~(11)~~] Class B pharmacy license or nuclear pharmacy license – A license issued to a pharmacy dispensing or providing radioactive drugs or devices for administration to an ultimate user.

(13) [~~(12)~~] Clean room–A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E, et seq.

(14) [~~(13)~~] Clean zone–A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(15) [~~(14)~~] Controlled area–A controlled area is the area designated for preparing sterile radiopharmaceuticals.

(16) [~~(15)~~] Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(17) [~~(16)~~] Dangerous drug–A device, drug, or radioactive drug that is unsafe for self medication and that is not included in Penalty Groups I through IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device, drug, or radiopharmaceutical that bears or is required to bear the legend:

(A) "Caution: Federal Law Prohibits Dispensing Without a Prescription"; or

(B) "Caution: Federal Law Restricts This Drug To Be Used By or on the Order of a Licensed Veterinarian."

(18) [~~(17)~~] Data communication device–An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(19) [~~(18)~~] Deliver or delivery–The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(20) [~~(19)~~] Designated agent–

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner, and for whom the practitioner assumes legal responsibility, who communicates radioactive prescription drug orders to a pharmacist; or

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a radioactive prescription drug order.

(21) [~~(20)~~] Device–An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(22) [~~(21)~~] Diagnostic prescription drug order–A radioactive prescription drug order issued for a diagnostic purpose.

(23) [~~(22)~~] Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(24) [~~(23)~~] Dispensing pharmacist–The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(25) [~~(24)~~] Distribute–The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(26) [~~(25)~~] Electronic radioactive prescription drug order–A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(27) [~~(26)~~] Internal test assessment–Validation of tests for quality control necessary to insure the integrity of the test.

(28) [~~(27)~~] Nuclear pharmacy technique–The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(29) [~~(28)~~] Original prescription–The:

(A) original written radioactive prescription drug orders; or

(B) original verbal or electronic radioactive prescription drug orders reduced to writing either manually or electronically by the pharmacist.

(30) [~~(29)~~] Pharmacist-in-charge–The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(31) [~~(30)~~] Pharmacy technician [~~Pharmacy technician/ Supportive Personnel~~]–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs or radiopharmaceuticals under the direct supervision of and responsible to a pharmacist.

(32) Pharmacy technician trainee–a pharmacy technician participating in a pharmacy's technician training program.

(33) [~~(31)~~] Process validation–Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(34) [~~(32)~~] Radiopharmaceutical–A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

(35) [~~(33)~~] Radioactive drug quality control–The set of testing activities used to determine that the ingredients, components (e.g., containers), and final radiopharmaceutical prepared meets predetermined requirements with respect to identity, purity, nonpyrogenicity, and sterility and the interpretation of the resulting data in order to determine the feasibility for use in humans and animals including internal test assessment, authentication of product history, and the keeping of mandatory records.

(36) [~~(34)~~] Radioactive drug service–The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(37) [~~(35)~~] Radioactive prescription drug order–An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(38) [~~(36)~~] Sterile radiopharmaceutical–A dosage form of a radiopharmaceutical free from living micro-organisms.

(39) [~~(37)~~] Therapeutic prescription drug order–A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(40) [~~(38)~~] Ultimate user–A person who has obtained and possesses a prescription drug or radiopharmaceutical for his or her own use or for the use of a member of his or her household.

§291.53. Personnel.

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

(c) Pharmacy Technicians.

(1) General.

(A) (No change.)

(B) The pharmacist-in-charge shall document the training and certify the competency of pharmacy technicians completing the training. A written record of initial and in-service training of pharmacy technicians shall be maintained and contain the following information:

(i)-(v) (No change.)

(vi) signature of the pharmacy technician and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians [~~supportive personnel~~].

(C) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except affixing a label to a prescription container and routinely compounding sterile radiopharmaceuticals;

(ii) may be designated a pharmacy technician trainee for no longer than one year; and

(iii) shall be counted in the pharmacist to pharmacy technician ratio.

(D) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist-in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(E) Effective January 1, 2001, all pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam.

(2) Duties.

(A) General. Pharmacy technicians may perform any nuclear pharmacy technique delegated by an authorized nuclear pharmacist which is associated with the preparation and distribution of radiopharmaceuticals other than those duties listed in subsection (b)(2) of this section provided:

(i) [~~(A)~~] an authorized nuclear pharmacist conducts in-process and final checks; and

(ii) [~~(B)~~] pharmacy technicians are under the direct supervision of and responsible to an authorized nuclear pharmacist.

(B) Labeling. Effective January 1, 2001, only certified pharmacy technicians may affix a label to a prescription container.

(3) Ratio of authorized nuclear pharmacists to pharmacy technicians.

(A) The ratio of authorized nuclear pharmacists to pharmacy technicians may not exceed [~~shall be no greater than~~] 1:2, provided that only one pharmacy technician may be engaged in the compounding of a sterile radiopharmaceutical.

(B) Effective January 1, 2001, the ratio of pharmacists to pharmacy technicians may be 1:3 provided no more than two of the technicians are pharmacy technician trainees and only one may be engaged in the compounding of a sterile radiopharmaceutical.

(d) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile radiopharmaceuticals.

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

(3) Pharmacy technicians. In addition to the qualifications and training outlined in subsection (c) of this section, all pharmacy technicians who compound sterile radiopharmaceuticals shall:

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

(D) effective January 1, 2001, be certified pharmacy technicians.

(E) shall discontinue preparation of sterile pharmaceuticals if they have not taken and passed the National Pharmacy Technician Certification Exam by January 1, 2001. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in subparagraph (B) of this paragraph.

(4) (No change.)

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

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

TRD-9903770
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 305-8028

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Subchapter D. Institutional Pharmacy (Class C)

22 TAC §291.72, §291.73

The Texas State Board of Pharmacy proposes amendments to §291.72, concerning Definitions, and §291.73, concerning Personnel. The amendments, if adopted, will: (1) define the terms "certified pharmacy technician," "pharmacy technician," and "pharmacy technician trainee"; (2) update the term "supportive personnel" to the term "pharmacy technician"; (3) clarify the qualifications, duties, and ratio to pharmacists after the requirement for certification of pharmacy technicians becomes effective; and (4) update identification requirements for pharmacy personnel.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has also determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be increased safety of the prescription drug supply by clarifying the qualifications, duties, and supervision of pharmacy technicians. Since certification is required by current rule, there are no additional economic costs anticipated for individuals who are required to comply with the rule. No additional economic costs are anticipated for small or large businesses.

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Compliance, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Box 21, Austin, Texas, 78701-3942.

The amendments are proposed under sections 4, 16(a), 17(b), and 17(o) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b) as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy. The Board interprets section 17(o) as authorizing the agency to adopt rules relating to the use, duties, training, and supervision of pharmacy technicians.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

§291.72. Definitions.

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

(1)-(9) (No change.)

(10) Certified Pharmacy Technician–A pharmacy technician who has:

(A) completed the pharmacy technician training program of the pharmacy;

(B) taken and passed the National Pharmacy Technician Certification Exam; and

(C) maintains a current certification with the Pharmacy Technician Certification Board.

(11) [~~(10)~~] Clean room–A room in which the concentration of airborne particles is controlled and there are one or more clean zones according to Federal Standard 209E et seq.

(12) [~~(11)~~] Clean zone–A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(13) [~~(12)~~] Compounding–The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(14) [~~(13)~~] Confidential record–Any health-related record maintained by a pharmacy or pharmacist, such as a patient medication record, prescription drug order, or medication drug order.

(15) [~~(14)~~] Consultant pharmacist–A pharmacist retained by a facility on a routine basis to consult with the facility in areas that pertain to the practice of pharmacy.

(16) [~~(15)~~] Controlled area–A controlled area is the area designated for preparing sterile pharmaceuticals.

(17) [~~(16)~~] Controlled substance–A drug, immediate precursor, or other substance listed in Schedules I-V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedules I-V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

(18) [~~(17)~~] Critical areas–Any area in the controlled area where products or containers are exposed to the environment.

(19) [~~(18)~~] Cytotoxic–A pharmaceutical that has the capability of killing living cells.

(20) [~~(19)~~] Dangerous drug–Any drug or device [~~or device~~] that is not included in Penalty Groups 1-4 of the controlled Substances Act and that is unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription"; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(21) [~~(20)~~] Device–An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(22) [~~(21)~~] Direct copy–Electronic copy or carbonized copy of a medication order, including a facsimile (FAX), tele-autograph, or a copy transmitted between computers.

(23) [~~(22)~~] Dispense–Preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(24) [~~(23)~~] Distribute–The delivery of a prescription drug or device other than by administering or dispensing.

(25) [~~(24)~~] Distributing pharmacist–The pharmacist who checks the medication order prior to distribution.

(26) [~~(25)~~] Downtime–Period of time during which a data processing system is not operable.

(27) [~~(26)~~] Drug regimen review–

(A) An evaluation of medication orders and patient medication records for:

(i) known allergies;

(ii) rational therapy–contraindications;

(iii) reasonable dose and route of administration;

(iv) reasonable directions for use;

(v) duplication of therapy;

(vi) drug-drug interactions;

(vii) drug-food interactions;

(viii) drug-disease interactions;

(ix) adverse drug reactions; and

(x) proper utilization, including overutilization or underutilization.

(B) The drug regimen review may be conducted prior to administration of the first dose (prospective) or after administration of the first dose (retrospective).

(28) [~~(27)~~] Electronic signature–A unique security code or other identifier which specifically identifies the person entering information into a data processing system. A facility which utilizes electronic signatures must:

(A) maintain a permanent list of the unique security codes assigned to persons authorized to use the data processing system; and

(B) have an ongoing security program which is capable of identifying misuse and/or unauthorized use of electronic signatures.

(29) [~~(28)~~] Expiration date–The date (and time, when applicable) beyond which a product should not be used.

(30) [~~(29)~~] Facility–Hospital or other inpatient facility that is licensed under the Texas Hospital Licensing Law, the Health and Safety Code, Chapter 241, or Texas Mental Health Code, Chapter 6, Texas Civil Statutes, Article 5547-1 et seq., or that is maintained or operated by the state.

(31) [~~(30)~~] Floor stock–Prescription drugs or devices not labeled for a specific patient and maintained at a nursing station or other hospital department (excluding the pharmacy) for the purpose of administration to a patient of the facility.

(32) [~~(31)~~] Formulary–List of drugs approved for use in the facility by the committee which performs the pharmacy and therapeutics function for the facility.

(33) [~~(32)~~] Full-time pharmacist–A pharmacist who works in a pharmacy from 30 to 40 hours per week or if the pharmacy is open less than 60 hours per week, one-half of the time the pharmacy is open.

(34) [~~(33)~~] Hard copy–A physical document that is readable without the use of a special device (i.e., cathode ray tube (CRT), microfiche reader, etc).

(35) [~~(34)~~] Inpatient–A person who is duly admitted to the hospital or who is receiving long term care services or Medicare extended care services in a swing bed on the hospital premise or an adjacent, readily accessible facility which is under the authority of the hospital's governing body. For the purposes of this definition, the term "long term care services" means those services received in a skilled nursing facility which is a distinct part of the hospital and the distinct part is not licensed separately or formally approved as a nursing home by the state, even though it is designated or certified as a skilled nursing facility.

(36) [~~(35)~~] Institutional pharmacy–Area or areas in a facility where drugs are stored, bulk compounded, delivered, compounded, dispensed, and distributed to other areas or departments of the facility, or dispensed to an ultimate user or his or her agent.

(37) [~~(36)~~] Investigational new drug–New drug intended for investigational use by experts qualified to evaluate the safety and effectiveness of the drug as authorized by the Food and Drug Administration.

(38) [~~(37)~~] Medication order–A written order from a practitioner or a verbal order from a practitioner or his authorized agent for administration of a drug or device.

(39) [~~(38)~~] Part-time pharmacist–A pharmacist either employed or under contract, who routinely works less than full-time.

(40) [~~(39)~~] Perpetual inventory–An inventory which documents all receipts and distributions of a drug product, such that an accurate, current balance of the amount of the drug product present in the pharmacy is indicated.

(41) [~~(40)~~] Pharmaceutical care–The provision of drug therapy and other pharmaceutical services intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(42) [~~(41)~~] Pharmacist-in-charge–Pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(43) [~~(42)~~] Pharmacy and therapeutics function–Committee of the medical staff in the facility which assists in the formulation of broad professional policies regarding the evaluation, selection, distribution, handling, use, and administration, and all other matters relating to the use of drugs and devices in the facility.

(44) Pharmacy technician–Those individuals utilized in pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with

the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist. Pharmacy technician includes certified pharmacy technicians and pharmacy technician trainees.

(45) Pharmacy technician trainee–a pharmacy technician participating in a pharmacy's technician training program.

(46) [~~(43)~~] Pre-packaging–The act of re-packaging and re-labeling quantities of drug products from a manufacturer's original container into unit-dose packaging or a multiple dose container for distribution within the facility.

(47) [~~(44)~~] Prescription drug–

(A) A substance for which federal or state law requires a prescription before it may be legally dispensed to the public;

(B) A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(i) Caution: federal law prohibits dispensing without prescription; or

(ii) Caution: federal law restricts this drug to use by or on order of a licensed veterinarian; or

(C) A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by a practitioner only.

(48) [~~(45)~~] Prescription drug order–

(A) a written order from a practitioner or a verbal order from a practitioner or his authorized agent to a pharmacist for a drug or device to be dispensed; or

(B) a written order or a verbal order pursuant to the Medical Practice Act, §3.06(d)(5) or (6).

(49) [~~(46)~~] Process validation–Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(50) [~~(47)~~] Quality assurance–The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(51) [~~(48)~~] Quality control–The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(52) [~~(49)~~] Sample–A prescription drug which is not intended to be sold and is intended to promote the sale of the drug.

(53) [~~(50)~~] Sterile pharmaceutical–A dosage form free from living micro-organisms.

~~[(51) Supportive personnel/pharmacy technicians–Those individuals utilized in institutional pharmacies whose responsibility it shall be to provide technical services that do not require professional judgment concerned with the preparation and distribution of drugs under the direct supervision of and responsible to a pharmacist.]~~

(54) [~~(52)~~] Texas Controlled Substances Act–The Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, as amended.

(55) [~~(53)~~] Unit-dose packaging–The ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with name, strength, and expiration date of the drug.

(56) [~~(54)~~] Unusable drugs–Drugs or devices that are unusable for reasons, such as they are adulterated, misbranded, expired, defective, or recalled.

(57) [~~(55)~~] Written protocol–A physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas State Board of Medical Examiners under the Texas Medical Practice Act (Texas Civil Statutes, Article 4495b).

§291.73. Personnel.

(a) Requirements for pharmacist services.

(1) A Class C pharmacy in a facility licensed for 101 beds or more shall be under the continuous on-site supervision of a pharmacist during the time it is open for pharmacy services; provided, however, that pharmacy technicians [~~supportive personnel~~] may distribute prepackaged and prelabeled drugs from a satellite pharmacy in the absence of on-site supervision of a pharmacist, under the following conditions:

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

(2)-(3) (No change.)

(b) Pharmacist-in-charge.

(1) General.

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

(C) The pharmacist-in-charge shall be assisted by additional pharmacists and pharmacy pharmacy technicians [~~supportive personnel~~] commensurate with the scope of services provided.

(D) (No change.)

(2) (No change.)

(c) (No change.)

(d) Pharmacists.

(1) General.

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

(C) All pharmacists shall be responsible for any delegated act performed by pharmacy technicians [~~supportive personnel~~] under his or her supervision.

(D)-(E) (No change.)

(2) (No change.)

(e) Pharmacy technicians. [~~Supportive personnel/Pharmacy technicians.~~]

(1) Qualifications.

(A) General.

(i) All pharmacy technicians [~~supportive personnel~~] shall:

(I) [~~(i)~~] have a high school or equivalent degree, e.g., GED, or be currently enrolled in a program which awards such a degree; and

(II) [~~(ii)~~] complete a structured didactic and experiential training program, which provides instruction and experience in the areas listed in paragraph (4) of this subsection.

[~~(B) Supportive personnel employed in a pharmacy before March 1, 1996, are not required to comply with the education requirements listed in subparagraph (A)(i) of this paragraph but must complete the training program specified in subparagraph (A)(ii) of this paragraph by January 1, 1997, or cease performing the duties of a supportive person.~~]

[~~(C) All supportive personnel employed in a pharmacy on or after March 1, 1996, must meet the education requirements listed in subparagraph (A)(i) of this paragraph and complete the training program specified in subparagraph (A)(ii) of this paragraph by January 1, 1997, or cease performing the duties of a supportive person.~~]

(III) [~~(D)~~] Effective January 1, 2001, all pharmacy technicians [~~supportive personnel~~] must have taken and passed the National Pharmacy Technician Certification Exam or be a pharmacy technician trainee.

(ii) [~~(E)~~] For the purpose of this section, pharmacy technicians[~~supportive personnel~~] are those persons who perform nonjudgmental technical duties associated with the distribution of a medication drug order.

(B) Pharmacy Technician Trainee.

(i) A person shall be designated as a pharmacy technician trainee while participating in a pharmacy's technician training program in preparation for the National Pharmacy Technician Certification Exam.

(ii) A person may be designated a pharmacy technician trainee for no more than one year or until the trainee fails, or fails to take, the next regularly-scheduled exam to become a certified pharmacy technician after completion of training.

(C) Certified Pharmacy Technicians. All certified pharmacy technicians shall have taken and passed the National Pharmacy Technician Certification Exam and maintain a current certification with the Pharmacy Technician Certification Board.

(2) Duties.

(A) General. Duties may include, but need not be limited to, the following functions under the direct supervision of and responsible to a pharmacist:

(i) [~~(A)~~] pre-packing and labeling unit and multiple dose packages, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her signature (first initial and last name or full signature) or electronic signature to the appropriate quality control records;

(ii) [~~(B)~~] preparing, packaging, compounding, or labeling prescription drugs pursuant to medication orders, provided a pharmacist supervises and checks the preparation;

[~~(C) compounding sterile pharmaceuticals pursuant to medication orders providing a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy);~~]

(iii) [~~(D)~~] bulk compounding or batch preparation provided a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the appropriate quality control records;

(iv) [~~(E)~~] distributing routine orders for stock supplies to patient care areas;

(v) [~~(F)~~] entering medication order and drug distribution information into a data processing system, provided judgmental decisions are not required and a pharmacist checks the accuracy of the information entered into the system prior to releasing the order or in compliance with the absence of pharmacist requirements contained in §291.74(e) of this title (relating to Operational Standards); and

(vi) [~~(G)~~] loading bulk unlabeled drugs into an automated compounding or drug dispensing system provided a pharmacist supervises, verifies that the system was properly loaded prior to use, and affixes his or her signature (first initial and last name or full signature) or electronic signature to the appropriate quality control records.

(B) Sterile pharmaceuticals.

(i) Only pharmacy technicians who have completed the training specified in subsection (f) of this section may compound sterile pharmaceuticals pursuant to medication orders providing a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).

(ii) effective January 1, 2001, only certified pharmacy technicians who have completed the training specified in subsection (f) of this section may compound sterile pharmaceuticals pursuant to medication orders providing a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the label or if batch prepared, to the appropriate quality control records. (The initials are not required on the label if it is maintained in a permanent record of the pharmacy).

(3) Procedures.

(A) pharmacy technicians [~~Supportive personnel~~] shall handle medication orders in accordance with standard, written procedures and guidelines.

(B) pharmacy technicians [~~Supportive personnel~~] shall handle prescription drug orders in the same manner as those working in a Class A pharmacy.

(4) Training.

(A) pharmacy technicians [~~Supportive personnel~~] shall complete initial training as outlined by the pharmacist-in-charge in a training manual, prior to the regular performance of their duties. Such training:

(i) shall include training and experience as outlined in paragraph (5) of this subsection; and

(ii) may not be transferred to another pharmacy unless:

(I) the pharmacies are under common ownership and control and have a common training program; and

(II) the pharmacist-in-charge of each pharmacy in which the pharmacy technician [~~supportive person~~] works certifies that the pharmacy technician [~~supportive person~~] is competent to perform the duties assigned in that pharmacy.

(B) A pharmacy technician shall be designated a pharmacy technician trainee until completing the full training program. A pharmacy technician trainee:

(i) may perform all of the duties of a pharmacy technician except effective January 1, 2001, compound sterile pharmaceuticals; and

(ii) may be designated a pharmacy technician trainee for no longer than one year.

(C) [~~(B)~~]The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians [~~supportive personnel~~] through in-service education and training to supplement initial training.

(D) [~~(C)~~] The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians [~~supportive personnel~~] completing the training. A written record of initial and in-service training of pharmacy technicians [~~supportive personnel~~] shall be maintained and contain the following information:

(i)-(iii) (No change.)

(iv) a statement or statements that certifies that the pharmacy technician [~~supportive person~~] is competent to perform the duties assigned;

(v) name of the person supervising the training; and

(vi) signature of the pharmacy technician [~~supportive person~~] and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians[~~supportive personnel~~].

(E) A person who has previously completed training as a pharmacy technician, or a licensed nurse or physician assistant is not required to complete the entire training program if the person is able to show competency through a documented assessment of competency. Such competency assessment may be conducted by personnel designated by the pharmacist- in-charge, but the final acceptance of competency must be approved by the pharmacist-in-charge.

(5) Training program. Pharmacy technicians [~~Supportive personnel~~] training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(A) written procedures and guidelines for the use and supervision of pharmacy technicians [~~supportive personnel~~]. Such procedures and guidelines shall:

(i) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians [~~supportive personnel~~] will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(ii) specify duties which may and may not be performed by pharmacy technicians[~~supportive personnel~~]; and

(B) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians [~~supportive personnel~~] in the pharmacy:

(i)-(xi) (No change.)

(xii) Written policy and guidelines for use of and supervision of pharmacy technicians [~~supportive personnel~~].

(f) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile pharmaceuticals.

(1) General.

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

(C) Although process validation may be incorporated into the experiential portion of a training program, process validation must be conducted at each pharmacy where an individual compounds sterile pharmaceuticals. No product intended for patient use shall be compounded by an individual until the on-site process validation test indicates that the individual can competently perform aseptic procedures, except that a pharmacist may compound sterile pharmaceuticals and supervise pharmacy technicians [~~supportive personnel~~] compounding sterile pharmaceuticals without process validation provided the pharmacist:

(i)-(ii) (No change.)

(D)-(E) (No change.)

(2) Pharmacists.

(A) All pharmacists who compound sterile pharmaceuticals or supervise pharmacy technicians [~~supportive personnel~~] compounding sterile pharmaceuticals shall:

(i) [~~effective March 1, 1996,~~] complete through a single course, a minimum 20 hours of instruction and experience in the areas listed in paragraph (1) of this subsection. Such training may be evidenced by either:

(I)-(II) (No change.)

(ii) (No change.)

(B) [~~Pharmacists shall discontinue preparation of sterile pharmaceuticals if the training specified in subparagraph (A) of this paragraph is not completed by March 1, 1996. Such pharmacists may continue to compound sterile pharmaceuticals and supervise supportive personnel compounding sterile pharmaceuticals until March 1, 1996, if they comply with the previous requirements of these rules and maintain documentation of completion of 20 hours of on-the-job training in the preparation, sterilization, and admixture of sterile pharmaceuticals.~~]

[~~(C)~~] The required experiential portion of the training programs specified in this paragraph must be supervised by an individual who has already completed training as specified in paragraph (2) or (3) of this subsection.

(3) Pharmacy technicians. [~~Supportive personnel/pharmacy technicians.~~] In addition to the qualifications and training outlined in subsection (e) of this section, all pharmacy technicians [~~supportive personnel~~] who compound sterile pharmaceuticals shall:

(A) have a high school or equivalent education;

(B) either:

(i) (No change.)

(ii) complete a training program which is accredited by the American Society of Health-System Pharmacists (formerly the American Society of Hospital Pharmacists). Individuals enrolled in training programs accredited by the American Society of Health-System Pharmacists may compound sterile pharmaceuticals in a licensed pharmacy provided:

(I) (No change.)

(II) the individual is under the direct supervision of and responsible to a pharmacist who has completed training as specified in paragraph (2) of this subsection [~~this subparagraph of this paragraph~~]; and

(III) the supervising pharmacist conducts in-process and final checks; and

(C) shall discontinue preparation of sterile pharmaceuticals if they have not taken and passed the National Pharmacy Technician Certification Exam by January 1, 2001. Such pharmacy technicians may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and January 1, 2001, if they maintain documentation of completion of the training specified in subparagraph (B) of this paragraph.

(D) [~~(C)~~] acquire the required experiential portion of the training programs specified in this paragraph under the supervision of an individual who has already completed training as specified in this paragraph or paragraph (2) of this subsection.

[~~(D) discontinue preparation of sterile pharmaceuticals if the training specified in subparagraphs (A) and (B) of this paragraph is not completed by March 1, 1996. Such supportive personnel may continue to compound sterile pharmaceuticals during the interim between the effective date of these rules and March 1, 1996, if they comply with the previous requirements of these rules and maintain documentation of completion of 40 hours of on-the-job training in the preparation, sterilization, and admixture of sterile pharmaceuticals.~~]

(4) (No change.)

(g) Identification of pharmacy personnel. All pharmacy personnel shall wear an identification tag or badge which bears the person's name and identifies him or her by title or function as follows:

(1) Pharmacy technicians. All pharmacy technicians shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacy technician trainee, pharmacy technician, or a certified pharmacy technician.

(2) Pharmacist interns. All pharmacist interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist intern.

(3) Pharmacists. All pharmacists shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist.

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

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

TRD-9903771
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 305-8028

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Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Subchapter F. Records Keeping

22 TAC §573.52

The Texas Board of Veterinary Medical Examiners proposes amendments to §573.52, concerning Patient Record Keeping. The amendments clarify what information is required to be maintained in patient records, including a notation identifying the person who treated the animal. Other amendments require practitioners to furnish clients with a copy of their animal's patient records within 15 business days of request. The cost for furnishing the records is the client's responsibility.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Allen also has determined that for the first five years the amendments are in effect that the public benefit anticipated as a result of enforcing the amendments will be better enforcement of the act since who performed what treatment can be specifically identified by the Board. The amendments will also give clients guidelines on how to obtain copies of patient records.

The additional information required to be recorded will take such a small amount of time that the time required could not be quantified. Therefore no economic costs can be established for persons who are required to comply with the amendments, including small businesses. Comments are solicited if a cost of compliance can be established. There will be no economic costs to practitioners who are required to furnish patient records because the practitioner is reimbursed under these amendments for any costs.

Written comments on the proposal may be submitted in writing to Mr. Chris Kloeris, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone: (512) 305-7555, and must be received by September 15, 1999.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Civil Statutes, article 8890, §8(a) which grants the Board the authority to amend rules of professional conduct in order to establish a high standard of integrity in the practice of veterinary medicine.

The amendments affect the Veterinary Licensing Act, article 8890, §14(a)(5) which allows the Board to discipline licensees for engaging in conduct violative of the rules of professional conduct.

§573.52. Patient Record Keeping.

(a) Individual records will be maintained at the veterinarian's place of business and include, but are not limited to:

(1) name and address of client;

(2) patient identity[~~,~~];

(3) patient history[~~,~~];

(4) dates of visits[~~,~~];

(5) any immunization records[~~,~~];

(6) weight [~~(estimate if necessary),~~] if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;

(7) temperature if required for diagnosis or treatment [~~(~~]except when treating a herd, [~~or~~] flock or a species that is difficult to temperature[~~),~~];

(8) any laboratory analysis[~~,~~];

(9) any radiographs[~~,~~];

(10) names, dosages, concentration, and routes of administration of each drug prescribed, [~~anesthetics and other medications~~] administered and/or dispensed;[~~, and~~]

(11) other details necessary to substantiate the examination, diagnosis, andtreatment provided, and/or surgical procedure performed [~~conducted~~].

(12) any signed acknowledgment required by §§573.12, 573.14, 573.15, and 573.16 of this title (relating to Supervision of Personnel). Each entry in the patient record shall identify the veterinarian who performed or supervised the procedure recorded.

(b) Patient records shall be current and maintained on the business premises for a period of three years and are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to his/her animals.

(c) Upon the request of the client or his/her authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 15 business days of the request, unless a longer period is reasonably required to duplicate the records. The veterinarian may charge a reasonable fee for this service, including actual costs for mailing, shipping or delivery. A veterinarian may not refuse a request for copies because payment in full for veterinary care has not been received from the client.

(d) [~~(c)~~] When appropriate, licensees may substitute the words "herd", "flock" or other collective term in place of the word "patient" in subsections (a) and (b) of this section. Records to be maintained on these animals may be kept in a daily log, or the billing records, provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and Board 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 June 21, 1999.

TRD-9903694
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 7, 1999
For further information, please call: (512) 305-7555

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Subchapter G. Other Provisions

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners proposes amendments to §573.64, concerning Continuing Education Requirements. The amendments allow practitioners obtaining continuing education hours in excess of the 15 required for license renewal, to carry the balance over and apply them to the next year's license renewal period. The carry over is limited to 15 hours each year.

Mr. Ron Allen, Executive Director, has determined that for the first five- year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Allen also has determined that for the first five years the amendments are in effect that the public benefit anticipated as a result of enforcing the amendments will be the improvement of practitioner skills through encouraging attendance at complex and comprehensive continuing education courses by allowing a practitioner to receive credit for more of the hours of attendance.

There are no additional costs imposed on the practitioner and therefore no adverse economic effects on small businesses. In some cases, there will be a cost benefit to practitioners who have previously not been able to count all the continuing education hours received.

Written comments on the proposal may be submitted in writing to Mr. Chris Kloeris, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone: (512) 305-7555, and must be received by September 15, 1999.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Civil Statutes, article 8890, §13(g) which requires the Board to establish a minimum number of hours of continuing education required to renew a license under this Act, and §8(a) which grants the Board the authority to amend rules of professional conduct in order to establish a high standard of integrity in the practice of veterinary medicine.

The amendments affect the Veterinary Licensing Act, article 8890, §14(a)(5) which allows the Board to discipline licensees for engaging in conduct violative of the rules of professional conduct.

§573.64. Continuing Education Requirements.

(a) Requirements.

(1) Fifteen (15) hours of acceptable continuing education shall be required annually for renewal of all types of Texas licenses except as provided in subsection (e) of this section. Licensees who successfully complete the Texas State Board Examination shall be allowed to substitute the examination for the continuing education requirements of their examination year.

(A) A licensee shall obtain the required fifteen hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee obtain acceptable continuing education hours during the year in excess of the required 15 hours, the licensee may carry over and apply the excess hours to the requirement for the next year. A maximum of 15 hours may be carried over each year.

(B) Effective Date. Beginning with the continuing education requirement for license renewal in 2000, licensees may carry over acceptable continuing education hours pursuant to subsection (a)(1)(A) of this section. For example, acceptable continuing education hours obtained in 1999 which are in excess of the 15 hours required for renewal in 2000, may be carried over and applied to the continuing education requirement for renewal in 2001, subject to the provisions of subsection (a)(1)(A).

[~~(2) Required continuing education hours must be obtained during the calendar year immediately preceding the submission for license renewal. Continuing education hours may be used for only one renewal period.~~]

(2) [~~(3)~~] Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. Requests

for a hardship extension must be received in the Board offices by December 15. Should such extension be granted, thirty (30) hours of continuing education shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the thirty (30) hours of continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year.

(b) Proof of Continuing Education. The licensee shall be required to sign a statement on the license renewal form attesting to the fact that the required continuing education hours have been obtained. It shall be the responsibility of the licensee to maintain records which support the sworn statements. Such records [~~may~~] include continuing education certificates, attendance records signed by the presenter, and/or receipts for meeting registration fees. These documents must be maintained for the last 3 complete renewal cycles and shall be provided for inspection to Board investigators upon request.

(c) Acceptable Continuing Education. Acceptable continuing education hours shall be hours earned by attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and veterinary medical colleges. The Executive Director and a licensed veterinarian Board member appointed by the Board President may approve hours earned by alternative methods.

(d) Distribution of Continuing Education Hours. Of the required fifteen (15) hours of continuing education, no more than five (5) may be derived from either:

(1) correspondence courses; or

(2) practice management courses. Continuing Education obtained as part of a disciplinary action is acceptable.

(e) Exemption from Continuing Education Requirements. A licensee is not required to obtain or report continuing education hours, provided that the licensee submits to the Board sufficient proof that during the preceding year the licensee was:

(1) in retired status,

(2) a veterinary intern or resident, or

(3) out-of-country on charitable or special government assignments for at least 9 months or

(4) on inactive status. Licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(f) Disciplinary Action for Non-Compliance. Failure to complete the required hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

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

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

TRD-9903693
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
Proposed date of adoption: October 7, 1999
For further information, please call: (512) 305-7555

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Chapter 577. General Administrative Duties

Subchapter B. Staff and Miscellaneous

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners proposes amendments to §577.15, concerning Fee Schedule. The amendments raise the license renewal and corresponding late fees by $11 in order to provide funding for the appropriations made by the 76th Legislature.

Ron Allen, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, there will be increased revenue OF $121,011 for each biennium that the amended license fee amounts are in effect.

Mr. Allen also has determined that for the first five years the amendments are in effect, that the public benefit anticipated as a result of enforcing the amendments will be the funding of those programs the 76th Legislature found appropriate to fund. The economic costs for persons who are required to comply with the amendments, including small businesses, will be an additional license fee of $11 for each license holder. No disparate effect is foreseen on small businesses as the fee is imposed on individual professionals regardless the size of any business. Comments are solicited if a cost of compliance can be established.

Written comments on the proposal may be submitted in writing to Mr. Chris Kloeris, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone: (512) 305-7555, and must be received by September 15, 1999.

The amendments are proposed under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, §19 which grants the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act.

The amendments affect the Veterinary Licensing Act, Article 8890, §19 which places limits on the Board's authority to set fees.

§577.15. Fee Schedule.

The Board shall establish fee amounts in accordance with Section 19(a), (b), and (c) of the Veterinary Licensing Act, art. 8890.
Figure: 22 TAC §577.15

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

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

TRD-9903691
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: October 7, 1999
For further information, please call: (512) 305–7555

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 5. Grants and Contracts

Subchapter B. Poison Control Centers

25 TAC §5.51

The Texas Department of Health (department) proposes an amendment to §5.51, concerning the Poison Control Coordinating Committee (committee). The committee provides advice to the Texas Board of Health (board) and the Advisory Commission on State Emergency Communications (commission) in the area of poison control and the operation of the Texas Poison Control Network. The committee is governed by the Health and Safety Code, §777.008.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Poison Control Coordinating Committee. The rule states that the committee will automatically be abolished on November 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Health and Safety Code and the Government Code; to continue the committee until November 1, 2003; to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be jointly appointed by the chairmans of the board and the commission 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 chairmans of the commission and 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, the commission or the committee except with certain approval; to require the committee's annual report in November; to reference reimbursement for a committee member's expenses if authorized by the General Appropriations Act or budget execution process; and to address meetings, attendance, staff, procedures of the meetings, subcommittees, statement by members, and reporting procedures. Other minor language changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Dennis M. Perrotta, Chief, Bureau of Epidemiology, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Perrotta also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board, the commission, and the department on the issues addressed by the committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Dennis M. Perrotta, Bureau of Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7268. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §777.008, which governs the committee; the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapters 11 and 777, and the Government Code, Chapter 2110.

§5.51. General Program Information.

(a) (No change.)

(b) The committee. An advisory committee shall be appointed under and governed by this section.

(1) (No change.)

(2) The committee is established under the Health and Safety Code, §777.008, which requires the committee to be established and §11.016, which allows the Texas Board of Health (board) to establish advisory committees.

(c) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(d) Purpose. The purpose of the committee is to provide advice to the board and the commission in the area of poison control and the operation of the Texas Poison Control Network in accordance with the poison control provisions of the Health and Safety Code, Chapters 771 and 777. The advice and recommendations of the committee regarding such matters shall be provided to the department and commission in writing, in the following fashion.

(1) In accordance with departmental organization, advice and recommendations to the department shall be referred to the board through the Health and Clinical Services Committee, or any similar committee officially established for such purposes by the board [~~Texas Board of Health~~].

(2) In accordance with commission organization, advice and recommendations to the commission shall be referred to the commission through the commission's poison control committee, or any similar committee officially established for such purposes by the commission.

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

(g) Review and duration. By November 1, 2003 [~~1999~~], the board and commission 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.

(h) (No change.)

(i) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(j) Officers. The chairmans of the board and the commission [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

(1) Each officer shall serve until the next regular appointment [~~election~~] of officers.

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [~~elected~~] to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filled temporarily by vote of the committee until a successor is appointed by the chairmans of the board and the commission [~~at the next committee meeting~~].

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

(7) The presiding officer and assistant presiding officer serving on October 1, 1999, will continue to serve until the chairmans of the board and the commission appoint their successors.

(k) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of commission staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by commission staff. Commission staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(l) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate commission staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(m) Staff. Staff support for the committee shall be provided by the commission.

(n) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by commission staff.

(A) A summary of the meeting shall be provided to the board , the commission, and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(o) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(p) Statement by members.

(1) The board, the department, the commission, 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, commission or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department, the commission or the committee except with approval through the department's or commission's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(q) Reports to board. The committee shall file an annual written report with the board and the commission.

(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 and the commission, the status of any rules which were recommended by the committee to the board or the commission, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board and the commission each November. It shall be signed by the presiding officer and appropriate commission staff.

(r)[~~(k)~~] Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department or the commission, may not receive reimbursement for expenses from the department or the commission.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department or the commission.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by commission [~~department~~] staff.

(s)[~~(l)~~] Definitions of terms and abbreviations. The following words, terms, and abbreviations, when used in this chapter have the following meanings, unless the context clearly indicates otherwise.

(1) AAPCC–American Association of Poison Control Centers.

(2) PCAP–Poison Control Answering Point; also referred to as Designated Regional Poison Control Center for the State of Texas.

(3) PSAP–Public Safety Answering Point.

(4) State fiscal year–A period of time which begins September 1 of a given year and ends August 31 of the following year.

(5) UGCMS–Uniform Grant and Contract Management Standards, consisting of a set of rules set forth in 1 Texas Administrative Code, Chapter 5, Subchapter A, promulgated pursuant to the Uniform Grant and Contract Management Act, Government Code, Chapter 783 [~~§783~~].

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

Filed with the Office of the Secretary of State, on June 25, 1999.

TRD-9903791
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 458–7236

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Chapter 123. Respiratory Care Practitioner Certification

25 TAC §123.3

The Texas Department of Health (department) proposes an amendment to §123.3, concerning the Respiratory Care Practitioners Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) on rules relating to the certification of respiratory care practitioners.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Respiratory Care Practitioners Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 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 November 1, 2003; to change the composition of the committee; to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain

approval; to require the committee's annual report in November rather than January; and to reference reimbursement for a committee member's expenses if authorized by the General Appropriations Act or budget execution process. Other minor language changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Amelia Middleton, Accountant, Associateship for Health Care Quality and Standards, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Ms. Middleton also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Donna S. Flippin, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6632. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§123.3. Respiratory Care Practitioners Advisory Committee.

(a) (No change.)

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c)-(d) (No change.)

(e) Review and duration. By November 1, 2003 [~~1999~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include:

(1) (No change.)

(2) three physicians with an interest in the practice of respiratory care; and [~~one physician who is a qualified chest physician;~~]

[~~(3) one physician who is a qualified anesthesiologist;~~]

[~~(4) one physician who is a qualified expert in thoracic medicine; and~~]

(3) [~~(5)~~] three certified respiratory care practitioners.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The chairman of the board [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

(1) Each officer shall serve until the next regular appointment [~~election~~] of officers.

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [~~elected~~] to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board [~~at the next committee meeting~~].

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

(7) The presiding officer and assistant presiding officer serving on October 1, 1999, will continue to serve until the chairman of the board appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

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

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[~~(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.~~]

(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A summary of the meeting [~~draft of the minutes approved by the presiding officer~~] shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

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

(3) A subcommittee chairperson shall make regular reports to the [~~advisory~~] committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year [~~, and any amendments to this section requested by the committee~~].

(2) The report shall identify the costs related to the committee's existence, including the cost of department [~~agency~~] staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each November [~~January~~]. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

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

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

Filed with the Office of the Secretary of State, on June 25, 1999.

TRD-9903793
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 458–7236

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Chapter 129. Opticians' Registry

25 TAC §129.3

The Texas Department of Health (department) proposes an amendment to §129.3, concerning the Opticians' Registry Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) concerning rules relating to opticians.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Opticians' Registry Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Health and Safety Code, §11.016 and the Government Code; to continue the committee until November 1, 2003; to change the composition of the committee; to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to require a summary of each meeting to be provided to the board; 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 November rather than September; and to reference reimbursement for a committee member's expenses if authorized by the General Appropriations Act or budget execution process. Other minor language changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Amelia Middleton, Accountant, Associateship for Health Care Quality and Standards, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Ms. Middleton also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Stephen Mills, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834- 6661. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§129.3. Opticians' Registry Advisory Committee.

(a) The committee. The Opticians' Registry Advisory Committee shall be appointed under and governed by this section. The committee is established under the Health and Safety Code, §11.016, which allows the Texas Board of Health (board) to establish Advisory Committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c)-(d) (No change.)

(e) Review and duration. By November 1, 2003 [~~1999~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of eleven [~~nine~~] members appointed by the board. The composition of the committee shall include four [~~two~~] consumer representatives, three opticians, two optometrists, and two physicians (ophthalmology).

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The chairman of the board [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

(1) Each officer shall serve until the next regular appointment [~~election~~] of officers.

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [~~elected~~] to complete the unexpired portion if the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board [~~at the next committee meeting~~].

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

(7) The presiding officer and assistant presiding officer serving on October 1, 1999, will continue to serve until the chairman of the board appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

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

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[~~(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.~~]

(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A summary of the meeting shall be provided to the board and each member of the committee within 30 days of each meeting. After approval by the committee, the minutes shall be signed by the presiding officer.

(B) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year [~~, and any amendments to this section requested by the committee~~].

(2) The report shall identify the costs related to the committee's existence, including the cost of department [~~agency~~] staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each November [~~September~~]. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Filed with the Office of the Secretary of State, on June 25, 1999.

TRD-9903800
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 458–7236

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Chapter 143. Medical Radiologic Technologists

25 TAC §143.3

The Texas Department of Health (department) proposes an amendment to §143.3 concerning the Medical Radiologic Technologist Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) concerning the regulation of persons performing radiologic procedures.

In 1993, the Texas Legislature passed Senate Bill 383 (now codified in the Government Code, Chapter 2110) which requires that each state agency adopt rules on advisory committees. The rules must state the purpose and tasks of the committee, describe the manner in which the committee will report to the agency, and establish a date on which the committee will be automatically abolished unless the governing body of the agency affirmatively votes to continue the committee's existence.

In 1995, the board established a rule relating to the Medical Radiologic Technologist Advisory Committee. The rule states that the committee will automatically be abolished on November 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until November 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 November 1, 2003; to revise the composition of the committee; to clarify that members holdover until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in November rather than January; and to reference reimbursement for a committee member's expenses if authorized by the General Appropriations Act or budget execution process. Other minor language changes were made for clarification. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Amelia Middleton, Accountant, Associateship for Health Care Quality and Standards, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Ms. Middleton also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Jeanette A. Hilsabeck, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6617. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §11.016, which allows the board to establish advisory committees; the Government Code, Chapter 2110, which sets standards for the evaluation of advisory committees by the agencies for which they function; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and commissioner of health.

The amendment affects the Health and Safety Code, Chapter 11, and the Government Code, Chapter 2110.

§143.3. Medical Radiologic Technologist Advisory Committee.

(a) (No change.)

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110 [~~Texas Civil Statutes, Article 6252-33~~], concerning state agency advisory committees.

(c)-(d) (No change.)

(e) Review and duration. By November 1, 2003 [~~1999~~], the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee or abolished. If the committee is not continued or consolidated, the committee will be abolished on that date.

(f) Composition. The committee shall be composed of eleven [~~nine~~] members appointed by the board. The composition of the committee shall include:

(1) four [~~two~~] consumers;

(2) one licensed physician who is a radiologist;

(3) one licensed medical physicist or a hospital administrator;

(4) one certified medical radiologic technologist whose primary practice is in diagnostic radiography [~~three certified medical radiologic technologists~~];

(5) one certified medical radiologic technologist whose primary practice is in nuclear medicine technology;

(6) one certified medical radiologic technologist whose primary practice is in radiation therapy;

(7) [~~(5)~~] one licensed physician who has experience in radiologic procedures and who practices in a rural community or at a site serving a medically underserved population in Texas as defined in the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5)(E)(iv); and

(8) [~~(6)~~] one registered nurse or certified physician assistant who has experience in radiologic procedures and who practices in a rural community or at a site serving a medically underserved population in Texas as defined in the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5)(E)(iv).

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

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

(h) Officers. The chairman of the board [~~committee~~] shall appoint [~~elect~~] a presiding officer and an assistant presiding officer to begin serving on November 1 of each odd-numbered year [~~at its first meeting after August 31st of each year~~].

(1) Each officer shall serve until the next regular appointment [~~election~~] of officers.

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [~~elected~~] to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filledtemporarily by vote of the committee until a successor is appointed by the chairman of the board [~~at the next committee meeting~~].

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

(7) The presiding officer and assistant presiding officer serving on October 1, 1999, will continue to serve until the chairman of the board appoints their successors.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

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

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each [~~Each~~] meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

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

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

[~~(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.~~]

(k) (No change.)

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A summary of the meeting [~~draft of the minutes approved by the presiding officer~~] shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) (No change.)

(m) (No change.)

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee

for the next year [~~, and any amendments to this section requested by the committee~~].

(2) The report shall identify the costs related to the committee's existence, including the cost of department [~~agency~~] staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each November [~~January~~]. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

Filed with the Office of the Secretary of State, on June 25, 1999.

TRD-9903796
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 19. Agent's Licensing

Subchapter I. Licensing Fees

28 TAC §19.802

The Texas Department of Insurance proposes amendments to §19.802 concerning the amounts of fees for original and renewal applications and examinations for various licensees. This proposal to amend the fee rule is necessary to update certain examination fees to accurately reflect the statutory ceiling on agent licensing examination fees and to conform the rule to the specialty agent licensing framework established by the 76th Legislature in Senate Bill 957.

Rose Ann Reeser, senior associate commissioner of regulation and safety, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Reeser has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit of enforcing the sections is that the license fees assessed in the proposed rule are sufficient to cover the costs of the administration of the license which includes licensure, enforcement of disciplinary requirements and market conduct examinations among other protections. These provisions aid in the protection of the insurance consumers of this state by ensuring the proper training and oversight of persons engaged in the sale of insurance products to the public. Ms. Reeser estimates the department will receive approximately 10,000 applications for the newly created specialty license. The economic costs to persons required to comply with the sections will be $50 per original application in the first year the proposed sections are in effect and $48 for each biennial renewal in the third and fifth years following adoption. The costs to apply for or renew an agent license will be identical for a large or small business. The cost of labor per hour is not affected by the proposed section and thus there is no disproportionate economic impact on small businesses.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Lynda H. Nesenholtz, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Linda Von Quintus, Deputy Commissioner, Regulation and Safety, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code, Articles 21.07-1 §15, 21.09 §6, and 1.03A. Article 21.07-1 §15 provides the commissioner may establish and amend reasonable rules for the administration of agent licensing. Article 21.09 §6 provides the commissioner may adopt rules as necessary to implement the specialty license. Article 1.03A provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

The following statutes and regulations are affected by the proposed amendments: Insurance Code, Articles 1.14-2; 21.01-1; 21.01-2; 21.07; 21.07-1; 21.07-2; 21.07-3; 21.07-4; 21.09; 21.11; 21.14; 21.14-1. Texas Administrative Code: 28 TAC §23.5.

§19.802. Amounts of Fees.

(a) (No change.)

(b) The amounts of fees are as follows:

(1) Group I, legal reserve life insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20;

(E) in addition to the original application fee listed in subparagraph (A) of this paragraph, an application filing fee for a temporary license of $100.

(2) Group II insurance agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20 [50];

(E) in addition to the original application fee listed in subparagraph (A) of this paragraph, an application filing fee for a temporary license of $100.

[(3) Health maintenance organization agent (basic health care plan):]

[(A) original application–$50;]

[(B) renewal–$48;]

[(C) additional appointment–$10;]

[(D) qualifying examination - $20.]

[(4) Health maintenance organization agent (single health care service plan):]

[(A) original application–$50;]

[(B) renewal–$48;]

[(C) additional appointment–$10.]

(3) [(5)] Insurance adjuster:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$50.

(4) [(6)] Insurance adjuster (emergency license): original application–$20.

(5) [(7)] Local recording agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$16;

(D) qualifying examination [reexamination]–$50.

(6) [(8)] Solicitor:

(A) original application–$20;

(B) renewal–$18;

(C) qualifying examination [reexamination]–$20;

(D) appointment of a currently licensed solicitor–$10.

(7) Insurance service representative:

(A) original application–$20;

(B) renewal–$18;

(C) qualifying examination–$20;

(D) appointment of a currently licensed insurance service representative–$10.

(8) [(9)] Managing general agent:

(A) original application–$30;

(B) renewal–$48;

(C) additional appointment–$10.

(9) [(10)] Prepaid legal:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10;

(D) qualifying examination–$20.

(10) [(11)] Surplus lines agent:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$20.

(11) [(12)] Specialty [Title] insurance agent:

(A) original application–$50;

(B) renewal–$48.

[(13) Title insurance escrow officer:]

[(A) original application–$50;]

[(B) renewal–$48.]

(12) [(14)] Title attorney:

(A) original application–$50;

(B) renewal–$48.

[(15) Direct operation license:]

[(A) original application–$50;]

[(B) renewal–$48.]

(13) [(16)] Variable contract agent:

(A) original application–$50;

(B) renewal–$48;

(C) additional appointment–$10.

(14) [(17)] Risk manager:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$50.

(15) [(18)] Agricultural agent:

(A) original application–$50;

(B) renewal–$50.

(16) [(19)] Life and Health insurance counselor:

(A) original application–$50;

(B) renewal–$48;

(C) qualifying examination–$20.

(17) [(20)] Nonresident property and casualty agent:

(A) original application–$50;

(B) renewal–$48.

(18) [~~(21)~~] Reinsurance intermediary:

(A) original application–$500;

(B) renewal–$500.

(19) [~~(22)~~] Utilization review agent:

(A) original application–$2,150;

(B) renewal–$545.

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

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

TRD-9903766
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter N. Migratory Game Bird Proclamation

31 TAC §65.309, §65.310

The Texas Parks and Wildlife Department proposes amendments to §65.309 and §65.310, concerning the Migratory Game Bird Proclamation. The amendments are necessary to adjust the state's baiting regulations to conform with recent rulemaking by the U.S. Fish and Wildlife Service. The amendment to §65.309, concerning Definitions, adds definitions for new regulatory terminology. The amendment to §65.310, concerning Means, Methods, and General Requirements, establishes those practices or activities which may be lawfully conducted and those practices or activities that would constitute the offense of baiting migratory game birds.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed rules are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, implementation of commission policy to maximize recreational opportunity for the citizenry, and consistency with federal regulations governing the hunting of migratory game birds.

There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4578 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, Subchapter C, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64, Subchapter C.

§65.309. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in Subchapter A of this chapter (relating to Statewide Hunting and Fishing Proclamation).

(1) Baited area–Any area where salt, grain, [~~shelled, shucked, or unshucked corn, wheat, or other grain, salt,~~] or other feed has been [~~capable of luring, attracting, or enticing such birds is directly or indirectly~~] placed, exposed, deposited, distributed, or scattered, if that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for ten days following the complete removal of all such salt, grain, or other feed.[~~; and the area shall remain a baited area for ten days following complete removal of all such corn, wheat, or other grain, salt or other feed~~].

(2) Baiting–The direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, [~~shelled, shucked, or unshucked corn, wheat, or other grain, salt,~~] or other feed that could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them[~~so as to constitute for migratory game birds a lure, attraction, or enticement to, on, or over areas when hunters are attempting to take such birds~~].

(3)-(6) (No change.)

(7) Manipulation - The alteration of natural vegetation or agricultural crops, including but not limited to mowing, shredding, discing, rolling, chopping, trampling, flattening, burning, and herbicide treatments. Manipulation does not include the distributing or scattering of grain, seed, or other feed after removal from or storage on the field where grown.

(8) Natural vegetation - Any non-agricultural, native, or naturalized plant species that grows at a site in response to planting or from existing seeds or propagule. Natural vegetation does not include planted millet. However, planted millet that grows on its own in subsequent years after the planting is considered natural vegetation.

(9) [~~(7)~~] Nontoxic shot–Any shot approved by the director, U.S. Fish and Wildlife Service.

(10) Normal agricultural operation -An agricultural practice other than a normal agricultural planting, harvesting, or post-harvest manipulation, including practices not directly tied to crop production (i.e., livestock feeding), that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(11) Normal agricultural planting, harvesting, or post-harvest manipulation - A planting or harvesting undertaken for the purpose of producing or gathering a grain, or manipulation after such harvest and removal of a grain, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(12) Normal soil stabilization practice - a planting for agricultural soil erosion control or post-mining land reclamation conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture.

(13) [~~(8)~~] Personal residence–One's principal or ordinary home or dwelling place. The term does not include a temporary or transient place of residence or dwelling such as a hunting club, or any club house, cabin, tent, or trailer house used as a hunting club, or any hotel, motel, or rooming house used during a hunting, pleasure, or business trip.

(14) [~~(9)~~] Sinkbox–Any type of low floating device having a depression which affords the hunter a means of concealing himself below the surface of water.

(15) Waterfowl - ducks (including teal), geese, and coots.

(16) [~~(10)~~] Wildlife resource–For the purposes of this subchapter, wildlife resource includes all migratory birds.

§65.310. Means, Methods, and Special Requirements.

(a) The following means and methods are lawful, subject to control of subsection (b) of this section, in the taking of migratory game birds:

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

(4) taking on or over unbaited areas, including:

(A) standing crops or flooded standing crops (including aquatics);

(B) standing, flooded, or manipulated natural vegetation;

(C) flooded harvested cropland;

(D) lands or areas where seeds or grains have been scattered solely as a result of a normal agricultural planting, harvesting, or post-harvest manipulation;

(E) normal soil stabilization practice;

(F) from a blind or other place of concealment camouflaged with natural vegetation;

(G) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed;

(H) standing crops or flooded standing agricultural crops where grain has been inadvertently scattered as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(5) except for waterfowl and cranes, the taking of migratory birds on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

(6) [~~(5)~~] taking by the use of power boats, sailboats, or other craft when used solely as a means of picking up dead or injured birds; and

(7) [~~(6)~~] paraplegics and single or double amputees of the legs may take migratory game birds from any stationary motor vehicle or motor-driven land conveyance.

(8) [~~(7)~~] taking by means of falconry, but the hunting is limited to persons holding valid falconry permits issued under the authority of Parks and Wildlife Code, Chapter 49.

(b) The following means and methods are unlawful in the taking of migratory game birds:

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

(7) by the aid of baiting, or on or over any baited area, or where migratory birds are lured, attracted, or enticed by bait where a person knows or reasonably should know that the area has been baited. [~~However, nothing in this subsection shall prohibit:~~]

[~~(A) the taking of migratory game birds, including waterfowl, on or over standing crops, flooded standing crops (including aquatics), flooded harvested croplands, grain crops properly shocked on the field where grown, or grains found scattered solely as the result of normal agricultural planting or harvesting;~~]

[~~(B) the taking of migratory game birds, except waterfowl, on or over lands where shelled, shucked, or unshucked corn, wheat, or other grain, salt, or other feed that has been distributed or scattered as the result of bona fide agricultural operations or procedures, or as a result of manipulation of a crop or other feed on the land where grown for wildlife management purposes; provided that manipulation for wildlife management purposes does not include the distributing or scattering of grain or other feed once it has been removed from or stored on the field where grown; and~~]

[~~(C) the taking of migratory game birds on or over moist soil or aquatic vegetation manipulated by any means.~~]

(8) the hunting of waterfowl or cranes on or over:

(A) manipulated, planted millet, unless the millet was planted not less than one year before hunting; or

(B) crops that have been manipulated, unless the manipulation is a normal agricultural planting, harvest, or post-harvest manipulation.

(9) the placing or directing the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.

(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 June 28, 1999.

TRD-9903849
Gene McCarty

Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter J. Petroleum Products Delivery Fee

34 TAC §3.151

The Comptroller of Public Accounts proposes an amendment to §3.151, concerning imposition, collection, and bond or other security of the fee. The 76th Legislature, 1999, in House Bill 2816, amended the Water Code, Chapter 26, to reduce the petroleum products delivery fee by 25 percent.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amendment will be in effect there will be no significant revenue impact on the state or local government.

Mr. LeBas also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of adopting the amendment will be in providing the petroleum product delivery fee schedule. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas, 78711-3528.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Water Code, §26.3574.

§3.151. Imposition, Collection, and Bonds or Other Security of the Fee.

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

(c) The fee is collected by the operator of a bulk facility from the person ordering the withdrawal. The fee is computed as follows:

(1) $18.75 [~~$25~~] for each delivery into a cargo tank or barge having a capacity of less than 2,500 gallons;

(2) $37.50 [~~$50~~] for each delivery into a cargo tank or barge having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) $56.25 [~~$75~~] for each delivery into a cargo tank or barge having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) $75 [~~$100~~] for each delivery into a cargo tank or barge having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) a $37.50 [~~$50~~] fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank or barge having a capacity of 10,000 gallons or more.

(d)-(x) (No change.)

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

Filed with the Office of the Secretary of State, on June 28, 1999.

TRD-9903846
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463-4062

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Part IX. Texas Bond Review Board

Chapter 190. Allocation of State's Limit on Certain Private Activity Bonds

Subchapter A. Program Rules

34 TAC §§190.1-190.7

The Texas Bond Review Board proposes amendments to §§190.1-190.7. The program rules are amended to comply with changes in Texas Civil Statutes, Article 5190.9a, as amended. Generally, the amendments will allow more applications to receive a reservation and more applications to successfully close their bond transactions. Additionally, the amendments serve to encourage more affordable rental housing targeted to lower income families. The amendments also recognize the codification of Texas Civil Statutes, Article 5190.9a, as amended, as Chapter 1372, Texas Government Code, effective September 1, 1999.

José A. Hernández, Executive Director of the Bond Review Board, has determined that for the first five-year period the sections are in effect there will be negligible fiscal implications for state and local government as a result of enforcing or administering the sections.

Mr. Hernández 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 an increase in the number of applications receiving a reservation and an increase in applications successfully completing their bond issue. There will be no effect on small businesses. There is little anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jose A. Hernandez, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amendments are proposed under Texas Civil Statutes, Article 5190.9a, as amended, which give the Texas Bond Review Board the authority to adopt rules governing the implementation and administration of the allocation of the state's ceiling on private activity bonds.

Texas Civil Statutes, Article 5190.9a is affected by these proposed amendments.

§190.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by Chapters 2001 and 2002, Government Code, as amended, and Texas Civil Statutes, Article 5190.9a, as amended, and Chapter 1372, Texas Government Code, the Bond Review Board prescribes the following sections regarding practice and procedure before the board in the administration of the allocation of the authority in the state to issue private activity bonds.

(b) (No change.)

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

(1) Act - Texas Civil Statutes, Article 5190.9a, as amended, and Chapter 1372, Texas Government Code,

(2)-(19) (No change.)

(20) Closing documents - Those documents that are required to be filed by the issuer not later than the fifth business day after the day on which the bonds are closed.

(21) Closing fee - The nonrefundable fee in the amount of $1,000 or 0.025% of the principal amount of the bonds certified as provided by §1372.039(a)(1), Texas Government Code, [~~the Act, §6(a)(2)~~] whichever is greater. The foregoing notwithstanding, an issuer exchanging a portion of the state ceiling for mortgage credit certificates shall submit to the board a closing fee in the amount of $1,000 or 0.0125% of the amount of the state ceiling exchanged [~~reserved~~], whichever is greater.

(22)-(56) (No change.)

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

§190.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after October 10 of the year preceding the applicable program year, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 2 of the program year. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in Article 5190.9a [~~the Act~~], §2(b), the board shall conduct a lottery establishing the order of priority of each such application for reservation. Once the order of priority for all applications for reservation filed on or before October 20 of the year preceding the applicable program year is established, reservations for each issuer within the categories described in subsection (b)(2), (3), [~~(b)(4),~~] and (6) of §2 [~~of the Act~~], shall be granted in the order of priority established by such lottery. Each issuer of state voted issues granted a reservation initially shall be granted a reservation date which is the first business day of the program year. If more than ten applications by issuers, other than issuers of state voted issues, are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates for such issuers.

(c) The order of priority for reservations in the category described in Article 5190.9a [~~the Act~~], §2(b)(1), shall further be determined as provided in §1372.032, Texas Government Code [~~the Act, §3(c)~~].

(1) The first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year. Any such priority of an issuer composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring governmental unit and that unit's population base if the dollar amount of the application has not increased.

(2) The second category of priority shall include those applications for a reservation not included in the first category of priority.

(3) Within each category of priority, reservations shall be granted in reverse calendar year order of the most recent closing of qualified mortgage bonds by each housing finance corporation, with the most recent closing being the last to receive a reservation and with those housing finance corporations that have never received a reservation for mortgage revenue bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot. The most recent closing applicable to:

(A) a newly created housing finance corporation that was created by a local government or local governments that had previously sponsored an existing housing finance corporation or a disbanded housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation;

(B) a housing finance corporation sponsored by a local government that has participated in the program of another housing finance corporation, is the most recent closing of qualified mortgage bonds the proceeds of which were available to the population of the housing finance corporation; and

(C) all other housing finance corporations, is the most recent closing of qualified mortgage bonds by the housing finance corporation. In no event will a housing finance corporation or its sponsoring local government be allowed to achieve an advantage in the determination of its last closing date by creating or disbanding from a housing finance corporation.

(d) The order of priority for reservations in the category described in Article 5190.9a, §2(b)(4), shall further be determined as provided in Article 5190.9a, §3(h).

(1) The first category of priority shall include those applications for a reservation for a project in which the maximum allowable rents are restricted to 30% of 50% adjusted median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for 100% of the units.

(2) The second category of priority shall include those applications for a reservation for a project in which the maximum allowable rents are restricted to 30% of 60% adjusted median family income, minus an allowance for utility costs authorized under the federal Low Income Housing Tax Credit Program, for 100% of the units.

(3) The third category of priority shall include those applications for any other qualified residential rental project.

(4) Within each category of priority, reservations shall be granted in the order established by the lottery.

(e) The order of priority for reservations in the category described in Article 5190.9a [~~the Act~~], §2(b)(5), shall further be determined as provided in §1372.033, Texas Government Code [~~the Act, §3(c)~~]. Reservations shall be granted in reverse calendar year order of the most recent closing of qualified student loan bonds by each issuer of qualified student loan bonds authorized by §53.47,

Education Code, with the most recent closing being the last to receive a reservation and with those higher education authorities that have never received a reservation for student loan bonds being the first to receive a reservation, and, in the case of closings occurring on the same date, reservations shall be granted in an order determined by the board by lot.

(f) If state ceiling becomes available on August 15, it shall be available prior to September 1 for qualified residential rental project issues in the order of priority described in subsection (d) of this section.

(g) [~~(e)~~] If any issuer which was subject to the lottery conducted as described in subsection (b) of this section does not, prior to September 1 of the program year, receive the amount requested by such issuer in its application for reservation filed on or before October 20 of the preceding year, and if state ceiling becomes available on or after September 1 of the program year, such issuer, subject to the provisions of §1372.037, Texas Government Code [~~the Act, §3(a)~~], shall receive a reservation for any state ceiling becoming available on or after September 1 of the program year, in the order of priority established by such lottery, without regard to the provisions of §§1372.032, 1372.033, Texas Government Code and Article 5190.9a §3(h) [~~the Act §3(c), relating to the order of priority for the categories described in subsections (b)(1) and (b)(5) of §2 of the Act~~].

(h) [~~(d)~~] All applications for a reservation filed after October 20 of the preceding year by any issuer for the issuance of bonds shall be accepted by the board in their order of receipt.

(i) [~~(e)~~] An application for a reservation for the current program year may not be submitted and a reservation may not be granted after December 1 of the program year.

(j) [~~(f)~~] An issuer may refuse to accept a reservation for any amount if the reservation is granted after September 23 of the program year.

(k) [~~(g)~~] The amount of the state's ceiling that has not been reserved prior to December 1 of the program year and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the Code through submission of the application for carryforward and any other required documentation.

(l) [~~(h)~~] An issuer may submit an application for carryforward to the board at any time during the year through the last business day in December.

(m) [~~(i)~~] Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

§190.3. Filing Requirements for Applications for Reservation.

(a) (No change.)

(b) Application Filing. The issuer shall submit one original and two copies of the application for reservation. Each application must be accompanied by the following:

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

(5) a copy of the issuer's certificate of continued existence from the secretary of state of Texas [~~or a copy of the issuer's certificate of good standing from the comptroller of public accounts of Texas,~~] dated within 30 days of submission of application;

(6) a copy of the borrower's and, if the borrower is a partnership, each partner's certificate of good standing from the comptroller of public accounts of Texas, dated within 30 days of submission of application;

(7) [~~(6)~~] a statement by the issuer, other than an issuer of a state-voted issue or the Texas Department of Housing and Community Affairs, that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer, or based on the issuer's population;

(8) [~~(7)~~] if unexpended proceeds exist from , including transferred proceeds representing unexpended proceeds from, a prior issue or issues of bonds, other than a state-voted issue or an issue by the Texas Department of Housing and Community Affairs, issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer of the prior issue of bonds shall certify to the current amount of unexpended proceeds that exists for each issue should a trustee not administer the bond issues;

(9) [~~(8)~~] if unexpended proceeds , including transferred proceeds representing unexpended proceeds, other than prepayments exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the Texas Department of Housing and Community Affairs, issued by issuer or on behalf of issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds by the later of [~~within~~] 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided however, that any such extension provision may be amended, prior to the date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond the later of 12 months after the date of receipt by the board of an application for reservation or December 31 of the program year for which the application is being filed. For purposes of this paragraph, issuers of qualified student loan bonds authorized by §53.47, Education Code, may satisfy the requirements of Article 5190.9a, §4(a)(6) by, in lieu of a definite and binding agreement, providing with the application evidence as certified by the issuer that the issuer has purchased, in each of the last three calendar years, qualified student loans in amounts greater than or equal to the amount of the unexpended proceeds;

(10) [~~(9)~~] if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the Texas Department of Housing and Community Affairs, issued by the issuer or on behalf of the issuer, or based on the issuer's population, for the same stated purpose for which the bonds are the subject of the pending application, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation contained in the application to fulfill the requirements of the Act and that the agreement referred to in paragraph (9) [~~(8)~~] of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(11) [~~(10)~~] a written opinion of legal counsel, addressed to the board, to the effect that the bonds are required to be included under the state ceiling and that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, the provision of the Constitution or law of the state which authorizes the bonds for the project;

(12) [~~(11)~~] a qualified mortgage bond issuer that submits an application for reservation as described in §1372.032, Texas Government Code [~~the Act, §3(c)~~], shall provide a statement certifying to the most recent closing of qualified mortgage bonds determined as provided in §190.2(c) [~~(b)~~](3) of this title, and the most recent date of a reservation received for mortgage revenue bonds and state the government unit(s) for which the local population was based for the issuance of bonds or for receipt of a reservation; and

(13) [~~(12)~~] For a qualified residential rental project issue, an issuer [~~that submits an application as described in the Act, §3(c),~~] shall provide a copy of an executed earnest money contract between the borrower and the seller of the project. This earnest money contract must be in effect at the time of submission of the application to the board and expire no earlier than March 1 of the program year, with the option to extend as necessary so that the borrower will have site control at the time a reservation is granted. If the borrower owns the property, evidence of ownership must be provided.

(c)-(d) (No change.)

(e) Closing documents. Not later than the fifth business day after the day on which the bonds are closed the issuer shall file with the board:

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

(6) the document evidencing compliance with §1372.040, Texas Government Code [~~Section 3(g) of the Act~~] ;

(7)-(9) (No change.)

(10) For a residential rental project described in §190.2(d)(1) or (2) of this title (relating to Allocation and Reservation System), evidence from the Texas Department of Housing and Community affairs that an award of Low Income Housing Tax Credits has been approved for the project.

(f) (No change.)

(g) Application restrictions.

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

(4) For any one project, no issuer, prior to September 1 of the program year, may exceed the following maximum application limits:

(A) $25 million for issuers described by Article 5190.9a, §2(b)(1) [~~of the Act~~] other than the Texas Department of Housing and Community Affairs;

(B) $50 million for issuers described by Article 5190.9a, [~~the Act~~] §2(b)(2) other than the Texas Higher Education Coordinating Board and $75 million for the Texas Higher Education Coordinating Board;

(C) an amount as limited by the code for issuers described by Article 5190.9a, §2(b)(3) [~~of the Act~~];

(D) the lesser of $15 million or 15 percent of the amount set aside for this purpose for issuers described by Article 5190.9a, [~~of the Act,~~] § 2(b)(4);

(E) $25 million for issuers described by Article 5190.9a, [~~the Act,~~] §2(b)(6); and

(F) $35 million for issuers described by Article 5190.9a, §2(b)(5) [~~of the Act~~].

(5) (No change.)

§190.4. Filing Requirements for Applications for Carryforward.

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

(c) Fee. The fee required by Article 5190.9a, §12 must be paid within 5 business days of receipt of the certificate of carryforward designation.

(d) [~~(c)~~] Additional Information. The board may require additional information at any time before granting a certificate of carryforward.

(e) [~~(d)~~] Closing documents. Not later than the fifth business day after the day on which the bonds are closed the issuer shall file with the board:

(1) a closing documents checklist on the form prescribed by the board;

(2) a certificate of delivery on the form prescribed by the board;

(3) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue;

(4) if one is required, a copy of the approval of the local government unit or local government units, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds for which the Code does not require such a public hearing and approval of a local government unit or local government units;

(5) other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule;

(D) purchaser or purchasers; and

(6) an official statement.

§190.5. Consideration of Qualified Applications by the Board.

(a)-(f) (No change.)

~~[(g) After August 25 of the program year but prior to September 1 of the program year, if any portion of the state ceiling set aside exclusively for the housing finance division of the Texas Department of Housing and Community Affairs is not subject to a reservation, such portion prior to September 1 of the program year shall be available exclusively to issuers of qualified mortgage bonds in accordance with the Act, §3(c).]~~

(g) [~~(h)~~] A reservation that is received by an issuer of qualified mortgage bonds for only a portion of the amount requested in the application for reservation shall be considered a reservation for the program year regardless of the amount reserved, and if an application for a reservation is submitted for the following program year by such issuer, as described in §1372.032, Texas Government Code [~~the Act, §3(c)~~], the category of priority will be determined in accordance with §1372.032(a), Texas Government Code [~~the~~

~~Act,~~ ~~§3(c)(2)~~] and the order determined by §1372.032 (c), Texas Government Code [~~the Act,~~ ~~§3(c)(4)~~].

(h) [~~(i)~~] If any change in a qualified application or in any of the items accompanying the application should occur prior to the date state ceiling becomes available to an issuer, the issuer or authorized representative shall promptly notify the board of any such change. Upon state ceiling becoming available, an issuer or authorized representative, within three days upon receipt of notice from the board that a portion of the state ceiling will be available to the issuer, must confirm and certify that the information contained in the qualified application and all items accompanying the application are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application (which does not result in the application failing to constitute a qualified application), which amendment will constitute such certification. Prior to receiving a reservation, only an issuer may amend the application to change the amount of the state ceiling requested, but the board may not accept an amendment to increase the amount of the state ceiling requested unless at the time of the amendment seeking an increase in the amount of state ceiling there are no other qualified applications pending, subsequent in order to said application, for which state ceiling is not available. A reservation date will not be given by the board until the receipt of such certification.

(i) [~~(j)~~] Upon notice by the board that a portion of the state ceiling will be available to the issuer for less than the requested amount, the issuer or authorized representative must confirm in writing its acceptance or denial of the amount available, within three business days. Refusal by an issuer to accept a certificate of reservation for less than the amount requested in a qualified application shall not change the chronological order in which such issuer will be offered a certificate of reservation. If an issuer accepts a certificate of reservation for less than the requested amount, the issuer shall maintain its current position, and will be offered the next available reservation amounts until the original request has been satisfied. However, the deadline restrictions will be calculated from the date of reservation for each reservation amount.

§190.6. Expiration Provisions.

(a) A certificate of reservation for an application within the category described by Article 5190.9a, §2(b)(1) [~~of the Act~~] shall expire at the close of business on the 180th calendar day after the date on which the reservation is given. A certificate of reservation for an application within the categories described by Article 5190.9a, §2(b)(2)-(6) [~~of the Act~~] shall expire at the close of business on the 120th calendar day after the date on which the reservation is given.

(b) (No change.)

§190.7. Cancellation, Withdrawal and Penalty Provisions.

(a) (No change.)

(b) If the closing documents are not received within five business days after the closing as described in §190.3(e) of this title (relating to Filing Requirements for Applications for Reservation), the issuer's reservation is cancelled and during the 150-day period beginning on the reservation date of the cancelled reservation for applications within the categories described by Article 5190.9a, §2(b)(2)-(6) [~~of the Act~~], and the 210-day period for an application within the category described by Article 5190.9a, [~~the Act,~~] §2(b)(1):

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

(c)-(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 June 18, 1999.

TRD-9903654
José Hernández
Executive Director
Texas Bond Review Board
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463-1741

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter M. Substitute-Care Services

40 TAC §§700.1331-700.1333

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§700.1331-700.1333, concerning the child's service plan, the family's service plan, and case plan review, in its Child Protective Services chapter. The purpose of the amendments is to streamline the sections due to the federal requirements of §§471, 473, and 475 of the Social Security Act and the Adoption and Safe Families Act of 1997, Public Law 105-89. The amendment to §700.1333 changes the time frames for child service plan reviews for children in therapeutic care in temporary legal status from three months to match the five-month and nine-month reviews of the other child service plans.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown 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 to ensure continued access to federal funds for foster care. The funding is contingent on implementation of the requirements of this legislation. There will be no effect on small businesses because there is no change to what staff are currently doing. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Larry Burgess at (512) 438-5320 in TDPRS's Child Protective Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-201, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code (HRC), Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to

comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The amendments implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.1331. The Child's Service Plan.

(a) Time frame. Within 45 days after a child's placement in substitute care, the Child Protective Services (CPS) Program [~~Office of Protective Services for Families and Children (PSFC)~~] must develop a written plan for services to the child. As specified in §700.1330(b) of this title (relating to The Case Plan), the child's service plan is part of the case plan.

(b) Required content. The child's service plan must contain the items required by federal and state laws and Texas Department of Protective and Regulatory Services (TDPRS) Licensing standards as listed in the Child Protective Services Handbook, Section 6400. [~~:~~]

[~~(1) document the continuing need for the child's placement in substitute care;~~]

[~~(2) identify the caregiver with whom the child has been placed;~~]

[~~(3) document the appropriateness of the type of substitute care the caregiver is providing;~~]

[~~(4) document that, of the available settings consistent with the best interest and needs of the child, the setting of the current placement is both:~~]

[~~(A) the least restrictive; and~~]

[~~(B) the one in closest proximity to the parents' home;~~]

[~~(5) either:~~]

[~~(A) document that the current placement is close enough to the child's school to allow the child to continue to attend the same school; or~~]

[~~(B) explain why not;~~]

[~~(6) specify the expected outcomes of the placement and the estimated length of stay;~~]

[~~(7) identify the child's needs and specify how they will be met while the child is in substitute care;~~]

[~~(8) identify all the services that will be provided to help the child's caregiver meet the child's needs;~~]

[~~(9) identify the child's permanency planning goal, and specify:~~]

[~~(A) the actions that will be taken to achieve it;~~]

[~~(B) the services that will be provided to prepare the child for it;~~]

[~~(C) the obstacles that could prevent its achievement; and~~]

[~~(D) the actions that will be taken to overcome those obstacles;~~]

[~~(10) if the child is 16 or older, identify the services being provided to prepare the child to live independently as an adult; and~~]

[~~(11) indicate how PSFC will ensure compliance with all specific orders of the court regarding the child.~~]

(c) Participation. CPS [~~PSFC~~] must ask the following individuals to participate in developing the child's service plan:

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

(5) the substitute caregiver (e.g., the foster parent, the residential group home director, the relative);

(6) the attorney or guardian *ad litem*, or both; [~~and~~]

(7) when appropriate, other professionals and volunteers who are providing services to the child or the child's family; and

(8) the adoptive parent(s) sometimes referred to as the pre-adoptive parent(s), if a child has been placed in an adoptive home and consummation of the adoption has not occurred.

(d) Distribution. CPS [~~PSFC~~] must send a copy of those parts of the child's service plan that identify services to be provided under the plan to each individual who has participated in developing the child's service plan as specified in paragraphs (1)-(8) of subsection (c) of this section.

§700.1332. The Family's Service Plan.

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

(c) Required content. The family's service plan must meet federal and state laws and TDPRS Licensing standards as listed in the Child Protective Services Handbook, Section 6400. [~~:~~]

[~~(1) include an assessment, developed with the family, of family problems and strengths related to the risk of child abuse or neglect;~~]

[~~(2) identify the changes needed to reduce the level of risk;~~]

[~~(3) specify the tasks the family must complete during the effective period of the plan in order to make the needed changes;~~]

[~~(4) describe the services CPS must provide to help the family complete those tasks; and~~]

[~~(5) indicate how CPS will evaluate the family's completion of those tasks.~~]

(d) Parents' participation.

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

(3) After completing the family's service plan, the worker asks the parents to sign it and gives them a copy of it, whether or not they are willing to sign.

§700.1333. Case Plan Review.

(a) Time frame.

(1) The Child Protective Services (CPS) Program [~~Office of Protective Services for Families and Children (PSFC)~~] must review each child's case plan when the child has been in care five months, nine months, and [~~at least~~] every six months thereafter to determine the continuing need for and appropriateness of the placement.

(2) For children in therapeutic foster care, CPS [~~PSFC~~] must review the child's service plan when the child has been in care five months and every four months thereafter while the child is in temporary legal status [~~of each child in therapeutic foster care at least every 90 days~~]. If the child enters permanent legal status with the Texas Department of Protective and Regulatory Services (TDPRS), the review will be done every three months while the child continues in therapeutic foster care.

(b) Components. [~~What the review must cover. Each case plan review must:~~]

(1) The case plan review for each child in substitute care includes [~~cover~~]:

(A) (No change.)

(B) the family's service plan, unless the Texas Department of Protective and Regulatory Services has been named permanent managing conservator or the child's parents:

(i)-(ii) (No change.)

(iii) have:

(I) (No change.)

(II) indicated that they do not want to participate in the child's case. [~~; and~~]

(2) Ensure [~~ensure~~] that the required content of both service plans is reconsidered point by point and updated wherever necessary.

(c) Required content. The review must address the items required by federal and state laws and TDPRS Licensing requirements as listed in the Child Protective Services Handbook, Section 6400. [~~At a minimum, the written review must:~~]

[~~(1) describe the family's progress towards making the changes needed to reduce the level of risk;~~]

[~~(2) explain the continued need for substitute care;~~]

[~~(3) document the appropriateness of:~~]

[~~(A) the child's placement with the caregiver; and~~]

[~~(B) the type of care provided by the caregiver;~~]

[~~(4) either:~~]

[~~(A) document that, of the available settings consistent with the best interest and needs of the child, the setting of the current placement is both:~~]

[~~*(i)* the least restrictive; and~~]

[~~*(ii)* the one in closest proximity to the parents' home; or~~]

[~~(B) explain why not;~~]

[~~(5) describe the services that have been provided under the case plan, and their appropriateness to the child's and the parents' needs;~~]

[~~(6) describe any new needs identified since the last plan was developed, and the plan for meeting them;~~]

[~~(7) set forth the plan for complying with judicial determinations regarding the child or the parents;~~]

[~~(8) identify any changes in the expected outcomes of the placement or in the estimated length of stay; and~~]

[~~(9) document the worker's reassessment of the child's permanency plan, including:~~]

[~~(A) the decision to continue or to change the current permanency- planning goal, and the reasons for doing so;~~]

[~~(B) the actions that will be taken to achieve the goal, and the services that will be provided to prepare the child for it;~~]

[~~(C) the obstacles that could prevent the goal's achievement and the actions that will be taken to overcome them; and~~]

[~~(D) the date projected for achieving permanency.~~]

(d) Participation. CPS [~~PSFC~~] must ask the individuals who participated in the development of the most recent version of the child's service plan to participate in the case plan review. If any individuals specified in §700.1331 of this title (relating to The Child's Service Plan) did not participate in developing the initial [~~most recent version of the~~] child's service plan, CPS [~~PSFC~~] may ask them [~~also~~] to participate in the case plan review.

(e) Parents' participation.

(1) CPS [~~PSFC~~] must ensure that the child's parents have an opportunity to participate in every case plan review unless the parents:

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

(2) (No change.)

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

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903836
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: October 1, 1999
For further information, please call: (512) 438-3765

♦ ♦ ♦

Subchapter R. Cost-finding Methodology for 24-Hour Child-care Facilities

40 TAC §700.1807

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §700.1807, concerning increase in residential child care reimbursement rates for fiscal years 2000-2001, in its Child Protective Services chapter. The purpose of the new section is to increase residential child care reimbursement rates for fiscal years 2000 and 2001. A seven percent increase will be applied across all levels of care effective September 1, 1999.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government will be an estimated additional cost of $3,284,598 for fiscal year 2000 and $3,284,599 for fiscal year 2001. The additional costs for fiscal years 2002, 2003, and 2004 are not known at this time. Future rates will be established by revised rate methodology. There will be no fiscal implications for local government.

Ms. Brown 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 that additional resources will be provided to 24-hour residential child care providers to care for children in TDPRS's conservatorship. There will be no adverse economic effect on small businesses because the rate increase is an increase for each child served, so small and large businesses will receive equal benefits for providing care to children in TDPRS conservatorship. There is no anticipated

economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Mary Fields at (512) 438-5747 in TDPRS's Budget and Analysis Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-218, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services, specifically §40.029 granting rulemaking authority to TDPRS, and §40.052 regarding delivery of services.

The new section implements the Human Resources Code, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.1807. Increase in Residential Child Care Reimbursement Rates for Fiscal Years 2000-2001.

Under the provisions of subsection (d) of §700.1802 of this title (relating to Cost-finding Analysis), and Texas Department of Protective and Regulatory Services (TDPRS) Rider 21, Article II of the General Appropriations Act for the 2000-2001 biennium, page II-90, the Board of the Texas Department of Protective and Regulatory Services has determined that for the fiscal years 2000- 2001, there will be a seven percent (7%) increase in the level-of-care reimbursement rates across all levels. This rate change shall be effective September 1, 1999.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 438-3765

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Chapter 720. 24–Hour Care Licensing

Subchapter A. Standards for Child-Placing Agencies

40 TAC §720.42

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§720.42, 720.117, 720.231, 720.302, 720.315, 720.316, 720.334, 720.903, 720.909, and 720.911, concerning substitute care placement, foster family qualifications, qualifications, requirements for home responsible to child-placing agency, fiscal accountability of independent foster group homes, personnel requirements for independent foster group homes, staff records, fiscal accountability, and qualifications and responsibilities; and proposes the repeal of §§720.404, 720.1201- 720.1228, 720.1301-720.1325, and 720.1401-720.1425, concerning financial audit requirements, regulations for juvenile correctional institutions (Subchapter P), juvenile correctional camps (Subchapter Q), and juvenile reception centers (Subchapter R), in its 24-Hour Care Licensing chapter. The purpose of the amendments and repeals is to delete requirements and regulations no longer enforced by child care licensing. The purpose of the amendment to §720.42 is to clarify the joint responsibility of the child placing agencies and the regulated child-care facilities to the children in care.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown 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 to delete requirements or procedures that are obsolete. There will be no adverse economic impact on small businesses because the proposal deletes procedures and requirements that are no longer applicable. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Lizet Alaniz at (512) 438-4538 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-179, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

The amendment is proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendment implements the Human Resources Code, Chapters 40 and 42.

§720.42. Substitute Care Placement.

(a) When the child-placing agency places children into a regulated child-care facility, the responsibility for the child's care becomes a joint responsibility between the facilities (facilities include child-care facilities and child-placing agencies) [~~agency and the regulated child care facility~~]. The appropriate minimum standards must be met by at least one of the entities. Duplication of activities and services is not required. A written agreement must be developed delineating specific roles and responsibilities relative to child-care services. A copy of the written agreement must be retained in the record of each entity involved in the placement of a child to facilitate accountability and monitoring by licensing staff. The written agreement can be specific to the child or specific to the ongoing role of each facility within the organization. [~~The facility must meet the appropriate minimum standards. The agency is not required to duplicate activities, such as service planning, being carried out by the facility.~~] In regard to time frames and any specifics of care, the minimum standards for the regulated child care facility apply.

(b)-(h) (No change.)

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: October 1, 1999
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Subchapter B. Standards for Agency Homes

40 TAC §720.117

The amendment is proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendment implements the Human Resources Code, Chapters 40 and 42.

§720.117. Foster Family Qualifications.

(a) (No change.)

[~~(b) At least three nonrelative references shall be obtained for the foster family and any employee involved in child care. Information obtained from references must be written and filed whether the interview is done in person or by telephone.~~]

(b) [~~(c)~~] No one who has been convicted within the preceding ten years of any felony classified as an offense against the person or family, or of public indecency or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, may serve as a foster parent or as an employee in an agency home unless the director of licensing has ruled that proof of rehabilitation has been established.

(c) [~~(d)~~] Each foster parent and all employees of an agency home shall submit a statement to the child-placing agency providing information concerning any felony and/or misdemeanor convictions, within the preceding 10 years and of any pending criminal charges.

(d)[~~(e)~~] Any foster parent or employee shall be reassigned or removed from contact with children if any of the following are returned:

(1) an indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act;

(2) an indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency;

(3) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency. Such reassignment or removal shall remain in effect pending resolution of the charges. Notification of such action shall be made to the Licensing Branch by the child-placing agency within 24 hours or the next working day.

(e)[~~(f)~~] Persons whose behavior or health status endangers the children shall not be allowed at the agency home.

(f)[~~(g)~~] Foster parents and any employees in the home shall have an examination for tuberculosis within 12 months before the home is used for children. Reexamination shall be in accordance with recommendations of local public health authorities or the regional office of the Texas Department of Health.

(g)[~~(h)~~] Children of foster parents shall meet the same requirements for examination for tuberculosis as those for children in care.

(h)[~~(i)~~] Each foster family unit shall participate in 15 hours of in-service training annually.

(i)[~~(j)~~] The foster parents shall have a written agreement with the child-placing agency which states the following:

(1) the financial agreement between the agency and the home;

(2) that the agency home shall not accept a nonrelative child for 24-hour care from any source other than through the child-placing agency;

(3) the agency's right to remove the child at its discretion;

(4) that the child shall be released only with the consent of the agency;

(5) that visiting by the child's parents or relatives shall be arranged through the agency;

(6) the agency's responsibility for regular supervision of the home and care of the children;

(7) agreements regarding visits of the child away from the home; and

(8) that the foster parents must notify the agency when they wish to take a child out of the county for an extended period of time. Both the agency and foster parents shall have a copy of this 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.

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C. Ed Davis
Deputy Director, Legal Services
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Earliest possible date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

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Subchapter E. Standards for Foster Family Homes

40 TAC §720.231

The amendment is proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendment implements the Human Resources Code, Chapters 40 and 42.

§720.231. Qualifications.

(a) (No change.)

[~~(b) At least three references shall be obtained for foster parents and any employee involved in child care. Information~~

~~obtained from references shall be written and filed, whether the interview is done in person or by telephone.~~]

(b)[~~(c)~~] No one who has been convicted within the preceding ten years of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of a misdemeanor classified as an offense against the person or family, or of public indecency, may serve as a foster parent or as an employee of the foster home, unless the director of licensing has ruled that proof of rehabilitation has been established.

(c)[~~(d)~~] A foster parent or employee shall be reassigned or removed from any contact with children if any of the following are returned:

(1) an indictment alleging commission of any felony classified as an offense against the person or family or of public indecency, or of violation of the Texas Controlled Substances Act;

(2) an indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency;

(3) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(d)[~~(e)~~] Such reassignment or removal shall remain in effect pending resolution of the charges. Notification of such action shall be made to the Licensing Branch within 24 hours or the next working day.

(e)[~~(f)~~] Foster parents and any employees in the home shall have an examination for tuberculosis within 12 months before the home is used for children. Reexamination shall be in accordance to recommendations of local public health authorities or the regional office of the Texas Department of Health. Children of foster parents shall meet the same requirements as those for the children in care.

(f)[~~(g)~~] The foster family shall provide the staff and services necessary to provide for the care and safety of children.

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

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C. Ed Davis
Deputy Director, Legal Services
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Subchapter F. Standards for Foster Group Homes

40 TAC §§720.302, 720.315, 720.316, 720.334

The amendments are proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendments implement the Human Resources Code, Chapters 40 and 42.

§720.302. Requirements for Home Responsible to Child-Placing Agency.

(a) (No change.)

[~~(b) At least three references shall be obtained for each foster parent and any employee involved in child care. These references shall be written and filed, whether the interview is done in person or by telephone.~~]

(b)[~~(c)~~] No one who has been convicted within the preceding ten years of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or the family, or of public indecency, may serve as a foster parent or as an employee of the foster group home, unless the director of licensing has ruled that proof of rehabilitation has been established.

(c)[~~(d)~~] Each foster parent and any employee of a foster home shall submit a statement to the child-placing agency providing information concerning felony or misdemeanor convictions, or both, if any, within the preceding 10 years and of any pending criminal charges, if any.

(d)[~~(e)~~] Any foster parent or employee shall be reassigned or removed from any contact with children if any of the following are returned:

(1) an indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act.

(2) an indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency.

(3) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(e)[~~(f)~~] Such reassignment or removal shall remain in effect pending resolution of the charges. Notification of such action shall be made to the Licensing Branch within 24 hours or the next working day.

(f)[~~(g)~~] Persons whose behavior or health status endangers the children shall not be allowed at the home.

(g)[~~(h)~~] Foster parents and any employees in the home shall have an examination for tuberculosis within 12 months before the home is used for children. Reexamination shall be in accordance with recommendations of local public health authorities or the regional office of the Texas Department of Health. Children of foster parents shall meet the same requirements as those for the children in care.

(h)[~~(i)~~] All foster parents or child care workers shall be at least 18 years old and able to read and write.

§720.315. Fiscal Accountability of Independent Foster Group Homes.

[~~(a) The foster group home shall keep complete financial records. Books shall be audited annually by a certified public accountant. A copy of the accountant's statement of income and disbursements (Texas Human Resources Code, Chapter 42) and the opinion letter from the audit report shall accompany the license application for licensed facilities.~~]

[~~(b) New homes (foster group homes which are not in operation) shall submit a letter from a certified public accountant stating that the bookkeeping system will be set up so that an audit can be made at the end of each fiscal year.~~]

(a)[~~(c)~~] New homes shall submit a 12-month budget when the signed application is submitted.

(b)[~~(d)~~] A new home shall have predictable funds for the first year of operation. It shall have reserve funds, or documentation of available credit, equal to the operating costs for the first three months.

§720.316. Personnel Requirements for Independent Foster Group Homes.

(a) (No change.)

~~[(b) At least three references shall be obtained for each foster parent and any employee involved in child care. Information obtained from references shall be written and filed whether the interview is done in person or by telephone.]~~

(b)[~~(c)~~] No one who has been convicted within the preceding ten years of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family, or of public indecency, may serve as a foster parent or as an employee of the foster group home, unless the Director of Licensing has ruled that proof of rehabilitation has been established.

(c)[~~(d)~~] Each foster parent and any employee of a foster home shall submit a statement providing information concerning any felony or misdemeanor convictions, or both, within the preceding ten years and any pending criminal charges.

(d)[~~(e)~~] Any foster parent or employee shall be reassigned or removed from any contact with children if any of the following are returned:

(1) An indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act.

(2) An indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency.

(3) An official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency. Such reassignment or removal shall remain in effect pending resolution of the charges. Notification of such action shall be made to the Licensing Branch within 24 hours or the next working day.

(e)[~~(f)~~] Persons whose behavior or health status endangers the children shall not be present at the foster group home.

(f)[~~(g)~~] Foster parents and any employees in the home shall have an examination for tuberculosis within 12 months before the home is used for children. Re-examination shall be in accordance with recommendations of local public health authorities or the regional office of the Texas Department of Health. Children of foster parents shall meet the same requirements as those for the children in care.

(g)[~~(h)~~] All foster parents or child care workers shall be at least 18 years old and be able to read and write.

§720.334. Staff Records.

Personnel records shall be kept for each employee of the foster group home. These records shall contain information on the following:

(1) (No change.)

(2) tuberculosis test reports for all staff as required by §720.316(f) [~~§720.316(g)~~] of this title (relating to Personnel Requirements for Independent Foster Group Homes);

~~[(3) date, name of contact, and information received for pre-employment references;]~~

(3)[~~(4)~~] conviction record statement;

(4)[~~(5)~~] evaluation of performance;

(5)[~~(6)~~] date of employment;

(6)[~~(7)~~] date and reason for separation; and

(7)[~~(8)~~] forwarding address of separated employees.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Earliest possible date of adoption: October 1, 1999
For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter H. Consolidated Standards for 24–Hour Care Facilities

40 TAC §720.404

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

The repeal is proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeal implements the Human Resources Code, Chapters 40 and 42.

§720.404. Audit Requirements.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438–3765

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Subchapter M. Standards for Emergency Shelters

40 TAC §§720.903, 720.909, 720.911

The amendments are proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The amendments implement the Human Resources Code, Chapters 40 and 42.

§720.903. Fiscal Accountability.

~~[(a) The emergency shelter must maintain complete financial records. A certified public accountant must audit these records annually. A licensed emergency shelter must submit a copy of the accountant's statement of income and disbursements and the opinion letter from the audit report with the license application.]~~

~~[(b) New emergency shelters must submit a letter form a certified public accountant stating that the bookkeeping system will be set up so that an audit may be made at the end of each fiscal year.]~~

(a)[~~(c)~~] When the signed application is submitted, new emergency shelters must submit a 12-month budget to the Licensing Branch.

(b)[~~(d)~~] New emergency shelters must have funds sufficient for the first year of operation. They must have reserve funds or documentation of available credit equal to the operating costs for the first three months.

§720.909. Qualifications and Responsibilities.

(a) (No change.)

(b) The emergency shelter must verify the personal qualifications of employees.

~~[(1) The emergency shelter must obtain at least three references for each potential employee. The emergency shelter must document and file information from these references whether the interview is conducted in person or by telephone.]~~

[~~(2)~~] Each staff must submit a statement to the facility concerning any felony and/or misdemeanor convictions within the preceding 10 years and of any pending criminal charges.

(c)-(e) (No change.)

§720.911. Staff Records.

The emergency shelter must maintain personnel records for each staff member. The emergency shelter must include in these records information on:

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

~~[(3) date, name of contact, and information received from preemployment references;]~~

(3)[~~(4)~~] conviction record statement;

(4)[~~(5)~~] date of employment;

(5)[~~(6)~~] date and reason for separation; and

(6)[~~(7)~~] forwarding address of staff no longer employed.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438–3765

♦ ♦ ♦

Subchapter P. Minimum Standards for Juvenile Correctional Institutions

40 TAC §§720.1201–270.1228

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

The repeals are proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeals implement the Human Resources Code, Chapters 40 and 42.

§720.1201. Legal Basis for Operation.

§720.1202. Administrative Responsibilities.

§720.1203. Fiscal Accountability.

§720.1204. Records and Reports.

§720.1205. Availability of Records.

§720.1206. Personnel Policies.

§720.1207. Administrator Qualifications and Responsibilities.

§720.1208. Staffing.

§720.1209. Staff Qualifications and Responsibilities.

§720.1210. Training.

§720.1211. Staff Records.

§720.1212. Admission.

§720.1213. Assessment.

§720.1214. Trips Away from the Institution.

§720.1215. Student's Records.

§720.1216. Child Care and Training; Individualized Program Plan.

§720.1217. Daily Care.

§720.1218. Education, Work, and Training.

§720.1219. Student's Rights Privileges.

§720.1220. Restraint.

§720.1221. Security.

§720.1222. Medical and Dental Care.

§720.1223. Nutrition.

§720.1224. Release.

§720.1225. Health and Safety.

§720.1226. Environment.

§720.1227. Food Preparation, Storage, and Equipment.

§720.1228. Definitions.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438–3765

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Subchapter Q. Minimum Standards for Juvenile Correctional Camps

40 TAC §§720.1301–270.1325

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

The repeals are proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeals implement the Human Resources Code, Chapters 40 and 42.

§720.1301. Legal Basis for Operation.

§720.1302. Administrative Responsibilities.

§720.1303. Fiscal Accountability.

§720.1304. Records and Reports.

§720.1305. Availability of Records.

§720.1306. Personnel Policies.

§720.1307. Administrator Qualifications and Responsibilities.

§720.1308. Staffing.

§720.1309. Staff Qualifications and Responsibilities.

§720.1310. Training.

§720.1311. Staff Records.

§720.1312. Admission.

§720.1313. Assessment.

§720.1314. Camper's Records.

§720.1315. Child Care and Training, Individualized Program Plan.

§720.1316. Daily Care.

§720.1317. Camper's Rights and Privileges.

§720.1318. Trips Away From the Correctional Camp.

§720.1319. Restraint.

§720.1320. Security.

§720.1321. Medical and Dental Care.

§720.1322. Nutrition.

§720.1323. Release.

§720.1324. Health and Safety.

§720.1325. Definitions.

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

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Subchapter R. Minimum Standards for Juvenile Reception Centers

40 TAC §§720.1401–720.1425

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

The repeals are proposed under the Human Resources Code (HRC), Chapter 40, which describes the department's rulemaking authority, and Chapter 42, which describes the department's licensing and regulatory authority.

The repeals implement the Human Resources Code, Chapters 40 and 42.

§720.1401. Legal Basis for Operation.

§720.1402. Administrative Responsibilities.

§720.1403. Fiscal Accountability.

§720.1404. Records and Reports.

§720.1405. Availability of Records.

§720.1406. Personnel Policies.

§720.1407. Administrator Qualifications and Responsibilities.

§720.1408. Staffing.

§720.1409. Staff Qualifications and Responsibilities.

§720.1410. Training.

§720.1411. Staff Records.

§720.1412. Admission.

§720.1413. Assessment.

§720.1414. Student's Records.

§720.1415. Daily Care.

§720.1416. Student's Rights and Privileges.

§720.1417. Restraint.

§720.1418. Security.

§720.1419. Medical and Dental Care.

§720.1420. Nutrition.

§720.1421. Transfer and Release.

§720.1422. Health and Safety.

§720.1423. Environment.

§720.1424. Food Preparation, Storage, and Equipment.

§720.1425. Definitions.

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

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Texas Department of Protective and Regulatory Services
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Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.1001, 725.1404, 725.1802, 725.2035, 725.2047, and 725.4050, concerning definitions, nonregulated activities, notice of action against a facility/registered or listed family home, denial or revocation of a registration, regulations for listed homes, and release hearings; proposes new §§725.1811 and 725.1812, concerning change of location of a facility/family home/foster home/foster group home and voluntary suspension; and proposes the repeal of §§725.2018 and 725.3054, concerning administrative licensing suspension and request for suspension, in its General Licensing Procedures chapter.

The purpose of the new sections is to clarify procedures and requirements for facilities and homes that change their locations and to clarify procedures for facilities and homes who want to voluntarily suspend their license or registration. The purpose of the amendments is to add requirements to licensing rules to require facilities notified by TDPRS that their licenses/registrations/listings have been revoked or suspended to provide verification to TDPRS that parents have been notified of their status. The amendment to §725.1404 adds adult caregivers who have court-ordered possessory conservatorship as exempt from regulation. The amendment to §725.2047 sets a minimum age requirement of 18 years for listed family home providers. The amendment to §725.4050 clarifies who may request that the State Office of Administrative Hearings combine appeals. The repeals delete rules related to requests for voluntary suspensions which are covered in proposed new §725.1812.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown 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 to clarify current information in licensing rules. There will be no effect on small businesses because the proposed revisions clarify current procedures and requirements. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Miriam Williams at (512) 438-3807 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-193, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Definitions

40 TAC §725.1001

The amendment is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendment implements the Human Resources Code, §§42.001- 42.077.

§725.1001. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1)-(18) (No change.)

(19) Person operating a listed home - The person who provides regular care for three or fewer unrelated children in his or her home.

(20) [~~(19)~~] Primary caretaker - The person who takes care of children in the caretaker's home.

(21) [~~(20)~~] Regular care - Care that is provided at least four hours a day, three or more days a week, for more than nine consecutive weeks.

(22) [~~(21)~~] Religious organization - A church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

(23) [~~(22)~~] State of Texas or state - Does not include political subdivisions of the 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.

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3765

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Subchapter O. Exemptions from Licensing

40 TAC §725.1404

The amendment is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendment implements the Human Resources Code, §§42.001- 42.077.

§725.1404. Nonregulated Activities.
(a) (No change.)

(b) The following types of facilities or activities are not regulated by residential child care licensing:

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

(6) Homes in which the adult caregiver has court-ordered possessory conservatorship, managing conservatorship or guardianship of a child not related by blood, marriage, or adoption; and

(A) the court-ordered possessory conservator, managing conservator or guardian does not receive compensation or solicit donations for the care of the child; and

(B) the court-ordered possessory conservator, managing conservator or guardian, alone or in association with others, does not hold itself out as a child care facility; and

(7) (No change.)

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

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765

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Subchapter S. Administrative Procedures

40 TAC §§725.1802, 725.1811, 725.1812

The amendment and new sections are proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendment and new sections implement the Human Resources Code, §§42.001-42.077.

§725.1802. Notice of Action Against a Facility/Registered or Listed Family Home.

If a facility/registered or listed family home receives written notice from the department that its license/registration/listing is being revoked or suspended, the facility/registered or listed family home must send a letter within five days of receiving the notice by certified mail to inform the parents or guardians of each child in care of this action. The facility/registered or listed family home must give the Texas Department of Protective and Regulatory Services (TDPRS) copies of the return receipts within five calendar days after the facility receives the return receipts. Parents or guardians seeking to enroll children after the facility/registered or listed family home has received a revocation or suspension notice must also be notified prior to enrollment. The effective date of the revocation or suspension is the date the facility/registered or listed family home receives the notice. The department will publish a notice of the revocation or suspension in the local newspaper. The department will send the notice to the newspaper for publication within 10 days of receipt of the final order following the appeal of the revocation or suspension. If there is no appeal filed, the department will send the notice within 10 days of the exhaustion of the administrative remedies.

§725.1811. Change of Location of a Facility/Family Home/Foster Home/Foster Group Home.

(a) If a change in location occurs in a licensed or state certified facility or a foster home or foster group home, the license or state certification is revoked under the provisions of §42.048 of the Human Resources Code. The licensee or state certification holder must reapply in order to offer care at the new location.

(b) If a listed family home changes location, the listee must notify the Texas Department of Protective and Regulatory Services (TDPRS) as early as possible before the move or no later than 15 calendar days after the move. The listee must complete a form provided by TDPRS showing the new address. The licensing representative amends the listing certificate to reflect the new address. The issuance date on the listing certificate is not changed and the listing remains in effect. There is no additional fee for a change in location for the listed family home. If a listed family home moves without notifying TDPRS within 15 calendar days of the move, the listing may be revoked.

(c) If a registered family home changes location, the registrant must notify TDPRS as early as possible before the move or no later than 15 calendar days after the move. The registrant must complete a form provided by TDPRS showing the new address. The licensing representative inspects for compliance with the standards affected by a change in operation at the new location. If there is compliance with standards, the licensing representative amends the registration certificate to reflect the new address. The issuance date on the registration certificate is not changed and the registration remains in effect. There is no additional fee for a change in location for the registered family home. If the registered family home moves without notifying TDPRS within 15 calendar days of the move, the registration may be revoked.

§725.1812. Voluntary Suspension.

(a) A facility or home may request approval from the Texas Department of Protective and Regulatory Services (TDPRS) to suspend its non- expiring license or registration. Voluntary suspension is different from emergency suspension as described in §725.3077 of this title (relating to Emergency Suspension and Closure) and §725.2019 of this title (relating to Corrective or Adverse Action) and suspension for non-payment of fees as described in §725.3076 of this title (relating to Non-payment of Annual License Fee) and §725.2042 of this title (relating to Non-payment of Annual License Fee). The request for suspension must be submitted in writing and include the dates the suspension will begin and end. The written request must include plans for resuming operation and show that standards can be met at the end of the suspension period. TDPRS, at its discretion, may approve, deny, or add conditions to the request for voluntary suspension. If TDPRS adds conditions to the voluntary suspensions or if the request is denied and the facility or home is not allowed to operate, the facility or home will be notified of its right to request an administrative review and of its right to request an appeal.

(b) The facility or home cannot reopen until licensing staff determine that it is complying with applicable standards. The facility or home must notify TDPRS within 14 calendar days before resuming operation.

(c) The following conditions are criteria for voluntary suspension:

(1) Registered homes and facilities licensed for less than 24-hour care can request to have a non-expiring license or registration suspended for a maximum of 90 days. Facilities licensed to provide 24-hour care can request to have a non-expiring license suspended for a maximum of two years.

(2) Children will not be in care during the suspension period.

(3) The facility or home is not under emergency suspension, probation, or revocation proceedings.

(4) Fees are still due during the suspension period.

(5) Before beginning to operate, registered homes and licensed facilities must comply with all applicable standards including those that were effected during the time the home or facility was closed.

(d) If a facility or home does not resume operations by the end of the suspension period, TDPRS will notify the home or facility by certified mail that its registration or license is no longer valid and the facility must close. The notification will include informing the facility or home of the right to request an administrative review and the right to appeal the decision to close. See §§725.2024, 725.3068, and 725.4001 of this title (relating to Requesting an Administrative Review, Requesting an Administrative Review, and Request for Appeal Hearing and Preliminary Procedures).

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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Subchapter U. Day Care Licensing Procedures

40 TAC §725.2018

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

The repeal is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The repeal implements the Human Resources Code, §§42.001-42.077.

§725.2018. Administrative Licensing Suspension.

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

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C. Ed Davis
Deputy Director, Legal Services
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40 TAC §725.2035, §725.2047

The amendments are proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendments implement the Human Resources Code, §§42.001- 42.077.

§725.2035. Denial or Revocation of a Registration.

(a) Reasons for revocation or denial are:

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

(5) Failure to notify licensing staff of a change in location [~~Change of location of the individual who was registered~~].

(6)-(8) (No change.)

(b) Licensing [~~Registration~~] staff may deny or revoke a registration if an individual knowingly and willfully provides false information on a registration request, or if an individual gives information on the registration request which shows non-compliance with minimum standards.

(c)-(d) (No change.)

§725.2047. Regulations for Listed Homes.

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

(c) A person operating a listed family home must be at least 18 years old.

(d) [~~(c)~~] A family home may not place a public advertisement that uses the title "listed family home" or any variation of that phrase unless the home is listed as provided by this chapter. Any public advertisement for a listed family home that uses the title "listed family home" must contain a provision in bold title stating: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. IT HAS NOT BEEN INSPECTED AND WILL NOT BE INSPECTED."

(e) [~~(d)~~] The department shall charge each family home that is listed with the department an annual fee to cover a part of the department's cost of regulating. The fee for listing is $20. The fee is due on the date on which the department initially lists the home and on the anniversary of that date.

(f) [~~(e)~~] The department may suspend, deny, revoke, or refuse to renew the listing of a family home that does not comply with the requirements of this chapter, the standards, and the rules of the department, or the specific terms of the listing. The department may revoke the probation of a person whose listing is suspended if the person violates the conditions of the probation.

(g) [~~(f)~~] The department shall suspend a family home's listing and order the immediate closing of the family home if violations or conditions create an immediate threat to the health and safety of the children attending or residing in the family home.

(h) [~~(g)~~] A person who operates a family home without a required listing commits a Class B misdemeanor as prescribed by the Human Resources Code, §42.076.

(i) [~~(h)~~] A person who places a public advertisement for an unlisted family home commits a Class C misdemeanor as prescribed by the Human Resources Code, §42.076.

(j) [~~(i)~~] A family home that has its listing revoked or suspended shall mail notification of this action by certified mail to the parents or guardian of the child served by the family home. The family home shall mail the notification within five days of the effective date of the revocation or suspension of the listing.

(k) [~~(j)~~] A family home will have until January 1, 1998, to come into compliance with this section.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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Subchapter EE. Agency and Institutional Licensing Procedures

40 TAC §725.3054

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

The repeal is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The repeal implements the Human Resources Code, §§42.001-42.077.

§725.3054. Request for Suspension.

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

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Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: October 1, 1999
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Subchapter PP. Release Hearings

40 TAC §725.4050

The amendment is proposed under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs, and Chapter 40 of the Human Resources Code which grants rulemaking authority to the department.

The amendment implements the Human Resources Code, §§42.001- 42.077.

§725.4050. Release Hearings.

Release of information hearings provide individuals found to have abused or neglected a child an opportunity to correct the abuse or neglect finding in official records. A release hearing must be granted to any alleged perpetrator about whom a finding of child abuse or neglect is to be released without that individual's consent. A release hearing must also be granted to any alleged perpetrator against whom an adverse action is to be taken by the Texas Department of Protective and Regulatory Services (PRS). In this and other instances in which the alleged perpetrator has the right to a release hearing as well as the right to appeal related issues, PRS or the alleged perpetrator may request that the State Office of Administrative Hearings [~~, at its discretion, may~~] combine the two appeals and hold a single hearing.

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

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C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 2. Environmental Policy

Subchapter D. Public Participation Programs

43 TAC §§2.61, 2.62, 2.71

The Texas Department of Transportation proposes amendments to §2.61 and §2.62, and proposes new §2.71 concerning the Adopt-an-Airport Program.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

The Texas Department of Transportation presently has various antilitter and beautification programs, including Adopt-a-Highway, Adopt-a-Freeway, Landscaping, and Cost Sharing. New §2.71 will allow private citizens an opportunity to support the department's programs by adopting an airport for the purposes of beautifying and creating a better image and enhancing public awareness for the airport. The new section outlines the eligibility requirements, application procedures, provisions of the agreement, responsibilities of the group adopting the airport and the department, general limiting conditions of the program, and any modification, renewal, or termination of the agreement.

With proposing new §2.71, it is also necessary to amend §2.61 and §2.62 to update and revise the sections to include airports for litter pickup, routine maintenance, and landscaping, and to amend and add definitions and references to the Adopt-an-Airport Program. Also, §2.62, Definitions, is being numbered to conform to Texas Register form and style.

FISCAL NOTE

James Bass, Budget and Forecasting Branch Manager, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no significant anticipated economic costs for persons required to comply with the amendments and new section as proposed.

David Fulton, Director, Aviation Division has certified that there should be a positive impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

PUBLIC BENEFIT

Mr. Fulton has also determined that for each year of the first five years that the amendments and new section are in effect, the public benefit anticipated as a result of enforcing the sections will be to enhance the department's maintenance, antilitter and beautification programs, and to enhance the utility of the state's airport system by allowing the adoption of an airport. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new section may be submitted to David Fulton, Director, Aviation Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments is 5:00 p.m. on August 9, 1999.

STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation; and more specifically, Transportation Code, §21.054, which provides the department with the authority to contract as necessary or advisable to encourage and assist the development of aeronautics.

No statutes, articles, or codes are affected by the proposed amendments and new section.

§2.61. Purpose and Scope.

In order to increase public awareness of the maintenance needs of the state highway and airport systems [~~system~~], improve the aesthetics of state highways and airports, and maximize the use of taxpayer revenue, it is the policy of the Texas Transportation Commission to encourage public participation in the maintenance, [~~and~~] landscaping, and beautification of the state highway and airport systems [~~system~~] through the creation of programs whereby local governments and private entities may adopt safety rest areas, [~~or~~] sections of the state highway system, or airports for litter pickup, routine maintenance, [~~and~~] landscaping, and beautification. The sections under this subchapter govern the operation of these programs.

§2.62. Definitions.

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

(1) Adopted area - A safety rest area approved for adoption by a donor.

(2) Adopted section - A section of state highway right of way or an airport [~~right-of-way~~] approved for adoption by a group.

(3) Airport - A publicly-owned airport that is included in the Texas Airport System Plan (TASP).

(4) Aviation Division - A division of the department.

(5) Authorized representative - An individual with the authority to sign agreements for the group or donor.

(6) Commission - The Texas Transportation Commission.

(7) Department - The Texas Department of Transportation.

(8) Design fee - Those engineering or project administration costs or expenses identified prior to the construction of a project.

(9) District - One of the 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(10) District engineer - The chief executive officer in charge of a district, or his or her designee.

(11) Donor - The private business or civic organization which adopts a safety rest area under the Adopt-an-Area Program or donates funds or services to a local government for the purpose of participating in the Landscape Cost Sharing or Adopt-a-Freeway Programs.

(12) Family member - Any spouse, sibling, parent, stepparent, grandparent, child, stepchild, aunt, uncle or cousin.

(13) Group - An entity that adopts a section of state highway right of way or an airport [~~right-of-way~~].

(14) Highway landscaping - A project design intent which attempts to provide primarily for the installation of native, naturalized, or adapted plant material within the project limits.

(15) Local government - A city or county.

(16) Non-cash contributions - The agreed value of labor, equipment, material, or design services furnished by a local government, and the agreed value of material and design services furnished by the donor in support of the project.

(17) Pedestrian landscaping - A project design intent which requires the installation of elements oriented primarily to pedestrian usage, including, but not limited to, parking, curbs, sidewalks, pavers, ramps for the disabled, cycling or jogging trails, benches, trash receptacles, or illumination.

(18) Project concept plan - The preliminary sketches, drawings, details, estimates, and specifications required by the department to illustrate the type of project development and establishment proposed by the local government, and as required for the department to determine if the proposed project is a highway landscaping project or a pedestrian landscaping project.

(19) Project design plan - The final drawings, details, specifications, and estimates, whether furnished by or through the local government or the department as may be required by the department to fully control the work to be performed on the project.

(20) Project development - The initial construction and installation of the landscape items in accordance with the project design plan.

(21) Project establishment - The landscape maintenance activities required to ensure the viability, upkeep, and continued effectiveness of the project.

(22) Project maintenance - The activities performed as determined by the program agreement to ensure the establishment, upkeep, and continued effectiveness of the project.

(23) Safety rest area - A roadside park, equipped with restroom facilities, intended to improve highway safety by providing a location for motorists to rest and recover from highway travel, such term to include a safety rest area adjacent to travel information centers.

(24) Sponsor - A local government or other public entity that owns or operates an airport.

§2.71. Adopt-an-Airport Program.

(a) Purpose. The Adopt-an-Airport Program (Program) allows private citizens an opportunity to support the department's beautification programs by adopting an airport for the purposes of beautifying and creating a better image and enhancing public awareness for the airport. This section sets forth policies and procedures to be used in administering the Program.

(b) Participation.

(1) Airport.

(A) Only publicly-owned airports included in the Texas Airport System Plan (TASP) are eligible to participate in the Adopt-an-Airport Program.

(B) Eligible airports shall execute an agreement with the department to define their respective responsibilities before the airport may be adopted.

(2) Groups.

(A) The following groups are eligible to participate in the Program:

(i) members or employees of civic and nonprofit organizations;

(ii) employees of private businesses and governmental entities; and

(iii) families.

(B) To be eligible a group must be located or reside in the city or county in which the adopted airport is located.

(c) Application.

(1) The authorized representative of a group that desires to participate, or to continue to participate, in the program shall submit an application to the district engineer of the district in which the airport to be adopted is located.

(2) The application shall be in a form prescribed by the department and shall at a minimum include:

(A) the date of application;

(B) the name and complete mailing address, including street address, of the group;

(C) the name, telephone number, and complete mailing address of the group's authorized representative;

(D) the name of the airport the group is interested in adopting; and

(E) what activities the applicant proposes for maintenance or beautification.

(3) If the group meets the criteria of this section, the district engineer will approve the adoption unless he or she determines that to do so would endanger the traveling public, or otherwise not be in the best interest of the airport.

(d) Agreement.

(1) If the district engineer approves the application submitted by the group under subsection (c) of this section, the authorized representative of that group shall execute a written agreement with the sponsor and the department providing for the group's participation in the Program.

(2) The agreement shall be in the form prescribed by the department and shall include:

(A) an acknowledgment by the group of the possible hazardous nature of the work involved in participating in the Program;

(B) an acknowledgment that the members of the group agree jointly and severally to be bound by and comply with the terms of the agreement; and

(C) a statement of the respective responsibilities of the group and the department as contained in subsection (e) of this section.

(e) Responsibilities of group and department.

(1) Groups must:

(A) appoint or select an authorized representative to serve as spokesperson for the group;

(B) obey and abide by all laws and regulations relating to safety and such other terms and conditions as may be required by the sponsor and the department for special conditions on a particular adopted airport;

(C) furnish adequate supervision by one or more adults for participants of a group who are 15 years of age or younger;

(D) conduct at least one safety meeting per year and ensure participants of the group attend a safety meeting before participating in the beautification of the adopted airport;

(E) adopt an airport for a minimum period of two years;

(F) pick up litter a minimum of four times a year and at such additional times as required by the sponsor or the department, if the group's responsibility is controlling and reducing litter;

(G) obtain required supplies and materials from the sponsor or the department during regular business hours;

(H) wear department furnished safety vests during the tasks being performed;

(I) place litter in trash bags furnished by the department and place filled trash bags at locations as determined by the sponsor or the department, if the group's responsibility is controlling and reducing litter;

(J) return all unused materials and supplies to the sponsor or the department within one week following cleanup unless the materials and supplies are necessary for continued beautification;

(K) neither possess nor consume alcoholic beverages while on the adopted airport; and

(L) maintain a first-aid kit and adequate drinking water while on the adopted airport.

(2) The department will:

(A) work with the group and the sponsor to determine the specific tasks to be performed;

(B) erect a sign on the closest highway right of way, normally near the airport pointer sign, with the group's name or acronym displayed;

(C) provide safety vests, trashbags, and safety literature;

(D) remove the filled trashbags after the pickup; and

(E) remove litter from the adopted section only under unusual circumstances, such as removal of large, heavy, or hazardous items.

(f) General limiting conditions. The Program is subject to the following conditions.

(1) The department may consider such factors as airport size and activity, geometrics, congestion, and visability restrictions in determining which airports shall be eligible for adoption.

(2) If any actions are determined to be contrary to any legislative restrictions on the use of appropriated funds for political activities, the department, at its sole discretion may take any and all necessary remedial actions, including, but not limited to, the removal of signs displaying the group's name or acronym.

(3) Adopt-an-Airport signs shall be four feet by four feet and shall be the least expensive and most effective for each situation. A sign will not state the full name or official title of an elected official.

(4) A group may not subcontract or assign its responsibilities to any other group, organization, or enterprise without the express written authorization of the department.

(5) The department shall not have the right to control the group in performing the agreed upon tasks and/or of picking up litter from the airport adopted by the group; and, in picking up litter, the group shall act as an independent contractor.

(g) Modification/renewal/termination of the agreement. The agreement may be modified in any manner at the discretion of the department. The group will have the option of renewing the agreement subject to the approval of the department and the sponsor, and the continuation of the Program. The department may terminate the agreement and remove the signs upon 30-day notice, if in its sole judgment it finds and determines that the group is not meeting the terms and conditions of the agreement.

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

Filed with the Office of the Secretary of State, on June 28, 1999.

TRD-9903816
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–8630

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Chapter 4. Employment Practices

Subchapter C. Conditional Grant Programs

43 TAC §4.25

The Texas Department of Transportation proposes amendments to §4.25, concerning the conditional grant program.

EXPLANATION OF PROPOSED AMENDMENTS

Education Code, Chapter 56, Subchapter I, requires the department to establish and administer a conditional grant program to provide financial assistance to women and minority students who intend to work for the department. Education Code, §56.144, requires the department to promulgate rules for the selection of applicants for grants.

The amendments to §4.25 strengthen the default repayment procedures in order to discourage students from defaulting on their agreement with the department. Currently, students have up to 10 years to repay funds without interest, and are required to pay as little as $20 per month. The amendments decrease the amount of time allowed for repayment and increase the minimum payment to $50. Students who received grants for four years or more will be required to repay in 120 equal monthly installments. Students who received grants for three years, but less than four years will be required to pay in 96 equal monthly installments, and those who received grants for two years, but less than three years, will be required to repay in 72 equal monthly installments. Students who received grants for less than two years will be required to repay in 48 equal monthly installments. The amendments also require a student who completes a degree but does not go to work for the department after graduation to begin repayments three months subsequent to the determination of default and to pay a minimum monthly installment of $200. The department will waive repayment of any remaining amounts for a student who defaults and makes the required payments according to the established repayment schedule if the student graduates with an eligible degree and honors the original agreement to work for the department. The student must adhere to the repayment schedule until the student begins employment with the department.

The amendments also provide that the department will notify the appropriate credit bureaus or agencies if a student fails to repay the department or fails to adhere to the terms of the conditional grant agreement.

FISCAL NOTE

James Bass, Budget and Forecasting Branch Manager, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section. There are no anticipated economic costs for persons required to comply with the section as proposed.

Diana L. Isabel, Director, Human Resources Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the section.

PUBLIC BENEFIT

Ms. Isabel has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be to reduce the student default rate. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Diana L. Isabel, Human Resources Director, 125

East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 9, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Education Code, Chapter 56, Subchapter I.

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

§4.25. Conditional Grant Program.

(a) Purpose. This section establishes procedures for the administration of a conditional grant program which will provide financial assistance to eligible minority and female students who intend to work for the department in civil engineering or any other profession identified by the department as having a significant statistical underrepresentation of minorities or women in the department's workforce. Authority for the creation of the conditional grant program is contained in Education Code, Chapter 56, Subchapter I.

(b) Program. Upon determination by the executive director or the director's [~~his~~] designee, the department may provide financial assistance to eligible minority and female students who:

(1) declare an intent to seek a baccalaureate degree from an institution in the State of Texas in a field of study that satisfies the department's minimum education requirement for an eligible profession;

(2) intend to work for the department for the two academic years immediately following the date of the student's receipt of an eligible degree from an institution in the State of Texas; and

(3) exhibit a high level of academic performance.

(c) Eligibility.

(1) To be initially eligible for a conditional grant, a student must:

(A) complete and file with the department, on forms prescribed by the department, a conditional grant application and a declaration of intent to become a member of an eligible profession and work for the department for the two academic years immediately following the date of the student's receipt of an eligible degree;

(B) enroll in an institution;

(C) be a Texas resident as defined by the Texas Higher Education Coordinating Board; and

(D) be a minority or a female; and

(E) have complied with any other requirements adopted by the department.

(2) In order to maintain eligibility, a student must be enrolled each semester in an institution in a course of instruction leading toward a degree in an eligible profession and, except as provided in paragraph (4) of this subsection, must:

(A) maintain an overall institutional grade point average of at least 2.5 on a four-point scale; and

(B) receive credit for not fewer than 12 hours each semester toward the student's degree program.

(3) If, during not more than one semester, a student fails to meet the grade point or credit hour requirements of this subsection, he or she will continue to maintain eligibility. Students who fail to meet the grade point requirement must receive credit for not fewer than 12 hours each semester and attain a semester grade point average of 2.5 during all semesters thereafter until the student graduates.

(4) The department may waive, upon approval of the executive director, the requirement that a student receive credit for not fewer than 12 hours each semester if a student demonstrates hardship. Hardship may involve serious illness, family emergency, or other extraordinary circumstances beyond the control of the student.

(d) Application.

(1) To apply for a conditional grant, a student must submit to the department:

(A) a completed application in a form prescribed by the department; and

(B) a declaration of intent.

(2) The application will require information and documentation relating to residency status, secondary school performance or college performance, the current or intended enrollment institution, the sworn statement as required by subsection (j) of this section, and such other information the department deems necessary to determine eligibility pursuant to subsection (c) of this section.

(3) An application must be submitted by March 1st of each year for the subsequent fall and spring semesters admission.

(4) The department will review applications for eligibility and will rank applicants according to the following selection criteria:

(A) secondary school or college grade point average;

(B) SAT or ACT score;

(C) honors and awards from, and participation in technical or academic organizations such as Texas Alliance for Minorities in Engineering, National Honor Society, Debate Team, or Dean's List;

(D) vocational education; and,

(E) work experience.

(e) Grant agreement.

(1) The department will send written notice to applicants selected to receive a grant informing them of the amount to be awarded for the conditional grant as certified by their educational institution.

(2) Each selected student will be required to execute a grant agreement prior to receiving a conditional grant. The grant agreement will be in a form prescribed by the department and will set forth the terms and conditions of the grant, including, but not limited to, the amount of the grant and the requirements of continued eligibility pursuant to subsection (c) of this section.

(f) Conditional grant.

(1) The amount of a conditional grant is the sum of:

(A) the amount of tuition and fees for the student, as certified by the institution; and

(B) a stipend based upon financial need as provided by subsection (g) of this section.

(2) Each semester the department will distribute a conditional grant for each eligible student on receipt of an enrollment report and certification of the amount of tuition, fees, and stipend (if any) for the student from the institution.

(3) The total amount of any one conditional grant may not exceed $2,500 per academic semester based on financial need.

(4) If the amount appropriated to the department for conditional grants is less than the estimated amount of all unpaid conditional grants, the department will proportionally reduce each unpaid conditional grant.

(g) Stipend.

(1) A student desiring to receive a stipend must:

(A) sign a financial information release statement; and

(B) complete the required financial need forms at the institution.

(2) The department will award a stipend to the student upon certification by the institution of the student's certified financial need.

(h) Default. The department will declare a student to be in default of the grant agreement and will require the student to repay all conditional grant funds received from the department if the student:

(1) withdraws from the institution; or

(2) fails to comply with one or more requirements of the grant agreement.

(i) Repayment.

(1) If a student is required to repay funds pursuant to subsection (h) of this section, the department will establish a repayment schedule of:

(A) 120 equal monthly installments for students who received grants for four years or more;

(B) 96 equal monthly installments for students who received grants for more than three years, but less than four years;

(C) 72 equal monthly installments for students who received grants for more than two years, but less than three years;

(D) 48 equal monthly installments for students who received grants for less than two years.

(2) The minimum installment shall be $50 and must be paid each month. Repayments may be made in fewer than the required number of installments [~~120 equal monthly installments; provided, however, that the minimum installment shall be $20, and further provided that, at the option of the student, repayments may be made in fewer than 120 installments~~].

(3) [~~(2)~~] A student will not be required to begin payments until six months subsequent to the determination of default.

(4) A student who completes an eligible degree and does not work for the department for two years immediately following the date of the student's receipt of an eligible degree from a Texas institution will be required to:

(A) begin payments three months subsequent to the determination of default; and

(B) pay a minimum monthly installment of $200.

(5) The department will waive repayment of any remaining amounts for a student who defaults and makes the required payments according to the established repayment schedule if the student graduates with an eligible degree and honors the original agreement to work for the department in an eligible profession for at least two years commencing immediately upon graduation. The student must adhere to the repayment schedule until the student begins employment with the department.

(6) [~~(3)~~] The department may temporarily reduce or defer the required payments and/or extend the prescribed repayment period, upon approval of the executive director, if a student demonstrates his or her inability to pay due to catastrophic illness or family emergency. Any reduction, deferral, or extension will not relieve a student of his or her responsibility to repay all funds.

(7) Credit bureau notification. The department will notify the appropriate credit bureaus or agencies if a student fails to repay the department or fails to adhere to the terms of the conditional grant agreement.

(j) Child support statement.

(1) In accordance with the Family Code, Chapter 14, §14.52, a child support obligor who is 30 or more days delinquent in paying child support is not eligible to receive funds under this subchapter.

(2) A student shall provide along with the application submitted as required by subsection (c) of this section a signed, sworn statement, in a form and manner prescribed by the department, affirming that the student is not 30 or more days delinquent in providing child support under a court order or a written repayment agreement.

(3) A student who is ineligible under this section shall remain ineligible to receive funds under this subchapter until:

(A) all arrearages have been paid; or

(B) the student is in compliance with a written repayment agreement or court order as to any existing delinquency.

(4) A student who is found to have submitted a falsely sworn statement under this section shall, upon demand, remit to the department all funds received while ineligible under paragraph (1) of this subsection.

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

Filed with the Office of the Secretary of State, on June 28, 1999.

TRD-9903817
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–8630

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Subchapter E. Sick Leave Pool Programs

43 TAC §4.51

The Texas Department of Transportation proposes amendments to §4.51, concerning definitions for the department's sick leave pool program.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments are proposed to ensure that the definitions used for the sick leave pool program are consistent with the definitions used with the Family and Medical Leave Act and the department's sick leave policy.

Section 4.51 amends the definition of "health care provider" to require that the health care provider be a medical doctor or a doctor of osteopathy, and to allow a health care provider to be licensed in another country. This is consistent with the Family and Medical Leave Act. The definition of "immediate family" is being amended so that it correlates with the definition in the department's sick leave policy. Since sick leave must be exhausted before sick leave pool hours may be granted, consistency in the definition will clarify the use of the sick leave pool.

FISCAL NOTE

James Bass, Budget and Forecasting Branch Manager, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amended section as proposed.

Diana L. Isabel, Director, Human Resources Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Ms. Isabel has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing or administering the amendments is to clarify who may certify that an illness or injury is severe, and which family members may be covered by the sick leave pool.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Diana L. Isabel, Director, Human Resources Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 9, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, Chapter 661 which authorizes creation of the sick leave pool program.

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

§4.51. Definitions.

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

(1) Accrued leave time - Vacation leave, sick leave, and compensatory time.

(2) Catastrophic illness or injury - A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

(3) Contribute - To give sick leave from an employee's personal sick leave account to the department sick leave pool.

(4) Different but related condition - A secondary catastrophic condition that is caused by a primary catastrophic condition which occurs at a later date, such as cancer which spreads from one part of the body to another.

(5) Discipline - Written reprimand, probation, suspension with pay, suspension without pay, involuntary demotion, or involuntary transfer.

(6) Employee - A person, other than the executive director, who is employed by the department.

(7) Health care provider - A medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law [~~A practitioner as defined by Texas Civil Statutes, Article 4590i, who is practicing within the scope of his or her license~~].

(8) Human resources officer - An employee in a district, division, or office who is responsible for verifying the accuracy of all employee leave time records. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

(9) Immediate family - Individuals [~~Those individuals who are~~] related by kinship, adoption, or marriage who are living in the same household, [~~as well as~~] foster children living in the same household and certified by the Texas Department of Protective and Regulatory Services, or a spouse, child, or parent of the employee who does not live in the same household and who needs care and assistance as a direct result of a documented medical condition.

(10) Licensed psychiatrist - A psychiatrist licensed by a state medical licensing board.

(11) Pool administrator - The Director of the Human Resources Division or [~~his or her~~] designee who administers the department's sick leave pool program.

(12) Request - An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

(13) Severe physical condition - A physical illness or injury that will likely result in death or causes the employee to be off work for 10 continuous weeks or more for the current episode.

(14) Severe psychological condition - A psychological illness that results in the patient being suicidal or capable of harming themselves or others and requires one week or more inpatient hospitalization.

(15) Sick leave - Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his immediate family who is actually ill.

(16) Sick leave pool - A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

(17) Withdrawal - An approved transfer of sick leave hours from the department sick leave pool.

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

Filed with the Office of the Secretary of State, on June 28, 1999.

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Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–8630

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Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter G. Port Authority Permits

43 TAC §§28.90–28.92

The Texas Department of Transportation proposes amendments to §§28.90-28.92, concerning port authority permits.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 934, 76th Legislature, 1999, amended Transportation Code, Chapter 623, Subchapter K to allow the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) to retain 15% of the revenue collected from the issuance of permits under this subchapter. This bill also expands the "heavy truck corridor" to include portions of U.S. Highway 77/U.S. Highway 83 to allow for travel to the new Veterans International Bridge at Los Tomates for vehicles possessing the necessary permit.

The amendments to §28.90 allow permitted vehicles carrying cargo to travel on U.S. Highway 77/U.S. Highway 83 or State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and the entrance to the Port of Brownsville.

Section 28.91(f)(3), is amended to clarify that in the event the Port of Brownsville's authority to issue permits is revoked, upon termination of the maintenance contract or upon expiration of the subchapter, that any revenue generated but not paid to the department shall be surrendered to the department for deposit in the state highway fund. This amendment is necessary to clarify that the department shall receive any revenue collected due the department minus the administrative costs incurred by the Port of Brownsville, and to ensure that the revenue is properly deposited to support the maintenance of the roadways. This amendment further clarifies that any funds suspensed and not yet transferred to the department shall be rendered upon revocation of authority to issue permits, termination of the maintenance contract, or expiration of this subchapter. Subsection (g)(1) is amended to provide that the Port of Brownsville may retain up to 15% of permit fees instead of the existing 10% for administrative costs. It also adds the phrase "U.S. Highway 77/U.S. Highway 83" to the reference that the balance of the permit fees shall be used to make payments to the department for maintenance.

Subsection (g) is also amended by adding paragraph (3) to provide that the Port of Brownsville may also issue a permit and collect a fee for any load exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapter B, concerning Weight Limitations, and Subchapter C, concerning Size Limitations, originating at the Veterans International Bridge at Los Tomates, and the Port of Brownsville.

Subsection (h) is amended to establish that the maintenance contract shall provide for a system of payments from the Port of Brownsville to the department for all maintenance costs expended by the department to maintain U.S. Highway 77/ U.S. Highway 83 and State Highway 48/State Highway 4 to the current level of service or pavement conditions and that maintenance includes routine and preventive maintenance, or total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service.

Section 28.92(a)(8) is amended to establish that the permit application form shall include a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville or the Veterans International Bridge at Los Tomates and the Port of Brownsville using U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4. The amendment to subsection (h)(7) changes the expiration of the subchapter from the year 2001 to 2005.

FISCAL NOTE

James Bass, Budget and Forecasting Branch Manager, Finance Division, has determined that for the first five year period the amendments are in effect there will be some fiscal implications to the state and local governments as a result of implementing the proposed amendments. There will be a revenue loss to Highway Fund 6 as a result of raising the percentage retained by the Port of Brownsville for administrative costs from 10% to 15%. From March 1998 to February 1999, the Port of Brownsville issued 29,774 permits at a fee of $30 per permit, generating revenue of $893,220. Assuming that the number of permits issued by the Port of Brownsville will remain constant at approximately 30,000 annually, under existing rules the department could expect to collect a total of $810,000 annually (90% of $900,000) with the Port of Brownsville receiving $90,000 (10% of $900,000). Under the proposed rules, the department would collect 85% of the total permit fees collected ($765,000) resulting in a revenue loss to Fund 6 of approximately $45,000 annually for each year the proposed rules are in effect.

The Port of Brownsville is the only local government affected by the proposed amendments. No new costs will be incurred by the Port of Brownsville, which will receive an additional 5% of permit fees to cover existing administrative costs. There are no anticipated additional costs for persons required to comply with the amendments as proposed.

Lawrance R. Smith, Director, Motor Carrier Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT

Mr. Smith 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 or administering the proposed amendments will be to facilitate compliance with requirements for the transport of oversize or overweight loads through the

Port of Brownsville using the Gateway International Bridge or the Veterans International Bridge at Los Tomates. The effect on small or large businesses is the increased efficiency in allowing these businesses to more fully utilize routes leading to the Port of Brownsville and to increase the efficiency of their operations.

SUBMITTAL OF COMMENTS

Written comments on the proposed section may be submitted to Lawrance R. Smith, Director, Motor Carrier Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 9, 1999.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of permits for oversize and overweight permits.

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

§28.90. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the department may authorize the Brownsville Navigation District of Cameron County, Texas (Port of Brownsville) to issue permits for the movement of oversize or overweight vehicles carrying cargo on State Highway 48/State Highway 4 between the Gateway International Bridge and the entrance to the Port of Brownsville, or on U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and the entrance to the Port of Brownsville. This subchapter sets forth the requirements and procedures applicable to the issuance of permits by the Port of Brownsville for the movement of oversize and overweight vehicles.

§28.91. Responsibilities.

(a) Surety bond. The Port of Brownsville shall post a surety bond in the amount of $500,000 for the purpose of reimbursing the department for actual maintenance costs of State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83 in the event that sufficient revenue is not collected from permits issued under this subchapter.

(b) Verification of permits. All permits issued by the Port of Brownsville shall be carried in the permitted vehicle. The Port of Brownsville shall provide access or a phone number for verification of permit authenticity by law enforcement or department personnel.

(c) Training. The Port of Brownsville shall secure any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training upon request by the Port of Brownsville.

(d) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter which the Port of Brownsville must comply with for the purpose of revenue collections and any payment made to the department under subsection (h) of this section.

(e) Audits. The department may conduct audits semi-annually or upon direction by the executive director of all Port of Brownsville permit issuance activities. In order to insure compliance, audits will at a minimum include a review of all permits issued, financial transaction records related to permit issuance, review of vehicle scale weight tickets and monitoring of personnel issuing permits under this subchapter.

(f) Revocation of authority to issue permits. If the department determines as a result of an audit that the Port of Brownsville is not complying with this subchapter, the executive director will issue a notice to the Port of Brownsville allowing 30 days to correct any non-compliance issue. If after 30 days it is determined that the Port of Brownsville is not in compliance, then the executive director may revoke the Port of Brownsville's authority to issue permits.

(1) Upon notification that its authority to issue permits under this subchapter has been revoked, the Port of Brownsville may appeal the revocation to the commission in writing.

(2) In cases where a revocation is being appealed, the Port of Brownsville's authority to issue permits under this subchapter shall remain in effect until the commission makes a final decision regarding the appeal.

(3) Upon revocation of authority to issue permits, termination of the maintenance contract, or expiration of this subchapter, all fees collected by the port, with the exception of administrative costs already expended, shall be paid to the department.

(g) Fees. Fees collected under this subchapter shall be used solely to provide funds for the payments provided for under Transportation Code, §623.213, less administrative costs.

(1) The permit fee shall not exceed $80 per trip. The Port of Brownsville may retain up to 15% [~~10%~~] of such permit fees for administrative costs, and the balance of the permit fees shall be used to make payments to the department for maintenance of State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83.

(2) The Port of Brownsville may issue a permit and collect a fee for any load exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapters B and C, originating at the Gateway International Bridge traveling on State Highway 48/State Highway 4 to the Port of Brownsville or originating at the Port of Brownsville traveling on State Highway 48/State Highway 4 to the Gateway International Bridge.

(3) The Port of Brownsville may also issue a permit and collect a fee for any load exceeding vehicle size or weight as specified by Transportation Code, Chapter 621, Subchapters B and C, originating at the Veterans International Bridge at Los Tomates, traveling on U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 to the entrance to Port of Brownsville or originating at the Port of Brownsville, traveling on State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83 to the Veterans International Bridge at Los Tomates.

(h) Maintenance Contract. The Port of Brownsville shall enter into a maintenance contract with the department for the maintenance of State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville and the maintenance of U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and the Port of Brownsville.

(1) The maintenance contract shall provide for a system of payments from the Port of Brownsville to the department for all maintenance costs expended by the department to maintain State Highway 48/State Highway 4 and U.S. Highway 77/U.S. Highway 83 to the current level of service or pavement conditions. Maintenance shall include, but is not limited to, routine maintenance, preventive

[~~preventative~~] maintenance, and total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service [~~for State Highway 48/State Highway 4~~].

(2) The Port of Brownsville may make direct restitution to the department for actual maintenance costs from this fund in lieu of the department filing against the surety bond described in subsection (a) of this section, in the event that sufficient revenue is not collected.

§28.92. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

(1) the name of the applicant;

(2) date of issuance;

(3) signature of the director of the Port of Brownsville;

(4) a statement of the kind of cargo being transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the kind and weight of each commodity to be transported, not to exceed loaded dimensions of 12' wide, 15'6" high, 110' long or 125,000 pounds gross weight;

(7) a statement of any condition on which the permit is issued;

(8) a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville, or using U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and the Port of Brownsville;

(9) the name of the driver of the vehicle in which the cargo is to be transported;

(10) the location where the cargo was loaded; and

(11) the name of the specific Port of Brownsville employee issuing the permit.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the permit.

(C) A permittee may not transport an overdimension or overweight load with a voided permit.

(2) Payment of permit fee. The Port of Brownsville may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle – 25,000 pounds;

(B) two axle group – 46,000 pounds;

(C) three axle group – 60,000 pounds;

(D) four axle group – 70,000 pounds;

(E) five axle group – 81,400 pounds;

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the department for an oversize or overweight permit in accordance with §28.11 of this title (relating to Permit Issuance Requirements and Procedures).

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours, as defined by Transportation Code, §541.401(1); however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) Any vehicle issued a permit by the Port of Brownsville must be weighed on scales capable of determining gross vehicle weights and individual axle loads. For the purpose of ensuring the accuracy of the permit, the scales must be certified by the Texas Department of Agriculture or [~~on scales~~] accepted by the United Mexican States.

(2) A valid permit and certified weight ticket must be presented to the gate authorities before the permitted vehicle shall be allowed to exit or enter the port.

(3) A copy of the certified weight ticket shall be retained by the Port of Brownsville and become a part of the official permit record subject to inspection by department personnel or Texas Department of Public Safety personnel.

(4) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued. The Port of Brownsville shall main-

tain records relative to this subchapter, which are subject to audit by department personnel.

(5) Permits issued by the Port of Brownsville shall be in a form prescribed by the department.

(6) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

(7) This subchapter expires March 1, 2005 [~~2001~~].

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

Filed with the Office of the Secretary of State, on June 28, 1999.

TRD-9903819
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 8, 1999
For further information, please call: (512) 463–8630

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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 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission Placement

Subchapter B. Placement Planning

37 TAC §85.33

The Texas Youth Commission has withdrawn from consideration for permanent adoption the proposed new §85.33, which appeared in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3164).

Issued in Austin, Texas, on June 22, 1999.

TRD–9903781
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: June 22, 1999
For further information, please call: (512) 424–6244

♦ ♦ ♦

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 V. General Services Commission

Chapter 111. Executive Administration Division

Subchapter B. Historically Underutilized Business Certification Program

1 TAC §111.13, §111.14

The General Services Commission adopts amendments to Title 1, T.A.C., Sections 111.13 and 111.14, Historically Underutilized Business (HUB) Certification Program with changes to the proposed text as published in February 5, 1999, issue of the *Texas Register* (24 TexReg 647).

The amendments to Sections 111.13 and 111.14 are adopted to clarify terminology within the current rules; eliminate the predetermined time deadlines for submission of required information; require that the General Services Commission's Centralized Master Bidders List (CMBL) and HUB directory be utilized when locating potential HUB subcontractors; change the minimum number of required notices from five to three to align with the recommended minimum number of bids that should be obtained; and require that all data collected relating to HUB Good Faith Effort Requirements be maintained in the project file for audit purposes.

In subsection 111.14(b), second sentence, the word "bidders" was deleted and the new language "potential contractors" inserted.

In the first sentence of subsection 111.14(c), the word "potential" was inserted before the word "contractor" that appears twice. The sentence reads "If the potential contractor plans to subcontract and is not using a HUB, the potential contractor shall be presumed to have made a good faith effort by having implemented the following procedure:" Paragraph 111.14(c)(2), third sentence, the new word "made" was deleted and the deleted word "provided" was reinserted for the sentence to read "The notice shall be provided to potential subcontractors prior to submission of the contractor's bid." In the fourth sentence of paragraph 111.14(c)(2), the word "potential" was inserted before the words "contractor" and "contractor's" of the sentence. The word "accepted" was deleted and the word "determined" was inserted in the new language of the last sentence of paragraph 111.14(c)(2) that begins with "'Reasonable time' in this context..." In paragraph 111.14(c)(3), the word "potential" was inserted before the word "contractor" in the first, second and third sentences of the paragraph. The words "make a good faith effort to" were inserted in the second sentence between the words "the contractor shall" and "provide the notice". Also, in the third sentence the word "an" was deleted between the words "provide" and "official"; and the words "form of" were deleted between the words "official" and "written" to read "contractor shall provide official written documentation..."

Due to comment that was received, subsection 111.14(d) that was shown in the proposed rule text as having no change, has been amended. In the first sentence of subsection (d), the word "five" was deleted and the word "three" was inserted between the words "least" and "businesses" to read "If the commission's directory does not include at least three businesses...."

In the first sentence of subsection 111.14(f) the word "potential" has been inserted before the word "contractor". The comma after the word "requirement" has been deleted and replaced with a period. The proposed new language "in a time frame" has been deleted as well in the first sentence. After the period of the first sentence, the words "This shall be done" have been inserted before the word "prior", thus creating a second sentence in subsection (f). The word "potential" has been inserted before the word "contractor" that appears twice in paragraph 111.14(f)(1). The word "potential" has also been inserted before the word "contractor" in paragraph 111.14(f)(2) and the word "sufficient" has been deleted after the words "HUBs allowing" and replaced with the new word "reasonable".

The original purpose, intent, good faith effort requirements and annual procurement utilization goals of the current rule would not be affected by these proposed amendments. Rather, the adopted changes would render the rule more efficient administratively for state agencies and universities. The adopted amendments to Sections 111.13 and 111.14 should prove beneficial to the state and bidders by streamlining the administrative process related to the good faith effort program.

Two written comments were received from the Texas Natural Resources Conservation Commission (TNRCC) and the Texas A&M University. Both entities offer comments to make the rules more effective. A summary of the comments and the General Services Commission's responses follow:

TNRCC Comment on the Proposed Rules:

Obligation to Identify Subcontracting Opportunities. The proposed rule reads:" If the contractor plans to subcontract and is not using a HUB, the contractor shall be presumed to have made a good faith effort by" taking certain steps outlined in Section 111.14(c). It is unclear how this it to be applied to a contractor who plans to subcontract and is in fact using a HUB, but only for a fraction of the total subcontracting the contractor

plans to do. Should that contractor go through the steps outlined in Section 111.14(c) with respect to subcontracts, which will be awarded to non-HUBs?

GSC Response: Yes, contractor should go through the steps outlined in Section 111.14(c) with respect to subcontracts. The requirement is to ensure an effort was made to utilize HUBs if there are opportunities for subcontracting.

Prudent or Standard Industry Practice and Contractor's Division of the Work into Lots or Portions. Under the existing rule a contractor is presumed to have made a Good Faith Effort if, among other things, it has divided the contract work into "reasonable lots" to the extent consistent with "prudent industry practice." (Section 111.14 (c)(1)). In determining whether a Good Faith Effort has been made, however, a state agency is required to obtain information regarding whether the contract work has been divided into "reasonable portions" in accordance with "standard industry practices." (Section 111.14(f)(3)) Are these intended to be the same standard? If not, why are they different and what information should a state agency consider with respect to the contractor's division of the work and industry practices? Should the rule be altered so that the same words are used in Sections 111.14(c)(1) and 111.14(f)(3)?

GSC Response: The standards referred to in both Sections 111.14(c)(1) and 111.14(f)(3) are intended to be the same. However, in Section 111.14(c)(1) the standard "prudent industry practice" is applicable to prime contractors who intend to subcontract. In Section 111.14(f)(3) the "standard industry practices" applies to the agency evaluation for contract compliance of the Good Faith Effort.

Subcontracting to Non-Certified HUB. In addition, the proposed rule limits the good faith effort presumption to contractors who solicit certified HUBs, except in cases where there are fewer than five certified HUBs on the GSC HUB Directory (§§111.14(c)(3) and 111.14(d)). This requirement could limit HUB participation and result in lost business for minority and women owned businesses who are eligible HUBs, but not yet certified, and limit HUB participation in state contracts. It could be especially problematic with respect to purchases funded in whole or in part by federal funds, because federal Minority Business Enterprise/Women's Business Enterprise requirements are not limited to certified businesses.

GSC Response: The intent of the Good Faith Effort requirement is to insure utilization of HUB businesses certified with the General Services Commission. State agencies will receive HUB credit for utilizing HUBs actively certified with the Commission. Non-certified minority or woman owned businesses should be encouraged by prime contractors and state agencies to become certified with the GSC to increase their contract opportunities and HUB participation.

Minimum Number of HUBs for Contractor to Solicit. The proposed rule change alters the requirement that contractors solicit five HUBs to a requirement that they solicit three HUBs (proposed §§ 111.14(b)(3), 111.14(f)(1), and 111.14(f)(2). However, § 114.14(d) still refers to an alternate procedure for contractors to follow if the GSC HUB Directory does not include at least five HUBs. Why is this requirement different? Should it also be altered from five to three?

GSC Response: Staff agrees and changes made in recommendation.

Use of Terms "Bidder," "Contractor," and "Potential Contractor." The rule uses the terms "bidder," "contractor," and "potential contractor" in a confusing manner.

GSC Response: The use of the terms "bidder," "contractor," and "potential contractor" have been reviewed and changed accordingly throughout the rule.

Sufficient vs. Reasonable Time. The proposed rule refers to a "reasonable time" for notice to potential HUB subcontractors in Section 111.14(c)(2), but later refers to "sufficient time" for such notice in Section 111.14(f)(6). It appears that the same standard is intended. Therefore, we suggest that "reasonable time" be used in both places.

GSC Response: GSC agrees, but commentor erroneously referred to 111.14(f)(6) in the above comment and intended to refer to Section 111.14(f)(2). Appropriate correction made to Section 111.14(f)(2) to change language from "sufficient time" to "reasonable time" so that language is consistent in rule Section 111.14.

Texas A&M University's Comments on the following Proposed Rules:

Comment: In Sec. 111.13(c)(6), the proposed text changes the term "contractor" to potential bidder. I believe this change is appropriate and more descriptive of the true nature of those individuals/firms that are interested in offering a bid to the state. If this new term is to be used in that context, the term contractor should be removed and replaced throughout the entire text of this rule. The individual/firm is a "potential bidder" until the presentation of a bidder, they then become a "potential contractor" and only after an award is made do they become a "contractor." In order to be correct the terms must be consistent throughout.

Response: GSC agrees and changes made in recommendation.

Comment: In Sec. 111.14(b), line 4 includes the term "bidder." The proper context here should be potential bidder.

Response: Language was changed in Sec. 111.14(b) from "bidder" to "potential contractor" due to other comments that were received. In the context used, the bids have already been received and opened. Thus, those that have submitted bids for evaluation are "potential contractors," not "potential bidders."

Comment: In Sec. 111.14(c), the first line should include potential in front of "contractor" and the phrase "and is not using a HUB" should be stricken. It serves no purpose in as much as the activities are required of all bidders regardless of their intent to ultimately use a HUB or not. In this same section on line 4, the term "procedure" should be used in the plural.

Response: Agree about the use of "potential" in front of "contractor." That change has been made. However, the staff believes that the use of "and is not using a HUB" in the proposed rule is appropriate in order to have the potential contractor document their effort to utilize a HUB subcontractor.

Comment: In Sec. 111.14(c)(2) line 5, I believe that a more appropriate word to use in the context of this sentence is "provided" rather than the replacement word of "made."

Response: GSC agrees and changes made in recommendation.

Comment: In Sec. 111.14(c)(2) line 8, the term "contractor" is not use properly as stated in the first paragraph of these comments.

Response: GSC agrees and changes made in recommendation.

Comment: In Sec. 111.14(c)(2) line 9, I believe the proper word to used in this sentence is "response" rather than "respond".

Response: GSC does not agree. In the context used, the appropriate word to use is "respond." No change recommended.

Comment: In Sec. 111.14(c)(2) lines 9 and 10, the phrase "which is accepted by the agency" should be deleted. The agency should have no responsibility or right to approve the time period. The sense of the rule without this phrase is completely clear without having the approval by the agency in it. It would add unneeded interference and bureaucracy to the bidder and the agency alike.

Response: GSC does not agree with commentor that language should be deleted. However, the phrase "which is accepted by the agency" has been amended to read "which is determined by the agency." Further, state agencies should have the authority to change the time frame if circumstances warrant (i.e. construction related procurements/projects may require a longer time frame for response than commodity/service related procurements).

Comment: In Sec. 111.14(c)(3) line 3, it is strongly recommended that the following phrase ("make a good faith effort") be inserted after the phrase "...the contractor shall..." The entire implementation concept of the HUB statute is centered on the "making of a good faith effort" to include HUB businesses in the bidding opportunities of the state. By isolating specific instances in these proposed rules to be more stringent, the basic intent of this principle is destroyed and makes the whole concept ambiguous. As long as the courts accept the premise of "goals" rather than quotas, we cannot penalize businesses if they cannot obtain specific numbers of HUBs in the bidding process. The "good faith effort" is a sound practice.

Response: GSC agrees and changes made in recommendation.

Comment: Sec 111.14(c)(3) line 8, to use consistent terms in the document, I believe the word [contractor] should be deleted and replaced with bidder. Also, since there is no "official form" for the written documentation of phone logs, fax transmittals, etc., using that term is erroneous. Delete the phrase "...an official form of...."

Response: GSC agrees in principal and has amended the rule to read "potential contractor" instead of "contractor". Also, changed "...official form of..." to "...official written documentation...."

Comment: Sec. 111.14(f) line 3, I suggest deleting the phrase "...and not utilize a HUB,..." All proposed contractors should be required to submit documentation of their efforts in making a good faith effort in accordance with this section. I believe contractors will appreciate the fact that they must provide this documentation for each bidding opportunity rather that it only being required when they are not intending to subcontract with a HUB.

Response: Recommendation not incorporated. Potential contractors are, in fact, required to submit supporting documentation regarding their decision to subcontract and not utilize a HUB subcontractor. Additionally, potential contractors are required to submit supporting documentation prior to the award if there is an intent to subcontract with a HUB. If the potential contractor makes a business decision not to subcontract any portion of the contract, state agencies will determine through the evaluation criteria identified in 111.14(f) if a good faith effort has been made.

Comment: Sec. 111.14(f) lines 6 and 7, I suggest deleting the phrase "...in a time frame [within 14 days] following selection but..." which follows "...according to each requirement..." In this way, the state agency will contact the specific time requirements for submittal of data on a case-by-case basis. The award could not be made until such time as the data was submitted and judged as acceptable to the contracting agency.

Response: GSC agrees and changes made in recommendation.

Comment: Sec. 111.14(f)(1) - (2), I suggest in each of these sections inserting the word "attempted" to after the opening phrase which reads "Whether the contractor...." Also change "provided" to "provide".

Response: Comment not incorporated. The recommendation to insert "attempted" after the opening phrase of "Whether the contractor..." implies a lessening of the current rule requirement which requires the potential contractor to provide written notices to HUBs not merely "attempt" to provide the notice.

The amendments are adopted under the Texas Government Code, Title 10, Subtitle D, Chapter 2161, Section 2161.002 which provides the General Services Commission with the authority to promulgate rules under this Code.

§111.13. Annual Procurement Utilization Goals.

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

(c) Each agency shall make a good faith effort to meet or exceed the goals outlined in subsection (b) of this section. The percentage goals established in subsection (b) are overall annual program goals for each state agency applicable to the total annual dollar amount of an agency's contracts for each of the specific types of contracts. It may not be practicable to apply these goals to each contract. For each contract, state agencies may set higher or lower program goals than those outlined in this subsection. Agencies may consider HUB availability, HUB utilization, geographical location of the project, the contractual scope of work or other relevant factors. By implementing the following procedures, an agency shall be presumed to have made a good faith effort:

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

(6) provide potential bidders with referenced list of certified HUBs for subcontracting;

(7) (No change.)

(d) (No change.)

§111.14. Subcontracts.

(a) (No change.)

(b) A state agency shall require a potential contractor to state whether it is a Texas certified HUB and whether subcontractors will be used to perform the contract. After the bid opening and prior to award of the contract, potential contractors may be required to submit a copy of the notice described in subsection (c)(2) of this

section and shall provide the expected percentage of work, if any, to be subcontracted.

(c) If the potential contractor plans to subcontract and is not using a HUB, the potential contractor shall be presumed to have made a good faith effort by having implemented the following procedure:

(1) To the extent consistent with prudent industry practice, divide the contract work into reasonable lots.

(2) Notify HUBs of the work that the contractor intends to subcontract. The preferable method of notice shall be in writing. The notice shall, in all instances, include a quantitative description of the subcontracting opportunities and identify the location to review contract specifications. The notice shall be provided to potential subcontractors prior to submission of the contractor's bid. The potential contractor shall provide potential subcontractors reasonable time to respond to the potential contractor's notice. "Reasonable time" in this context is no less than five working days from receipt to respond unless circumstances require a different time period which is determined by the agency, and documented in the project file.

(3) The potential contractor shall utilize the Commission's Centralized Master Bidders List and HUB Directory when searching for HUB subcontractors. In this effort, the potential contractor shall make a good faith effort to provide the notice described in paragraph (2) of this subsection to at least three certified HUBs that perform the type of work required in the area in which the work will be performed. Upon request, the potential contractor shall provide official written documentation (i.e. phone logs, fax transmittals, etc.) to substantiate the notice described in paragraph (2) of this subsection. This information shall be retained as part of the project file.

(4) If a non-HUB subcontractor is selected through means other than competitive bidding, or a HUB bid is the lowest price responsive bidder to a competitive bid, but not selected, the contractor will be required to document the selection process.

(5) The contractor shall maintain business records documenting its compliance with this section and shall make a compliance report to the contracting agency and report in the format required by the agency's contract documents, provided that reporting shall be required at least once for each calendar quarter during the term of the contract.

(6) If the contract is a state lease contract, the contractor or lessor shall comply with the requirements of this section from and after the occupancy date provided in the lease, or such other time as may be specified in the invitation for bid for the lease contract.

(d) If the commission's directory does not include at least three businesses, the contractor shall send the notice to HUBs on lists of minority and women-owned businesses maintained by other government agencies or organizations. If a contractor uses a source other than the commission's directory, the selected HUB subcontractor must become certified by the commission in accordance with the procedures set forth in §111.17 of this title (relating to Certification Process).

(e) An agency shall ensure that a contractor has complied with this section as a condition of awarding any contract.

(f) In making a determination whether a good faith effort has been made in cases where a bidder is planning to subcontract and not utilize a HUB, a state agency shall require the potential contractor to complete a checklist, and submit supporting documentation explaining in what ways the potential contractor has made a good faith effort according to each requirement. This shall be done prior to award of the contract. The checklist shall include at least the following:

(1) Whether the potential contractor provided notices to at least three qualified HUBs or the potential contractor advertised in general circulation, trade association, and/or minority/women focus media concerning subcontracting opportunities.

(2) Whether the potential contractor provided notice to at least three qualified HUBs allowing reasonable time for HUBs to participate effectively.

(3) Whether the contractor divided the contract work into the reasonable portions in accordance with standard industry practices.

(4) Whether the contractor documented reasons for rejection or met with the rejected HUB to discuss the rejection.

(5) Whether the contractor provided qualified HUBs with adequate information about bonding, insurance, the plans, the specifications, scope of work and requirements of the contract.

(6) Whether the contractor negotiated in good faith with qualified HUBs, not rejecting qualified HUBs who are also the lowest responsive bidder.

(g) Contractors are encouraged to use the services of available minority and women; community organizations contractor groups; local, state, and federal business assistance offices, and other organizations that provide support services to HUBs.

(h) State agencies shall review the checklist and the attached documentation submitted by the contractor to determine if a good faith effort has been made in accordance with this section or the contract specifications. If determined that a good faith effort has not been made in accordance with this section and the contract specifications, the bid will be rejected. The reasons for noncompliance shall be recorded in the project file.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 1999.

TRD-9903807
Judy Ponder
General Counsel
General Services Commission
Effective date: July 15, 1999
Proposal publication date: February 5, 1999
For further information, please call: (512) 463-3960

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TITLE 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 29. Sale of Checks Act

7 TAC §29.11

The Texas Department of Banking adopts new §29.11, concerning the effect certain criminal convictions may have on the holder of a license to engage in the business of selling checks or on an applicant for a license. The section is adopted with nonsubstantive changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3419).

Texas Civil Statutes, Article 6252-13c and Article 6252-13d, require a licensing authority to adopt rules relating to its exercise of authority to suspend or revoke an existing license, or deny

an application for a license, because of a person's conviction of a crime which directly relates to the duties and responsibilities of the licensed profession.

Licenses to sell checks are regulated by the banking commissioner and the department of banking pursuant to Finance Code, Chapter 152. Before a license may be issued, an applicant must be found to possess satisfactory character and general fitness. A license also may be revoked if a license holder no longer possesses these attributes. As adopted, §29.11(b) addresses conviction of an official of a felony or another crime of moral turpitude that directly disqualfy an applicant or license holder as provided in Finance Code, §152.203(a)(3).

A conviction of a crime which directly relates to the duties and responsibilities of a check seller could result in a determination that an applicant or license holder lacks the requisite character and general fitness. As adopted, §29.11(c)-(i) identifies crimes the agency considers directly related to the duties and responsibilities of a check seller, specifies possible mitigating circumstances, and describes the precedural rights and protections available to the applicant or license holder affected by an adverse action of the commissioner as a result of a conviction.

The adopted rule will benefit potential applicants for a check seller's license by permitting assessment of the prospects of obtaining a license if an official of the applicant has a criminal conviction prior to expending the resources necessary to apply. It also will benefit existing license holders by providing notice and the opportunity to avoid adverse action with respect to a license because of such a conviction.

The agency received only one comment on the proposed section. The commenter suggested that §29.11(i), relating to judicial review, incorporate relevant and controlling Government Code provisions in lieu of specifying details such as the location of the court in which a petition must be filed and the time limitations on filing, to avoid the necessity of amending the rule should the underlying statutes change. The agency believes that this suggestion is well-founded, and has changed the subsection accordingly. The agency is also making stylistic edits to improve readability based on internal comments. No edit changes the meaning, intent, or effect of the section as proposed with regard to any affected person.

The agency is also correcting a few citations to law. The remaining provisions of Texas Civil Statutes, Article 489d, have been codified into Finance Code, Chapter 152, by Senate Bill 1368, §7.37, 76th Legislature, effective September 1, 1999. All references to Article 489d in the proposed section are edited to reflect correct statutory location in the Finance Code.

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

§29.11. Effect of Criminal Conviction on Licenses.

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

(1) Commissioner–The banking commissioner of Texas.

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

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

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

(c) Effect of other criminal convictions on proposed or existing license. The commissioner may deny an application for a license, or revoke an existing license if an official has been convicted of a crime which directly relates to the duties and responsibilities of a check seller. Adverse action by the commissioner in response to a crime specified in subsection (d) of this section is subject to mitigating circumstances and rights of the applicant or license holder as specified in subsections (e)-(i) of this section.

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

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

(2) breach of trust or other fiduciary duty;

(3) dishonesty or theft;

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

(5) failure to file a required report with a governmental body, or filing a false report; or

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

(e) Mitigating considerations. In determining whether a conviction for a crime specified in Subsection (d) of this section renders an official presently unfit to be a license holder, the commissioner shall consider:

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

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

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

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

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

(6) the official's present fitness for a license, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the official, the sheriff and chief of police in the community where the official resides, and other persons in contact with the official.

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

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

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

(i) Judicial review. An applicant whose license application has been denied or a license holder whose license has been revoked because of a criminal conviction of an official may appeal a final order as set forth in Government Code, Chapter 2001, Subchapter G.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Banking
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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 7. Gas Utilities Division

Subchapter B. Substantive Rules

16 TAC §7.70, §7.81

The Railroad Commission of Texas adopts amendments to §7.70, relating to general and definitions, with respect to minimum safety standards and regulations applicable to natural gas pipeline facilities and natural gas transportation within the state of Texas, and §7.81, relating to safety regulations adopted concerning the transportation of hazardous liquids within the state, with changes to the proposed text as published in the March 19, 1999 issue of the *Texas Register* (24 TexReg 1893). Section 7.81 is being adopted without changes and will not be republished. The only changes to the text previously published were non- substantive and do not change the rules as currently effective. A portion of the citation to the Code of Federal Regulations was inadvertently omitted from the proposed language and has been reinserted, and italics and commas have been added where appropriate. By these changes, the commission adopts by reference the new amendments issued by the United States Department of Transportation (USDOT) in 49 Code of Federal Regulations (C.F.R.) Parts 192, 193, 195, and 199, concerning natural gas, liquified natural gas, hazardous liquids pipelines, and drug testing requirements.

The new rules change the date stated in §7.70 and §7.81 to reflect the new date-January 15, 1999-on which the commission adopts by reference the federal regulations in 49 CFR Parts 192, 193, 195, and 199 in order to adopt recent amendments to those regulations.

USDOT's Amendment Number 199-16, published at 62 *Federal Register* (FR) 67293, limited the applicability of the Drug Testing Rules only to operators whose employees are located within the United States territory, including the Outer Continental Shelf. This amendment was based on a reevaluation of the complicated legal issues faced by USDOT in enforcing its drug testing rules on employees located outside of United States territory.

Amendment Number 192-82 (later corrected to Amendment Number 192-83 in 63 FR 20134) required operators of natural gas distribution systems to provide customers of new and replaced single residence service lines with information about excess flow valves (EFV's). The required notice must explain to these customers the availability of these valves meeting USDOT prescribed performance standards and related safety benefits and costs. If a customer requests installation, the rule requires the operator to install the EFV if the customer pays all costs associated with installation. EFV's restrict the flow of gas by closing automatically if a service line breaks, thus mitigating the consequences of service line failures.

Amendments Number 192-81, and Number 195-59, published in 63 FR 12659, confirmed the effective date of the federal direct final rule that excluded from USDOT safety regulations producer- operated gas and hazardous liquid pipelines located on the Outer Continental Shelf upstream from where operating responsibility transfers to a transporting operator. This rule was adopted by USDOT with an effective date of March 19, 1998.

Amendment Number 199-15, published in 63 FR 12998, required a face-to-face evaluation by substance abuse professionals for pipeline employees who have either received a positive drug test or have refused a drug test required by the Research and Special Projects Administration. In addition, the substance abuse professional can require a pipeline employee to complete a rehabilitation program before being eligible to return to duty.

Amendment Number. 199-16, published in 63 FR 14041, confirmed the USDOT effective date of the federal direct final

rule that amends the "Scope and Compliance" section of the Drug Testing Rules to revise the applicability requirements with respect to any operator located outside the territory of the United States or its Outer Continental Shelf.

Amendment Number 195-62, published in 63 FR 36373, adopted an industry publication for pipeline leak detection, API 1130, "Computational Pipeline Monitoring," published by the American Petroleum Institute, as a referenced document. The industry standard requires that an operator of a hazardous liquids pipeline use API 1130 in conjunction with other information in designing, evaluating, operating, maintaining, and testing its leak detection system.

Amendments Number 192-85, Number 193-16, Number 194-3, and Number 195-63, published in 63 FR 37500, provide metric equivalents to pipeline safety regulations. The metric equivalents are provided for informational purposes only; operators are to continue using English units for purposes of compliance and enforcement.

Amendments Number 192-83, 193-15, 194-2, 195-61, 198-3, and 199-17, published in 63 FR 7721, were part of the annual effort by the Office of Pipeline Safety, USDOT, to improve safety by clarifying and updating the pipeline safety regulations. (Amendment Number 192-83 was later corrected to Number 192-84 in 63 FR 38757.) Revisions included updated references to voluntary specifications and standards incorporated by reference, and various clarifications and grammatical corrections. These updates reflected the most recent editions of each specification and standard incorporated by reference to enable pipeline operators to utilize current technology, materials, and practices. In addition, certain gender-specific terms have been replaced by gender-neutral terms.

The Research and Special Projects Administration incorporated by reference all or portions of nine updated documents containing practices, codes, standards, and specifications developed and published by technical organizations, including the American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, and the National Fire Protection Association. The updated standards incorporated the latest technology and engineering practice. Adoption of these updated documents assures that pipeline operators will not be unnecessarily burdened with outdated materials.

The following sections were amended to clarify their meaning: 1. Prior to the federal amendments, §192.16(b)(5) stated that "The operator (if applicable), plumbers, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping." The final rule clarifies the reference by deleting the term "plumbers" and inserting the word "plumbing contractors." 2. Prior to the federal amendments, §195.56(a) described safety-related condition reports "under §191.55(a) . . .", which was inaccurate. Safety-related condition report requirements for Part 195 are contained in §195.55(a). The amendment corrects the rule citation. 3. As amended, the last line of §199.17(a) clarifies that "samples may be discarded following the end of the 365-day period." Also, this rule amendment revised the language containing the term "his representative," removing the specific references to gender.

Section 192.107(b)(2) and §193.2059(d)(l)(i) of the pipeline safety regulations contained minor grammatical errors and gender-specific language that are revised.

Amendments Number 192-84, Number. 193-15, Number 194-2, Number 195-61, Number 198-3, and Number 199-17, published in 63 FR 38757, removed an amendment in a direct final rule titled "Periodic Updates to the Pipeline Safety Regulations" found at 62 FR 7721, and restored the regulatory text that existed prior to the direct final rule. The final rule updated references to voluntary specifications and standards incorporated by reference, and made various other corrections. Section 192.614(c)(5) required operators to "Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins." RSPA believed that this requirement could be confusing to the reader in terms of interpreting the meaning of "as far as practical." Therefore, RSPA proposed amending the paragraph to require temporary marking of buried pipelines before excavation activities begin "except in emergency situations." Based on a comment to this clarification, RSPA removed this change from the direct final rule. The comment was based on the interpretation of "as far as practical." RSPA did not mean to distort the language of the regulation, only to clarify that operators would not be responsible for marking in an emergency situation. However, based on feedback from the pipeline industry and other regulatory bodies within RSPA, it was determined that the original language better served the reader of the regulation. RSPA plans to issue an interpretation of the language in § 192.614 to clarify its meaning.

Amendments Number 192-84, Number193-15, Number 194-2, Number 195-61, Number 198-3, and Number 199-17, published in 63 FR 38758, made minor corrections to "Periodic Updates to Pipeline Safety Rules," published on February 17, 1998. The rule incorrectly listed the amendment numbers for Part 192 at the beginning of the rule. The correct amendment number is 192-84, as noted above. Also, in updating the American Society for Testing and Materials (ASTM) Designation 2513, the rule inadvertently removed the reference to the ASTM 2513-87 edition for § 192.63(a)(1). This amendment corrected this reference to reflect the appropriate standard, ASTM Designation D 2513 "Standard Specification of Thermoplastic Gas Pressure Pipe, Tubing, and Fittings." (D 2513-96a).

Amendment Number 195-64, published in 63 FR 46692, excluded from RSPA's safety standards for hazardous liquid pipelines low-stress pipelines regulated for safety by the US Coast Guard and low- stress pipelines less than one mile long that serve certain plants and transportation terminals without crossing an offshore area or a waterway currently used for commercial navigation. RSPA previously stayed enforcement of the standards against these pipelines to mitigate compliance difficulties that did not appear warranted by the safety risk. The rule change conformed the standards with this enforcement policy and eliminated duplicative and unnecessarily burdensome regulation.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Utilities Code §121.201, which authorizes the commission to adopt rules and safety standards for the transportation of gas and for gas pipeline facilities, and under the Texas Natural Resources Code, §117.001, which authorizes the commission to regulate the pipeline transportation of hazardous liquids and carbon dioxide and facilities related thereto under, and to take any other requisite action in accordance with, the Pipeline Safety Act, 49 United States Code §60101.

Texas Utilities Code §121.201 and Texas Natural Resources Code §117.001 are affected by the adopted amendments.

§7.70. General and Definitions.

(a) Minimum safety standards. All gas pipeline facilities and the transportation of gas within this state, except those facilities and that transportation of gas which are subject to exclusive federal jurisdiction under the Natural Gas Pipeline Safety Act, 49 United States Code Annotated, §60101 *et. seq.*, shall be designed, constructed, maintained and operated in accordance with the Minimum Safety Standards for Natural Gas,49 Code of Federal Regulations (CFR) Part 192, and Liquified Natural Gas Facilities, 49 CFR Part 193, and the Control of Drug Use in Natural Gas, Liquified Natural Gas, and Hazardous Liquid Pipeline Operations, 49 CFR, Part 199, with amendments, effective January 15, 1999, and with the additional regulations set out in this section.

(b)-(k) (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 June 22, 1999.

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Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 463–7008

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Chapter 15. Alternative Fuels Research and Education Division

Subchapter B. Propane Consumer Rebate Program

16 TAC §15.130, §15.145

The Railroad Commission of Texas adopts amendments to §15.130 and §15.145, relating to the Alternative Fuels Research and Education Division's propane consumer rebate program for propane-fueled appliances and equipment, without changes to the proposed text published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3673). The commission adopts these amendments (1) to increase the available options for verifying compliance with the rules of the program, and (2) to increase the number of verifications performed without increasing the overall cost of verification. This increased verification activity is justified by the doubling of funding for the consumer rebate program to more than $1 million a year under Texas Natural Resources Code §§113.2435(c)(5) and 113.246(b) as amended by Senate Bill 925, 75th Legislature, effective September 1, 1997, and implements the recommendations of the commission's internal auditor. The text of the amended rules will not be republished.

Amended paragraph (5) in §15.130 and new subsection (b) in §15.145 add surveys and questionnaires conducted by telephone, mail or electronic media to the options available for verifying rebate applicants' and participating propane dealers' compliance with commission rules governing operation of the rebate program. In re-lettered §15.145(c), deleting "inspected and" clarifies that the commission will not pay rebates for installations that are found to be out of compliance by any means of verification, including but not limited to an on-site inspection. In re- lettered §15.145(d), deleting "inspected by the commission after payment of a rebate and" after "If an installation is" and adding "after payment of a rebate" after "found not to be in compliance" clarifies that the requirements of this section apply to installations that are found to be out of compliance by any means of verification, including but not limited to an on-site inspection.

The commission received no comments on the proposed amendments.

The amendments are adopted under Texas Natural Resources Code, §§113.2434(a) and 113.2435(b), which authorize the commission to adopt rules relating to the establishment of consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial fuels for the purpose of achieving energy conservation and efficiency and improving air quality in this state. Texas Natural Resources Code, §113.243(c)(6), authorizes the commission to use money in the Alternative Fuels Research and Education Fund to pay the direct and indirect costs of such programs.

Texas Natural Resources Code, §§113.2435, 113.243(c)(6); 113.248, 113.249, and 113.250, are affected by the rules as amended.

Issued in Austin, Texas, on June 29, 1999.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

The Public Utility Commission of Texas (commission) adopts amendments to §22.52 relating to Notice in Licensing Proceedings with changes and §22.104 relating to Motions to Intervene with no changes to the proposed text as published in the April 23, 1999 *Texas Register* (24 TexReg 3175). These amendments are adopted under Project Number 20580. The amendments are necessary to conform these sections to the expedited approval schedule in §25.101 of this title (relating to Certification Criteria), as recently adopted by the commission. Adopted §25.101 was published in the March 19, 1999 issue of the *Texas Register* (24 TexReg 1999).

Section 25.101 replaced existing §23.31 of this title (relating to Certification Criteria) as it relates to electric service providers. Section 25.101 was modified from §23.31 to bring the section concerning certification criteria into agreement with §§25.191

- 25.198 and 25.200- 25.204 of this title (relating to Open-Access Comparable Transmission Service for Electric Utilities in the Electric Reliability Council of Texas) recently adopted by the commission under Project Number 18703, *Review of Transmission Access Rules, Substantive Rules §23.67 and §23.70.* Section 25.101 as adopted gives great weight to recommendations for transmission lines made by the Electric Reliability Council of Texas (ERCOT) independent system operator (ISO) and allows for certain transmission line applications to be processed on an expedited basis. It is necessary to amend §22.52 and §22.104 to bring these sections into agreement with §25.101 to allow expedited processing of: (1) uncontested applications pursuant to §25.101(c)(5)(A); (2) minor boundary or service area exception applications pursuant to §25.101(c)(5)(B); (3) uncontested transmission line applications pursuant to §25.101(c)(5)(C); or projects deemed critical to the reliability of the Electric Reliability Counsel of Texas (ERCOT) system pursuant to §25.101(c)(5)(D).

The commission received comments on the proposed amendments from the Lower Colorado River Authority (LCRA) and the Office of Public Utility Counsel (OPC).

OPC comments that the preamble to the proposed amendments as published could be misleading, is too broad in application and does not justify reducing the time for intervention from 70 to 45 days for all licensing proceedings, contested and uncontested alike. OPC comments that the preamble states that the changes are necessary to allow expedited processing of uncontested applications, minor boundary changes, or projects critical to ERCOT reliability and that no rationale has been given for reducing the time for intervention by 35% for contested licensing proceedings. OPC states that decreasing the amount of time for interested parties to intervene in contested cases potentially affects due process rights and that the less time allowed, the less likely it is that affected parties will have an adequate opportunity to address matters that may significantly impact their lives. OPC submits that the proposed rules should not be adopted until an appropriate justification has been made for applying the shortened intervention period to contested licensing proceedings. OPC further states that the proposed changes are not necessary to bring the rules into compliance with the recent changes to Substantive Rule §25.101 of this title (relating to Certification Criteria). OPC states that there is no conflict between §25.101 and the existing §22.52 or §22.104.

The commission disagrees with OPC's comments and adopts the intervention deadline amendments as proposed. The commission acknowledges that these amendments will shorten the intervention period for contested cases. Through these amendments, the commission has attempted to balance the need for expedited processing of important transmission line project applications and the need for affected persons to receive adequate notice of any such proceeding. The commission believes that 45 days' notice is an adequate notice period. Affected persons will have over six weeks to decide whether to intervene in a certification proceeding. Additionally, the commission concurs with LCRA's comment (discussed below) that for projects affecting more than 25 persons, the notice period is effectively much longer than 45 days.

LCRA supports the proposed amendments as published and states that a transmission utility must hold at least one public meeting, with adequate notice prior to the meeting date, before filing the application if more than 25 persons would be affected. Concerns expressed at the meeting must be addressed in the application. Thus, property owners effectively receive much more notice of certificate of convenience and necessity proceedings than the 45 days proposed in this rulemaking.

LCRA also comments that the Texas Legislature is poised to enact legislation that would eliminate the integrated resource planning (IRP) process. LCRA suggests that if such legislation is adopted the references in the proposed amendments to the IRP process should be withdrawn without the necessity of republishing the rule. The commission agrees with this comment. Subsection (b) of §22.52 concerning notice by applicants for new electric generating plants has been deleted and the remaining subsection has been renumbered accordingly. The reference to notice for new electric generating plants in subsection (a) has also been deleted.

In reply comments, LCRA takes issue with OPC's claim that reducing the notice from 70 to 45 days has not been justified and is overly broad. LCRA notes that as a result of recently enacted legislation, the only electric utility matters requiring licensing from the commission are service area boundary changes and transmission line CCNs. LCRA notes that PUC Substantive Rule §25.101(c)(5) provides for expedited approval for uncontested area boundary changes and uncontested transmission line CCNs recommended by the Electric Reliability Council of Texas, Independent System Operator (ISO). LCRA correctly observes that the commission has 80 days to process such applications. If the current 70-day intervention period were retained, the commission would have only ten days to process these applications, which is impractical and unworkable.

LCRA also notes that the 45 day intervention deadline is sufficient notice, particularly when compared to the 28 day notice required for electric rate increases under PUC Substantive Rule §22.51(a)(1) as well as the 30 day notice for rulemaking and ten day notice for hearings under the Texas Administrative Procedure Act. The commission agrees with LCRA's comments and declines to adopt the proposed changes to the rule recommended by OPC.

All comments, including any not specifically referenced herein, were fully considered by the commission.

Subchapter D. Notice

16 TAC §22.52

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052

§22.52. Notice in Licensing Proceedings.

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:

(1) Applicant shall publish notice of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general

terms the type of facility if applicable, and the estimated expense associated with the project.

(A) The notice shall also include the following statement in the first paragraph: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at P. O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 45 days after the date the application was filed with the commission) and a letter requesting intervention should be received by the commission by that date."

(B)-(D) (No change.)

(2) (No change.)

(3) Applicant shall, upon filing an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. For purposes of this paragraph, land is directly affected if an easement would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 200 feet of the proposed facility.

(A) The notice must contain all information required in paragraph (1) of this subsection and contain the following statement in the first paragraph of the notice printed in bold-face type: "Your land may be directly affected in this proceeding. If the preferred route or one of the alternative routes requested under the certificate is approved by the Public Utility Commission of Texas, the utility will have the right to build a facility which may directly affect your land. This proceeding will not determine the value of your land or the value of an easement if one is needed by the utility to build the facility. If you have questions about this project, you should contact (name of utility contact) at (utility contact telephone number). If you wish to participate in this proceeding by becoming a party or to comment upon action sought, you should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. If you wish to participate in this proceeding by becoming a party, the deadline for intervention in the proceeding is (date 45 days after the date the application was filed with the commission), and you must send a letter requesting intervention to the commission which is received by that date."

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

(D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.

(E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately provide notice in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has fifteen days to intervene. The utility shall immediately notify the commission that such supplemental notice has been provided.

(4)-(5) (No change.)

(6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's Office of Regulatory Affairs.

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

(b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

(1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission at P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission's (commission) Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) (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.

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Subchapter F. Parties

16 TAC §22.104

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 1999.

TRD-9903784
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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Proposal publication date: April 23, 1999
For further information, please call: (512) 936-7308

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Chapter 23. Substantive Rules

Subchapter C. Rates

16 TAC §23.22

The Public Utility Commission of Texas (commission) adopts the repeal of §23.22 relating to Energy Efficiency Plan with no changes to the proposed text as published in the April 16, 1999 *Texas Register* (24 TexReg 3002). This section required that electric utilities file an energy efficiency plan with the commission providing information on the utilities conservation programs. Project Number 17709 is assigned to this proceedings.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. The commission requested specific comments on the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist.

The commission received comments on the proposed repeal from the Office of Public Utility Counsel (OPC) and Southwestern Public Service Company (SPS).

SPS supports the repeal of §23.22 for the reasons stated in the preamble for the proposed repeal.

The preamble proposed eliminating the energy efficiency plan (EEP) as unnecessary for two reasons: (1) the commission's integrated resource planning (IRP) rules in Chapter 25, Subchapter H of this title (relating to Electrical Planning) required the submission of the necessary information for the commission to meet the requirements of the Public Utility Regulatory Act (PURA) §34.003; and (2) the information necessary for the commission to meet the requirements of PURA §36.052(2) is filed as part of a utility's rate filing package.

OPC suggested that the commission postpone the repeal of §23.22 and reconsider the issue after the legislative session due to deregulation bills pending in the Texas Legislature which propose to eliminate the integrated resource planning process and do not require a final rate case. OPC stated that if the energy efficiency plan requirement is repealed and the IRP process is eliminated through legislation, the commission and intervenors could be denied access to the information provided by the EEP during the period of transition to competition.

Senate Bill 7, 76th Legislature, Regular Session (1999), repealing PURA Chapter 34, was passed by the Texas House of Representatives and the Texas Senate and is awaiting signature by the Governor. Senate Bill 7 establishes a goal for energy efficiency and requires the commission to adopt rules and procedures to ensure that the goal is achieved by January 1, 2004. Much of the information required by §23.22 is intended to be used in a rate setting context, and will not be needed by the commission because of the rate freeze imposed by Senate Bill 7. The commission will undertake a rulemaking addressing energy efficiency, as required by Senate Bill 7. To the extent the commission requires information in the interim, PURA §14.003 authorizes the commission to require a public utility to report information about the utility to the commission. The commission finds that the reasons for adopting §23.22 no longer exist and repeals the rule.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross-Index to Statutes: Public Utility Regulatory Act §§14.002, 34.003 and 36.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

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Subchapter H. Telephone

16 TAC §23.99

The Public Utility Commission of Texas adopts the repeal of §23.99 relating to Unbundling with no changes to the proposed text as published in the January 8, 1999 *Texas Register* (24 TexReg 229). The repeal is necessary to avoid duplicative rule sections. The commission has adopted §26.276 of this title (relating to Unbundling) to replace §23.99. This repeal is adopted under Project Number 17709.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: Public Utility Regulatory Act §14.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

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Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter L. Wholesale Market Provisions

16 TAC §26.276

The Public Utility Commission of Texas (commission) adopts new §26.276 relating to Unbundling with changes to the proposed text as published in the January 8, 1999 *Texas Register* (24 TexReg 230). New §26.276 replaces §23.99 of this title (relating to Unbundling). Section 26.276 requires incumbent local exchange companies (ILECs) to unbundle their network to the extent ordered by the Federal Communications Commission (FCC) as required by the Public Utility Regulatory Act (PURA) §60.021. This section is adopted under Project Number 17709.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 Texas Administrative Code (TAC) Chapter 23 to (1) satisfy the requirements of Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. Chapter 26 has been established for all commission substantive rules applicable to telecommunications service providers.

The commission requested specific comments on the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. The commission received no comments on the Section 167 requirement or the proposed rule. The commission finds that the reason for adopting the rule continues to exist. Non-substantive changes were made for clarification. Subsections (b)(3) and (f)(4) as published have been deleted as they no longer apply due to the passage of time. In subsection (e) the language "discretionary services, or competitive services" has been replaced with "or non-basic services" to reflect changes to terminology that occurred during the 76th Legislative Session (1999).

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §60.021 which requires at a minimum, an incumbent local exchange company shall unbundle its network to the extent ordered by the Federal Communications Commission.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §60.021.

§26.276. Unbundling.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §60.021, which requires an incumbent local exchange company (ILEC), at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) Application.

(1) The provisions of this section apply, as of its effective date, to each ILEC that serves one million or more access lines.

(2) The provisions of this section apply upon a bona fide request to each ILEC that serves fewer than one million access lines.

(c) Unbundling requirements.

(1) Unbundling pursuant to current FCC requirements. Each ILEC that is subject to this section shall unbundle as specified in subparagraphs (A) and (B) of this paragraph. An ILEC with interstate tariffs in effect shall unbundle its network/services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements. Nothing

herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.

(A) The ILEC's network shall be unbundled to the extent ordered by the FCC in compliance with its open network architecture requirements; and

(B) Signaling for tandem switching shall be unbundled to the extent ordered by the FCC in compliance with CC Docket Number 91-141, Third Report and Order, In the Matter of Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II.

(2) Unbundling pursuant to future FCC requirements. An ILEC shall unbundle its network/services as defined in the term "unbundling" in §26.5 of this title (relating to Definitions) for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect shall unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for unbundling. Nothing herein precludes the commission from requiring further unbundling of local exchange company services, including the services unbundled pursuant to this paragraph.

(d) Costing and pricing of services in compliance with this section.

(1) Cost standard. Services unbundled in compliance with this section shall be subject to the following cost standard.

(A) The cost standard for unbundled services shall be the long run incremental costs (LRIC) of providing the service.

(B) Any ILEC subject to §23.91 of this title (relating to Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility Services) shall file LRIC studies pursuant to that rule for unbundled components specified in subsection (c)(1) of this section.

(C) For any ILEC that is subject to §23.91 of this title, the cost standard for unbundled services required under subsection (c)(2) of this section shall be the long run incremental costs pursuant to §23.91 of this title.

(D) The long run incremental cost standard shall not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or if the ILEC adopts rates of another ILEC pursuant to paragraph (2)(B) of this subsection.

(2) Pricing standard. Services unbundled in compliance with this section shall be subject to the following pricing standard.

(A) Any ILEC may propose rates, without cost justification, that are at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service. The ILEC shall amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling pursuant to filing requirements established in subsection (f)(4) of this section.

(B) In addition to the provision in subparagraph (A) of this paragraph, ILECs that are not subject to §23.91 of this title may adopt the rates of another ILEC that are developed pursuant to the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same or equivalent unbundled service or does not adopt the rates of another ILEC pursuant to subparagraph (B) of this paragraph, the following requirements shall apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service shall be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(ii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there shall be a rebuttable presumption that the rate of an unbundled component is reasonable.

(iii) The proposed rates and terms of the service shall not be unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(B) of this subsection shall be subject to the pricing rulemaking referred to in §23.91(p) of this title to the same extent as any other service offered by an ILEC subject to the pricing rule.

(e) Basket assignment. An ILEC electing incentive regulation under PURA Chapter 58 shall, in its compliance tariff filed pursuant to subsection (f) of this section, include a proposal and rationale for designating the unbundled components as basic services or non-basic services.

(f) Filing requirements.

(1) Initial filing to implement subsection (c)(1) of this section in effect for ILECs serving one million or more access lines. An ILEC serving one million or more access lines shall file initial tariff amendments to implement the provisions of subsection (c)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(2) Filings to comply with subsection (c)(2) of this section for ILECs serving one million or more access lines. An ILEC serving one million or more access lines shall file tariff amendments to implement the provisions of subsection (c)(2) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(3) Filings to implement subsections (c)(1) and (2) of this section for ILECs serving fewer than one million access lines. If an ILEC serving fewer than one million access lines receives a bona fide request, it shall unbundle its network/services pursuant to the bona fide request within 90 days from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.

(4) Filings to comply with subsection (d)(2)(A) of this section. An ILEC proposing rates pursuant to subsection (d)(2)(A) shall file tariff amendments to implement the revisions in its interstate tariffs providing for unbundling, within 30 days of the effective

date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(g) Requirements for notice and contents of application in compliance with this section.

(1) Notice of Application. The presiding officer may require notice to be provided to the public as required by Chapter 22, Subchapter D of this title (relating to Notice). The notice shall include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, PO Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936- 7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or may reach the commission's toll free number by calling Relay Texas at (800) 735- 2988."

(2) Contents of application for an ILEC serving one million or more access lines that is required to comply with subsection (f)(1), (2), and (4) of this section. An ILEC shall request approval of an unbundled service by filing an application that complies with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy to the Office of Public Utility Counsel. The application shall contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions are in conformity with the requirements in subsections (c), (d), and (e) of this section, as applicable;

(B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;

(C) a copy of the text of the notice, if any;

(D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;

(E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs, if the rates are not at parity with the carrier's interstate rates;

(G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(H) the information required by §§26.121 of this title (relating to Privacy Issues), 26.122 of this title (relating to Customer Proprietary Network Information, and 26.123 of this title (relating to Caller Identification Services); and

(I) any other information which the ILEC wants considered in connection with the commission's review of its application.

(3) Contents of application for an ILEC serving fewer than one million access lines that is required to comply with subsection (f)(3) and (4) of this section. An ILEC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Office of Regulatory Affairs, Legal Division, and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (C), (H), and (I) of this subsection;

(B) contents of application required by paragraph (2)(D), (E), (F), and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(E) projections of the amount of revenues that will be generated by the proposed service.

(h) Commission processing of application.

(1) Administrative review. An application considered under this section may be reviewed administratively unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be according to the requirements in subsection (f) of this section.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the commission staff and the staff of the Office of the Public Utility Counsel may submit requests for information to the ILEC. Six copies of all answers to such requests for information

shall be filed with Central Records and one copy shall be provided to the Office of Public Utility Counsel within ten days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the ILEC's application.

(2) Approval or denial of application. The application shall be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) Standards for docketing. The application may be docketed pursuant to §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) Commission processing of waivers. Any request for modification or waiver of the requirements of this section shall include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 281. Administrative Practice and Procedures

Subchapter A. General Provisions

22 TAC §281.8, §281.17

The Texas State Board of Pharmacy adopts amendments to §281.8, concerning Grounds for Discipline of a Pharmacy License and adopts new rule §281.17, concerning Historically Underutilized Businesses without changes to the proposed text in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1896).

Adoption of the amendments to §281.8 clarifies the actions that may result in the discipline of a pharmacy license. The 75th Texas Legislature amended Section 26(b) of the Texas Pharmacy Act to add subsection (10), which provides that the Board may discipline the holder of a pharmacy license if the Board finds that the applicant or licensee has "engaged in any fraud, deceit, or misrepresentation as defined by the rules adopted by the board in operating a pharmacy or in seeking a license to operate a pharmacy." Adoption of the new rule §281.17 incorporates by reference the rules adopted by the General Services Commission for historically underutilized businesses and implements Section 124 of Article IX of the General Appropriations Act adopted by the 75th Texas Legislature.

No comments were received regarding this proposal.

The amendments are adopted under sections 4, 16(a), and 26(b)(10) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes) and Section 124 of Article IX of the General Appropriations Act adopted by the 75th Texas Legislature. The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 26(b)(10) as authorizing the agency to adopt rules to define "fraud," "deceit," and "misrepresentation" in operating a pharmacy or in seeking a license to operate a pharmacy. The Board interprets Section 124 of Article IX of the General Appropriations Act adopted by the 75th Texas Legislature as requiring all state agencies to adopt the General Services Commission's rules regarding historically underutilized businesses.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9903767
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: July 14, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 305-8028

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Chapter 291. Pharmacies

Subchapter A. All Classes of Pharmacies

22 TAC §§291.7, 291.8, 291.10, 291.17

The Texas State Board of Pharmacy adopts amendments to §291.7, concerning Change of Pharmacist Employment, §291.8, concerning Return of Prescription Drugs, §291.10, concerning Pharmacy Balance Registration/Inspection, and §291.17, concerning Inventory Requirements without changes to the proposed text in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1897). The amendments come as a result of the review of Chapter 281 (§§291.1-291.23) concerning all classes of pharmacy, pursuant to the Appropriations Act, §167.

Adoption of the amendments: (1) make a change in the notification requirement for a change of pharmacist-in-charge consistent with the Texas Pharmacy Act; (2) clarify that a dispensed prescription drug may not be returned to a pharmacy and re-dispensed; (3) clarify expiration dates, registration requirements, and delete obsolete language concerning prescription balances; and (4) clarify inventory requirements and make changes necessary when butorphanol was scheduled as a controlled substance.

No comments were received regarding this proposal.

The amendments are adopted under sections 4, 16(a), and 17(b) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 4 as authorizing the agency to adopt rules to protect the public health, safety, and welfare through the effective control and regulation of the practice of pharmacy. The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 17(b) as authorizing the agency to regulate the delivery or distribution of prescription drugs as they relate to the practice of pharmacy, specify the minimum standards for the maintenance of prescription drug records, and register/inspect prescription balances used for the compounding of drugs in pharmacies.

The statutes affected by this rule: Texas Civil Statutes, Article 4542a-1.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9903768
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: July 16, 1999
Proposal publication date: March 19, 1999
For further information, please call: (512) 305-8028

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Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Subchapter C. Responsibilities to Clients

22 TAC §573.20

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.20, concerning Responsibility for Acceptance of Medical Care, with changes to the proposed text published in the February 26, 1999 issue of the *Texas Register* (24 TexReg 1298-99) The following sections of the rule was changed: In subsection (b)(4) the word after was removed.

The agency is adopting these amendments to define the specific conditions under which a veterinarian may terminate care of an animal so that the veterinarian knows exactly what steps must be taken in order to transfer or terminate the veterinarian/patient/client relationship pursuant to the normal standard of care.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, §8(a) which grants the Board the authority to amend rules of professional conduct in order to establish a high standard of integrity in the practice of veterinary medicine.

§573.20. Responsibility for Acceptance of Medical Care.

(a) The decision to accept an animal as a patient is at the sole discretion of a veterinarian. The veterinarian is responsible for determining the course of treatment for an animal that has been accepted as a patient and for advising the client as to the treatment to be provided.

(b) Once a patient/client/veterinarian relationship has been established, a veterinarian may discontinue treatment after:

(1) the request of the client,

(2) the veterinarian substantially completes the treatment or diagnostics prescribed,

(3) referral to another veterinarian, or

(4) notice to the client providing a reasonable period for the client to secure the services of another veterinarian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9903692
Ron Allen
Executive Director
Texas Board of Veterinary Medical Examiners
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Proposal publication date: February 26, 1999
For further information, please call: (512) 305–7555

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Part XXIX. Texas Board of Professional Land Surveying

Chapter 663. Standards of Responsibility and Rules of Conduct

Subchapter A. Ethical Standards

22 TAC §663.2

The Texas Board of Professional Land Surveying adopts an amendment to §663.2, concerning Intent, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3295).

In subsection (a), a new paragraph (3) is added for clarification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903811
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: July 18, 1999
Proposal publication date: April 30, 1999
For further information, please call: (512) 452-9427

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Subchapter B. Professional and Technical Standards

22 TAC §663.21

The Texas Board of Professional Land Surveying adopts new §663.21, concerning Descriptions Prepared for Political Subdivisions, without changes to the proposed text as published in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3296).

Section 663.21 is adopted to provide the public with a better, more informative, surveying product. The minimum conditions require descriptions to be unambiguous and locatable on the ground.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903812
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: July 18, 1999
Proposal publication date: April 30, 1999
For further information, please call: (512) 452-9427

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Subchapter C. Fair Hearing Procedures

25 TAC §1.41

The Texas Department of Health (department) adopts new §1.41 concerning adoption by reference of 1 Texas Administrative Code, Chapter 357, §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, and 357.29, Medicaid fair hearings rules, adopted by the Texas Health and Human Services Commission regarding the procedures for fair hearings for recipients in the Medicaid program. The section is adopted with changes to the proposed text as published in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2841).

Specifically, new §1.41 will standardize the fair hearing process for all Medicaid funded services so that recipients may participate in uniform hearings conducted by the Texas Department of Health, Texas Health and Human Services Commission (HHSC), Texas Department of Human Services, and the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Health and Human Services Commission is required to promulgate uniform fair hearing rules under the Government Code, Chapter 531.

The department is making the following minor change due to staff comments to improve the accuracy of the section.

Change: Concerning §1.41(a), the language ", effective March 31, 1999" was deleted.

No comments were received regarding adoption of the new rule.

The new section is adopted under the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner of health.

The new section affects the Health and Safety Code, Chapter 12.

§1.41. Medicaid Uniform Fair Hearing Procedures.

(a) Authority. The Texas Department of Health (department) adopts by reference rules regarding Medicaid fair hearings adopted by the Texas Health and Human Services Commission under 1 Texas Administrative Code (TAC), Chapter 357, §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, and 357.29.

(b) Scope. These rules establish fair hearing procedures which the department will follow when the department is required to conduct a fair hearing for Medicaid funded services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903848
Susan K. Steeg
General Counsel

Texas Department of Health
Effective date: July 18, 1999
Proposal publication date: April 9, 1999
For further information, please call: (512) 458–7236

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Chapter 37. Maternal and Infant Health Services

Subchapter M. Texas Perinatal Care System

25 TAC §§37.251–37.259

The Texas Department of Health (department) adopts new §§37.251-37.259 concerning the establishment of a voluntary perinatal health care system. Sections 37.251-37.253 and 37.256-37.259 are adopted with changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2595). Sections 37.254 and 37.255 are adopted without changes, and therefore will not be republished.

These rules implement Health and Safety Code, Chapter 32, Subchapter B, which requires the Texas Board of Health (board) to adopt minimum standards and objectives to implement a voluntary perinatal health care system. Specifically, the sections cover the purpose of the rules; definitions; professional standards/guidelines; statewide oversight of the perinatal care system and interstate cooperation; perinatal planning areas (PPAs); perinatal resource coordinating groups (PRCGs); perinatal plans; data analysis and progress report; and designation of perinatal care facilities.

The intent of the legislation and these sections is the promotion of safe, quality, risk-appropriate perinatal care for women and for their infants; continuity and comprehensiveness of care; optimal and cost-effective utilization of perinatal personnel and facilities; and the provision of health promotion and health education for women from preconception through the postpartum period, as well as parenting information through the first year of their infants' lives.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

Comment: Concerning the subchapter as a whole, one commenter supported the overall content, but expressed skepticism that the rules as proposed would establish effective regulation of certain "for-profit" practices in perinatal care such as false advertising and selective transports of pregnant women and neonates. The commenter added that the "medical home" of the woman and/or neonate should remain financially responsible for transport.

Response: The department acknowledges the commenter's concern about the overall effectiveness of a voluntary perinatal system. However, the department believes the rules will enable PRCGs in each of the PPAs to focus on issues such as those the commenter raises through the perinatal system planning process. No changes were made as a result of this comment.

Comment: Concerning the subchapter as a whole, one commenter stated that implementation of the rules will require the department to incur costs through its regions.

Response: The department agrees. When the 74th Legislature mandated establishment of the voluntary perinatal health care system, no accompanying legislative appropriation was provided. Until and if the legislature appropriates funds to support development of the perinatal health care system, plans for allocating existing funds within the department must evolve. No changes were made as a result of this comment.

Comment: Concerning the subchapter as a whole, one commenter stated that because of the time required for collaboration, reporting, verification of facility designations, and other activities, local governments, communities, and facilities will incur costs in implementing the sections on a local level. The commenter stated that the department should establish the system so that everyone can participate on a truly "cost-neutral" basis. The commenter also stated that increasing or improving maternal commitment would most directly improve pregnancy outcomes in his part of the state.

Response: The legislature directed the department to assist local communities, facilities, and providers in regions across the state in a collaborative planning process to support and strengthen local perinatal provider relationships and referral arrangements in order to improve the quality of the perinatal service delivery system. Participation in the development of an integrated perinatal health care system is optional, and if undertaken, will require varying commitments of time and resources. Such planning might ultimately distribute provider costs, reimbursements, and responsibility to clients in a more open and equitable manner. Also, since the planning process for the perinatal health care system not only allows but encourages participation by consumers and community-based support service entities, inclusion of these groups should help address issues such as "maternal commitment". No changes were made as a result of these comments.

Comment: Concerning the subchapter as a whole, one commenter stated that formation of PRCGs in Public Health Regions 9/10 and 11 might be helpful in addressing issues concerning funding for prenatal care for the undocumented. The commenter added the department's Medicaid Managed Care Committee and the Regional EMS Committees may have suggestions for successful implementation.

Response: The department agrees that the process of establishing a perinatal health care system across Texas may also help particular areas and communities find solutions to problems such as funding for perinatal care for undocumented persons. No changes were made as a result of this comment.

Comment: Concerning §37.251(1), one commenter suggested that addition of the phrase "risk-appropriate perinatal" would more precisely define the purpose of the statewide perinatal health care system.

Response: The department agrees and has amended the section by adding the phrase "risk- appropriate perinatal".

Comment: Concerning §37.252(7), one commenter stated that the definition of the term "neonate" should be changed to "an infant from birth through 28 completed days after birth" for consistency with the current World Health Organization definition of "neonatal period".

Response: The department agrees and has amended the definition accordingly.

Comment: Concerning §37.252(15), one commenter stated that the definition of "subspecialty perinatal facility" should include approximately the same level of detail as the definitions of "specialty perinatal facility" and "basic perinatal facility".

Response: The department agrees and has deleted the qualifications required for physicians who supervise subspeciality perinatal facilities. Specific designation criteria for basic, specialty, and subspecialty perinatal facilities are adopted by reference at §37.253 of this title (relating to Professional Standards/ Guidelines).

Comment: Concerning §37.253(a)(1), one commenter stated that some of the page references from the publication *Guidelines for Perinatal Care, Fourth Edition* should be amended for accuracy and also suggested that a new standard/guideline concerning "Risk Assessment and Management" should be added.

Response: The department agrees and has changed the page numbers and added the new standard/guideline references.

Comment: Concerning §37.253(a)(2), one commenter suggested that the section should be amended to add three new standards/guidelines concerning "Content of Reproductive Health Screening", "Early Pregnancy Risk Identification", and "Ongoing Pregnancy Risk Identification".

Response: The department agrees and has added the three new subparagraphs.

Comment: Concerning §37.255, one commenter stated that the PPAs are too large for effective coordination.

Response: The department acknowledges that PRCGs in each of the PPAs will confront different issues, and that the PRCGs in some PPAs may find it necessary to create two or more subgroups that can address the needs of specific geographic areas within the PPA. The perinatal plan for each PPA will reflect its own needs. No changes were made as a result of this comment.

Comment: Concerning §37.256(a), one commenter stated that the rules should include specific criteria and/or standards concerning use of helicopters and fixed-wing aircraft for transport.

Response: The section requires each PRCG to develop a perinatal plan which includes referral and transport protocols. The PRCGs may consult the health care literature and seek guidance from health care professionals, department staff, and other sources to establish standards of practice for transports. No changes were made as a result of this comment.

Comment: Concerning §37.256(a), one commenter stated that rather than requiring PRCGs to "establish" perinatal networks, PRCGs should support their development by the communities in the PPAs.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §37.256(d), one commenter stated that the subsection should be amended to allow a broad spectrum of providers to participate in the PRCGs.

Response: The department agrees and has amended the subsection as suggested.

Comment: Concerning §37.256(g)(5), one commenter suggested that the section should be amended to clarify that PRCGs should support rather than impose integration of community resources and planning efforts.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §37.257, one commenter stated that the section should be amended to state that PPAs may include one or more perinatal networks, depending on the area's needs.

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §37.257(c)(4)(B), one commenter suggested adding the word Aperinatal@ before the word "provider" to clearly define one of the sources of information and opinion upon which perinatal plans must be based.

Response: The department agrees and has amended the section as suggested.

Comment: Concerning §37.258, maternal deaths should be investigated, but that information is not included among the information to be provided by the department to the PRCGs.

Response: Although the "maternal mortality rate" is listed in §37.258(a)(1)(A), as one of the statistics to be monitored, the section as proposed does not include information on causes of maternal deaths. Section 37.258(a)(1)(B)(viii) has been amended accordingly.

Comment: Concerning §37.258(a)(1)(A), one commenter stated that the descriptive phrase following "postneonatal" should be amended for consistency with the current World Health Organization definition of the term "neonatal period".

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §37.258(b)(4), one commenter suggested adding the word Aperinatal@ before the word "provider" to emphasize that the annual report to be filed by each PRCG must document "perinatal provider education".

Response: The department agrees and has amended the section accordingly.

Comment: Concerning §37.259, one commenter suggested changing the description of the review teams for basic, specialty, and subspecialty perinatal facilities to allow inclusion of a group of perinatal providers and one or more department representatives, if desired.

Response: The department agrees and the section has been amended as requested.

Comment: Concerning §37.259, one commenter stated that self-declaration of the level of care by facilities presents a problem and that state inspection should be required.

Response: The department disagrees that mandatory state inspection of perinatal facilities is necessary to assure accurate designations of level of care. Section 37.253(a)(1)-(2) lists the designation criteria for levels of inpatient perinatal care, and the department will publish the self-declared perinatal center designations. Although §37.259(d) authorizes the department to conduct site visit reviews at the request of a PRCG or at random, community knowledge and ownership of the health care issues should prompt facilities to make accurate level of care designations and to improve and/or expand their operations if needed. Continuing community pressure and PRCG scrutiny may be more effective than a site visit by the state once every three years. The rules set up an infrastructure for service planning and delivery that addresses the communities' needs and is evaluated on the basis of health care outcomes. That process will result in heightened attention, visibility, and vigi-

lence regarding perinatal health care, all of which will make it more difficult for poor quality health care practices to survive. No changes were made as a result of this comment.

Comment: Concerning §37.259, one commenter stated that one hospital in each region should be designated as the perinatal hospital for that region.

Response: The department disagrees. Each PRCG will address the service delivery and provider patterns in the perinatal plan for the region. The plan will vary from region to region depending on the resources in the region. No changes were made as a result of this comment.

Comment: Concerning §37.259(e), one commenter stated that the subspecialty of "neonatal-perinatal medicine" should be listed before the specialty of Apediatrics@ in the description of the review team for specialty and subspecialty perinatal facilities in order to establish a more effective survey process.

Response: This section has been amended in response to another comment to provide greater flexibility in the composition of facility review teams. No changes were made as a result of this comment.

The new sections are adopted under Health and Safety Code, §32.042, which authorizes the Texas Board of Health (board) to adopt rules to implement a perinatal health care system; and Health and Safety Code, §12.001, which authorizes the board to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§37.251. Purpose.

The purpose of these sections is to establish the procedures and standards for the implementation of a statewide system for perinatal health care that fosters:

(1) safe, quality, risk-appropriate perinatal care for women and for their infants;

(2) continuity and comprehensiveness of care;

(3) optimal and cost-effective utilization of perinatal personnel and facilities; and

(4) access for women to health promotion and health education from preconception through the postpartum period, and parenting information through the first year of their infants' lives.

§37.252. Definitions.

The following words and terms pertain explicitly to this subchapter and shall have the following meanings, unless the context clearly indicates otherwise.

(1) Basic perinatal facility - An inpatient facility providing care during the prenatal period for women and infants whose care is or is expected to be uncomplicated.

(2) Department - Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) Health education - Provision of health information and anticipatory guidance concerning nutrition, fitness, and the prevention and early recognition of perinatal risk conditions and/or illnesses.

(4) Health promotion - Provision of information or activities which motivate individuals to adopt healthy behaviors, including the appropriate use of health resources.

(5) Infant - An individual from birth through the first year of life.

(6) Intrapartum - The period beginning at the onset of labor or childbirth and ending with delivery.

(7) Neonate - An infant from birth through 28 completed days after birth.

(8) Parenting information - Information provided to any person responsible for the care of a child about practices which promote the child's mental and physical health and quality of life.

(9) Perinatal - The period which begins before conception in a woman of child-bearing age and ends on the infant's first birthday.

(10) Postpartum - The six-week period following delivery.

(11) Prenatal - The period beginning on the date of conception and ending with the commencement of labor or childbirth.

(12) Provider - A person, facility, and/or organized entity that delivers or affects the delivery of perinatal care.

(13) Specialty perinatal facility - An inpatient facility providing care during the prenatal period for women and infants whose care is or is expected to be uncomplicated as well as for the majority of those women and infants who are at high risk for or who require complicated care.

(14) State - The State of Texas.

(15) Subspecialty perinatal facility - An inpatient facility providing care during the prenatal period for all pregnant women and infants, including those with serious illnesses and abnormal health conditions.

§37.253. Professional Standards/Guidelines.

(a) Activities of the department and providers pursuant to this subchapter will be conducted in accordance with guidelines and standards for perinatal care found in the following obstetric and pediatric professional publications:

(1) *Guidelines for Perinatal Care, Fourth Edition* (American Academy of Pediatrics, American College of Obstetricians and Gynecologists, 1997).

(A) Table 1-1: Ambulatory Prenatal Care Provider Capabilities and Expertise, page 3;

(B) Table 1-2: Health Screening for Women of Reproductive Age, page 10;

(C) Table 2-1: Recommended Nurse/Patient Ratios for Perinatal Care Services, page 19;

(D) Table 4-2: Risk Factors Associated with Spontaneous Preterm Labor and Birth, page 89;

(E) Appendix B: Early Pregnancy Risk Identification for Consultation, pages 299-300;

(F) Appendix C: Ongoing Pregnancy Risk Identification for Consultation, pages 301-302;

(G) Appendix D: Federal Requirements for Patient Screening and Transfer, pages 303-309;

(H) In-Hospital Perinatal Care, pages 4-7;

(I) Inpatient Perinatal Care Services, pages 13-50;

(J) Interhospital Care of the Perinatal Patient, pages 51-61;

(K) Patient Education, pages 68-70;

(L) Risk Assessment and Management, page 76;

(M) Intrapartum Care, pages 91-125; and

(2) *Toward Improving The Outcomes of Pregnancy, The 90s and Beyond* (March of Dimes, American Academy of Pediatrics, and American College of Obstetricians and Gynecologists, 1993);

(A) Table 1: Content of Reproductive Health Screening, page 15;

(B) Appendix 4a: Early Pregnancy Risk Identification, page 96;

(C) Appendix 4b: Ongoing Pregnancy Risk Identification, page 97;

(D) Appendix 6: Levels of Inpatient Perinatal Care, pages 102-115.

(b) Copies of these publications may be viewed during normal business hours at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 or they may be obtained from the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, or the March of Dimes publications office. Contact numbers for these organizations are available from the department at the address in this subsection.

§37.254. Statewide Oversight of the Perinatal Care System and Interstate Cooperation.

(a) The department shall develop and maintain a reporting and analysis system to monitor outcomes of the statewide perinatal care system.

(b) The department shall request information as specific issues arise from persons with expertise in the provision of perinatal care, data analysis, and community networking/systems development, including, but not limited to, individuals from academic institutions, professional groups, advocacy groups, and other state agencies. The department shall also seek ongoing input from consumers or recipients of perinatal care and from representatives of their identified community-based social support systems (e.g. extended families, churches).

(c) The department shall facilitate the organization and operations of the perinatal resource coordinating groups described in §37.256 of this title (relating to Perinatal Resource Coordinating Groups).

(d) The department shall facilitate cooperation and coordination with perinatal care providers and systems in adjoining states.

§37.255. Perinatal Planning Areas.

(a) Eight perinatal planning areas (PPAs), encompassing every county in the state, shall be established for descriptive, planning, and continuous quality improvement purposes. The PPA boundaries shall be based upon the regional organization of the Texas Health and Human Services Commission (HHSC).

(b) PPA boundaries are not intended to restrict decisions concerning client referral or transfer to other facilities or providers.

(c) The perinatal planning areas shall include the following counties:

(1) Area One (HHSC Region 1): Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, King, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Terry, Wheeler, and Yoakum;

(2) Area Two (HHSC Region 2/3): Archer, Baylor, Brown, Callahan, Clay, Coleman, Collin, Comanche, Cooke, Cottle, Dallas, Denton, Eastland, Ellis, Erath, Fannin, Fisher, Foard, Grayson, Hardeman, Haskell, Hood, Hunt, Jack, Johnson, Jones, Kaufman, Kent, Knox, Mitchell, Montague, Navarro, Nolan, Palo Pinto, Parker, Rockwall, Runnels, Scurry, Shackelford, Somervell, Stephens, Stonewall, Tarrant, Taylor, Throckmorton, Wichita, Wilbarger, Wise, and Young;

(3) Area Three (HHSC Region 4/5): Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Delta, Franklin, Gregg, Harrison, Henderson, Hopkins, Houston, Jasper, Lamar, Marion, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, and Wood;

(4) Area Four (HHSC Region 6/5): Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Orange, Walker, Waller, and Wharton;

(5) Area Five (HHSC Region 7): Blanco, Bosque, Brazos, Burleson, Burnet, Caldwell, Coryell, Falls, Fayette, Freestone, Grimes, Hamilton, Hays, Hill, Lampasas, Lee, Leon, Limestone, Llano, McLennan, Madison, Milam, Mills, Robertson, San Saba, Travis, Washington, and Williamson;

(6) Area Six (HHSC Region 8): Atascosa, Bandera, Bexar, Calhoun, Comal, De Witt, Dimmit, Edwards, Frio, Gillespie, Goliad, Gonzales, Guadalupe, Jackson, Karnes, Kendall, Kerr, Kinney, La Salle, Lavaca, Maverick, Medina, Real, Uvalde, Val Verde, Victoria, Wilson, and Zavala;

(7) Area Seven (HHSC Region 9/10): Andrews, Borden, Brewster, Coke, Concho, Crane, Crockett, Culberson, Dawson, Ector, El Paso, Gaines, Glasscock, Howard, Hudspeth, Irion, Jeff Davis, Kimble, Loving, McCulloch, Martin, Mason, Menard, Midland, Pecos, Presidio, Reagan, Reeves, Schleicher, Sterling, Sutton, Terrell, Tom Green, Upton, Ward, and Winkler; and

(8) Area Eight (HHSC Region 11): Aransas, Bee, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio, Starr, Webb, Willacy, and Zapata.

§37.256. Perinatal Resource Coordinating Groups.

(a) A perinatal resource coordinating group (PRCG) shall be established within each perinatal planning area (PPA) to examine outcomes, to develop community-based plans for continuous improvement of perinatal care services, to work with communities in order to foster perinatal networks, and to develop at-risk and emergency transfer/transport protocols, considering the standards/guidelines listed in §37.253 of this title (relating to Professional Standards/Guidelines).

(b) A PRCG shall be established in each PPA within five years from the date this subchapter becomes effective.

(c) PRCG members shall be initially recruited by the following department staff:

(1) the Regional Medical Director or designee from the region in which most of the counties in the PPA are located;

(2) a representative of the Emergency Medical Services Division; and

(3) representatives from the Medicaid and maternal and child health programs.

(d) PRCG membership shall include broad-based community representation from the counties in the PPA; perinatal providers, including basic, specialty, and subspecialty perinatal care facilities; advocacy groups; consumers; social support systems; and primary care residency programs. PRCG membership shall reflect the demographics of the population.

(e) Each PRCG shall adopt bylaws describing the purpose; membership and member terms; officers and their terms of office; and periodicity of meetings.

(f) The department shall provide data and technical assistance to the PRCGs.

(g) Each PRCG shall be charged with:

(1) analyzing perinatal data, including, but not limited to the following:

(A) reports provided by the department concerning the perinatal vital statistics in the PPA; and

(B) aggregated reports of problems identified by the maternal, neonatal, and infant mortality review committees of each participating facility and by communities in the PPA;

(2) responding to consumer and/or provider complaints that pertain to perinatal care and that have been directed to the PRCG;

(3) responding to complaints that pertain to perinatal care originally received by the Texas Department of Insurance and/or the department;

(4) identifying and supporting health care delivery systems and social support infrastructures within the communities of the PPA that enhance the quality of perinatal health care;

(5) providing technical assistance to communities to enhance coordination of perinatal service planning and delivery among perinatal network providers (including perinatal transport providers), consumers, and community-based support entities within the PPA;

(6) identifying unmet community needs, such as gaps in perinatal care or breakdowns in communications; and

(7) developing a community-based perinatal plan to coordinate existing services and address unmet needs that builds upon and bolsters community strengths, health care delivery systems, and social support infrastructures. The plan will address community-based, culturally competent health promotion activities, both consumer and provider health education, the development and support of perinatal networks, and referral/transport protocols for high-risk pregnant women and newborn infants.

§37.257. Perinatal Plans.

(a) The perinatal resource coordinating group (PRCG) in each perinatal planning area (PPA) shall submit for approval to the department an initial perinatal plan concerning the provision of perinatal care for women of child-bearing age and infants within the PPA. The plan shall be submitted in a format specified by the department.

(b) Each PRCG shall submit an annual revised plan in a format specified by the department.

(c) The initial plan and any revisions shall be subject to approval by the department, contingent upon documentation of the following:

(1) individuals representing the geographic and demographic diversity of all counties within the PPA have been involved in the development and implementation of the plan;

(2) individuals representing all perinatal care facilities have been given an opportunity to participate in the planning and implementation process, through participation in either the PRCG or the perinatal network(s);

(3) mechanisms are in place for communication and coordination of services among the PPA perinatal network(s);

(4) the plan includes:

(A) a list of participants in the PRCG and the perinatal network(s);

(B) a list of identified strengths and unmet needs of the PPA based on analysis of the PPA data, registered complaints, and discussions with consumers, community-based support entities, and perinatal providers;

(C) a list of goals and objectives to improve the quality of perinatal care based upon the identified strengths and unmet needs in the PPA and the health outcomes measures referenced in §37.258 of this title (relating to Data Analysis and Progress Report);

(D) mechanisms for completing referrals and returning reports of care provided among the perinatal care providers;

(E) protocols for exchange of confidential patient records among participating providers in the perinatal planning area;

(F) descriptions of emergency transport capability requirements and protocols;

(G) protocols for at-risk and emergency maternal and neonatal transfer from one hospital to another for the purpose of receiving more intensive or specialized care;

(H) protocols for return transfer of a pregnant woman and/or her infant from a referral center to the original referring hospital or to a local hospital for continuing care;

(I) triage criteria for appropriate level referrals; and

(J) mechanisms and protocols for:

(i) conducting high-risk screening and counseling guidance;

(ii) increasing community awareness of the existence of the perinatal plan(s) and the importance of early and preventive care for women of child-bearing age and infants;

(iii) increasing consumer access to the perinatal network(s);

(iv) continuing improvement of the quality of perinatal care; and

(v) community-based and area-wide perinatal health education, health promotion, and dissemination of parenting information.

§37.258. Data Analysis and Progress Report.

(a) Annually the department shall provide each perinatal resource coordinating group (PRCG) with:

(1) information pertaining to the population of women of child-bearing age and infants within its perinatal planning area (PPA), including:

(A) neonatal mortality rate, postneonatal (beginning after 28 completed days after birth and extending through one completed year of life) mortality rate, infant mortality rate, and maternal mortality rate;

(B) information collated from birth and death certificates, including but not limited to:

(i) trimester of entry into prenatal care;

(ii) number of prenatal visits related to time of entry into prenatal care;

(iii) maternal use of tobacco, drugs, and alcohol;

(iv) number of low birth weight infants;

(v) number of pre-term infants;

(vi) numbers and rates of low birth weight and very low birth weight infants by facility of birth;

(vii) causes of infant deaths;

(viii) causes of maternal deaths;

(ix) maternal transports and infant transports; and

(C) other information available from state reported data and registries upon request of the PRCG; and

(2) information recorded by the department pertaining to the perinatal care facilities within the PPA, including licensure status and level designation as perinatal center.

(b) Each PRCG shall file an annual report in a format approved by the department describing its activities and progress toward outcome objectives projected in the plan or in the revised plan, as described in §37.257 of this title (relating to Perinatal Plans). The report shall include:

(1) evidence that the members of the PRCG and perinatal networks are involved in evaluation and management of the plan;

(2) changes in the membership of the PRCG;

(3) documentation of community-based consumer education, including topics concerning prevention of health risks; the importance of early and regular preventive health check-ups; and access to the perinatal care systems;

(4) documentation of perinatal provider education concerning the availability of high risk screening tools, patient counseling, referral protocols, and population-based health needs assessment; and

(5) documentation of progress toward the goals and objectives stated in their plan.

(c) The department shall maintain the confidentiality of all information in these reports to the extent authorized by the Texas Open Records Act, Government Code, Chapter 552.

§37.259. Designation of Perinatal Care Facilities.

(a) The department or its designee(s) shall request inpatient facilities to report to the department their self-designations as basic, specialty, or subspecialty perinatal care facilities. Designations shall be self-reported by facilities based upon the standards and guidelines in the publications listed in §37.253 of this title (relating to Professional Standards/Guidelines). Facilities shall select the designation category that most accurately describes their capacity to provide perinatal care.

(b) Each facility providing inpatient perinatal care may voluntarily report to the department its self-designated category.

(c) The department shall publish the designation categories of all participating perinatal facilities in each perinatal planning area annually.

(d) The department or its designees may evaluate a facility to confirm the facility's self- declared designation category through a random review process or upon request by a perinatal resource coordinating group (PRCG), at the discretion of the department.

(e) The review team for specialty and subspecialty perinatal facilities may include board certified/eligible specialists in obstetrics, maternal-fetal medicine, pediatrics, and neonatal-perinatal medicine, as appropriate for the facility to be reviewed, and one or more department representatives.

(f) The review team for basic perinatal facilities may include one or more active perinatal care providers and one or more department representatives.

(g) The department shall provide a copy of the review report and recommendations to the reviewed facility, the review team, and the PRCG.

(h) Whenever a facility review is conducted, the department may confirm the self-declared designation or approve a different designation.

(i) If a perinatal care facility disagrees with the department's designation decision, the facility may request an administrative hearing which shall be conducted according to §§1.51-1.55 of this title (relating to Fair Hearing Procedures).

(j) A participating perinatal care facility shall notify the department and its PRCG within 30 days if it is unable or chooses not to continue providing perinatal care commensurate with its designation category.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
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Chapter 229. Food and Drug

Subchapter M. Regulation of Food, Drug, Device, and Cosmetic Salvage Establishments and Brokers

25 TAC §§229.191–229.208

The Texas Department of Health (department) adopts the repeal of existing §§229.191-229.208, and new §§229.191-229.208, concerning the regulation of food, drug, device, and cosmetic salvage establishments and brokers. New §§229.192, 229.204 and 229.206 are adopted with changes to the proposed text as published in the April 2, 1999, issue of the *Texas Register* (24 TexReg 2613). The repeal of §§229.191-229.208

and new §§229.191, 229.193-229.203, 229.205, 229.207, and 229.208 are adopted without changes to the proposed text, and therefore, the sections will not be republished.

New §§229.191-229.208 cover purpose; applicable federal laws and regulations; definitions; exemptions; licensure requirements; licensure procedures; report of changes; licensure fees; denial, suspension, or revocation of license; personnel; construction and maintenance of physical facilities; sanitary facilities and controls; general provisions for handling distressed merchandise; handling distressed food; handling distressed drugs; handling distressed devices; records; and enforcement and penalties.

The new sections contain new language and incorporate language that was previously located in §§229.191-229.208, which are being repealed. Sections 229.191-229.208 are being repealed for the purpose of reorganization. The new sections establish new licensure fees for salvagers to allow the department to recover the costs associated with inspecting salvage establishments and brokers and administering the program. The new sections contain new language to clarify existing requirements for device salvagers and include language to standardize licensure requirements to improve the timeliness and efficiency of the licensure process. The new sections also clarify the department's inspection authority and enforcement options available under Health and Safety Code, Chapter 432 (Texas Food, Drug, Device, and Cosmetic Salvage Act).

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 the agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). These sections have been reviewed and the department has determined that the reason for readopting the sections continues to exist; however, the rules required revisions as described in this preamble.

The department published a Notice of Intention to Review for §§229.191-229.208 in the *Texas Register* (23 TexReg 9078) on September 4, 1998. No comments were received by the department following the publication of the Notice.

No comments were received regarding the repeal and new sections as proposed during the comment period.

The department is making the following minor changes due to staff comments to clarify the intent and improve accuracy of the section.

Change: Concerning §229.192(a)(3), the § symbol has been replaced with the word Section.

Change: Concerning §229.204(e), the "parts per million" was added to clarify the measurement.

Change: Concerning §229.206(k), the word "Code" was added to complete the cite, Health and Safety Code.

The repeals are adopted under the Health and Safety Code, §432.011, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 432; 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; and 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.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458–7236

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The new sections are adopted under the Health and Safety Code, §432.011, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 432; 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.

§229.192. Applicable Federal Laws and Regulations.

(a) The Texas Department of Health (department) adopts by reference the following federal laws and regulations:

(1) Federal Food, Drug, and Cosmetic Act, 21 United States Code, et seq. as amended;

(2) Fair Packaging and Labeling Act, 15 United States Code 1451 et seq. as amended;

(3) Section 501(c)(3), Internal Revenue Code of 1986, as amended;

(4) 21 Code of Federal Regulations (CFR), Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, as amended;

(5) 21 CFR, Part 210, Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; General, as amended;

(6) 21 CFR, Part 211, Current Good Manufacturing Practice for Finished Pharmaceuticals, as amended; and

(7) 21 CFR, Part 820, Quality System Regulation, as amended.

(b) Copies of these laws and regulations are indexed and filed in the office of the Bureau of Food and Drug Safety, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for inspection during normal working hours.

(c) Nothing in these sections shall relieve any person of the responsibility for compliance with other applicable federal laws and regulations.

§229.204. Handling Distressed Food.

(a) Good manufacturing practices. The requirements of this section are in addition to those described in 21 CFR, Part 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food, as amended; except where this section is more restrictive.

(b) Perishable foods. All perishable foods shall be kept at a temperature that will provide protection against spoilage.

(c) Potentially hazardous foods. All potentially hazardous foods shall be maintained at a safe temperature, 41 degrees Fahrenheit

(5 degrees Celsius) or below; 140 degrees Fahrenheit (60 degrees Celsius) or above.

(d) Distressed or nonsalvageable merchandise.

(1) All metal cans of food offered for sale or distribution shall be essentially free from rust (pitting) and dents (especially at rim, end double seams, and/or side seams).

(2) Leakers, springers, flippers, and swells shall be deemed unfit for sale or distribution.

(e) Metal containers of food. All metal containers of food, other than those mentioned in subsection (d) of this section, whose integrity has not been compromised and whose integrity would not be compromised by the reconditioning, and which have been partially or totally submerged in water, liquid foam, or other deleterious substance as the result of flood, sewer backup, or other reasons shall, after thorough cleaning, be subjected to sanitizing rinse of a concentration of 100 parts per million (ppm) available chlorine for a minimum period of one minute, or shall be sanitized by another method approved by the department. They shall subsequently be treated to inhibit rust formation.

(f) Label removal.

(1) Any cans or tins showing surface rust shall have labels removed, the outer surface cleaned by buffing, a protective coating applied where necessary, and shall be relabeled.

(2) Relabeling of other salvageable nonmetal (glass, plastic, etc.) containers shall be required when original labels are missing or illegible.

(g) Relabeling. All salvaged food in containers shall be provided with labels meeting the requirements in §229.203(i) of this title (relating to General Provisions for Handling Distressed Merchandise). Where original labels are removed from containers which are to be resold or redistributed, the replacement labels must show the name and address of the salvage establishment.

§229.206. Handling Distressed Devices.

(a) Internal audits. Each salvage establishment that engages in the reconditioning of devices shall establish written procedures for conducting an internal quality audit and shall conduct such an audit at least annually. The dates and results of the audit shall be documented, including any deficiencies found and the corrective action taken to address the deficiencies.

(b) Personnel. Each salvage establishment that engages in the reconditioning of devices shall have sufficient personnel with the necessary education, background, training, and experience to assure that all reconditioning activities are correctly performed. Training of personnel engaged in reconditioning activities shall be documented.

(c) Identification. Each salvage establishment that engages in the reconditioning of devices shall establish and maintain written procedures for identifying devices during all stages of receipt, reconditioning, distribution, and installation to prevent mixups.

(d) Inspection, measuring, and test equipment.

(1) Each salvage establishment that engages in the reconditioning of devices shall ensure that all inspection, measuring, and test equipment used in the reconditioning of devices is:

(A) suitable for its intended purpose and capable of producing valid results; and

(B) routinely calibrated, inspected, checked, and maintained.

(2) Each salvage establishment that engages in the reconditioning of devices shall establish and maintain calibration records for inspection, measuring, and test equipment to include:

(A) the equipment identification;

(B) dates of calibration;

(C) the individual performing each calibration; and

(D) the next scheduled calibration date.

(e) Corrective and preventative action. Each salvage establishment that engages in the reconditioning of devices shall document any action taken by the salvage establishment to correct or prevent any nonconformities relating to a salvaged device or to the reconditioning of a device.

(f) Labeling. In addition to the general labeling requirements found in §229.203(i) of this title (relating to General Provisions for Handling Distressed Merchandise), all reconditioned devices shall be labeled with the statement "Reconditioned by (name and business address of the salvage establishment responsible for the reconditioning of the device)".

(g) Device history record. Each salvage establishment that engages in the reconditioning of devices shall maintain a device history record for each batch, lot, or unit reconditioned to ensure that devices are reconditioned in accordance with subsection (h) of this section. The device history record shall include the following information:

(1) the dates of reconditioning;

(2) the quantity reconditioned;

(3) the quantity released for distribution;

(4) the acceptance records which demonstrate the device is reconditioned in accordance with the device master record;

(5) copies of any labeling required by these sections; and

(6) any device identification or control number used.

(h) Device master record. Each salvage establishment that engages in the reconditioning of devices shall maintain device master records for each type of device reconditioned. The device master record shall include, or refer to the location of, the following information:

(1) device specifications, including appropriate drawings, composition, formulation, component specifications, and software specifications;

(2) reconditioning process specifications, including the appropriate equipment specifications, reconditioning methods, reconditioning procedures, and reconditioning environment specifications;

(3) final acceptance procedures and specifications, including acceptance criteria and the inspection, measuring, and test equipment to be used;

(4) packaging and labeling specifications, including methods and processes used; and

(5) installation, maintenance, and servicing procedures and methods.

(i) Complaint files. Each salvage establishment and salvage broker that engages in the reconditioning or distribution of distressed or salvaged devices shall maintain complaint files. Any complaint involving the possible failure of a device, labeling, or packaging

to meet any of its specifications shall be reviewed, evaluated, and investigated. All records of investigation shall include:

(1) the name of the device;

(2) the date the complaint was received;

(3) any device identification(s) and control number(s) used;

(4) the name, address, and phone number of the complainant;

(5) whether the complaint is associated with any illness or injury involving the device;

(6) the nature and details of the complaint;

(7) the dates and results of the investigation;

(8) any corrective action taken;

(9) any reply to the complainant; and

(10) the name and signature of the person formally designated by the salvage establishment or salvage broker as responsible for investigating all complaints.

(j) A device salvage establishment or device salvage broker must comply with the device distributor requirements of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, Subchapter L, prior to taking possession of devices that are unsafe for self-medication (prescription devices) as referenced in the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483.

(k) Device remanufacturers. Those salvage establishments who are also device remanufacturers shall comply with these sections and with the device manufacturer requirements in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, Subchapter L, including the applicable requirements in 21 CFR, Part 820, Quality System Regulation, as amended.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Health
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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter X. Preferred Provider Plans

28 TAC §§3.3701-3.3706

The Commissioner of Insurance adopts amendments to §§3.3701 - 3.3704, and new §§3.3705 and 3.3706, concerning preferred provider plans. Sections 3.3702, 3.3703, 3.3704, and 3.3706 are adopted with changes to the proposed text as published in the January 8, 1999 issue of the *Texas Register* (24 TexReg 234). Sections 3.3701 and 3.3705 are adopted without changes and will not be republished. Simultaneous to this adoption of the amendments and new sections, the department is repealing §3.3705. Notice of the adopted repeal is published elsewhere in this issue of the *Texas Register*.

The amendments and new sections implement legislation enacted by the 75th Legislature in Senate Bill 383 which amends Chapter 3, Subchapter G of the Insurance Code by adding Article 3.70-3C (Preferred Provider Benefit Plans), House Bill 2846 which amends Chapter 3, Subchapter G of the Insurance Code by adding Article 3.70-3C (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Benefit Plans), and Senate Bill 786 which amends Insurance Code, Chapter 21, Subchapter E by adding Article 21.53K concerning the provisions of services related to immunizations and vaccinations under managed care plans. The amendments and new sections restructure the existing rules, §§3.3701-3.3705, by moving some of the existing rules and incorporating them into other sections, altering the language of the rules to comply with the legislative enactments, and reorganizing the rules into individual sections relating to specific components of a preferred provider benefit plan, thus rendering the rules better organized and easier to read.

The amendments to §3.3701 add advanced practice nurses and physician assistants as preferred providers and indicate that Articles 3.70-3C (Preferred Provider Benefit Plans), 3.70-3C (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Benefit Plans) and 21.53K, which concerns the provisions of services related to immunizations and vaccinations under managed care plans, are now applicable to the provisions of Subchapter X of Chapter 28 of the Texas Administrative Code.

The amendments to §3.3702 redefine the words and terms used in the subchapter to comply with amendments made to Chapter 3 of the Insurance Code by the 75th Legislature and eliminate definitions that are no longer necessary. The amendments to §3.3703 consolidate the contracting requirements between insurers and physicians and health care providers, contained in the existing rules, which were not affected by the enactment of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and which are distributed throughout several sections of the existing rules. The amendments to §3.3703 include additional contracting provisions required by Article 3.70-3C (Preferred Provider Benefit Plans) and two provisions required by Insurance Code Article 21.53K which concern written protocols for immunizations or vaccinations to be administered by a pharmacist. The amendments to §3.3704 consolidate the existing rules relating to an insured's freedom of choice in the selection of providers, add additional requirements required by Article 3.70-3C (Preferred Provider Benefit Plans), and delete provisions concerning coverage information which are now set forth in new §3.3705.

New §3.3705 sets forth readability and mandatory disclosure requirements for preferred provider benefit plans issued pursuant to Sec. 6 of Article 3.70-3C (Preferred Provider Benefit Plans). New §3.3706 sets forth procedures by which physicians and practitioners shall be notified of an insurer's sponsorship of a preferred provider benefit plan, how application for designation as a preferred provider can be made, notification requirements to providers upon disapproval of an application for

designation as a preferred provider, notification requirements to a provider upon termination by an insurer from a plan as a preferred provider, and mandatory review procedures available whenever a physician or health care practitioner is not designated as a preferred provider or is terminated from a plan by an insurer.

In addition, §3.3706(d) and (e) create expedited and standard versions of the review processes required by statute. It should be noted that the review process is already required by the existing rules. The changes alter the time schedule for the review process. The rules add an expedited review process at §3.3706(e) which a physician or health care practitioner can access by the delivery of all relevant material pertaining to the review to the insurer within ten business days of receipt of notice of an insurer's intent to terminate him or her as a preferred provider. The insurer is then required to render a decision within thirty calendar days. The standard process, set forth in §3.3706(d), allows the physician or practitioner twenty calendar days in which to submit materials pertaining to the review and the insurer sixty calendar days within which to render a decision.

After receiving public comments on the proposed amendments and new sections to Chapter 3, Subchapter X, the department has made changes based upon the public comments, as well as for clarification, punctuation, and consistency. The following revisions to the referenced sections were made: A conforming change was made to §3.3702(15). Changes were made to §3.3703(a)(8), (a)(10), (a)(12), (a)(13), (a)(14), (a)(15), (a)(18), and (a)(19) for purposes of consistency and clarification. Section 3.3703(a)(11) was reworded to track only the portion of Article 3.70-3C(3)(m) that refers to provider contracts. Proposed §3.3703(b) was deleted entirely and the subsequent subsections were renumbered. A change was made to §3.3704(a)(11) for clarification.

The word "advisory" was added before "review panel" throughout all of §3.3706. Changes were made for purposes of clarification and consistency in §3.3706(a)(2), (a)(4), and (e)(2). In §3.3706(a)(3), the words "health care" were deleted and the phrase "requirements, including the use of economic profiling by the insurer, used by the insurer to admit a provider to the plan" was substituted for "requirements for participation as a provider in the plan". "Reasons" was changed to "reason(s)" in §3.3706(b)(1)(A) and (c)(1) in response to a comment. Finally, in §3.3706(b)(2)(A), the phrase "in the applicable service area" was added between "practitioners" and "contracting."

General: A commenter stated that the proposed rules create new contract provisions that are not contained in current contracts and not required by Article 3.70-3C (Preferred Provider Benefit Plans). [Hereinafter referred to throughout this section of the preamble as Article 3.70-3C or statute.] The commenter proposed that the rules should contain an effective date of at least 60 days after adoption and a "grandfathering" of all existing contracts to avoid the necessity and expense of restating and re-executing existing contracts.

Agency Response: The department does not agree that the rules create contract provisions not required by Article 3.70-3C. All provisions track the language and requirements of the statute. Senate Bill 383 of the 75th Legislature at Section 2 provides that the requirements of Article 3.70-3C as added by Section 1 of the bill apply to any insurance policy or contract issued, delivered, or renewed on or after the effective date of the Act. The effective date of the Act was June 19, 1997 and contracts issued after that date are subject to the statute, notwithstanding the provisions of the rules. Therefore, the department cannot change the effective date or grandfather existing contracts from application of the rules.

§3.3701(a): A commenter disagreed with the language indicating that the rules do not apply to dental care benefits as well as the department's interpretation that the Insurance Code prohibits preferred provider dental benefit plans. The commenter believes that Articles 21.53(1)(a) and 21.53(2)(b) allow for contracting and non-contracting providers under a plan providing dental care benefits. The commenter requests that the rules be clarified to allow dental preferred provider benefit plans.

Agency response. The department disagrees. Article 3.70-3C(2) specifically states that "this article does not apply to provisions for dental care benefits in any health insurance policy." In addition, Article 21.53(3)(b) of the Insurance Code prohibits a health insurance policy or employee benefit plan from providing a different level of reimbursement for preferred providers.

§3.3703(a)(3): A commenter suggested deletion of the phrase "a significant portion" because the commenter interprets the rule to require a provider to have a significant portion of practice at a facility before being granted staff privileges.

Agency response: The department disagrees with the commenter's interpretation of this subsection. The subsection applies to providers who have a significant portion of their practice located in a hospital or institutional provider setting. It does not purport to affect the eligibility of a particular provider for staff privileges at a facility. The department also notes that this provision was in the rules prior to the enactment of Article 3.70-3C by the 75th Legislature.

§3.3703(a)(5): A commenter suggested adding language to clarify that an insured may agree in advance to pay a provider out of pocket for care for which the insurer has declined to provide coverage and that an insurer may make an initial determination of medical necessity dependent upon a subsequent review by a physician or practitioner panel.

Agency response: The department has not added the suggested language because this section relates only to terms included in contracts between an insurer and a preferred provider. The department agrees that the rules do not affect an insurer's ability to require that all initial determinations of medical necessity made concerning services provided pursuant to a plan be supported by a subsequent review by a physician or practitioner panel. The department also agrees that these rules would not prohibit an insured and a provider from agreeing in advance that the insured will pay the provider for services that the insured has requested but for which the insurer subsequently declines to provide coverage. However, the department notes that there may be other rules or provisions of the Insurance Code that would restrict such an agreement.

§3.3703(a)(6)(A): A commenter suggested that referrals be limited only to other preferred providers.

Agency Response: The department disagrees. The statute ensures an individual insured's freedom of choice, which includes the right to choose out-of-network providers, so long as the insured is willing to pay the additional cost for services obtained from these out-of-network providers.

Comment: Another commenter suggested that the rules should prohibit a contract from containing "any restriction on physicians and practitioners who may refer an insured to another physician or practitioner."

Agency Response: The department disagrees. The subsection prohibits an insurer from prohibiting physicians of a particular subspecialty or practitioners of a particular type from referring insureds to other physicians or practitioners, while permitting physicians of other subspecialties or other types of practitioners to make such referrals. The commenter's language would prohibit an insurer from placing any limitations at all upon providers with regard to referrals.

§3.3703(a)(7): A commenter noted that there is no mention of capitation and suggests language permitting the use of capitation, per diems, and diagnostic related groups as reimbursement for preferred providers.

Agency Response: The department declines to adopt this proposed change at this time. The department believes that the capitation language in Article 3.70-3C(7)(d) was inadvertently carried over from the codification of the HMO patient protection rules passed by the 75th Legislature in SB 385 without intending to extend this type of payment arrangement to all preferred provider plans. Capitation is not a normal business practice among insurers and could implicate licensing under Chapter 20A of the Insurance Code. This issue was not addressed in the proposed rules and the addition of language relating to capitation as requested at this time could constitute a substantive change from the proposed rules.

Comment: Another commenter believed that the second sentence of this subsection contradicts the first and should be deleted. The commenter also noted that under the HMO law, the department reviews incentives on a case-by-case basis, disallowing incentives that act to restrict patient access to medically necessary services, while this subsection sanctions an entire class of incentives.

Agency Response: The department disagrees that these sentences are contradictory. The subsection permits an insurer to encourage effective utilization of health services that does not restrict or limit medically necessary services. The department also notes that both the prohibition against the use of financial incentives to limit medically necessary services and the language permitting providers to share in savings from cost effective utilization of health services were contained in the rules prior to the enactment of Article 3.70-3C by the 75th Legislature.

§3.3703(a)(11): A commenter proposed that the reference to Article 3.70-3C(3)(m) be deleted from the rule and that the language be re-worked to track only the portion of the article relating to provider contracts.

Agency Response: The department agrees and has reworded §3.3703(a)(11) to directly track the relevant portion of Article 3.70-3C(3)(m) that refers to provider contracts.

§3.3703(a)(14), (a)(15), (a)(17) and (a)(18): A commenter believed that these paragraphs should be deleted because, while the statute addresses them, it does not specifically require that provisions concerning these matters be placed in a contract between an insurer and a provider.

Agency Response: The department disagrees. Article 3.70-3C and the rules implementing the statute set out the respective rights of insurers who are subject to Article 3.70-3C and the providers who contract with these insurers as preferred providers. Inclusion of these required terms in the contracts entered into between insurers and preferred providers ensures that both parties are aware of their respective rights and responsibilities under the statute and rules.

§3.3703(a)(16): A commenter believed there is no legislative requirement for this provision and it should be deleted.

Agency Response: The department disagrees. Article 21.53K applies to all insurers as defined in Article 3.70-3C. The department has the authority to require that all insurers contracting with providers under the article comply with Article 21.53K.

§3.3703(b): A commenter believed that this subsection is duplicative of the requirements of (3.3703(a) and should be deleted.

Agency Response: The department agrees and has deleted this subsection and renumbered the remaining subsections.

§3.3704(a)(6): A commenter suggested that this paragraph lacks statutory authority and proposes elimination of the term "basic level of benefits" as it is not mentioned in the statute. The commenter proposes that this paragraph read "the difference in coinsurance for services rendered by preferred provider and a nonpreferred provider cannot exceed 30 percent."

Agency Response: The department disagrees. Article 3.70-3C(2) states that the statute applies to any plan where the insurer provides for a level of coverage "which is different from the basic level of coverage provided by the health insurance policy if the insured uses a preferred provider." Article 3.70-3C(8)(a) requires insurers to ensure that "both preferred provider benefits and basic level benefits" are available to insureds within a service area. The department established by this rule, prior to the enactment of Senate Bill 383 by the 75th Legislature, that the differential between the basic level of benefits and benefits provided through preferred providers cannot exceed 30%. The purpose of the rule, as originally written, was to allow insureds to retain meaningful freedom of choice when selecting amongst health care providers. This portion of the rules is unaffected by the enactment of this legislation.

§3.3704(a)(7) and (a)(8): A commenter, believing there to be no statutory authority for these provisions, recommended deletion of paragraphs (a)(7) and (a)(8).

Agency Response: The department disagrees. Article 3.70-3C(3)(a) indicates that health insurance policies that include benefits that differ from the basic level of coverage are permitted only if the policies meet the requirements set forth in Article 3.70-3C(3). Otherwise, such polices could be considered unjust under Article 3.42, unfair discrimination under Articles 21.21-6 and 21.21-8, and in violation of Articles 3.70-2 and 21.52 of the Insurance Code. Article 3.70-3C(8) requires an insurer offering a benefit plan under Article 3.70-3C to ensure that both preferred provider benefits and basic level benefits are reasonably available to all insureds within a designated service area. These paragraphs implement these sections of Article 3.70-3C and ensure that insureds retain meaningful freedom of choice when selecting amongst health care providers.

§3.3704(a)(10): A commenter believed that out-of-network services create problem for patients regarding provider billing and suggests the following addition: "Nothing contained in this

section requires reimbursement based upon the billed charge of the provider."

Agency Response: The department disagrees that the suggested language is necessary but notes that the commenter is correct in that the rule does not require an insurer to reimburse a provider on any basis other than the benefits provided by the plan to the insured.

§3.3704(a)(11): A commenter suggested the term "referral" be defined and questions whether this provision authorizes a gatekeeper.

Agency Response: The department disagrees with the suggestion that "referral" requires definition. Nothing in the statute or rules authorizes the use of a "gatekeeper" in a preferred provider plan. Section 3.3704(a)(1) prohibits a preferred provider benefit plan from requiring that a service be rendered by a particular hospital, physician, or practitioner. "Referral" as used here has its commonly understood meaning whereby a physician or practitioner recognizes that another physician or practitioner should perform the type of treatment or services required by the insured.

§3.3704(b): A commenter interpreted this subsection to require insureds to comply with (3.3703(a)(11) with regard to nonpreferred providers. Section 3.3703(a)(11) states that the time period in which insurers must provide payment to preferred providers will be controlled by the terms of the contract or, if no such terms are specified, within 45 days of submission of the claim by the provider. Since nonpreferred providers have no contract with the insurer, the commenter believed that compliance with this rule would not be possible and the commenter suggested that it be deleted.

Agency Response: The department disagrees with the commenter's interpretation of this subsection. Section 3.3703 concerns terms that must be included in contracts between insurers and preferred providers. Section 3.3704 concerns issues affecting an insured's freedom of choice in selecting a provider. Subsection (b) requires an insurer to use the same diligence in responding to claims filed by nonpreferred providers as it uses in responding to claims filed by preferred providers. It should be noted that insurers must comply with all applicable laws and rules relating to payment of claims.

§3.3704(d): A commenter questioned the statutory authority for this subsection. The commenter also posed numerous questions about interpretation of the subsection.

Agency Response: The department notes that this provision has been in effect since June 4, 1986 (see current 28 TAC §3.3704(13)), well before the enactment of Article 3.70-3C by the 75th Legislature, and was not altered or amended by the changes under consideration at this time. The statutory authority for the provision was set forth at the time it was adopted in 1986. If the commenter is so inclined, the department believes that it would be more appropriate to address the various questions that the commenter has about interpretation of the provision in a meeting rather than attempt to address the questions in this adoption order, since the questions pertain to the adoption in 1986 and interpretation of the provision since that time. The commenter is encouraged to contact the department to set up a meeting to address its concerns.

§3.3705(b)(12): A commenter requested that paragraph (12) be deleted and that an insurer be required only to comply with §3.3705(f), which requires providing to an enrollee, upon request, only the most current list of preferred providers maintained by the insurer. The commenter also requested that the list required by §3.3705(b)(12) be limited to a specific service area.

Agency Response: The department disagrees. These two subsections serve two different purposes and both are required by law. Section 3.3705(b)(12) allows current and prospective contract holders and insureds to make meaningful comparisons among different health plans and enables them to make informed decisions in selecting a plan. Section 3.3705(f) allows insureds and prospective insureds to make informed decisions when selecting from among the various health care providers offering services as preferred providers under a specific plan. The information under §3.3705(b)(12) is to be provided only upon request. It is up to the requestor to specify the service area for which the information is being requested. Nothing in the rule prohibits an insurer from helping a requestor to narrow his or her request to a specific service area.

§3.3705(f): A commenter requested that this subsection be changed to permit an insurer to post this information electronically on the Internet rather than by publishing a directory and to allow an insurer to provide an annual update to its prior directory or to print an annual update and reprint its directory biannually. The commenter also questioned the source of authority for the requirement that an insurer file a copy of its directory with the department annually on June 1.

Agency Response: The department agrees that it would be useful for an insurer to post this information on the Internet. However, publication and distribution of a directory is required to ensure that enrollees and potential enrollees who do not have access to the Internet can obtain this information. The requirement that directories be updated annually and filed with the department on June 1st of each year was carried over from the original rules. In the November 15, 1995 Commissioner's Order adopting those rules, the department agreed with comments "that a complete provider list sent quarterly to all enrollees would be more costly than useful." The Order states that "In order to reduce costs, the agency has rewritten the subsection to require the list to be sent annually. Supplying insureds with an updated provider list annually plus providing a toll free number for insureds to call to obtain a current provider list should suffice." The department believes that the annual publication requirement for the provider list should be retained.

§3.3705(g): A commenter requested that this rule be changed to require that a toll free number be provided for use only during the insurer's regular business hours.

Agency Response: The department disagrees that such a change should be made. The forty-hour per week requirement was carried over from the existing rules. The department cannot control or define an insurer's regular business hours.

§3.3706(a): A commenter suggested that the rule be changed to state that required notice is adequate under the rules if it is published in a local newspaper.

Agency Response: The department disagrees. This subsection requires that notice of the opportunity to become a preferred provider be distributed by publication, which would include a local newspaper, or in writing. The purpose of the subsection is not to dictate how notice is conveyed to potential providers, but to ensure that all potential preferred providers are made

aware of the opportunity to become a preferred provider in a uniform manner.

§3.3706(b): A commenter stated that there is no statutory provision requiring a insurer to give reasons for denying a provider's request to become a preferred provider or to appeal such a denial. The commenter remarked that since an insurer could deny a request due to a sufficiency of current providers there was no need to allow an appeal. The commenter also suggested that the rule should be changed to allow an insurer to give "the specific reason(s)" for the denial rather than "reasons" and that the word "advisory" be added before the word "panel" throughout §3.3706(b).

Agency Response: The department disagrees with the commenter's first two assertions. The process set forth in this subsection is authorized by Article 3.70-3C(b)(1), which requires that all qualified providers be afforded a fair, reasonable, equivalent opportunity to become preferred providers and prohibits an insurer from unreasonably withholding designation as a preferred provider. The rules implement the statute by requiring the insurer to articulate a reason for the denial that indicates that designation as a preferred provider was not unreasonably denied. Another purpose for this requirement is to allow a physician or practitioner to decide whether to request a review. Article 3.70-3C(3)(b)(2) states that a physician or practitioner whose request to become a preferred provider is denied by an insurer must be provided with "a reasonable review mechanism that incorporates, in an advisory role only, a review panel." The statute does not withhold this requirement if the denial is based on sufficiency. Presumably, a provider notified that sufficiency was the reason for denial would not request a review. The department does agree with the commenter's suggestion about wording changes and has made them.

§3.3706(c): A commenter suggested changing "impairs" to "effectively impairs" and requests guidance as to what is meant by "imminent harm" and "effectively impairs." The commenter noted that it would seem that a license which has been revoked, probated, or suspended should automatically be deemed impaired and proposes the addition of a new paragraph (3): "In the event a physician or practitioner has their license to practice revoked, impaired, suspended, probated, are reprimanded, or involuntarily lose staff privileges, such action is or deemed to involve imminent harm to a patient."

Agency Response: The department declines to define these terms, as it would not be possible to delineate every action that a provider could commit which would constitute imminent harm or effective impairment for purposes of this rule. The department also declines to adopt the commenter's suggested language. The limitations spelled out in the suggested language, other than suspension of hospital privileges, are already covered in §3.3706(c)(2)(B), which states that a physician or practitioner need not be given an opportunity to appeal termination as a preferred provider in cases involving "an action by a state medical or other physician licensing board or other government agency which impairs the physician's or practitioner's ability to practice medicine or to provide services." The department does not believe that "involuntary suspension of hospital privileges" can be automatically assumed to constitute proof of impairment that would justify termination as a preferred provider without allowing the provider the opportunity to appeal the decision.

§3.3706(d) and (e): A commenter noted that the termination requirements in these subsections do not set forth an exception for voluntary withdrawal or termination by a provider, and suggested that appeal rights be specifically restricted in the rule to involuntary withdrawals and termination.

Agency Response: The department does not agree that this is necessary. Review is available to a physician or practitioner under §§3.3706(d) and 3.3706(e) only from notification of an insurer's decision to terminate the physician or practitioner.

Comment: A commenter requested guidance on expedited versus standard review.

Agency Response: Neither the statute nor the rules restrict a physician or practitioner's ability to seek expedited review. The rules place the burden upon the physician or practitioner requesting expedited review to provide the insurer, within ten business days of receipt of notification of termination from the insurer, any relevant documentation that the provider wishes the advisory review panel and insurer to consider. The department feels that the provider is in the best position to determine whether this requirement can be met.

§3.3706(f): A commenter stated that it can find no legislative enactment supporting this subsection regarding confidentiality and suggests that if the rule is designed to prevent a practitioner from learning about the complaint, this should be specifically stated.

Agency Response: The department believes that it addressed this matter in its preamble proposing these rules where it stated: "Subsection (f) of proposed §3.3706 requires an insurer to maintain confidentiality of patient identity and records involved in a review requested by a provider under this subsection. State law already mandates that an insurer maintain confidentiality of all patient identities and records. The new section clarifies that the already existing confidentiality requirements apply to the review processes as well." (Proposed Rules, January 8, 1999, Texas Register, 24 TexReg 234 at 235.)

§3.3706(g)(1): A commenter suggested that this rule be revised because it prohibits advance notice of termination until the actual date of termination even if all appeals available to the provider have been exhausted. The commenter believes this could cause an insured to be billed at a nonpreferred rate if the insured unknowingly continues to seek services from a provider who has been terminated as a preferred provider.

Agency Response: The department disagrees with the commenter's interpretation of paragraph (1). With the exception of providers who are not entitled to an appeal, a physician or practitioner who has been notified of an insurer's intention to terminate him or her but has not exhausted all appeals is still a preferred provider. An insurer could not charge an insured a nonpreferred rate unless the insured continued to seek services after being notified that the provider was no longer a preferred provider.

For, with changes: BlueCross BlueShield of Texas, Fortis Benefits Insurance Company, Office of Public Insurance Counsel, and Texas Association of Life Health Insurers.

The amendments and new sections are adopted under the Insurance Code, Chapter 3, Subchapter G, as enacted by the 75th Legislature in Senate Bill 383 and House Bill 2846, Chapter 21, Subchapter E, as amended by the 75th Legislature in Senate Bill 786, and Article 1.03A. Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans), Section 9, provides that the commissioner shall adopt rules and regulations as

necessary to implement the provisions of this article and to ensure reasonable accessibility and availability of preferred provider and basic level benefits to Texas citizens. Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules necessary for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

§3.3702. Definitions.

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

(1) Contract holder – An individual who holds an individual health insurance policy, or an organization which holds a group health insurance policy.

(2) Emergency care – As defined in Insurance Code Article 3.70-3C §1(1) (Preferred Provider Benefit Plans).

(3) Health care provider or provider – As defined in Insurance Code Article 3.70-3C §1(3) (Preferred Provider Benefit Plans).

(4) Health insurance policy – As defined in Insurance Code Article 3.70- 3C §1(2) (Preferred Provider Benefit Plans).

(5) Health Maintenance Organization (HMO) – As defined in Insurance Code Article 20A.02(n).

(6) Hospital – As defined in Insurance Code Article 3.70-3C §1(4) (Preferred Provider Benefit Plans).

(7) Institutional provider – As defined in Insurance Code Article 3.70-3C §1(5) (Preferred Provider Benefit Plans).

(8) Insurer – As defined in Insurance Code Article 3.70-3C §1(6) (Preferred Provider Benefit Plans).

(9) Physician – As defined in Insurance Code Article 3.70-3C §1(8) (Preferred Provider Benefit Plans).

(10) Practitioner – As defined in Insurance Code Article 3.70-3C §1(9) (Preferred Provider Benefit Plans).

(11) Preferred provider – As defined in Insurance Code Article 3.70-3C §1(1) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans).

(12) Preferred Provider Benefit Plan – As defined in Insurance Code Article 3.70-3C §1(2) (Use of Advanced Practice Nurses and Physician Assistants by Preferred Provider Plans).

(13) Prospective insured – As defined in Insurance Code Article 3.70-3C §1(11) (Preferred Provider Benefit Plans).

(14) Quality assessment – As defined in Insurance Code Article 3.70-3C §1(12) (Preferred Provider Benefit Plans).

(15) Service area – As defined in Insurance Code Article 3.70-3C §1(13) (Preferred Provider Benefit Plans).

(16) Utilization Review – As defined in Insurance Code Article 21.58A §2(20).

§3.3703. Contracting Requirements.

(a) An insurer marketing a preferred provider benefit plan must contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the plan in a manner that assures both availability and accessibility of adequate personnel, specialty care, and facilities. Each contract must meet the following requirements:

(1) A contract between a preferred provider and an insurer shall not restrict a physician or health care provider from contracting with other insurers, preferred provider plans, preferred provider organizations, or HMOs.

(2) Any term or condition limiting participation on the basis of quality, contained in a contract between a preferred provider and an insurer, shall be consistent with established standards of care for the profession.

(3) In the case of physicians or practitioners with hospital or institutional provider privileges who provide a significant portion of care in a hospital or institutional provider setting, a contract between a preferred provider and an insurer may contain terms and conditions which include the possession of practice privileges at preferred hospitals or institutions, except that if no preferred hospital or institution offers privileges to members of a class of physicians or practitioners, the contract may not provide that the lack of hospital or institutional provider privileges may be a basis for denial of participation as a preferred provider to such physicians or practitioners of that class.

(4) A contract between an insurer and a hospital or institutional provider shall not, as a condition of staff membership or privileges, require a physician or practitioner to enter into a preferred provider contract.

(5) A contract between a preferred provider and an insurer may provide that the preferred provider will not bill the insured for unnecessary care, if a physician or practitioner panel has determined the care was unnecessary, but the contract shall not require the preferred provider to pay hospital, institutional, laboratory, x-ray, or like charges resulting from the provision of services lawfully ordered by a physician or health care provider, even though such service may be determined to be unnecessary.

(6) A contract between a preferred provider and an insurer shall not:

(A) contain restrictions on the classes of physicians and practitioners who may refer an insured to another physician or practitioner; or

(B) require a referring physician or practitioner to bear the expenses of a referral for specialty care in or out of the preferred provider panel. Savings from cost-effective utilization of health services by contracting physicians or health care providers may be shared with physicians or health care providers in the aggregate.

(7) A contract between a preferred provider and an insurer shall not contain any financial incentives to a physician or a health care provider which act directly or indirectly as an inducement to limit medically necessary services. This subsection does not prohibit the savings from cost-effective utilization of health services by contracting physicians or health care providers from being shared with physicians or health care providers in the aggregate.

(8) A contract between a physician, physicians' group, or practitioner and an insurer shall have a mechanism for the resolution of complaints initiated by an insured, a physician, physicians' group, or practitioner which provides for reasonable due process including, in an advisory role only, a review panel selected by the manner set forth in subsection (b)(2) of §3.3706 of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(9) A contract between a preferred provider and an insurer shall not require any health care provider, physician, or physicians' group to execute hold harmless clauses that shift an insurer's tort liability resulting from acts or omissions of the insurer to the preferred provider.

(10) A contract between a preferred provider and an insurer shall require a preferred provider who is compensated by the insurer on a discounted fee basis to agree to bill the insured only on the discounted fee and not the full charge.

(11) A contract between a preferred provider and an insurer shall require payment to the provider for covered services that are rendered to insureds:

(A) within 45 calendar days after the date on which the claim for payment is received by the insurer with the documentation reasonably necessary to process the claim; or

(B) within a specified number of calendar days, which number has been agreed upon by the parties and included in the contract, after the date on which the claim for payment is received by the insurer with the documentation reasonably necessary to process the claim.

(12) A contract between a preferred provider and an insurer shall require the provider to comply with Insurance Code Article 3.70-3C §4 (Preferred Provider Benefit Plans), which relates to Continuity of Care.

(13) A contract between a preferred provider and an insurer shall not prohibit, penalize, permit retaliation against, or terminate the provider for communicating with any individual listed in Insurance Code Article 3.70-3C §7(c) (Preferred Provider Benefit Plans) about any of the matters set forth therein.

(14) A contract between a preferred provider and an insurer conducting, using, or relying upon economic profiling to terminate physicians or health care providers from a plan shall require the insurer to inform the provider of the insurer's obligation to comply with Insurance Code Article 3.70-3C §3(h) (Preferred Provider Benefit Plans).

(15) A contract between a preferred provider and an insurer that engages in quality assessment shall disclose in the contract all requirements of Insurance Code Article 3.70-3C §3(i) (Preferred Provider Benefit Plans).

(16) A contract between a preferred provider and an insurer shall not require a physician to issue an immunization or vaccination protocol for an immunization or vaccination to be administered to an insured by a pharmacist.

(17) A contract between a preferred provider and an insurer shall not prohibit a pharmacist from administering immunizations or vaccinations if such immunizations or vaccinations are administered in accordance with the Texas Pharmacy Act, Article 4542a-1, Texas Civil Statutes and rules promulgated thereunder.

(18) A contract between a preferred provider and an insurer shall require a provider that voluntarily terminates the contract to provide reasonable notice to the insured, and shall require the insurer to provide assistance to the provider as set forth in Insurance Code Article 3.70-3C §6(e)(2) (Preferred Provider Benefit Plans).

(19) A contract between a preferred provider and an insurer shall require written notice to the provider upon termination by the insurer, and in the case of termination of a physician or practitioner, the notice shall include the provider's right to request a review, as set forth in §3.3706(c) of this title (relating to Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process).

(b) In addition to all other contract rights, violations of these rules shall be treated for purposes of complaint and action in accordance with Insurance Code Article 21.21-2, and the provisions of that article shall be utilized insofar as practicable, as it relates to the power of the department, hearings, orders, enforcement, and penalties.

(c) An insurer may enter into an agreement with a preferred provider organization for the purpose of offering a network of preferred providers, provided that it remains the insurer's responsibility to:

(1) meet the requirements of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and this subchapter; or

(2) ensure that the requirements of Insurance Code Article 3.70-3C (Preferred Provider Benefit Plans) and this subchapter are met.

§3.3704. Freedom of Choice; Availability of Preferred Providers.

(a) A preferred provider benefit plan shall not be considered unjust under the Insurance Code Article 3.42, or unfair discrimination under the Insurance Code Articles 21.21-6 or 21.21-8, or to violate Articles 3.70-2(B) or 21.52 of the Insurance Code provided that:

(1) pursuant to the Insurance Code, Article 3.70-3C §3 (Preferred Provider Benefit Plans), Article 3.51-6, (3, and Article 3.70-3(A)(9), no preferred provider benefit plan may require that a service be rendered by a particular hospital, physician, or practitioner;

(2) insureds shall be provided with direct and reasonable access to all classes of physicians and practitioners licensed to treat illnesses or injuries and to provide services covered by the preferred provider benefit plan;

(3) insureds shall have the right to treatment and diagnostic techniques as prescribed by a physician or other health care provider included in the preferred provider benefit plan;

(4) insureds shall have the right to continuity of care as set forth in Article 3.70-3C, §4 (Preferred Provider Benefit Plans);

(5) insureds shall have the right to emergency care services as set forth in Article 3.70-3C, §5 (Preferred Provider Benefit Plans);

(6) the basic level of coverage, excluding a reasonable difference in deductibles, is not more than 30% less than the higher level of coverage. A reasonable difference in deductibles shall be determined considering the benefits of each individual policy;

(7) the rights of an insured to exercise full freedom of choice in the selection of a physician or provider are not restricted by the insurer;

(8) if the insurer is issuing other health insurance policies in the service area that do not provide for the use of preferred providers, the basic level of coverage must be reasonably consistent with such other health insurance policies offered by the insurer which do not provide for a different level of coverage for use of a preferred provider;

(9) any actions taken by an insurer engaged in utilization review under a preferred provider benefit plan shall be taken pursuant to Insurance Code Article 21.58A and Chapter 19, Subchapter R of this title (relating to Utilization Review Agents);

(10) if covered services are not available through preferred providers within the service area, nonpreferred providers shall be reimbursed at the same percentage level of reimbursement as preferred providers. Nothing in this section requires reimbursement at a preferred level of coverage solely because an insured resides out of the service area and chooses to receive services from providers other than preferred providers for the insured's own convenience;

(11) a preferred provider benefit plan may provide for a different level of coverage for use of a nonpreferred provider if the referral is made by a preferred provider, only if full disclosure of the difference is included in the plan and the written description as required by §3.3705(b) of this title (relating to Readability and Mandatory Disclosure Requirements); and

(12) both preferred provider benefits and basic level benefits are reasonably available to all insureds within a designated service area.

(b) Payment by the insurer shall be made for services of a nonpreferred provider in the same prompt and efficient manner as to a preferred provider.

(c) An insurer shall not engage in retaliatory action against an insured, including cancellation of or refusal to renew a policy, because the insured or a person acting on behalf of the insured has filed a complaint against the insurer or a preferred provider or has appealed a decision of the insurer.

(d) In addition to the requirements for availability of preferred providers set forth in Insurance Code Article 3.70-3C §8 (Preferred Provider Benefit Plans), any insurer offering a preferred provider benefit plan shall make a good faith effort to have a mix of for-profit, non-profit, and tax-supported institutional providers under contract as preferred providers in the service area to afford all insureds under such plan freedom of choice in the selection of institutional providers at which they will receive care, unless such a mix proves to be not feasible due to geographic, economic, or other operational factors. An insurer shall give special consideration to contracting with teaching hospitals and hospitals that provide indigent care or care for uninsured individuals as a significant percentage of their overall patient load.

§3.3706. Designation as a Preferred Provider, Decision to Withhold Designation, Termination of a Preferred Provider, Review of Process.

(a) Physicians, practitioners, institutional providers, and health care providers other than physicians, practitioners, and institutional providers, if such other health care providers are included by an insurer as preferred providers, licensed to treat injuries or illnesses or to provide services covered by the preferred provider benefit plan and that comply with the terms and conditions established by the insurer for designation as preferred providers, shall be eligible to apply for and be afforded a fair, reasonable and equitable opportunity to become preferred providers.

(1) An insurer initially sponsoring a preferred provider benefit plan shall notify all physicians and practitioners in the service area covered by the plan of its intent to offer the plan and of the opportunity to apply to participate.

(2) Subsequently, an insurer shall annually notify all noncontracting physicians and practitioners in the service area covered by the plan of the existence of the plan and the opportunity to apply to participate in the plan.

(3) An insurer shall, upon request, make available to any physician or provider information concerning the application process and qualification requirements, including the use of economic profiling by the insurer, used by the insurer to admit a provider to the plan.

(4) All notifications required to be made by an insurer pursuant to this subsection shall be made by publication or distributed in writing to each physician and practitioner in the same manner.

(b) Designation as a preferred provider shall not be unreasonably withheld provided that, unless otherwise limited by the Insurance Code or rule promulgated by the department, an insurer may reject an application from a physician or health care provider on the basis that the preferred provider benefit plan has sufficient qualified providers.

(1) An insurer shall provide written notice of denial of any initial application to a physician or health care provider, which includes:

(A) the specific reason(s) for the denial; and

(B) in the case of physicians and practitioners, the right to a review of the denial as set forth in paragraph (2) of this subsection.

(2) An insurer shall provide a reasonable review mechanism that incorporates, in an advisory role only, a review panel.

(A) The advisory review panel shall be composed of not less than three individuals selected by the insurer from the list of physicians or practitioners in the applicable service area contracting with the insurer.

(B) At least one of the three individuals on the advisory review panel shall be a physician or practitioner in the same or similar specialty as the physician or practitioner requesting review unless there is no physician or practitioner in the same or similar specialty contracting with the insured.

(C) The list of physicians or practitioners required by subparagraph (A) of this paragraph shall be provided to the insurer by the physicians or practitioners who contract with the insurer in the applicable service area.

(D) The recommendation of the advisory review panel shall be provided upon request to the affected physician or practitioner.

(E) In the event that the insurer makes a determination that is contrary to the recommendation of the advisory review panel, a written explanation of the insurer's determination shall be provided to the affected physician or practitioner upon request.

(c) Before terminating a contract with a preferred provider, the insurer shall provide written notice of termination, which includes:

(1) the specific reason(s) for the termination; and

(2) in the case of physicians or practitioners, notice of the right to request a review prior to termination conducted in the same manner as the review mechanism set forth in subsection (b)(2) of this section which includes the timelines set forth in subsections (d) and (e) for requesting review, except in cases involving:

(A) imminent harm to patient health;

(B) an action by a state medical or other physician licensing board or other government agency which impairs the physician's or practitioner's ability to practice medicine or to provide services; or

(C) fraud or malfeasance.

(d) To obtain a standard review of an insurer's decision to terminate him or her, a physician or practitioner shall:

(1) make a written request to the insurer for a review of that decision within ten business days of receipt of notification of the insurer's intent to terminate him or her; and

(2) deliver to the insurer, within 20 business days of receipt of notification of the insurer's intent to terminate him or her, any relevant documentation the physician or practitioner desires the advisory review panel and insurer to consider in the review process.

(3) The review process, including the recommendation of the advisory review panel and the insurer's determination as required by subsection (b)(2)(E) of this section, shall be completed and the results provided to the physician or practitioner within 60 calendar days of the insurer's receipt of the request for review.

(e) To obtain an expedited review of an insurer's decision to terminate him or her, a physician or practitioner shall:

(1) make a written request to the insurer for a review of that decision within five business days of receipt of notification of the insurer's intent to terminate him or her; and

(2) deliver to the insurer, within ten business days of receipt of notification of the insurer's intent to terminate him or her, any relevant documentation the physician or practitioner desires the advisory review panel and insurer to consider in the review process.

(3) The expedited review process, including the recommendation of the advisory review panel and the insurer's determination as required by subsection (b)(2)(E) of this section, shall be completed and the results provided to the physician or practitioner within 30 calendar days of the insurer's receipt of the request for review.

(f) Confidentiality of information concerning the insured.

(1) An insurer shall preserve the confidentiality of individual medical records and personal information used in its termination review process. Personal information shall include, at a minimum, name, address, telephone number, social security number and financial information.

(2) An insurer may not disclose or publish individual medical records or other confidential information about an insured without the prior written consent of the insured or unless otherwise required by law. An insurer may provide confidential information to the advisory review panel for the sole purpose of performing its advisory review function. Information provided to the advisory review panel shall remain confidential.

(g) Notice to insureds.

(1) If a physician or practitioner is terminated for reasons other than at the preferred provider's request, an insurer shall not notify insureds of the termination until the effective date of the termination or at such time as an advisory review panel makes a formal recommendation regarding the termination, whichever is later.

(2) If a physician or provider voluntarily terminates the physician's or provider's relationship with an insurer, the insurer shall provide assistance to the physician or provider in assuring that the notice requirements are met as required by §3.3703(a)(18) of this title (relating to Contracting Requirements).

(3) If a physician or practitioner is terminated for reasons related to imminent harm, an insurer may notify insureds immediately.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 1999.

TRD-9903795
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 15, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 463-6327

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28 TAC §3.3705

The Commissioner of Insurance adopts the repeal of §3.3705 (relating to Procedure to Assure Adequate Treatment). The repeal is adopted without change to the proposal as published in the January 8, 1999 issue of the *Texas Register* (24 TexReg 233). Contemporaneously with this repeal, the adoption of amendments to §§3.3701-3.704 and new §§3.3705 and 3.3706 are published elsewhere in this issue of the Texas Register.

The repeal is necessary so that new §§3.3705 and 3.3706 may be adopted to implement legislation from the 75th Legislative Session in Senate Bill 383.

Amendments to §3.3703 capture provisions relating to contract requirements between the insurer and a preferred provider and new §3.3706 capture provisions relating to termination that were included in §3.3705 which is now repealed.

No comments were received.

Repeal of §3.3705 is adopted pursuant to Insurance Code, Chapter 3, Subchapter G, as enacted by the 75th Legislature in Senate Bill 383 and Insurance Code, Article 1.03A. The Texas Insurance Code, Article 3.70-3C (Preferred Provider Benefit Plans), Section 9, provides that the commissioner shall adopt rules and regulations as necessary to implement the provisions of the article and to ensure reasonable assessibility and availability of preferred provider and basic level benefits to Texas citizens. Insurance Code Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only 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 June 25, 1999.

TRD-9903794
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 15, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 463-6327

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Chapter 34. State Fire Marshal

Subchapter F. Fire Alarm Rules

28 TAC §§34.606–34.609, 34.613–34.615, 34.623

The Commissioner of Insurance adopts amendments to Subchapter F, concerning fire alarm rules, by amending §§34.606-

34.609, 34.613-34.615, and 34.623. Section 34.607 is adopted with changes to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3680). Sections 34.606, 34.608, 34.609, 34.613, 34.614, 34.615 and 34.623 are adopted without changes and will not be republished.

The adopted amendments are necessary, in part, to implement legislation enacted by the 75th Legislature in Senate Bill 371. Senate Bill 371, in part, transferred the operations of the state fire marshal and all of the powers, duties, rights, obligations, contracts, records, personnel, property, funds, and unspent appropriations of the Texas Commission on Fire Protection with respect to the administration of Article 5.43-2 of the Insurance Code from the Texas Commission on Fire Protection to the Texas Department of Insurance, effective September 1, 1997. In accord with the administration of Article 5.43-2 of the Insurance Code, the adopted amendments also update the minimum standards and recommendations of the National Fire Protection Association and Underwriters Laboratories, which are adopted by reference. The adopted amendments also provide for a new certificate of registration for single station fire alarm companies and establish the registration and renewal fees for those companies. The adopted amendments also set forth the limit of the number of times a license applicant may schedule the required examination within a 12-month period. A change was made in punctuation to §34.607(a)(17).

The Texas Department of Insurance now regulates fire detection and alarm devices; accordingly, §§34.606, 34.607, 34.608, 34.609, 34.613, 34.614, 34.615 and 34.623, which refer to the Texas Commission on Fire Protection, are amended to reflect the transfer of authority from that agency to the Commissioner of Insurance. Section 34.606 has also been reformatted to number the definitions contained in that section and to delete definitions that are already defined by statute. Section 34.607, which adopts by reference minimum standards and recommendations of the National Fire Protection Association and Underwriters Laboratories, is amended by replacing some of the currently adopted standards and recommendations by the most recent versions of those standards and recommendations. The adoption of the most recent standards and recommendations is necessary because as the technology for fire detection and alarm devices develops, the minimum standards of design and performance also change. This results in better protection of the public from fire by the application of the most recent standards and recommendations to fire detection and alarm devices. Additionally, other units of government in Texas are adopting these standards, and uniformity of standards enables both the fire alarm industry and the public to know what standards are applicable in all jurisdictions. The changes to the standards were made to clarify existing requirements, eliminate redundant language, restructure the document for ease in use, mandate existing current installation practices, encourage competent system design, adapt existing requirements to current state-of-the-art equipment, and add installation requirements to provide a greater level of safety to the public that rely on the performance of fire alarm and detection systems. Changes were made concerning the resounding of trouble signals, separate annunciation of areas of refuge, control and listing of alarm software and firmware, providing an additional firefighter warning circuit in elevators, providing separate control units for suppression systems, restricting control of subscriber phone lines used for monitoring, providing emergency lighting for proprietary supervising stations, placement of smoke detectors in beam and solid joist construction, spacing of detectors used for smoke control, providing remote indicators for duct detectors in concealed spaces, resolving conflicts with the requirements of the Americans with Disabilities Act pertaining to the use and placement of notification devices, limiting sound levels for audible devices, requirements for reacceptance testing, guidance when performing sensitivity tests on unmarked detectors, limiting the use of certain types of wires for fire alarm systems and requiring a new circuit integrity rating to be marked on certain fire alarm wire. The department has filed a copy of these revised standards and recommendations with the Secretary of State's Texas Register Section. In addition, the adopted amendment to §34.613 provides for a new certificate of registration for single station fire alarm companies. The adopted amendments to §34.614 establish the registration and renewal fees for those companies. In addition, §34.615 is amended to limit the number of times a license applicant may schedule the required examination to three within a 12-month period.

No comments were received regarding adoption of these amendments.

The amendments are adopted pursuant to the Insurance Code Articles 5.43-2 and 1.03A. Section 6 of Article 5.43-2 provides that the Commissioner of Insurance may adopt rules necessary to the administration of this article. The rules may establish specialized licenses and certificates of registration for organizations or persons engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring or maintaining fire alarm or fire detection devices or systems. Section 6 also provides that the commissioner shall adopt standards applicable to any fire alarm device, equipment, or system regulated by the article. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

§34.607. Adopted Standards.

(a) The commissioner adopts by reference those sections of the following copyrighted minimum standards, recommendations, and appendices concerning fire alarm, fire detection, or supervisory services or systems, except to the extent they are at variance to sections of this chapter, the Texas Insurance Code, Article 5.43-2, or other state statutes. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

(1) NFPA 11-1998, Standard for Low-Expansion Foam.

(2) NFPA 11A-1994, Standard for Medium- and High-Expansion Foam Systems.

(3) NFPA 12-1998, Standard on Carbon Dioxide Extinguishing Systems.

(4) NFPA 12A-1997, Standard on Halon 1301 Fire Extinguishing Systems.

(5) NFPA 13-1996, Standard for the Installation of Sprinkler Systems.

(6) NFPA 13D-1996, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.

(7) NFPA 13R-1996, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.

(8) NFPA 15-1996, Standard for Water Spray Fixed Systems for Fire Protection.

(9) NFPA 16-1995, Standard for the Installation of Deluge Foam-Water Sprinkler and Foam Water Spray Systems.

(10) NFPA 17-1998, Standard for Dry Chemical Extinguishing Systems.

(11) NFPA 17A-1998, Standard for Wet Chemical Extinguishing Systems.

(12) NFPA 25-1998, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems.

(13) NFPA 70-1999, National Electrical Code.

(14) NFPA 72-1996, National Fire Alarm Code.

(15) NFPA 90A-1996, Standard for the Installation of Air Conditioning and Ventilating Systems.

(16) NFPA 101-1997, and later editions, Code for Safety to Life from Fire in Buildings and Structures (Life Safety Code), or a local jurisdiction may adopt one set of the model codes listed in subsection (b) of this section in lieu of NFPA 101.

(17) UL 827 October 1, 1996, Standard for Central Station Alarm Services.

(b) (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 June 24, 1999.

TRD-9903764
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: July 14, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 463–6327

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TITLE 34. PUBLIC FINANCE

Part V. Texas County and District Retirement System

Chapter 103. Calculations or Types of Benefits

34 TAC §103.7

The Texas County and District Retirement System adopts an amendment to §103.7, concerning the determination of the amount of reestablished credit in the retirement system following the redeposit of amounts previously withdrawn by the member. The amendment is adopted without changes to the proposed text as published in the May 14, 1999, issue of the *Texas Register* (24TexReg3686). The amendment excludes repayments of amounts transferred from a local pension system and the accumulated interest earned by such amounts in the computation for determining the amount of reestablished credit. Including such amounts in the computation could produce a greater benefit than would be produced if the member's credit had never been canceled. These excluded amounts will be credited to the redepositing member's individual account but will have no effect on the computation of the member's reestablished current service credit or multiple matching credit, unless a merger agreement provides otherwise.

No comments were received from the public regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 845, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §843.403, is affected by this amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903815
Terry Horton
Director
Texas County and District Retirement System
Effective date: July 18, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 328–8889

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 104. Informal Appeals, Formal Appeals, and Mediation by Applicants/Clients of Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services

40 TAC §104.6

The Texas Rehabilitation Commission (TRC) adopts an amendment to §104.6, concerning Motion for Reconsideration, without changes to the proposed text as published in the May 28, 1999, issue of the *Texas Register* (24 TexReg 3991). The text will not be republished.

The section is being amended to provide more time for filing appeals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903809

Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: July 18, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 424–4050

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Chapter 117. Special Rules and Policies

40 TAC §117.3

The Texas Rehabilitation Commission (TRC) adopts an amendment to §117.3, concerning Board Policies, without changes to the proposed text as published in the May 28, 1999, issue of the *Texas Register* (24 TexReg 3991). The text will not be republished.

The section is being amended to update board policies.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903810
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Effective date: July 18, 1999
Proposal publication date: May 28, 1999
For further information, please call: (512) 424–4050

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Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter R. Cost-Finding Methodology for 24-Hour Child-Care Facilities

40 TAC §700.1802

The Texas Department of Protective and Regulatory Services (TDPRS) adopts an amendment to §700.1802, with changes to the proposed text published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3696).

Rules for the cost-finding methodology for 24-hour child care facilities currently include therapy costs in its recommended payment rates for Levels of Care 3 through 6. The justification for the amendment is to require contractors to access Medicaid for Medicaid-allowable therapy with certain exceptions. The current payment rate for Levels of Care 3 through 6 will not change as a result of this rule change.

The amendment will function by providing children in TDPRS conservatorship who reside in TDPRS contracted 24-hour child care facilities access to an additional resource for therapy services.

During the public comment period, TDPRS received comments from the Texas Association of Licensed Children's Services, The Settlement Home, and Roy Maas' Youth Alternatives, Inc. A summary of the comments and TDPRS's responses follow:

Comment: Two commenters sought clarification on the proposed rule and how it would relate to therapists who have their temporary licensure as professional counselors while working towards full licensure. While these therapists cannot enroll as a Medicaid provider, they have been considered by TDPRS as appropriately qualified to provide therapy.

Response: TDPRS follows policy of the Texas State Board of Examiners of Professional Counselors, which recognizes Licensed Professional Counselor (LPC) interns holding a temporary license as qualified to provide therapy. As this therapy is not a service allowable under Medicaid, it meets the second exception in the proposed rule and therefore would be considered as an allowable cost on the annual cost report.

Comment: A commenter suggested a language change for the second exception to "the necessary therapy is not a service allowable under Medicaid."

Response: TDPRS agrees with the suggested change. This change in the wording clarifies that there may be instances where a service is allowable under Medicaid (therapy provided by an LPC) but is not reimbursable because the provider cannot enroll in Medicaid (LPC intern with a temporary license) and that when that service is provided by a LPC intern with a temporary license, the service is not "allowable" under Medicaid.

Comment: Two commenters requested a longer transition period from a non-Medicaid provider to a Medicaid provider prior to requesting TDPRS approval beyond this allowable time period. It was felt that this longer period would allow new therapists to begin seeing their caseload immediately rather than using an interim therapist who is Medicaid enrolled, and would allow time for the new therapist to become Medicaid enrolled. One commenter suggested a language change for the fifth exception to change the transition period in the proposed rule from "six weeks or six sessions" to "90 days or 14 sessions."

Response: In the fifth exception, TDPRS agrees to remove the "six weeks or six sessions" and replace it with "90 days or 14 sessions." Services provided by the new staff member up to the "90 days or 14 sessions" may be included on the annual cost report.

Comment: A commenter expressed concern that in complying with the proposed rule, the facility will have additional administrative costs and has suggested that these costs be allowable as part of allowable administrative costs for rate setting purposes.

Response: Medicaid administrative costs are included in the Medicaid payment. Therefore, Medicaid administrative costs will not be considered allowable for cost reporting purposes. Administrative costs associated with complying with the exceptions to the rule will be allowable for cost reporting purposes. These costs, along with other increasing administrative costs, have caused TDPRS to raise the benchmark used for analysis from 20% to 25%.

Comment: A commenter expressed concern about the Medicaid requirement for prior approval beyond an initial 30-encounter threshold. The commenter would like assurances that Medicaid will grant extensions beyond the initial 30 encounters.

Response: By accessing Medicaid for Medicaid allowable therapy, an additional resource will be available for providing therapy. The established extension process should be followed, and if denied, the necessary therapy that is not Medicaid allowable will continue to be an allowable cost for inclusion on the annual cost report.

Comment: A commenter expressed a need for TDPRS to initiate a committee consisting of providers and Medicaid and TDPRS staff to address provider problems under this new system as they arise, such as rejection of extensions.

Response: TDPRS has established specific contact persons at TDPRS, the Texas Department of Health, the Texas Health and Human Services Commission, and the National Heritage Insurance Company to facilitate resolution of enrollment and claiming problems.

Comment: One commenter asked who at TDPRS will provide the approval for exceptions to the provisions.

Response: The Child Protective Services (CPS) Program Directors will provide approvals for the fifth exception. The first through fourth exceptions will not require approval.

Comment: One commenter asked for clarification between what therapists are appropriate as part of the level-of-care reviews and which of these costs are allowable for inclusion in the annual cost report.

Response: TDPRS will include this requested information in a packet to be sent to 24-hour child-care contractors by November 1, 1999.

Comment: One commenter expressed concern that Medicaid policy could change which would adversely affect children, such as limitation on providers, a limitation on services authorized, etc.

Response: Access to Medicaid is being developed as an additional resource for what otherwise are allowable costs on the annual cost report. Any Medicaid restriction is only a restriction on what can be billed to Medicaid. Reimbursement for allowable costs through the annual cost reporting process will continue as in the past.

Comment: One commenter suggested a language change for the first exception to "the child is not eligible for Medicaid or not enrolled with fee-for-service Medicaid coverage." The commenter believes that this wording change will fill any gaps in the system of care and providers enrolling in Medicaid.

Response: TDPRS agrees that Medicaid service coordination is complicated when a child has Medicaid under a Managed Care program and then comes into TDPRS care under the fee-for-service system. TDPRS will not use the commenter's wording but will make a similar wording change to the first exception which will read: "the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee-for-service Medicaid." TDPRS believes that this change in wording will assist with the transition in systems of care and support providers enrolling in Medicaid.

Comment: Two commenters requested the postponement of the implementation date for this rule change, one to November 1, 1999, and one to January 1, 2000.

Response: TDPRS will postpone the implementation date for this rule change to November 1, 1999, to allow additional time for provider enrollment.

In addition to the above changes, TDPRS has reorganized and renumbered the wording in paragraph (9) for clarification.

The amendment is adopted under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services, specifically §40.029 granting rulemaking authority to TDPRS, §40.052 regarding delivery of services, §40.0563 relating to the use of federal funds, and §40.058 relating to contracts and agreements.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.1802. Cost-finding Analysis.

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

(c) To develop rate recommendations for Board consideration for Levels of Care 2 through 6 and emergency shelters, TDPRS analyzes the information submitted in provider cost reports and related documentation in the following ways.

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

(9) TDPRS includes therapy costs in its recommended payment rates for emergency shelters. TDPRS includes therapy costs in its recommended payment rates for Levels of Care 3 through 6, which will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions apply. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed care to fee-for-service Medicaid; or

(B) the necessary therapy is not a service allowable under Medicaid; or

(C) service limits have been exhausted and the provider has been denied an extension; or

(D) there are no Medicaid providers available that meet the needs identified in the service plan within 45 miles to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transitional period of time not to exceed 90 days or 14 sessions. Any exception beyond the 90 days or 14 sessions must be approved by TDPRS prior to the provision of services.

(10)-(17) (No change.)

(d) (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 June 28, 1999.

TRD-9903833
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: November 11, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 438-3765

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Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §725.2024 and §725.3044, without changes to the proposed text published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3697).

The justification for the amendment to §725.2024 is to clarify procedures for requesting administrative reviews of actions or decisions made by Licensing staff. The justification for the amendment to §725.3044 is to clarify which facilities are exempt from application fees and licensing fees and eliminate inconsistencies regarding timeframes for notifying applicants regarding the acceptance of their applications.

The amendments will function by (1) clarifying which facilities are exempt from application and license fees, (2) clarifying the procedures for accepting applications, and (3) eliminating inconsistencies in timeframes for requesting administrative reviews.

No comments were received regarding adoption of the amendments.

Subchapter U. Day Care Licensing Procedures

40 TAC §725.2024

The amendment is adopted under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001- 42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903834
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: August 1, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 438-3765

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Subchapter EE. Agency and Institutional Licensing Procedures

40 TAC §725.3044

The amendment is adopted under the Human Resources Code (HRC), Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001-42.077.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903835
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Effective date: August 1, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 438-3765

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 11. Design

Subchapter E. Statewide Transportation Enhancement Program

43 TAC §11.202

The Texas Department of Transportation adopts an amendment to §11.202, concerning project eligibility for the Statewide Transportation Enhancement Program. The amendment is adopted without changes to the proposed text as published in the April 9, 1999 issue of the *Texas Register* (24 TexReg 2868) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENT

Section 11.202 is amended to remove the wording that a project must have a "direct" relation of function or impact to the surface transportation system. The word "direct" has been removed so that the wording of the rule closely follows the wording of the new federal surface transportation authorization bill, Transportation Equity Act for the 21st Century (TEA 21). However, the direct relation to the transportation system is still required under federal guidance (Letter of Anthony Kane, Associate Administrator for Program Development, U.S. Department of Transportation, Federal Highway Administration (FHWA), dated April 24, 1992). This amendment will not result in any program changes at this time. The department deems it prudent to remove the word "direct" in anticipation that FHWA's guidance may change under TEA 21.

COMMENTS

No comments were received on the proposed amendment.

STATUTORY AUTHORITY

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903820
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: July 18, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 463-8630

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Chapter 25. Traffic Operations

Subchapter A. General

43 TAC §25.2

The Texas Department of Transportation adopts the repeal of §25.2, concerning freeway corridor management systems. The repeal is adopted without changes to the text as proposed by publication in the April 9, 1999 issue of the *Texas Register* (24 TexReg 2868).

EXPLANATION OF ADOPTED REPEAL

Section 25.2 contains guidelines for the development of freeway corridor management systems in coordination with local government entities such as municipalities, counties, and transit authorities. The section describes each participant's responsibility in the development, operations, and funding of each system.

Since this section was initially developed, many legal, programmatical, and institutional changes have taken place in the field of traffic management. Participant responsibilities for the development, operation, and funding of these systems between the Texas Department of Transportation and local entities are typically handled on a case by case basis. In addition, the department has existing rules §§15.50-15.56, concerning Federal, State, and Local Participation, that detail local cost participation and which allow the department to enter into mutually acceptable agreements with local governments for the development of transportation projects.

COMMENTS

No comments were received on the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903821
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: July 18, 1999
Proposal publication date: April 9, 1999
For further information, please call: (512) 463-8630

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Chapter 28. Oversize and Overweight Vehicles and Loads

Subchapter B. General Permits

43 TAC §28.12

The Texas Department of Transportation adopts amendments to §28.12, concerning Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D. The amendments are adopted without changes to the text as proposed by publication in the May 14, 1999 issue of the *Texas Register* (24 TexReg 3698), and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department received a comment during the rule review of Chapter 28 asking that the department consider a rule change concerning the overall width limits for newly constructed houses and storage tanks. The commenter requested that the maximum width be increased from 32 feet to 34 feet. Currently, §28.12(d)(5) states that a permit will not be issued for newly constructed houses or storage tanks that exceed 32 feet overall width. The State of Oklahoma implemented similar legislation in 1991, which allows for the permitted movement of industrialized housing that is 34 feet overall in width.

The amendment to increase the overall width of a newly constructed house or storage tank from 32 feet to 34 feet should pose no additional risk to the traveling public as these loads are traveling on pre-authorized routes and have both front and rear escorts.

COMMENTS

No comments were received on the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 623, which authorizes the department to carry out the provisions of those laws governing the issuance of oversize/overweight permits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 1999.

TRD-9903822
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: July 18, 1999
Proposal publication date: May 14, 1999
For further information, please call: (512) 463-8630

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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.

Amended Agency Rule Review Plan

Texas State Board of Pharmacy

Title 22, Part XV

Filed: June 24, 1999

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Proposed Rule Review

Texas Health Care Information Council

Title 25, Part XVI

The Texas Health Care Information Council (Council) proposes to review Title 25, Part XVI, Chapter 1301, Subchapter A, concerning Hospital Discharge Data as required by the General Appropriations Act, Article IX, Section 167, 75th Legislature. This section requires an agency's review, at a minimum, to assess whether the reasons for adopting or readopting rules that became final prior to September 1, 1997 still exist.

The Council has reviewed the rules in Subchapter A and determined that the reasons for their adoption continue to exist. The rules relate to the methods hospitals are to utilize in reporting discharge data to the Council, to the data elements to be reported, to the Council's discharge data collection and storage procedures, and to procedures for accessing the data. The Council is required by its enabling legislation to continue collecting discharge data from hospitals that are not exempted from reporting.

Comments on the review must be submitted in writing no later than 5:00 p.m. on September 15, 1999 to Dr. Bruce Burns, Texas Health Care Information Council, 4900 North Lamar, OOL-3407, Austin, TX 78751-2399. Comments may be submitted electronically to Dr. Burns at bburns@thcic.state.tx.us.

TRD-9903878
Jim Loyd
Executive Director
Texas Health Care Information Council
Filed: June 29, 1999

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Adopted Rule Reviews

Texas Department of Banking

Title 7, Part I

The Finance Commission of Texas, on behalf of the Texas Department of Banking (department), has completed the review of Texas Administrative Code, Title 7, Chapter 15, Subchapters A and B, comprised of §§15.1-15.8, regarding Fees and General Requirements with Respect to Corporate Filings, §15.23, regarding Interim Bank Charters, and §15.24, regarding Withholding the Identity of Prospective Officers, as noticed in the April 9, 1999, issue of the *Texas Register* (24 TexReg 2955). One internal comment was received with respect to these Subchapters, that the reference in these rules to trust companies should be deleted now that rules specific to trust companies have been adopted as 7 TAC Chapter 21. While the department concurs, additional amendments to these rules will also be necessary to conform them to 1999 interstate banking and branching legislation, Act approved May 29, 1999 (House Bill 2066), 76th Legislature, Articles 1-7, effective September 1, 1999. The suggested change will be proposed as part of a general revision later this year.

The finance commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, Section 167, and finds that the reason for adopting these rules continues to exist. The rules were substantially rewritten and revised effective March 1, 1996, to be in accordance with the recently enacted Texas Banking Act. Everette D. Jobe Certifying Official Finance Commission of Texas

TRD-9903797
Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: June 25, 1999

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Comptroller of Public Accounts

Title 34, Part I

The Comptroller of Public Accounts readopts, without changes, all sections of Texas Administrative Code, Title 34, Part I, Chapter 3, Subchapter D (relating to Occupation Tax on Sulphur Producers), Subchapter F (relating to Motor Vehicle Sales Tax), Subchapter I (relating to Miscellaneous Occupation Taxes), Subchapter J (relating

to Petroleum Products Delivery Fee), Subchapter T (relating to Manufactured Housing Sales and Use Tax), and Subchapter Z (relating to Coastal Protection Fee). The review was conducted in accordance with Article IX, Section 167, of H. B. 1, 75th Texas Legislature.

The proposed rule review was published in the May 7, 1999, issue of the Texas Register (24 TexReg 3545). No comments were received concerning the readoption of these sections. The Comptroller has reviewed these sections, and determined that the reasons for adopting the sections continues to exist. Martin Cherry Special Counsel Comptroller of Public Accounts

TRD-9903823
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Filed: June 28, 1999

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Texas Department of Health

Title 25, Part I

The Texas Department of Health (department) readopts Title 25, Texas Administrative Code, Part I, Chapter 229, Food and Drug, Subchapter J. Minimum Standards for Narcotic Treatment Programs, §§229.141 - 229.152, without any change. The Notice of Intention to Review was published in the September 4, 1998, issue of the *Texas Register* (23 TR 9078). There were no comments received for any of the sections due to the publication of the Notice of Intention to Review.

These sections have been reviewed in accordance with the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, which requires that each state agency review and consider for readoption each rule adopted by that agency. The department has determined that reasons for readopting the sections continue to exist.

TRD-9903845
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 28, 1999

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Texas State Board of Pharmacy

Title 22, Part XV

The Texas State Board of Pharmacy adopts the review of Chapter 291 (§§291.1-291.23) concerning All Classes of Pharmacies, in accordance with the Appropriations Act, Section 167. The proposed rule review was published in the March 19, 1999, issue of the *Texas Register* (24 Tex Reg 2032). In conjunction with this review, the agency is adopting amendments to §§291.7, 291.8, 291.10, and 291.17 published elsewhere in this issue of the *Texas Register*.

The agency finds that the reason for adopting the rule continues to exist. No comments were received regarding adoption of the review.

TRD-9903773
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: June 24, 1999

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Texas Department of Transportation

Title 43, Part I

The Texas Department of Transportation readopts without changes Title 43, TAC, Part I, Chapter 4 (Employment Practices). This review was conducted in accordance with the General Appropriations Act of 1997, House Bill 1, Article IX, §167.

The proposed rule review was published in the May 14, 1999, issue of the *Texas Register* (24 TexReg 3758). No comments were received regarding the readoption of this chapter. The Commission has reviewed the rules in this chapter, and determined that the reasons for adopting this chapter continue to exist.

TRD-9903813
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 28, 1999

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as “Figure 1” followed by the TAC citation, “Figure 2” followed by the TAC citation.

Figure: 7 TAC §3.37

First determine the bank's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group			
1	For assessable assets of at least (in thousands)	$0	$10,000	$25,000	$40,000
	But not greater than (in thousands)	$10,000	$25,000	$40,000	$70,000
2	Take the total assessable assets over (in thousands)	$0	$10,000	$25,000	$40,000
3	And multiply by this factor:	0.705	0.332	0.158	0.155
4	Add this result to the base assessment amount of:	$1,250	$8,300	$13,280	$15,650
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	(As Per Policy Memorandum 1003)			
	6-month frequency	200%	200%	200%	200%
	12-month frequency	100%	100%	100%	100%
	18-month frequency	87.5%	87.5%	87.5%	87.5%
Steps	Assessment Calculation:	Assessable Asset Group			
1	For assessable assets of at least (in thousands)	$70,000	$100,000	$250,000	$1,000,000
	But not greater than (in thousands)	$100,000	$250,000	$1,000,000	----
2	Take the total assessable assets over (in thousands)	$70,000	$100,000	$250,000	$1,000,000
3	And multiply by this factor:	0.150	0.092	0.062	0.060
4	Add this result to the base assessment Amount of:	$20,300	$24,800	$38,600	$85,100
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	(As Per Policy Memorandum 1003)			
	6-month frequency	200%	200%	200%	200%
	12-month frequency	100%	100%	100%	100%
	18-month frequency	87.5%	87.5%	NA	NA

Figure: 7 TAC §3.38

First determine the bank's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group		
1	For assessable assets of at least (in thousands)	$0	$70,000	$250,000
	But not greater than (in thousands)	$70,000	$250,000	-----
2	Take the total assessable assets over (in thousands)	$0	$70,000	$250,000
3	And multiply by this factor:	0.00	0.05	0.01
4	For the assessment, add this result to the base assessment amount of:	$10,000	$10,000	$19,000

Figure: 16 TAC §9.15(d)[(e)]

§9.15 REGISTRATION AND TRANSFER OF LP-GAS TRANSPORTS OR CONTAINER DELIVERY UNIT
TABLE 1

Requirements for Indicated Units	Initial Registration for Previously Unregistered Units	Transfer of Units Currently Registered	Registration of Expired Specification Units
1. Pay $270 Registration Fee: Bobtail truck, semitrailer, container delivery unit, or other motor vehicle equipped with LP-gas cargo tanks	*		*
2. File LPG Form 7	*	*	*
3. A. File copy of DOT certification issued by manufacturer and/or subframer who prepared unit for road use	*		
B. File copy of DOT certification issued by manufacturer and/or subframer who prepared unit for road use or other documentation indicating that the unit was built in accordance with DOT MC-330/MC-331 code	*		*
4. If unit tested in previous 5 years (§9.1753), file copy of test results and/or LPG Form 8 from a DOT-approved testing facility (include DOT Registration number)	*		*
5. Pay $100 Transfer Fee per Unit (regardless of size)		*	

Figure: 16 TAC §13.69

§13.69. Registration of CNG Transports
Table 1

Requirement	Initial Registration for Units Not Previously Registered	Transfer of Units Currently Registered	Registration of Unit with Expired Registration
File CNG Form 1007	*	*	*
Pay $270 annual registration fee: transport truck, semitrailer, cylinder delivery unit, or other motor vehicle equipped with CNG cargo tank	*		*
Pay $100 transfer fee		*	
File copy of DOT certification issued by manufacturer or subframer who prepared unit for road use	*		
File CNG Form 1005, Manufacturer's Data Report, upon commission request	*	*	*

Figure: 16 TAC §13.70(a)(1)

§13.70. Examination and Other Requirements for Licenses by Category
Table 1

	License Categories					
	1	2	3	4	5	6
Employee Level Exams Offered:						
1. Company Representative Management Exam	*	*	*	*	*	*
2. Operations Supervisor (Branch Manager) Management Exam	*	*	*	*	*	*
3. Employee - CNG Service and Installation Exam	*	*				
4. Employee - CNG DOT Cylinder Filling Exam			*		*	
5. Employee - CNG Transport Driver/Service and Installation, including CNG DOT Cylinder Filling Exam, or Ultimate Consumer (any ultimate consumer who has purchased, leased, or obtained other rights in any vessel defined as a CNG transport, and any employee of the ultimate consumer who drives or in any way operates a CNG transport must pass the CNG transport driver/service and installation, including the DOT cylinder filling, examination)		*	*		*	
6. File CNG Form 1016	*	*	*	*	*	*
7. Employee - Pay $20 Annual Renewal Fee on or before May 31 each year	*	*	*	*	*	*
8. File CNG Form 1016B (applies to the installation, service, or repair of CNG systems and the installation of CNG cylinders, excluding the installation, service, or repair of CNG carburetion equipment for the categories marked)	*	*				

Figure: 16 TAC §13.2704(a)

§13.2704. Registration of LNG Transports
Table 1

Requirement	Initial Registration for Units Not Previously Registered	Transfer of Units Currently Registered	Registration of Unit with Expired Registration
File LNG Form 2007	*	*	*
Pay $270 annual registration fee: transport truck, semitrailer, container delivery unit, or other motor vehicle equipped with LNG cargo tank	*		*
Pay $100 transfer fee		*	
File copy of DOT certification issued by manufacturer or subframer who prepared unit for road use	*		
File LNG Form 2005, Manufacturer's Data Report, upon commission request	*	*	*

Figure: 16 TAC 401.309(a)(2)

Texas Lottery Commission
REQUEST TO ASSIGN SPECIFIC INSTALLMENT PAYMENTS

NAME OF PRIZE WINNER (Assignor) _____
(Name of person who presented valid ticket and claimed ticket and was and is recognized by the TLC as prize winner)

DATE OF DRAW _____
(Month and Year)

NAME/TITLE _____
(Person with legal authority to bind the prize winner.)

ASSIGNEE _____

NAME/TITLE _____
(Person with legal authority to bind the assignee, if other than an individual.)

SSN OR FEIN _____

ADDRESS _____

_____

CONTACT PERSON _____

PHONE NUMBER _____

AMOUNT PER YEAR AS BE ASSIGNED _____
(exact pre-tax dollar amount)

ASSIGNMENT DATE(S) _____
*THE LAST 2 YEARS OF PAYMENTS MAY NOT BE ASSIGNED

_____ _____
Signature of Prize Winner/Assignor (Person with legal authority to bind.) Date

_____ _____
Signature of Notary Public Date

Figure 1: 22 TAC §577.15

(a) **EXAMINATIONS**	**FEE**
State Board Exam(SBE)	$100
Nat'l. Exam(NBE)	$225
Clinical Comp. Exam(CCT)	$205
SBE & NBE	$290
SBE & CCT	$265
SBE & NBE & CCT	$430
NBE & CCT	$380
Special License	$100

(b) **RENEWALS**	**BOARD FEE**	**PROF. FEE**	**TOTAL FEE**
License Renewal (*Current*)	$[110] **121**	$200	$[310] **321**
Delinquent Renewals (*90 Days or Less*)	$[160] **171**	$200	$[360] **371**
Delinquent Renewals (*Over 90 Days but Less Than One Year*)	$[210] **221**	$200	$[410] **421**
Inactive Renewals	$[110] **121**	-0-	$[110] **121**
Delinquent Inactive Renewal (*90 Days or Less*)	$[160] **171**	-0-	$[160] **171**
Delinquent Inactive Renewals (Over 90 Days but Less Than One Year)	$[210] **221**	-0-	$[210] **221**
Special License	$[110] **121**	$200	$[310] **321**
Delinquent Special License Renewals (*90 Days or Less*)	$[160] **171**	$200	$[360] **371**
Delinquent Special License Renewals (Over 90 Days but Less than One Year)	$[210] **221**	$200	$[410] **421**
(c) **PROVISIONAL LICENSE**	$250	-0-	$250

(d) **OPEN RECORDS**
Charges for all open records and other goods/services such as tapes, disks, will be in accordance with General Services Commission rules 111.61 through 111.71 - "Charges for Public Records".

(e) **RETURNED CHECK FEE** $25

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.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of June 18, 1999, through June 23, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Ross Novelli, Sr.; Location: The project is located adjacent to Offats Bayou, at 8415-17 Teichman Road, Galveston, Galveston, County, Texas; CCC Project Number: 99-0226-F1; Description of Proposed Action: The applicant proposes to elevate his property by placing fill material onto the lot. The property is approximately 1.3 acres, including two separate areas of wetlands, totaling approximately 0.5 acres. The subject property would be raised between 1 and 3 feet in elevation. The applicant is proposing on-site, out-of-kind mitigation, to offset impacts to wetlands on the property. The mitigation area would be approximately 75 feet-long, between the points it connects with the existing shoreline protection, and extend between 10 and 15 feet waterward at its midpoint; Type of Application: U.S.A.C.E. permit application #21071(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9903892
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 30, 1999

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Comptroller of Public Accounts

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the April 23, 1999, issue of the *Texas Register* (24 TexReg 3227).

The consultant will assist the Comptroller in conducting a management and performance review of the El Paso Community College, produce periodic progress reports and assist in producing a final report.

The contract is awarded to McConnell, Jones, Lanier & Murphy, L.L.P., Summit Tower, 11 Greenway Plaza, Suite 2902, Houston, Texas 77046. The total dollar value of the contract is not to exceed $249,951.00 in the aggregate. The contract was executed June 18, 1999, and extends through December 31, 1999. McConnell, Jones, Lanier & Murphy will assist the Comptroller in preparing a final report which will be made public on or about October 19, 1999.

TRD-9903814
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: June 28, 1999

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Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts

(Comptroller) announces the issuance of its Request for Proposals (RFP) for the performance of a management and performance review of the San Antonio Independent School District (San Antonio ISD). The services sought under this RFP will culminate in a final report, which report shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review. The successful proposer will be expected to begin performance of the contract on or about September 1, 1999.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 East. 17th Street, Room G-24, Austin, Texas, 78744, Clay Harris, (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, July 9, 1999, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and the non-binding mandatory Notice of Intent Form (new form will be included in this solicitation) must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Friday, July 30, 1999. The form must be addressed to Clay Harris, Legal Counsel and must be filled out completely and signed by an official of that entity. All responses to questions and other information pertaining to this procurement will be sent to only potential proposers who have submitted a timely Notice of Intent Form. The mandatory Notice o! f Intent Form and Questions received after this time and date will not be considered. Prospective proposers are encouraged to fax the form and questions to (512) 475-0973 to ensure timely receipt.

Closing Date: Proposals must be received in the Legal Counsel's Office no later than 2:00 p.m. (CZT), on Wednesday, August 11, 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. Each committee member 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 any 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 - July 9, 1999, 2:00 p.m. (CZT); Mandatory Notice of Intent Form and Questions Due - July 30, 1999, 2:00 p.m. (CZT); Proposals Due - August 11, 1999, 2:00 p.m. (CZT); Contract Execution - August 20, 1999, or as soon thereafter as possible; Commencement of Project Activities - September 1, 1999.

TRD-9903899
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: June 30, 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, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of July 5, 1999–July 11, 1999 is 18% for Consumer [1]/ Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Article 1D.003 and 1D.009 for the period of July 5, 1999–July 11, 1999 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by Article 1D.005 and 1D.009[3] for the period of July 1, 1999–July 31, 1999 is 18% for Consumer/ Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by Article 1D.005 and 1D.009 for the period of July 1, 1999–July 31, 1999 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-9903886
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 29, 1999

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The Texas Department of Criminal Justice

Request for Qualifications

The Texas Department of Criminal Justice (TDCJ) hereby presents this Request for Qualifications (RFQ) to Energy Service Companies (ESCOs). ESCOs responding will describe their capabilities to identify, design, install, maintain, and monitor equipment and/or retrofits, and arrange financing of a comprehensive energy cost reduction program for TDCJ facilities. Inclusive in the description will be a detailed narrative explaining the criteria on implementing sustainable measures associated with any design of equipment and/ or retrofit. The ESCO must have the ability to meet performance guarantees and have the professional in-house staff to understand the special needs of TDCJ. For the purpose of this RFQ, "ESCO" refers to any entity that is qualified to provide a turnkey packet and meets the requirements of the Texas Energy Performance Contracting Guidelines, available through: The State Energy Conservation Office, 208 E. 10th Street, Rusk State Office Building, Suite 206, Austin, Texas 78711-3047, Attention: Felix A. Lopez, www.asc.state.tx.us/ energy/energy.html.

The Statements of Qualifications (SOQ) submitted by ESCOs will be screened by the TDCJ and a Preferred Vendor List (PVL) will be developed of the highest and most qualified ESCOs. After further screening of the PVL, the TDCJ intends to select one or more ESCOs and intends to award one or more contract(s) to perform cost-effective energy conservation retrofits. An initial contract may be awarded for the completion of a detailed energy project analysis. A subsequent performance contract may be awarded for complete design and implementation of sustainable, cost-effective, energy measures. The performance contract will require a guarantee of energy savings sufficient to cover all costs of the project within a 10-year performance period.

Sealed submissions will be accepted (mailed or hand delivered) by the TDCJ at or before 5pm on August 9, 1999. For a complete packet, which includes the RFQ and attachments, contact Brenda Jordy, EPC Coordinator, TDCJ, (409) 437-5563 or you may request by mail to: Texas Department of Criminal Justice, Facilities Division, Sustainability Department - Bank of America, P.O. Box 4011, Huntsville, Texas 77342-4011, Attention: Brenda Jordy.

TRD-9903782
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: June 25, 1999

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East Texas Council of Governments

Release of Provider Application Package

The East Texas Workforce Development Board will soon release a Provider Application Package which contains the Provider Certification System for which educational institutions and vocational training providers can be certified to provide training/coursework for clients receiving training under the Workforce Investment Act (WIA). WIA is the new employment and training legislation which became law on July 1, 1999, and which replaces the Job Training Partnership Act (JTPA).

The following types of training providers are eligible to apply: (1) a postsecondary educational institution that is eligible to receive Federal funds under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) and that provides a program that leads to an associate degree, baccalaureate degree or certificate, or (2) an entity that carries out programs under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.). Providers for which the submission of performance information is required are: (1) Postsecondary educational institutions that provide a program of training services that does not lead to an associate degree, baccalaureate degree or certificate, and (2) entities that provide an apprenticeship program that is not registered by the U.S. Department of Labor's Bureau of Apprenticeship and Training under the National Apprenticeship Act, or (3) all other public or private providers of a program of training services.

Excluded Providers are providers of on-the-job training, customized training or youth activities authorized under WIA.

Institutions or persons wishing to receive a Provider Application Package should request by letter or by fax. Requests should be addressed to Renee' Smith - Planning and Board Support, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, East Texas Council of Governments, tele. (903) 984-8641.

TRD-9903765
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: June 24, 1999

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Texas Education Agency

Public Notice Announcing the Availability of the Elementary and Secondary Education Act (ESEA) Title VI Effectiveness Evaluation Report for School Year 1997–1998, Texas

The Elementary and Secondary Education Act (ESEA), Title VI, Innovative Education Program Strategies, provides federal financial assistance to state and local educational agencies to improve elementary and secondary education through a variety of innovative assistance programs and services for children attending both public and private nonprofit schools.

The ESEA Title VI Effectiveness Evaluation Report for School Year 1997-1998, for Texas is now available to the public through each regional education service center (ESC). In addition, colleges and universities in Texas were requested to place a copy of the report in their campus libraries. Parents, teachers, school administrators, private nonprofit school personnel, local community organizations, businesses, and other interested persons or agencies may review the document or copy it at personal expense at any ESC or college or university library where the document is on file.

Interested persons or agencies may also request a copy at no charge via mail, telephone, fax, or e-mail from the Texas Education Agency, Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9304, Fax (512) 463-9811, email at dcc@tmail.tea.state.tx.us.

Additional information about the ESEA, Title VI, Effectiveness Evaluation Report for School Year 1997-1998 may be obtained from Sharon Conable, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269.

TRD-9903898
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 30, 1999

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Texas Emancipation Juneteenth Cultural and Historical Commission

Job Posting - Information Specialist III

Listing number: 1-01

Opening Date: 6/18/99

Closing Date: until filled

Full Time: Yes

Hours/Week: 40

Salary: $3100.00 mo.

Work Location Address: Austin/Houston

MINIMUM QUALIFICATIONS (License, Education, Experience): Bachelor's degree in Journalism, Public Relations, Marketing, or Communications. Minimum 5 years experience in public and media relations with some experience in grant writing.

REMARKS (Application procedure, special requirements): Applications must be submitted on state job application form available at 1511 Colorado Street, Austin, Texas. Driving record will be checked with the Texas Department of Public Safety. Applications will be reviewed, and top applicants will be interviewed. Disability access for application submission, testing and interview accommodations can be provided upon reasonable notice.

Internal Job Title: Public Relations/Fundraising Coordinator

Reports to: TEJHC Executive Assistant

Position Summary: Responsible for coordinating agency public relations/fundraising programs and developing strategies to position the agency as the premier source for Juneteenth growth and development, preservation, and information in Texas. Works with commission staff to coordinate all media relations. Works closely with the chair, staff, and TEJHC to promote the commission's numerous initiatives. Some prior knowledge of the significance of Emancipation/Juneteenth in Texas required.

Duties and Responsibilities:

-Researches, writes, edits, and compiles press releases, reports, news and feature stories.

-Assists chair in coordinating media relations and fundraisers.

-Coordinates special events, fundraisers, press conferences, and media briefings.

-Creates and implements public relations/fundraising plans and strategies for TEJHC projects.

-Manages and maintains numerous media databases and media lists.

-Works closely with web team and assists in the development of content for the web site.

-Oversees TEJHC news clipping service and distribution of news stories.

-Develops and disseminates information to commission's target audiences (TEJHC commission members, legislators, media, other state agencies, tourism partners, other Juneteenth organizations, TEJHC employees, donors) on the agency's programs.

Qualifications: Bachelor's degree in Communications, Public Relations, Marketing, or related field. Minimum 5 years experience in public and media relations with experience in grant writing. Excellent writing and editing skills. Strong project management skills and ability to multi-task. Extremely detail-oriented. Knowledge of public/media relations/fundraising strategies and measurement techniques; strong verbal and written communication skills; knowledge of word processing software, as well as graphic software (QuarkXpress, Pagemaker, etc). Seeking flexible, mature, highly organized individual with strong self-initiative.

Interested applicants should submit a cover letter, resume, sample press releases, fundraising references, and state job application to: Texas Emancipation Juneteenth Cultural & Historical Commission, P.O. Box 2910, Austin, TX. 78768-2910. State job application can be picked up at 1511 Colorado. Please refer to Job Listing number 1-01.

If hired for employment, you will need to provide a document or documents that establish identity and employment eligibility. Document or documents must be provided within 3 days from date of hire. A complete list of acceptable documents is on file with the Texas Employment Commission office.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

TRD-9903880
Representative Al Edwards
Chair
Texas Emancipation Juneteenth Cultural and Historical Commission
Filed: June 29, 1999

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Finance Commission of Texas

Request for Proposals

Pursuant to the Government Code, Chapter 2254, Subchapter B, the Finance Commission of Texas (finance commission) announces its Request for Proposals (RFP) to hire an executive search consultant to assist the finance commission in recruiting a person with the experience, personality, character, and leadership ability to be appointed the next Banking Commissioner of Texas. Banking Commissioner Catherine A. Ghiglieri has resigned effective July 1, 1999.

Contact: Parties interested in submitting a proposal should obtain a complete copy of the RFP from the web site of the Department of Banking at http://www.banking.state.tx.us/, from the Electronic State Business Daily at http://www.marketplace.state.tx.us/1380 or by contacting Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas, 78705-4294, (512) 475-1321, during business hours, or by e-mail to ejobe@banking.state.tx.us.

Closing Date: Proposals must be received by Mr. Jobe at the above-referenced address no later than 5:00 p.m. on July 26, 1999. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by the finance commission, acting by delegation through its search committee, based on the evaluation criteria set forth in the RFP. A proposing consultant may be asked to clarify its proposal, and qualified consultants may be required to make oral presentations to the search committee at a public meeting in Dallas, Texas, on August 6, 1999, beginning at 8:30 a.m. At that meeting, the search committee will select the proposal which best meets the RFP criteria, but could reject all proposals. If all other considerations are equal, the search committee will, pursuant to Government Code, §2254.027, give preference to the consultant whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the state.

The finance commission reserves the right to accept or reject any or all proposals submitted. The finance commission is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the finance commission to pay for any costs incurred prior to the execution of a contract.

TRD-9903786
Everette D. Jobe
General Counsel
Finance Commission of Texas
Filed: June 25, 1999

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Texas Health and Human Services Commission

Public Notice

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 99-01, Amendment Number 556.

The amendment provides annual documentation of nursing facility rates in accordance with the Omnibus Budget Reconciliation Acts of 1987 and 1990. The amendment is effective October 1, 1999.

If additional information is needed, please contact Kathy Hall, Texas Department of Human Services at 512/438-3702.

TRD-9903909
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 30, 1999

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Texas Department of Human Services

Correction of Error

The Texas Department of Human Services proposed §48.6003. The rule appeared in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4212).

Due to agency error:

On page 4213, the first paragraph of the preamble should read:

"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. The need for proposal of these rules arises from the need to define exceptions and clarify in which infrequent situations an individual would bypass the waiting list. CBA client enrollment is limited by the availability of state funding. When enrollment is suspended, this rule change will allow individuals that meet the exception criteria to be enrolled if they meet all eligibility criteria, instead of just placing them on a waiting list."

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Public Notice-Open Solicitation for Clay County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg. 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in Clay County, County #039, identified in the May 21, 1999 issue of the *Texas Register* (24 TexReg 3881), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of August 1998 through January 1999. The county occupancy rate for each month of that period was: 97.5%, 93.1%, 93.2%, 90.9%, 94.5%, 91.7%. Potential contractors seeking to construct a 90-bed nursing facility in a high-occupancy area must demonstrate a history of quality care, as specified in §19.2322(g)(4) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not elimate a new potential NFO who has no history of providing care. The NFO must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS before the close of business August 9, 1999, the published ending date of the open solicitation period. Potential contractors who reply as specified above will be allowed 90 days to qualify. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within ten working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. If two or more potential contractors become eligible to be qualified during the open solicitation period, there will be a lottery selection. Each application must be complete at the time of its receipt. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9903802
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: June 25, 1999

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Public Notice-Open Solicitation for Donley County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg. 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in Donley County, County #065, identified in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3881), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of October 1998 through March 1999. The county occupancy rate for each month of that period was: 96.9%, 98.0%, 97.0%, 98.4%, 96.6%, 97.6%. Potential contractors seeking to construct a 90-bed nursing facility in a high-occupancy area must demonstrate a history of quality care, as specified in §19.2322(g)(4) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not elimate a new potential NFO who has no history of providing care. The NFO must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS before the close of business August 9, 1999, the published ending date of the open solicitation period. Potential contractors who reply as specified above will be allowed 90 days to qualify. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The

signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. If two or more potential contractors become eligible to be qualified during the open solicitation period, there will be a lottery selection. Each application must be complete at the time of its receipt. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9903803
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: June 25, 1999

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Public Notice-Open Solicitation for Hansford County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in Hansford County, County #098, identified in the May 21, 1999 issue of the *Texas Register* (24 TexReg 3881), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of August 1998 through January 1999. The county occupancy rate for each month of that period was: 97.0%, 97.0%, 90.1%, 90.5%, 94.7%, 92.1%. Potential contractors seeking to construct a 90-bed nursing facility in a high-occupancy area must demonstrate a history of quality care, as specified in §19.2322(g)(4) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not elimate a new potential NFO who has no history of providing care. The NFO must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care- Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS before the close of business August 9, 1999, the published ending date of the open solicitation period. Potential contractors who reply as specified above will be allowed 90 days to qualify. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within ten working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. If two or more potential contractors become eligible to be qualified during the open solicitation period, there will be a lottery selection. Each application must be complete at the time of its receipt. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9903804
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: June 25, 1999

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Public Notice-Open Solicitation for Kent County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg. 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in Kent County, County #132, identified in the May 21, 1999, issue of the Texas Register (24 TexReg 3882), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of June 1998 through November 1998. The county occupancy rate for each month of that period was: 90.5%, 92.2%, 97.6%, 93.3%, 93.6%, 93.2%. Potential contractors seeking to construct a 90-bed nursing facility in a high-occupancy area must demonstrate a history of quality care, as specified in §19.2322(g)(4) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not elimate a new potential NFO who has no history of providing care. The NFO must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care- Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS before the close of business August 9, 1999, the published ending date of the open solicitation period. Potential contractors who reply as specified above will be allowed 90 days to qualify. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within ten working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. If two or more potential contractors become eligible to be qualified during the open solicitation period, there will be a lottery selection. Each application must be complete at the time of its receipt. If no potential contractors submit replies during this open solicitation period, TDHS will place another public

notice in the Texas Register announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9903805
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: June 25, 1999

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Public Notice-Open Solicitation for San Jacinto County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the May 22, 1998, issue of the *Texas Register* (23 TexReg. 5450), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in San Jacinto County, County #204, identified in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3882), where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of June 1998 through November 1998. The county occupancy rate for each month of that period was: 94.7%, 98.2%, 98.2%, 96.9%, 96.6%, 97.5%. Potential contractors seeking to construct a 90-bed nursing facility in a high-occupancy area must demonstrate a history of quality care, as specified in §19.2322(g)(4) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not elimate a new potential NFO who has no history of providing care. The NFO must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care- Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS before the close of business August 9, 1999, the published ending date of the open solicitation period. Potential contractors who reply as specified above will be allowed 90 days to qualify. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within ten working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5.0% of the estimated total cost of the proposed or completed facility. If the 24-month deadline is not met, liquidated damages are an additional 5.0% of the estimated total cost of the proposed or completed facility. If two or more potential contractors become eligible to be qualified during the open solicitation period, there will be a lottery selection. Each application must be complete at the time of its receipt. If no potential contractors submit replies during this open solicitation period, TDHS will place another public notice in the Texas Register announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-9903806
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: June 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 change the name of WINTERTHUR REINSURANCE CORPORATION OF AMERICA to PARTNERRE INSURANCE COMPANY OF NEW YORK, a foreign fire and casualty company. The home office is in New York, New York.

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-9903906
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 30, 1999

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Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket 2393 on Tuesday, August 10, 1999, at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, and continuing thereafter at dates, times, and places designated by the commissioner until conclusion. This is notice of the re-scheduling of the Form and Rulemaking Phase of the 1998 Texas Title Insurance Biennial Hearing that was originally set on February 3, 1999, as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12539).

The purpose of this hearing is to receive comments and consider testimony presented and information filed by title insurers, title agents, the Office of Public Insurance Counsel and other interested parties regarding the rules, forms, and endorsements, and related matters not having rate implications, all of which are more particularly set out in the Notice of the 1998 Texas Title Insurance Biennial Hearing as published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12539). Therefore, the Commissioner will hear comments from interested parties and consider testimony as noted herein regarding the proposals as set forth in the form and rulemaking phase of the Notice of the 1998 Texas Title Insurance Biennial Hearing. A formal notice of proposed rulemaking will be published in the Texas Register at a later date. Individuals who wish to present comments at the hearing will be asked to register immediately prior to the hearing.

The Commissioner of Insurance has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, Articles 1.02, 1.04, 9.01, 9.02, 9.07, and 9.21, and pursuant to the Texas Administrative Code, Title 28, Section 9.1. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Gov't Code, Ch. 2001).

Written comments may be submitted to the Chief Clerk's Office, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of each comment should be submitted to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, 333 Guadalupe Street, P. O.

Box 149104, Austin, Texas 78714-9104. In order to expedite the proceeding the Commissioner request that interested parties submit written comments on the proposed rule by August 2, 1999.

TRD-9903907
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 30, 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 admission to Texas of Centra Healthplan, L.L.C., a foreign third party administrator. The home office is Wilmington, Delaware.

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-9903879
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 29, 1999

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Texas Lottery Commission

Instant Game Number 163 “One-Eyed Jack”

1.0 Name and Style of Game.

A. The name of Instant Game Number 163 is "One-Eyed Jack. The play style of the game is a "yours beats theirs " play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game Number 163 shall be $1.00 per ticket.

1.2 Definitions in Instant Game Number 163.

A. Display Printing–That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint–The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol–One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible "Your Card" Play Symbols are: 3, 4, 5, 6, 7, 8, 9, 10, a one-eyed Jack auto-win symbol, a Queen, a King and an A. The possible "Dealer’s Card" Play Symbols are: 2, 3, 4, 5, 6, 7, 8, 9, 10, a Queen and a King.

D. Play Symbol Caption–the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1
Figure 1:16 TAC GAME NO. 163 – 1.2D

PLAY SYMBOL	CAPTION
2	TWO
3	THRE
4	FOUR
5	FIVE
6	SIX
7	SEVN
8	EGHT
9	NINE
10	TEN
JACK	WIN
QUEEN	QUEN
KING	KING
A	ACE
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$80.00	EGHTY
$500	FIVHUND
$2,000	TWOTHOU

E. Retailer Validation Code–Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate low-tier instant winning tickets. The possible validation codes are:

Table 2
Figure 2:16 TAC GAME NO. 163 – 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
SVN	$7.00
TEN	$10.00
TWN	$20.00

Non-winning and high-tier winning tickets will have different combinations of any three of the following letters, excluding the combinations above: E, F, G, N, O, R, S, T, V, W. All codes from $1 through $24 not used for this game are protected. Other combinations of these letters are to be used for non-winning and high-tier winning tickets. The letter "" will only be used for the appropriate winning codes and will always have a slash through it.

F. Serial Number–A unique 12 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining eight (8) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 000000000000.

G. Low-Tier Prize–A prize of $1.00, $2.00, $4.00, $7.00, $10.00 or $20.00

H. Mid-Tier Prize–A prize of $40.00, $80.00 or $500

I. High-Tier Prize–A prize of $2,000

J. Bar Code–A 20 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number and eight (8) digits of the Validation Number and a two (2) digit filler. The bar code appears on the back of the ticket.

K. Pack-Ticket Number–A thirteen (13) digit number consisting of the three (3) digit game number (163), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 163-0000001-000.

L. Pack–A pack of "ONE-EYED JACK" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Ticket 000 to 004 will be on the top page. Tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page.

M. Non-Winning Ticket–A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket–A Texas Lottery "ONE-EYED JACK" Instant Game Number 163 ticket.

2.0 Determination of Prize Winners.

The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "ONE-EYED JACK" Instant Game is determined once the latex on the ticket is scratched off to expose a "YOUR CARD" symbol that is higher than the "DEALER'S CARD" symbol. If a One-Eyed Jack symbol is revealed as a "YOUR CARD" symbol, the prize is won automatically. Aces are considered to be high cards in the "ONE-EYED JACK" Instant Game. A ticket may contain up to four (4) winners if the "YOUR CARD" symbol beats the "DEALER'S CARD" symbol in all four games. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received or recorded by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Adjacent tickets in a pack will not have identical patterns.

B. Non-winning prize amounts will be unique.

C. There will be no more than two (2) like card symbols on a ticket.

D. The "YOUR CARD" symbol will never match the "DEALER'S CARD" symbol

E. The auto win, One-Eyed Jack symbol, will never appear as a "DEALER'S CARD".

F. There will never be a TWO in the "YOUR CARD" play spots.

G. There will never be an ACE in the "DEALER'S CARD" play spots.

2.3 Procedure for Claiming Prizes.

A. To claim a "ONE-EYED JACK" Instant Game prize of $1.00, $2.00, $4.00, $7.00, $10.00, $20.00, $40.00, $80.00 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $40.00, $80.00 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "ONE-EYED JACK" Instant Game prize of $2,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "ONE-EYED JACK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16630, Austin, Texas 78761-6630. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment.

The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18.

If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "ONE-EYED JACK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "ONE-EYED JACK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period.

All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,000,000 tickets in the Instant Game Number 163. The expected number and value of prizes in the game are as follows:

Table 3
Figure 3:16 TAC GAME NO. 163 – 4.0

Prize Amount	Approximate Number of Winners	Chances of Winning
$1.00	2,600,640	1:7.75
$2.00	1,088,640	1:18.52
$4.00	221,760	1:90.91
$7.00	181,440	1:111.11
$10.00	80,640	1:250.00
$20.00	80,640	1:250.00
$40.00	27,300	1:738.46
$80.00	4,200	1:4,800.00
$500	504	1:40,000.00
$2,000	30	1:672,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 Termination of the Instant Game.

The Executive Director may, at any time, announce a termination date for the Instant Game Number 163 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law.

In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game Number 163, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9903792
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 25, 1999

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Midwestern State University

Request for Proposals for Outside Counsel

STATEMENT OF PURPOSE

The Board of Regents of Midwestern State University is requesting proposals for the purpose of retaining a firm to act as the university's outside counsel.

INSTRUCTIONS TO PROPOSERS

A. All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal-Outside Counsel Services." All proposals must be received by 3:00 p.m. August 2, 1999.

B. Three copies of the proposal are required and may be mailed to: Midwestern State University, ATTN: Debbie Barrow, Executive Assistant, 3410 Taft Blvd., Wichita Falls, TX 76308, or hand delivered to 3410 Taft Blvd., Room 107, Hardin Administration Building, Wichita Falls, TX by 3:00 p.m. August 2, 1999. Each proposal should indicate the name and phone number of the principal contact for the firm.

C. Questions or comments concerning this request for proposals should be directed to: Dr. Louis J. Rodriguez, President, Midwestern State University, 3410 Taft Blvd., Wichita Falls, TX 76308, (940) 397-4211.

D. The Board will select a firm at its meeting August 6, 1999. The selected firm will be notified on or about August 16, 1999.

E. The Board shall submit its selection to the Texas State Attorney General for final approval.

TERMS AND CONDITIONS

A. The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within 30 days after the award of the proposal.

B. The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.

C. The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least 30 working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

D. Any agreement or contract resulting from acceptance of a proposal shall be on forms either supplied by or approved by the Attorney General. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.

E. The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

ELIGIBLE PROPOSERS

A. The Midwestern State University Board of Regents will only consider proposals from law firms licensed in Texas.

B. Counsel must have prior higher education legal experience and preferably be members of the Texas Association of State University Attorneys and the School Law Section of the State Bar of Texas.

C. Counsel must agree to attend any and all Board of Regents meetings which are held no less than quarterly on the campus of Midwestern State University, Wichita Falls, Texas, at the request of the Board.

D. Counsel must maintain malpractice insurance in an amount of not less $1,000,000.

SCOPE OF SERVICES

The selected firm will provide the following services:

A. In all situations where local assistance is required by the Office of the Attorney General on litigation or general counsel matters being handled by the Office of the Attorney General, or where the Office of the Attorney General defers the matter to local counsel.

B. In situations where expertise in school law and policy is required.

C. In situations where prior knowledge or experience with the particular facts or issues in the matter or where other unusual circumstances exist which would facilitate the most timely and economical handling of the matter.

D. In emergency and other situations that require a response time that the Office of the Attorney General cannot reasonably provide.

E. In situations involving personal meetings or conferences where the charges for legal fees and expenses for travel by the Office of the Attorney General would result in a total cost greater than could be obtained by using the local counsel.

QUALIFICATIONS

A. Describe how the firm is organized and how its resources will be put to work for MSU.

B. List the firm's most recent three years of experience in higher education or school law relationships. State the term of the relations, briefly describe the work performed, and include the names, addresses and phone numbers of contact persons.

C. Affirm that no individual in the firm has represented any client in any matter pending before Midwestern State University during the previous six month period.

PERSONNEL

A. Indicate which individuals in the firm would be assigned in a direct, on-going working relationship with the Board and staff and include their resumes. Indicate the role these individuals assumed in the three-year history of higher education or school law counsel

relationships as described in subsection B of the QUALIFICATIONS section.

B. Indicate the availability of individuals described in subsection A of this section.

C. Include a description of your firm's Affirmative Action program and include any strides made in the employment of women and minorities.

COMPENSATION

Explain the firm's proposed hourly fee schedule and the projected annual cost for the scope of services detailed in this RFP. If the firm proposes that the university bear the costs of incidental expenses associated with these services, clearly state what type of incidental expense and estimated costs the university will be expected to bear.

TRD-9903895
Dr. Louis J. Rodriguez
President
Midwestern State University
Filed: June 30, 1999

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Texas Natural Resource Conservation Commission

Enforcement Orders-Week Ending June 30, 1999

An agreed order was entered regarding YEH'S BROTHERS, INC., DBA DAYS INN INTERCONTINENTAL AIRPORT, Docket Number 1997-0921-MWD-E; Permit Number 12138-001; Enforcement ID Number 8947 on June 22, 1999, assessing $37,740 in administrative penalties with $35,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512) 239-3915 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE PEP BOYS - MANNY MOE & JACK, Docket Number 1997-1075-PST-E; TNRCC ID Numbers 47430 and 44031; Enforcement ID Numbers 11965 and 11966 on June 22, 1999, assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or Randy Norwood, Enforcement Coordinator at (512) 239-1879, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GALVESTON ENVIRONMENTAL SERVICES, Docket Number 1998-0293-IHW-E; Enforcement ID Number 1483 on June 22, 1999, assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Otten, Staff Attorney at (512) 239-1738 or Anne Rhyne, Enforcement Coordinator at (512) 239- 1291, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STEVE DETTLE DBA DETTLE FEEDYARD, Docket Number 1998-0929-AGR-E; Enforcement ID Number 12814 on June 22, 1999, assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HEREFORD BI-PRODUCTS DBA STRATFORD BI-PRODUCTS, Docket Number 1998-1168-AGR-E; No Permit Number; Enforcement ID Number 13014 on June 22, 1999, assessing $10,450 in administrative penalties with $2,090 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. AUKE OSINGA DBA OSINGA DAIRY, Docket Number 1998-0688-AGR-E; No TNRCC Permit Number; Enforcement ID Number 12621 on June 22, 1999, assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOY CLUB OF AUSTIN, INC., Docket Number 1998-0661-PWS-E; PWS ID Number 2270121; Enforcement ID Number 12478 on June 22, 1999, assessing $1,238 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Paul Beasley, Enforcement Coordinator at (512) 239-1759, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MS. OLIVIA SCHACHERL DBA OLIVIA'S QUIK STOP, Docket Number 1998-1269-PWS-E; TNRCC ID Number 0240010; Enforcement ID Number 13045 on June 22, 1999, assessing $1,200 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SMS FINANCIAL, L.L.C. & SMS TEXAS FINANCIAL, L.L.C. DBA COUNTRY VILLAGE MOBILE HOME ESTATES, Docket Number 1998-1452-PWS-E; PWS ID 1650111; Enforcement ID Number 13107 on June 22, 1999, assessing $1,250 in administrative penalties.

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 CHRISTIAN TABERNACLE DBA IN THE BEGINNING DAYCARE, Docket Number 1998-1165-PWS-E; PWS ID Number 1012697; Enforcement ID Number 6555 on June 22, 1999, assessing $813 in administrative penalties.

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.

A default order was entered regarding NOBLE ENLOE, DOING BUSINESS AS TANGLEWOOD FOREST WATER SYSTEM,

Docket Number 1996-1723-PWS-E; TNRCC ID Number 2040054; Enforcement ID Number 7092; CCN Number 11667 on June 22, 1999, assessing $11,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224 or Sabelyn Pussman, Enforcement Coordinator at (512) 239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JOSEPH MCCONLEY DBA METRO LAND & INVESTMENTS DBA MARTIN CREEK ESTATES, Docket Number 1996-1975-PWS-E; TNRCC ID Number 1260122; Enforcement ID Number 6719 on June 22, 1999, assessing $7,110 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney at (512) 239-3506 or 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 CITY OF LUBBOCK DBA LUBBOCK POWER & LIGHT, Docket Number 1998-1359-IWD-E; Registration Number L-03195; Enforcement ID Number 2604-3 on June 22, 1999, assessing $750 in administrative penalties with $150 deferred.

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 THE RAVAGO AMERICA CORPORATION, Docket Number 1998-1019-IWD-E; WQ Permit Number 03567; Enforcement ID Number 7213 on June 22, 1999, assessing $4,375 in administrative penalties.

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 MR. ABRAHAM DALY DBA ABE'S MART, Docket Number 1998-0945-PST-E; PST Facility ID Number 0034586; Enforcement ID Number 12526 on June 22, 1999, assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512) 239-2576, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHUCK VAICULEVICH DBA CEDAR PARK FINA, Docket Number 1998-0899-PST-E; TNRCC ID Number 53212; Enforcement ID Number 12662 on June 22, 1999, assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512) 239-4706 or Randy Norwood, Enforcement Coordinator at (512) 239-1879, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BILL WHITTEN, Docket Number 1998-0788-OSS-E; Installer Certification Number 5923; Enforcement ID Number 12694 on June 22, 1999, assessing $750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney at (512) 239-0678 or Pam 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 CBI NA-CON, INC., Docket Number 1998-1024- MWD-E; Permit Number 11389-001; Enforcement ID Number 12807 on June 22, 1999, assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VARCO SHAFFER, INC., Docket Number 1998- 0216-MWD-E; Permit Number 11758-001 (Expired); Enforcement ID Number 10165 on June 22, 1999, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAT G. CHAPMAN, SR., Docket Number 1998- 0263-MWD-E; TNRCC ID Number 13184-001 (Expired); Enforcement ID Number 8977 on June 22, 1999, assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney at (512) 239-1736 or 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 CITY OF GROVES, Docket Number 1998-0867- MWD-E; WQ Permit Number 10094-002; Enforcement ID Number 8620 on June 22, 1999, assessing $21,250 in administrative penalties.

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 FELCOR AIRPORT UTILITIES, L.L.C., Docket Number 1998-1442-MWD-E; Permit Number 11159-001; Enforcement ID Number 13096 on June 22, 1999, assessing $7,500 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 MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 24, Docket Number 1998-1398-MWD-E; Permit Number 11789-001 (Expired); Enforcement ID Number 11733 on June 22, 1999, assessing $5,000 in administrative penalties with $1,000 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 CITY OF KOSSE, Docket Number 1998-1081- MWD-E; WQ Permit Number 11405-001; Enforcement ID Number 8555 on June 22, 1999, assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBERT TOMKO, Docket Number 1997-0357- IHW-E; TNRCC SWR Number F0072; Enforcement ID Number 10162 on June 22, 1999, assessing $24,880 in administrative penalties with $24,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113 or Anne Rhyne, Enforcement Coordinator at (512) 239-1291, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An amendment to an agreed order was entered regarding TECHNI-COAT, INC., FELTON HAVINS, SR., AND CYTECINDUSTRIES, Docket Number 1998-0723-IHW-E; TNRCC ID Number 30068 on June 22, 1999.

Information concerning any aspect of this order may be obtained by contacting Cecily Gooch, Staff Attorney at (817)469-6750 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 MR. RANDY COLLINS AND MR. CHRIS WISE DBA RANDY COLLINS SPRINKLERS, DBA SPRINKLERS BY RANDY AND CHRIS, AND DBA COLLINS AND WISE SPRINKLERS, Docket Number 1996-1927-LII-E; No Irrigator License Number; Master Plumber Number M-17451; Enforcement ID Numbers 10150 and 3669 on June 22, 1999, assessing $6,720 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Camille Morris, Staff Attorney at (512) 239-3915 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 VALLEY BY PRODUCTS, INC., Docket Number 1998-1212-MLM-E; Account Number EE-1074-H; WQ Permit Number 01243-000; Enforcement ID Number 12855 on June 22, 1999, assessing $8,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scottie Aplin, Staff Attorney at (512) 239-2941 or 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 ALI SAATSAZ DBA RELIABLE USED CARS, Docket Number 1998-1148-AIR-E; Account Number DB-4968-J; Enforcement ID Number 12982 on June 22, 1999, assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBCO PROPERTIES, LTD., Docket Number 1998-1013-EAQ-E; Enforcement ID Number 12818 on June 22, 1999, assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. BRUCE DUNCAN DBA BLACKIE'S PUMP SERVICE, Docket Number 1998-0836-SLG-E; Transporter Registration Number 22311; Enforcement ID Number 12699 on June 22, 1999, assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding RICHARD A. DOMENICK DBA CENTRAL TRANSPORT INTERNATIONAL, INC., DBA C.C. SOUTHERN, Docket Number 1999-0353- PST-E; Enforcement ID Number 13542 on June 17, 1999.

Information concerning any aspect of this order may be obtained by contacting Scott McDonald, Staff Attorney at (512) 239-6005 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding GARY SCALF DBA MANDY'S RACING FUEL, Docket Number 1999-0330-PST-E; Facility ID Number 0060575; Enforcement ID Number 13518 on June 21, 1999.

Information concerning any aspect of this order may be obtained by contacting KATHY Keils, Staff Attorney at (512) 239-0678 or Sushil Modak, Enforcement Coordinator at (512) 239-2142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9903905
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 30, 1999

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Notice Of Application for Industrial Hazardous Waste Permits/Compliance Plans and Underground Injection Control Permits for the Period of June 22, 1999 to June 28, 1999

US STEEL CORPORATION (TEXAS WORKS), located at 5200 East McKinney Road, approximately 0.75 miles east of FM 1405 on approximately 740 acres near Baytown, Chambers County, Texas, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of hazardous waste permit HW-50192. The applicant operated a steel manufacturing plant, which is closed, that produced steel products. The permit would authorize the continued post closure care of the closed industrial hazardous waste landfill. The Executive Director of the TNRCC has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination Council and has determined that the action is consistent with the applicable CMP goals and policies.

This notice satisfies the requirements of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S. 6901 et seq. and 40 CFR 124.10. Once the final permit decisions of the TNRCC and U.S. Environmental Protection Agency (EPA) are effective regarding this facility, they will implement the requirements of RCRA as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The final permit decision will also implement the federally authorized State requirements. The TNRCC and EPA have entered into a joint permitting agreement whereby permits will be issued in Texas in accordance with the Texas Solid Waste Disposal Act, Texas Health and Safety Code Ann., Chapter 361 and RCRA, as amended. In order for the applicant to have a fully effective RCRA permit, both the TNRCC and EPA must issue the permit. All permit provisions are fully enforceable under State and Federal law. The State of Texas has not received full HSWA authority. Areas in which the TNRCC has not been authorized by EPA are denoted in the draft permit with an asterisk (*). Persons wishing to comment or request a hearing on a HSWA requirement denoted with an asterisk (*) in the draft permit should also notify in writing, Chief, RCRA Permits Branch, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. EPA will accept hearing requests submitted to the TNRCC.

TEXAS ENGINEERING EXPERIMENTAL STATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit renewal of hazardous waste permit HW-50367, to continue the scientific experiment designed to establish credible and scientifically sound information on the utility of bioremediation for oil-contaminated sandy/silty shorelines. The research project site is at Parker's Cove Bioremediation Field Testing Facility, Interstate I-10 and San Jacinto River on approximately 5.76 acres in Channelview, Harris County, Texas. The Executive Director of the TNRCC has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The facility is located in an area subject to the Texas Coastal Management Program (CMP). This hazardous waste permit renewal application is for a research, demonstration, and development facility. The project study involves the application of a weathered oil onto plots within a wetland near the spring high tide line. Due to the nature of this permit, the agency has determined that strict compliance with the applicable requirements of 30 Texas Administrative Code Chapters 335 and 305 which are consistent with and satisfy the requirements of the CMP is not foreseeable and would preclude the option of research.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk at the address provided in the information section below, within 45 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 or if requested in writing by an affected person within 45 days of the date of newspaper publication of the notice.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 45 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

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 granting of 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. 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, 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, TX 78711-3087. For information concerning the hearing process, please contact the Office of Public Interest Counsel, MC 103, the same address as above. Individual members of the general public may contact the Office of Public Assistance, c/o Office of the Chief Clerk, at the address above, or by calling 1-800-687-4040 to: (a) review or obtain copies of available documents (such as draft permit, technical summary, and application); (b) inquire about the information in this notice; or (a) inquire about other agency permit applications or permitting processes. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9903902
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 30, 1999

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Notice Of Application For Municipal Solid Waste Management Facility Permit for the Period of June 22, 1999 to June 28, 1999

THE CITY OF LAREDO, 4312 Daugherty Avenue, Laredo, Texas 78041, has applied to the Texas Natural Resource Conservation Commission (TNRCC) to amend existing Permit Number MSW-1693 (Proposed Permit Number MSW-1693A) which will authorize horizontal and vertical expansion to an existing Type I and Type IV municipal solid waste management facility. The amendment will increase the landfill footprint acreage from the currently permitted 135 acres to 150 acres, will increase the maximum permitted depth of excavation from 451 feet above mean sea level (msl) to 445 feet above msl, and will increase the maximum fill height of the completed landfill from the currently permitted height of approximately 548 feet above msl to 640.5 feet above msl. The site will receive an estimated average 1,096 tons of waste per day. The total disposal capacity of the landfill is approximately 18,150,000 in-place cubic yards. The permittee is authorized to dispose of municipal solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; municipal solid waste resulting from construction or demolition projects, Class 2 industrial solid waste, and special wastes that are properly identified. The operating hours for receipt of waste at this municipal solid waste facility shall be any time between the hours of 7:00 a.m. to 7:00 p.m., Sunday through Saturday. The waste management facility is located on State Highway 359 approximately two miles east of the intersection of State Highway 359 and Loop 20 in Laredo, Webb County, Texas (latitude 27ø29'49.964" north, longitude 99ø24'16.031" west).

If you wish to request a public hearing, you must submit your request in writing. You must state: (1) your name, mailing address

and daytime phone number; (2) the application number, TNRCC docket number or other recognizable reference to the application; (3) the statement I/we request an evidentiary public hearing; (4) a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and (5) a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 1101, Texas Natural Resource Conservation Commission, Mail Code 105, 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.

TRD-9903901
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 30, 1999

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Notice of Opportunity to Comment on Default Orders 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 Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 9, 1999. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 9, 1999. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in writing.

(1) COMPANY: Haji Memon and Peach Tree Stores, Incorporated; DOCKET NUMBER: 1998- 0652-PST-E; TNRCC IDENTIFICATION (ID) NUMBER: 39407; LOCATION: 11111 Kingsley, Suite 101, Dallas, Dallas County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §115.242(3)(A) and (J) by failing to provide and maintain all components of the Stage II vapor recovery system (VRS) in proper operating condition and free of defects that would impair the effectiveness of the system; 30 TAC §115.244(3) and §115.246(7)(A) by failing to conduct monthly inspections of the Stage II VRS and by failing to maintain records on site; 30 TAC §115.245(2) by failing to conduct an annual pressure decay test; 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and the Code, §26.348 by failing to record the inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank daily and by failing to reconcile inventory records at least once a month; and 30 TAC §334.7(d)(3) and the Code, §26.346 by failing to file any change or addition to the registration of the USTs within 30 days after the date of occurrence; PENALTY: $23,125; STAFF ATTORNEY: Cecily Small Gooch, Litigation Division, MC R-4, Arlington Regional Office, 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Trenton Pickett; DOCKET NUMBER: 1997-0255-MSW-E; TNRCC ID NUMBER: 2978; LOCATION: Catholic Cemetery Road, 2.3 miles east of Farm to Market Road 455, Montague County, Texas; TYPE OF FACILITY: waste storage and disposal; RULES VIOLATED: 30 TAC §330.4(a) by allowing the accumulation of materials, without evidence that a substantial portion of the material is consistently used in the manufacturing of products which may otherwise be produced using raw or virgin materials and by charging a fee for these materials; and 30 TAC §330.5(a)(1) and (2) by placing composition roofing shingles in a creek gully; PENALTY: $27,360; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-9903856
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 28, 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 the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is August 9, l999. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of

changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 9, 1999. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys 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: Fernando Gomez dba Ace Roofing; DOCKET NUMBER: 1998-0336-MSW-E; TNRCC IDENTIFICATION (ID) NUMBER: 12320; LOCATION: 329 Springhill Road, Marshall, Harrison County, Texas; TYPE OF FACILITY: roofing; RULES VIOLATED: 30 TAC §330.5(a) by causing, suffering, allowing, or permitting the collection, storage, transportation, processing, or disposal of municipal solid waste without authorization of the TNRCC; and 30 TAC §330.32 by failing to ensure that all solid waste collected was unloaded only at facilities authorized to accept the type of waste being transported; PENALTY: $1,250; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Bilkish Lakhani and Texas Sunnyland Incorporated; DOCKET NUMBER: 1998- 0596-PWS-E; TNRCC ID NUMBER: 0200436; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(a)(b) by failing to collect routine water samples for bacteriological analysis and by failing to collect repeat water samples; 30 TAC §290.103(5) by failing to provide public notification of the failure to sample; 30 TAC §290.42(e)(2) and (8) by failing to provide disinfection prior to storage, properly cover the top of the hypochlorination solution container, and keep the hypochlorination solution container and pump properly housed and locked; 30 TAC §290.46(f)(1)(A) and (2) and subparagraph (B) by failing to maintain a free chlorine residual of 0.2 milligrams per liter throughout the distribution system, test the disinfectant residual in the distribution system with a test kit which employs a diethyl-p- phenylenediamine indicator, and perform and record the results of chlorine residual tests conducted at least once every seven days; 30 TAC §290.41(c)(1)(A) and (3)(K) and (O) by failing to properly seal the well head, maintain a separation distance of 150 feet between an underground petroleum storage tank (UST) and the well, and lock the well house; and 30 TAC §290.46(m) by failing to initiate a maintenance program to facilitate cleanliness of the facility; PENALTY: $2,844; STAFF ATTORNEY: Heather C. Otten, Litigation Division, MC 175, (512) 239-1738; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Johan DeBoer; DOCKET NUMBER: 1998-1046-AGR-E; TNRCC ID NUMBER: 12487; LOCATION: west side of State Highway 16, approximately 0.6 miles north of Downing, Comanche County, Texas; TYPE OF FACILITY: concentrated animal feeding; RULE VIOLATED: 30 TAC §321.35(a) and §321.33(e) by failing to have adequate facilities to retain all feedlot runoff from open lots and associated areas resulting from a 25-year or lesser rainfall event; PENALTY: $3,125; STAFF ATTORNEY: Nathan Block, Litigation Division, MC 175, (512) 239-0467; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469- 6750.

(4) COMPANY: G. B.'s Self Serve, Incorporated; DOCKET NUMBER: 1997-0692-PST-E; TNRCC ID NUMBER: 27375; LOCATION: 207 Commerce, Wills Point, Van Zandt County, Texas; TYPE OF FACILITY: USTs; RULES VIOLATED: 30 TAC §334.54(d)(1)(B) by failing to upgrade or permanently remove from service the USTs at the facility which had been temporarily out of service for longer than 12 months; 30 TAC §334.7(d)(3) by failing to amend, update, or change ST registration information with the commission; and 30 TAC §334.50(b)(1)(A) by failing to monitor the USTs for releases; PENALTY: $6,250; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Naushad Ali Virani dba Honey Stop #1; DOCKET NUMBER: 1998-1404-PST- E; TNRCC ID NUMBER: 0029412; LOCATION: Highway 75 and Highway 150, New Waverly, Walker County, Texas; TYPE OF FACILITY: retail gasoline dispensing; RULES VIOLATED: 30 TAC §334.51(b)(2)(B) and (C) and the Code, §26.3475 by failing to install overfill prevention equipment and spill prevention equipment; and 30 TAC §334.22(a) by failing to pay outstanding UST fees; PENALTY: $3,125; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

TRD-9903855
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 28, 1999

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Notice of Water Quality Applications Issued for the period of May 28 1999 to June 28, 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.

GLEN OAKS MANAGEMENT, INC. has applied for a renewal of TNRCC Permit Number 12296-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The plant site is located approximately 2,000 feet southeast of the intersection of State Highway 30 and Farm-to-Market Road 158 in Brazos County, Texas

CITY OF HOUSTON, CITY OF HOUSTON DEPARTMENT OF PUBLIC WORKS AND ENGINEERING, has applied for a renewal of TNRCC Permit Number 10495-142, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 378,000 gallons per day. Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10495-142 will replace the existing NPDES Permit Number TX0088501 issued on August 19, 1988 and TNRCC Permit Number 10495-142. The plant site is located approximately 250 feet south of River Ridge Drive and 3/4 mile west of U.S. Highway 59 in Montgomery County, Texas.

ISK MAGNETICS, INC. has applied for a renewal of TNRCC Permit Number 03834, which authorizes the discharge of process wastewater, utility water, and storm water at a daily average flow not to exceed 920,000 gallons per day via Outfall 001. Issuance of this

Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0113514 which was never issued and TNRCC Permit Number 03834. The applicant operates a facility which produces magnetic iron oxide for use in the manufacturing of video tapes. The plant site is located at 2239 Haden Road, east of Haden Road, south of Interstate Highway 10, and north of Greens Bayou, within the extraterritorial jurisdiction of the City of Houston, Harris County, Texas.

CITY OF MIDWAY has applied for a renewal of TNRCC Permit Number 13378-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The plant site is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas

MOUNT HOUSTON ROAD MUNICIPAL UTILITY DISTRICT, 333 Clay Avenue, 8th Floor, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11154-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11154-001 will replace the existing NPDES Permit Number TX0023515 issued on September 9, 1988 and TNRCC Permit Number 11154-001.

TEXAS UTILITIES ELECTRIC COMPANY has applied for a renewal of TNRCC Permit Number 01250, which authorizes the discharge of once-through cooling water and previously monitored effluents (from Outfall 101) at a daily average flow not to exceed 927,000,000 gallons per day via Outfall 001, the discharge of low-volume waste and storm water runoff on an intermittent and flow variable basis via Outfall 002, and the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 003. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0001007 issued on May 30, 1997, and TNRCC Permit Number 01250 issued October 16, 1992. The applicant operates the Mountain Creek Steam Electric Station, a steam electric power generating facility. The plant site is located at 2233-A Mountain Creek Parkway in the City of Dallas, Dallas County,

MARY SUE WARREN, 120 Oak Leaf Drive, North Richland Hills, Texas 76180, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11175-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,500 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11175-001 will replace the existing NPDES Permit Number TX0066427 issued on December 16, 1986 and TNRCC Permit Number 11175-001 issued on March 12, 1993. The plant site is located at 140 Oak Leaf Drive, approximately 0.2 mile west of Precinct Line Road (Farm-to-Market Road 3029), approximately 2 miles northwest of State Highway 26, approximately 2.75 miles north of the intersection of State Highway 26 and Precinct Line Road (Farm-to-Market Road 3029), and approximately 13 miles northeast of the City of Fort Worth central business district, in North Richland Hills in Tarrant County, Texas. The treated effluent is discharged via a pipe to Little Bear Creek; thence to Big Bear Creek; thence to the Lower West Fork Trinity River in Segment Number 0841 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life uses for Little Bear Creek. The designated uses for Segment Number 0841 are intermediate aquatic life uses and contact recreation.

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 DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AIR LIQUIDE AMERICA CORPORATION has applied for a renewal of TNRCC Permit Number 03167, which authorizes the discharge of cooling tower blowdown and utility wastewater at a daily average flow not to exceed 20,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03167. The applicant operates a gas purification plant. The plant site is located at 2300 Tidal Road, approximately 0.5 miles east of the intersection of Tidal Road and Battleground Road in the City of Dear Park, Harris County, Texas.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 12070-002, 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 in the northeast corner of T.S. Grantham M.S. Campus at 13800 Chrisman Road, approximately 1350 feet east of Chrisman Road and approximately 1900 feet north of the intersection of Aldine Mail Road and Chrisman Road in Harris County, Texas.

ALUMINUM CHEMICALS, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03944. The draft permit authorizes the discharge of stormwater at an intermittant and flow variable via Outfall 001 and boiler blowdown and stormwater at a intermittent and flow variable basis via Outfall 002 The plant site is located at 1632 Haden Road between Haden Road and Greens Bayou approximately 0.5 miles south of Interstate Highway 10 in Harris County, Texas.

ARAMARK UNIFORM SERVICES, INC., has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03441. The draft permit authorizes the discharge of treated groundwater at a daily average flow not to exceed 14,400 gallons per day via Outfall 001. The applicant operates a groundwater remediation site. The plant site is located at 8302 Market Street at the intersection of Market Street Road and Port Houston Street in the City of Houston in Harris County, Texas.

CITY OF ASHERTON has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13746-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The plant site is located approximately 6,000 feet northeast of U.S. Highway 83 and 4,000 feet northwest of Farm-to-Market Road 190 in Dimmit County, Texas.

BACLIFF MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 10627-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,030,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,030,000 gallons per day. The plant site is located approximately 1 1/2 miles north of the intersection of State Highway 146 and Farm-to-Market Road 517, 1 1/2 miles east of State Highway 146, at the south boundary of the District in Galveston County, Texas.

BAKER PETROLITE CORPORATION, 16950 Wallisville Road, Houston, Texas 77049, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 13580-001 which authorizes the discharge of treated domestic wastewater effluent at a volume not to exceed a daily average flow of 1,000 gallons per day.

CITY OF BAYTOWN has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 10395-007 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 4,500,000 gallons per day to an annual average flow not to exceed 6,000,000 gallons per day. The plant site is located approximately 2,250 feet south of the intersection of Ferry Road and Massey Thompkins Road in Harris County, Texas.

BELL COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NUMBER 1 has applied for a renewal of TNRCC Permit Number 10351-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 15,000,000 gallons per day. The plant site is located approximately 0.75 mile north of the intersection of Farm-to-Market Road 2410 and U.S. Highway 190, adjacent to and west of Farm-to-Market Road 2410 in the City of Killeen in Bell County, Texas.

BLUE BELL MANOR UTILITY COMPANY, INC., 1330 Blue Bell, Houston, Texas 77038, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0066478 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11473-001. The draft permit 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 on the north bank of Halls Bayou, approximately 1,200 feet north-northeast of the intersection of State Highway 249 (formerly Farm-to-Market Road 149) and Veterans Memorial (formerly Stuebner Airline Road) in Harris County, Texas.

CITY OF BRENHAM, P.O. Box 1059, Brenham, Texas 77834-1059, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10388-001, which authorizes the discharge of treated domestic wastewater a daily average flow not to exceed 2,550,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,550,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10388-001 will replace the existing NPDES Permit Number TX0025470 issued on September 27, 1996 and TNRCC Permit Number 10388-001 issued November 7, 1989.

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0089109 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02545. The draft permit authorizes the discharge of stormwater runoff, groundwater from a trench recovery system, and pad wash water via Outfalls 001 and 002. The applicant operates a railroad main line fueling facility. The plant site is located or about 800 feet north of the Hawkins Road Crossing and 3400 feet north of Farm-to-Market Road 3117 Crossing, south of the City of Temple, Bell County, Texas.

C & P UTILITIES, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11720-001, 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 south of Woodland Lane, approximately 1,000 feet west of Farm-to-Market Road 1409 and approximately 500 feet north of Old River in Chambers County, Texas.

C & P UTILITIES, INC.,, has applied for a renewal of TNRCC Permit Number 12382-001,, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The plant site is located approximately 3,300 feet west from the bridge where Rothwood Road crosses Spring Creek in Harris County, Texas.

CITY OF CALLISBURG has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0072362 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11840-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The plant site is located adjacent to and west of Farm-to-Market Road 678 approximately 3000 feet southeast of the intersection of Farm-to-Market Roads 678 and 2896 in Cooke County, Texas.

CHASEWOOD WATER SUPPLY CORPORATION, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0090182 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12541-001. The draft permit 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 at 20131 Farm-to-Market Road 149, immediately northwest of the point where Farm-to-Market Road 149 crosses Cypress Creek in Harris County, Texas.

CITY OF COVINGTON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0084395 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12279-001. The draft permit 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 800 feet south and 250 feet west of the intersection of Weir Avenue and State Highway 171 in Hill County, Texas.

CITY OF CRYSTAL CITY has applied for a renewal of TNRCC Permit Number 10098- 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 at the terminus of Plant Street approximately 0.2 mile northwest of the intersection of Plant Street and U.S. Highway 83, approximately 2 blocks west of the intersection of State Highway 393 and U.S. Highway 83, northwest of the City of Crystal City in Zavala County, Texas.

CYPRESS-KLEIN UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11366-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The plant site is located on Cypresswood Boulevard approximately 1500 feet north of Cypress Creek and 3500 feet north of the intersection of Steubner-Airline Road and Strack Road in Harris County, Texas.

CITY OF DE LEON, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant

Discharge Elimination System (NPDES) Permit Number TX0054844 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10078-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 295,000 gallons per day. The plant site is located approximately 1000 feet south of State Highway 6 and 4000 feet east of State Highway 16, east of the City of De Leon in Comanche County, Texas.

CITY OF DEVINE has applied for a renewal of TNRCC Permit Number 10160-001, 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 4000 feet south of the intersection of U.S. Highway 81 and State Highway 173, south of the City of Devine in Medina County, Texas.

CITY OF DILLEY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10404-003. The draft permit 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 approximately 3,000 feet east along Crawford Road from the intersection of White Street and Houston Street in Frio County, Texas.

ELITE COMPUTER CONSULTANTS, INCORPORATED has applied for a renewal of TNRCC Permit Number 12600-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located at 15110 Grant Road on the south bank of Faulkey Gully, approximately 800 feet northeast of Grant Road and approximately 600 feet west of Shaw Road in Harris County, Texas.

ELLIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0055387 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10561-001. The draft permit authorizes the discharge of treated water treatment effluent at a daily average flow not to exceed 104,000 gallons per day. The plant site is located south of the City of Waxahachie, northeast of Farm-to-Market Road 877, approximately one mile southeast of the intersection of Farm-to-Market Road 877 and U.S. Highway 77 in Ellis County, Texas.

ENGINEERED CARBONS, INC. has applied for a renewal of TNRCC Permit Number 00814, which authorizes the discharge of process wastewater, boiler blowdown, cooling tower blowdown, treated domestic wastewater and stormwater on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0007544 issued on March 8, 1985 and TNRCC Permit Number 00814. The applicant operates the Echo Carbon Black Plant. The plant site is located adjacent to Farm-to-Market Road 736 approximately two miles east of the intersection of State Highway 87 and Farm-to-Market Road 3247 and three miles northeast of the city of Orange, Orange County, Texas.

EVADALE INDEPENDENT SCHOOL DISTRICT, P.O. Box 497, Evadale, Texas 77615, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13933-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13933-001 will replace the existing TNRCC Permit Number

FAULKEY GULLY MUNICIPAL UTILITY DISTRICT has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0072354 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11832-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The plant site is located at 15503 Hermitage Oak, north of Malcomson Road and west of Farm-to-Market Road 149 in Harris County, Texas.

CITY OF FRISCO has applied for a renewal of TNRCC Permit Number 10172-002, 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 approximately 2500 feet north of Farm-to- Market Road 720 and immediately east of St. Louis-San Francisco Railroad in Collin County, Texas.

GLEN OAKS MANAGEMENT, INC. has applied for a renewal of TNRCC Permit Number 12296-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day. The plant site is located approximately 2,000 feet southeast of the intersection of State Highway 30 and Farm-to-Market Road 158 in Brazos County, Texas.

GREATER WHITEHOUSE UTILITY COMPANY, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0095419 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12910-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 41,300 gallons per day. The plant site is located at 100 Quail Lane, at the intersection of Quail Lane and Bobwhite Lane, approximately 1 3/8 miles southwest of the intersection of State Highway 110 and Farm-to-Market Road 346 in Smith County, Texas.

GULF CHEMICAL & METALLURGICAL CORPORATION, P.O. Box 2290, Freeport, Texas 77542, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to Permit Number 01861 to authorize an increase in the effluent discharge limitations for Outfall 001 due to increases in production; an increase in the discharge of process wastewater, cooling water, domestic sewage, and stormwater from a daily average flow not to exceed 220,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day via Outfall 001; and to authorize the flow variable discharge of non-contact cooling water and cooling tower blowdown via Outfall 002. The current permit authorizes the discharge of: process water, cooling water, domestic sewage and stormwater runoff at a daily average flow not to exceed 220,000 gallons per day via Outfall 001; and stormwater on an intermittent and flow variable basis via Outfall 002. The applicant operates a plant that recovers metals (molybdenum and vanadium) from spent refinery hydro-desulferizing catalyst.

HANSON AGGREGATES WEST, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 02970, which authorizes the discharge of groundwater and storm water runoff on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0102831 issued on June 3, 1988 and TNRCC Permit Number 02970 issued June 4, 1993. The applicant operates a sand and gravel mining operation at the Cobb Plant. The plant site is located on Malloy Bridge Road, approximately

0.5 miles southeast of the intersection of Bilindsay Road and Malloy Bridge Road, approximately 3.1 miles southeast of Seagoville, Dallas County, Texas.

CITY OF HARKER HEIGHTS has applied for a renewal of TNRCC Permit Number 10155-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located approximately 3,000 feet northwest of the intersection of U.S. Highway 190 and Farm- to-Market Road 3219, approximately 1/4 mile south of U.S. Highway 190 on the south bank of Nolan Creek in Bell County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 6 has applied for a renewal of TNRCC Permit Number 11273-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The plant site is located approximately 2 miles north and one mile east of the intersection of Fairbanks-North Houston Road and Whiteoak Bayou in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 247 has applied for a renewal of TNRCC Permit Number 12681-001, 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 at 12103 Castlebridge Drive, approximately 0.75 mile northwest of the intersection of U.S. Highway 290 and Jones Road and 2.0 miles southeast of the intersection of U.S. Highway 290 and Farm-to-Farm Market Road 1960 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 58 has applied for a renewal of TNRCC Permit Number 11941-001, 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 1100 feet west of Kuykendahl Road and 2250 feet south of Farm-to-Market Road 1960 on the north and south sides of Bammel Village Drive in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 285 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0095451 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12928-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 500 feet north of the intersection of Wickhamford Way and Crosshaven Drive, approximately 3/4 mile west of Carpenters Bayou in Harris County, Texas.

HERITAGE FINANCIAL GROUP INC. DBA PECAN PLANTATION LTD, has applied for a renewal of TNRCC Permit Number 12677-001, 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 0.25 mile south of the intersection of Spencer Highway and Canada Street, 0.75 mile southwest of the intersection of Spencer Highway and Underwood Road in Harris County, Texas.

CITY OF HICO has applied for a renewal of TNRCC Permit Number 10188-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 0.25 mile south of State Highway 6 and approximately 0.75 mile east of U.S. Highway 281, southeast of the City of Hico in Hamilton County, Texas.

CITY OF HITCHCOCK has applied for a renewal of TNRCC Permit Number 10690-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located approximately 1.0 mile south of the intersection of State Highway 6 and Farm-to-Market Road 519 in Galveston County, Texas.

JIM HOGG COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 2 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10799-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 796,000 gallons per day. The plant site is located approximately 3,700 feet east of the intersection of State Highway 285 and Farm-to-Market Road 1017, on the north side of State Highway 285 in Jim Hogg County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit Number 10495-053, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The plant site is located at 4900 Gallagher in the City of Houston in Harris County, Texas.

CITY OF HOUSTON has applied for a major amendment to TNRCC Permit Number 10495-139 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 500,000 gallons per day to an annual average flow not to exceed 995,000 gallons per day. The plant site is located approximately 250 feet west of the intersection of Genard Road and Steffani Lane in Harris County, Texas.

CITY OF HOUSTON, CITY OF HOUSTON DEPARTMENT OF PUBLIC WORKS AND ENGINEERING, has applied for a renewal of TNRCC Permit Number 10495-142, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 378,000 gallons per day. Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10495-142 will replace the existing NPDES Permit Number TX0088501 issued on August 19, 1988 and TNRCC Permit Number 10495-142. The plant site is located approximately 250 feet south of River Ridge Drive and 3/4 mile west of U.S. Highway 59 in Montgomery County, Texas.

HOUSTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10871-001. The draft permit authorizes the discharge of filter backwash at a daily average flow not to exceed 60,000 gallons per day. The plant site is located approximately one mile southwest of Latexo, approximately 1 and 3/4 miles northwest of the intersection of U.S. Highway 287 and Farm-to-Market Road 2160 in Houston County, Texas.

HOUSTON INDUSTRIES INCORPORATED has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0102008 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13368-001. The draft permit 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 at 16303 State Highway 249 immediately west of the T.H. Wharton Electric Generating Station and approximately

2,500 feet southwest of the intersection of Grant Road and Farm-to-Market Road 149 in Harris County, Texas.

HUNGERFORD MUNICIPAL UTILITY DISTRICT NUMBER 1 has applied for a renewal of TNRCC Permit Number 13240-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located approximately 250 feet northwest of the intersection of West Live Oak Road and Habermacher Street, approximately 0.5 mile north-northwest of the intersection of State Highway 60 and Farm-to Market Road 1161 in Wharton County, Texas.

CITY OF HUNTSVILLE, 1212 Avenue M, Huntsville, Texas 77340, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0022373 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10781-001. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10781-001 will replace the existing NPDES Permit Number TX0022373 issued on September 30, 1993 and TNRCC Permit Number 10781-001.

ISK MAGNETICS, INC. has applied for a renewal of TNRCC Permit Number 03834, which authorizes the discharge of process wastewater, utility water, and storm water at a daily average flow not to exceed 920,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0113514 which was never issued and TNRCC Permit Number 03834. The applicant operates a facility which produces magnetic iron oxide for use in the manufacturing of video tapes. The plant site is located at 2239 Haden Road, east of Haden Road, south of Interstate Highway 10, and north of Greens Bayou, within the extraterritorial jurisdiction of the City of Houston, Harris County, Texas.

IVERNESS FOREST IMPROVEMENT DISTRICT has applied for a renewal of NPDES Permit Number 10783-001, which authorizes the discharge of treated domestic wastewater based on a daily average flow not to exceed 500,000 gallons per day. The plant site is located on the north side of Cypress Creek, approximately 800 feet east of the Hardy Road bridge crossing Cypress Creek in Harris County, Texas.

IOLA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 12664-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The plant site is located on school property at the intersection of Fort Worth and Neches Streets in the City of Iola in Grimes County, Texas.

CITY OF ITASCA has applied for a renewal of TNRCC Permit Number 10423-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 378,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10423-001 will replace the existing TNRCC Permit Number 10423- 001. The plant site is located approximately one mile south of the City of Itasca, west of U.S. Highway 81 and adjacent to Missouri, Kansas and Texas Railroad in Hill County, Texas

JOPATA INDUSTRIES, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0063860 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11673-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The plant site is located approximately 0.75 mile south-southeast of the intersection of Hardy Road and Aldine Mail Road between Erwin Street and Collins Street in Harris County, Texas.

JEZIERSKI PROPERTIES PARTNERSHIP has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13067-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,600 gallons per day. The plant site is located at 120 Dale Street, on the northeast corner of Airline Drive and Dale Street, approximately 4,000 feet north of Halls Bayou in Harris County, Texas.

CITY OF JOSEPHINE has applied for a renewal of TNRCC Permit Number 10887, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000 gallons per day. The plant site is located approximately 0.2 mile north and 0.7 mile east of the intersection of Farm-to-Market Road 6 and Farm-to-Market Road 1777 in Collin County, Texas.

CITY OF KIRBYVILLE has applied for a renewal of TNRCC Permit Number 10202-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 930,000 gallons per day. The plant site is located approximately 3/4 mile east of the intersection of U.S. Highway 96 and Main Street in the City of Kirbyville in Jasper County, Texas.

KOHLER CO., has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 03781. The draft permit authorizes the discharge of process wastewater and water washdown at a daily average flow not to exceed 20,000 gallons per day via Outfall 001 and the disposal of treated effluent via irrigation of 8.3 acres of company owned property during dry weather conditions. The plant site is located at the southwest corner of Milam Drive and Albert Sidney Johnson Drive, approximately 0.6 mile from the existing Kohler facility in the extraterritorial jurisdiction of the City of Brownwood in Brown County, Texas.

LAMAR CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit Number 13006-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 17,000 gallons per day. The plant site is located approximately 3.5 miles generally south of the City of Rosenberg and approximately 1300 feet east of the intersection of J. Meyer Road and State Highway 36 in Fort Bend County, Texas.

LOUISIANA-PACIFIC CORPORATION has applied for a renewal of TNRCC Permit Number 03363, which authorizes the discharge of stormwater and wet decking water via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03363. The applicant operates a hardwood lumber sawmill. The plant site is located adjacent to the west side of the Southern Pacific Railroad and approximately four (4) miles northwest of the intersection of U.S. Highways 69 and 287 and Farm-to-Market Road 418 in the Town of Kountze, Hardin County, Texas.

LUCE BAYOU PUBLIC UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11167-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 161,000 gallons per day. The plant site is located 3.5 miles north of the intersection of Farm-to-Market Road 1960 and Farm-

to-Market Road 2100 at a point 2 miles north of Huffman in Harris County, Texas.

LOUIS MANZONE has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13529-001. The draft permit 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 1,000 feet south of State Highway 114 and approximately 4,500 feet east of the intersection of State Highway 114 and Interstate Highway 35W in Denton County, Texas.

MAVERICK COUNTY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13716-001. The draft permit 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 approximately 2,000 feet southeast of the intersection of U.S. Highway 277 and State Highway 131 in Maverick County, Texas.

CITY OF MEXIA has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0052990 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10222-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 850,000 gallons per day. The plant site is located approximately 1.25 miles southeast of the intersection of State Highway 14 and Farm-to-Market Road 39 and approximately a half mile south of the intersection of Travis Street and Bonham Street in the City of Mexia in Limestone County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 19, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11970-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 625,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11970-001 will replace the existing NPDES Permit Number TX0076538 issued on April 26, 1997 and TNRCC Permit Number 11970-001 issued on January 17, 1997.

MOUNT HOUSTON ROAD MUNICIPAL UTILITY DISTRICT, 333 Clay Avenue, 8th Floor, Houston, Texas 77002, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11154-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11154-001 will replace the existing NPDES Permit Number TX0023515 issued on September 9, 1988 and TNRCC Permit Number 11154-001.

NCI BUILDING SYSTEMS, L.P., has applied for a renewal of TNRCC Permit Number 12552- 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 7301 Fairview, approximately 0.4 mile north of Farm-to-Market Road 529, 1.5 miles northwest of the intersection of Farm-to- Market Road 529 and U.S. Highway 290, and approximately 18 miles northwest of the City of Houston Central Business District in Harris County, Texas.

NORTH ALAMO WATER SUPPLY CORPORATION, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13747-001. The draft permit 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 1/3 mile south of State Highway 186 and « mile west of Farm-to-Market Road 1015 in Willacy County, Texas.

ORANGE COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1 has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10875-007. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 216,500 gallons per day. The plant site is located adjacent to Terry Gully and approximately 2,000 feet west of the intersection of Farm-to-Market 1132 and Interstate Highway 10 in Orange County, Texas

ORBIT SYSTEMS, INC. has applied for a renewal of TNRCC Permit Number 12672-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The plant site is located approximately 0.50 mile south of Farm-to- Market Road 1462 and 1.5 miles west of State Highway 288 in Brazoria County, Texas.

PWT ENTERPRISES, INC., has applied for National Pollutant Discharge Elimination System (NPDES) Permit Number TX0093483 and has existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02642. The draft permit authorizes the discharge of settled and equalized wastewater at a daily average flow not to exceed 3,000 gallons per day via Outfall 001. The applicant operates King Kleen Car Wash, an automatic car wash. The plant site is located at 1956 North Park Drive (in the rear of the Kingwood subdivision) which is about 1.5 miles east of U.S. Highway 59 in Montgomery County, Texas.

CITY OF PASADENA has applied for a renewal of TNRCC Permit Number 10053-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The plant site is located north of the 3,600 block of Darling Avenue; approximately 4,000 feet east-southeast of the intersection of South Avenue and State Highway 225 in Harris County, Texas.

CITY OF POINT, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0071579 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10964-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.040 million gallons per day. The plant site is located approximately 1,500 feet west of the intersection of Farm-to-Market Road 514 and U.S. Highway 69 in Rains County, Texas

POINT AQUARIUS MUNICIPAL UTILITY DISTRICT, has applied for a renewal of TNRCC Permit Number 11219-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 390,000 gallons per day. The plant site is located approximately 1 mile southwest of the intersection of Farm-to-Market Road 1097 and Aquarius Boulevard in Montgomery County, Texas.

CHAO KUAN LEE has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13560-001. The draft permit authorizes

the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The plant site is located 600 feet north of Northville Road and 300 feet west of Interstate Highway I-45 in Harris County, Texas.

LEAGUE LINE UTILITIES, L.L.C. has applied for a major amendment to TNRCC Permit Number 13118-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 21,500 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The draft permit 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 approximately 1.5 miles west of Interstate Highway 45 and approximately 2.4 miles northwest of the intersection of State Highway Loop 336 and Interstate Highway 45 and approximately 4.3 miles northwest of the courthouse in the City of Conroe in Montgomery County, Texas.

STEVEN EDWIN AND MAE ROSE LEWIS has applied for a renewal of TNRCC Permit Number 12804-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located immediately south of County Road 739 (Trammel-Fresno Road) and 1/4 mile west of Kansas Road, approximately 2 miles north of the intersection of State Highway 6 and Farm-to-Market Road 521 in Fort Bend County, Texas.

LIVINGSTON BEACON BAY, INC., Route 9, Box 1620, Livingston, Texas, 77351, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13637-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The plant site is located approximately 500 feet southwest of the intersection of Farm-to-Market Road 350 and Farm-to-Market Road 3126 on the shoreline of Lake Livingston in Polk County, Texas.

LUMBERTON MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TNRCC Permit Number 11709-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 1,720,000 gallons per day to an annual average flow not to exceed 3,330,000 gallons per day. The plant site is located on the northeast bank of Boggy Creek, approximately 4000 feet southwest of the intersection of Farm-to-Market Road 421 and U.S. Highway 69 in Hardin County, Texas.

MAXEY ROAD WATER SUPPLY CORP., 8556 Katy Freeway, Suite 128, Houston, Texas 77024, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0105406 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13503-001. The draft permit 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 on the east side of Gregdale Road approximately 300 feet south of the intersection of Gregdale Road and .S. Highway 90 in Harris County, Texas.

MEMORIAL POINT UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11147-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The plant site is located approximately 2 miles south of the intersection of Farm-to-Market Roads 2457 and 3277 on the east side of Lake Livingston in Polk County, Texas.

CITY OF MIDWAY has applied for a renewal of TNRCC Permit Number 13378-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The plant site is located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of the City of Midway in Madison County, Texas.

CITY OF NEW WAVERLY has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0087831 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11020-002. The draft permit 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 0.6 mile west of the junction of Farm-to-Market Road 1375 and .S. Highway 75 in Walker County, Texas.

NITSCH AND SON UTILITY COMPANY, INC. has applied for a renewal of TNRCC Permit Number 10419-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1 mile east of Interstate Highway 45 and « mile north of Canino Road in Harris County, Texas.

CHAU NGOC ONG has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11812-001, which authorizes 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 1,000 feet southeast of the intersection of Aldine Westfield Road and Aldine Mail Road, between Aldine Mail Road and Isom Street in Harris County, Texas.

ORANGE COUNTY WATER CONTROL DISTRICT AND IMPROVEMENT DISTRICT NUMBER 1 has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0108073 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10875-003. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 255,000 gallons per day. The plant site is located approximately 3,500 feet southwest of the intersection of Farm-to-Market Road 1132 and State Highway 105 in Orange County, Texas.

CITY OF PASADENA has applied for a renewal of TNRCC Permit Number 10053-005, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,000,000 gallons per day. The plant site is located on the east and west banks of Vince Bayou; west of McDonald Street and north of West Richey Access Road in Harris County, Texas.

PARBHUBHAI THAKORBHAI PATEL, 6108 W. US Highway 80, Terrell, Texas 75160, has applied for a renewal of TNRCC Permit Number 11286-001, 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 1/4 mile north of the intersection of Interstate Highway 20 and State Highway 80, approximately 1 and « miles west of the intersection of Farm-to-Market Road 1392 and State Highway 80 in Kaufman County, Texas.

PLANTATION MUNICIPAL UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11971-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 550,000 gallons per day. The plant site is located at 802 Tara Plantation Drive on the north bank of Rabbs Bayou, approximately 4,000 feet north of Booth-Richmond Road (Farm-to-Market Road

2759) and approximately 3,250 feet east of Crabb River Road in Fort Bend County, Texas.

POLO CLUB OFFICE PARK has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13985-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 5,200 feet north of the intersection of Riley Fussell Road and Rayford Road in Montgomery County, Texas.

PORTERFIELD VENTURES, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0071145 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11778-001. The draft permit 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 approximately 2.5 miles southwest of the intersection of Farm-to-Market Road 2818 and Farm-to-Market Road 1688 (Leonard Road), 2000 feet southwest of the intersection of Leonard Road and Jones Road, five miles southwest of City of Bryan in Brazos County, Texas.

CITY OF POST, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0001511 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13048-001. The draft permit 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 approximately 0.75 mile southeast of the intersection of U.S. Highway 84 and U.S. Highway 380 in Garza County, Texas.

RELIANT ENERGY INCORPORATED, has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0006441 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01027. The draft permit authorizes the discharge of cooling tower blowdown, stormwater, and previously monitored effluents. The applicant operates the H. O. Clarke steam electric station. The plant site is located the southwest corner of the intersection of Hiram Clarke Road and U.S. Highway 90A in the City of Houston, Harris County, Texas.

THE CITY OF RIO VISTA has applied for a renewal of TNRCC Permit Number 13546- 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 at 702A Cleburne Whitney Road, approximately 2400 feet south and 4000 feet east of the intersection of County Road 916 and State Highway 174, southeast of the City of Rio Vista in Johnson County, Texas.

SANDERSON FARMS, INC. (Processing Division) has applied for a major amendment to TNRCC Permit Number 03821 to authorize the addition of truck wash water and stormwater to Outfall 001; to increase the discharge from a daily average flow not to exceed 1,671,000 gallons per day to a daily average flow not to exceed 1,678,000 gallons per day via Outfall 001; to add Outfall 002 for the discharge of cooling system condensate, melted ice, and stormwater at a flow variable rate; and to reuse treated effluent for landscape irrigation. The current permit authorizes the discharge of process wastewater, utility wastewater, and domestic wastewater at a daily average flow not to exceed 1,671,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03821 issued on August 18, 1995. The applicant operates a poultry processing facility. The plant site is located 2000 Shiloh Drive, approximately 1.6 miles southwest of the intersection of State Highway 21 and Farm-to- Market Road 2818 in the City of Bryan , Brazos County, Texas.

SANDERSON FARMS, INC. has applied for a renewal of TNRCC Permit Number 03847, which authorizes the discharge of boiler blowdown and truckshop wastewater at a daily average flow not to exceed 29,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0113794 and TNRCC Permit Number 03847. The applicant operates a feedmill. The plant site is located on U.S. Highway 79 approximately 3.2 miles northeast of the intersection of U.S. Highway 79 and State Route 1940 in the Community of New Baden, Robertson County, Texas.

SANDY CREEK UTILITIES, INC. has applied for a renewal of TNRCC Permit Number 13293-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 42,400 gallons per day. The plant site is located approximately 4 miles southeast of the intersection of Interstate Highway 35 and Farm-to-Market Road 2001 and 5 miles north of the intersection of State Highway 21 and Farm-to-Market Road 272 in Hays County, Texas.

SHERIDAN WATER SUPPLY CORPORATION has applied for renewal of an existing wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13452-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons. The plant site is located 1400 feet east-southeast of the intersection of U. S. Highway 90 Alternate and Farm-to-Market Road 2437 near the City of Sheridan in Colorado County, Texas.

CITY OF SINTON has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit 13641-001. The draft permit 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 in the Rob and Bessie Welder Park on U.S. Highway 181, approximately 2.4 miles north of the intersection of U.S. Highway 181 and Farm-to-Market Road 881 in San Patricio County, Texas.

SPENCER ROAD PUBLIC UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11472-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The plant site is located at 14310 Spencer Road (Farm-to-Market Road 529), approximately 2,000 feet west of the intersection of Jackrabbit Road and Spencer Road, approximately 1.1 miles east of the intersection of State Highway 6 and Spencer Road, adjacent to the east bank of Horsepen Creek in Harris County, Texas.

CITY OF SPLENDORA, P.O. Drawer 1087, Splendora, TX 77372, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13389-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 84,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13389-001 will replace the existing NPDES Permit Number TX0102512 issued on February 16, 1994 and TNRCC Permit Number 13389-001 issued on December 13, 1993. The plant site is located approximately 2,000 feet north of Farm-to-Market Road 2090 on the east side of Cox Street and adjacent to the T. & N.O. Railroad in the City of Splendora in Montgomery County, Texas. The treated effluent is discharged to a roadside channel; thence to an unnamed tributary of Peach Creek; thence to Peach Creek in Segment Number

1011 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the roadside channel and the unnamed tributary of Peach Creek. The designated use for Segment Number 1011 are high aquatic life uses, public water supply and contact recreation.

SPRING CREEK U.D. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0026221 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 11574-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 475,000 gallons per day. The plant site is located approximately 1 mile west of the intersection of Riley Fussel Road and Rayford Road in Montgomery County, Texas.

CITY OF SPRINGTOWN has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0032646 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10649-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 260,000 gallons per day. The plant site is located east of the City of Springfield approximately 4600 feet east of the intersection of Spring Branch Trail and 3rd Street in Parker County, Texas.

STEPHEN F. AUSTIN STATE UNIVERSITY - PINEY WOODS CONSERVATION CENTER, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0098744 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13161-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The plant site is located approximately 5,000 feet south-southwest of the intersection of Farm-to-Market Roads 705 and 3127 in San Augustine County, Texas.

STERLING CHEMICALS, INC., has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0005762 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 00575. The draft permit authorizes the discharge of once- through bay water for non-contact cooling, screen wash water, stormwater runoff, steam condensate, and boiler blowdown at a daily average flow not to exceed 72,000,000 gallons per day via Outfall 002; once-through bay water for non-contact cooling, screen wash water, stormwater runoff, steam condensate, and boiler blowdown at a daily average flow not to exceed 30,500,000 gallons per day via Outfall 003; and stormwater runoff, non-routine cooling tower blowdown, boiler blowdown, and demineralizer and ion exchanger rinse water on an intermittent and flow variable basis via Outfall 004. There is no Outfall 001 at this facility. The applicant operates a chemical manufacturing facility producing organic and inorganic chemicals. The plant site is located at the south end of Bay Street, on the west shore of Galveston Bay, with the eastern plant border adjacent to Loop 197, in the City of Texas City in Galveston County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TNRCC Permit Number 10518-001, 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 on the south side of Halls Bayou approximately 1000 feet east of Hacker Street in Harris County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT, has applied for a renewal of TNRCC Permit Number 11670-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The plant site is located approximately 4000 feet east of the Fairbanks North Houston Road bridge over Whiteoak Bayou in Harris County, Texas.

SUPERIOR DERRICK SERVICES, INC., 9523 Fairbanks N. Houston Road, Houston, Texas 77064, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12443-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,400 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12443-001 will replace the existing NPDES Permit Number TX0088676 issued on May 15, 1987 and TNRCC Permit Number 12443-001. The plant site is located approximately 250 feet west of Fairbanks-N. Houston Road and approximately 0.75 mile north of Taub Road in Harris County, Texas. The treated effluent is discharged to a Harris County Flood Control ditch; thence to Whiteoak Bayou Above Tidal in Segment Number 1017 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the Harris County Flood Control ditch. The designated uses for Segment Number 1017 are contact recreation and limited aquatic life uses.

TXI OPERATIONS, L.P., has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0047791 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 01691. The draft permit authorizes the discharge of cooling water and wet scrubber water commingled with stormwater runoff at a daily average flow not to exceed 600,000 gallons per day via Outfall 001. The applicant operates a lightweight aggregate production facility. The plant site is located approximately three (3) miles northwest of the City of Streetman on the east side of Interstate Highway 45, 1.5 miles north of the Wortham/Streetman exit in Navarro County, Texas.

TARRANT BAPTIST ASSOCIATION, INC. has applied for a renewal of TNRCC Permit Number 10895-001, 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 1000 feet due west of the Brazos River and approximately 4 miles due east of the intersection of Farm-to-Market Road 56 and Farm-to-Market Road 144 in Somervell County, Texas.

TEXAS A&M UNIVERSITY, Physical Plant, Mail Stop 1371, College Station, Texas 77843-1371, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of Permit Number 10968-002, 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 portion of the TAMU Research Annex (Riverside Campus), approximately 2.25 miles southwest of the intersection of State Highway 21 and State Highway 45 in Brazos County, Texas. The treated effluent is discharged to a man-made ditch; thence to an unnamed tributary; thence to the Brazos River Below Whitney Lake in Segment Number 1242 of the Brazos River Basin. The unclassified receiving water uses are no significant aquatic life uses for the man-made ditch and limited aquatic life uses for the unnamed tributary. The designated uses for Segment Number 1242 are contact recreation, high aquatic life uses and public water supply.

TEXAS DEPARTMENT OF TRANSPORTATION, P.O. Box 1210, Atlanta, Texas 75551, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC

Permit Number 11973-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11973-001 will replace the existing TNRCC Permit Number 11973-001. The plant site is located within the right- of-way of Interstate Highway 20 at a point approximately 3.4 miles east of Farm-to-Market Road 450 in Harrison County, Texas. The treated effluent is discharged to unnamed tributary; thence to Hatley Creek; thence to the Sabine River Above Toledo Bend Reservoir in Segment Number 0505 of the Sabine River Basin. The unclassified receiving water uses are no significant aquatic life for unnamed tributary. The designated uses for Segment Number 0505 are public water supply, high aquatic life uses and contact recreation.

TEXAS PARKS AND WILDLIFE DEPARTMENT, TNRCC Coordinator (Code 32) Infrastructure Division, 4200 Smith School Road, Austin, Texas 78744-9822, has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13613-001. The draft permit 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 Number 13613-001 will replace the existing TNRCC Permit Number 13613-001. The plant site is located approximately 500 feet east of Buggy Whip Creek and approximately 7,800 feet north of Posey in Hopkins County, Texas. The treated effluent is discharged to Cooper Lake through 6-inch pipe in Segment Number 0307 of the Sulphur River Basin. The designated uses for Segment Number 0307 are high aquatic life uses, public water supply and contact recreation.

TEXAS UTILITIES ELECTRIC COMPANY has applied for a renewal of TNRCC Permit Number 01250, which authorizes the discharge of once-through cooling water and previously monitored effluents (from Outfall 101) at a daily average flow not to exceed 927,000,000 gallons per day via Outfall 001, the discharge of low-volume waste and storm water runoff on an intermittent and flow variable basis via Outfall 002, and the discharge of storm water runoff on an intermittent and flow variable basis via Outfall 003. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0001007 issued on May 30, 1997 and TNRCC Permit Number 01250 issued October 16, 1992. The applicant operates the Mountain Creek Steam Electric Station, a steam electric power generating facility. The plant site is located at 2233-A Mountain Creek Parkway in the City of Dallas, Dallas County, Texas.

CITY OF THORNTON has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0075639 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10824-001. The draft permit authorizes the discharge of treated domestic wastewater based on a daily average flow not to exceed 41,000 gallons per day. The plant site is located approximately 0.5 mile south of the intersection of State Highway 14 and Farm-to- Market Road 1246, on the southwest side of the city limits of the City of Thornton in Limestone County, Texas.

TIMBERLAKE IMPROVEMENT DISTRICT, c/oYoung and Brooks, 1415 Louisiana, 5th Floor, Houston, Texas 77002-7349, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11267-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11267-001 will replace the existing NPDES Permit Number TX0046868 issued on August 3, 1989 and TNRCC Permit Number 11267-001 issued on July 11, 1994. The plant site is located at 12702 Jarvis, south of Cypress Creek, approximately 3.2 miles north of the intersection of U.S. Highway 290 and Farm-to-Market Road 1960 and approximately 1.4 miles north of the intersection of Cypress-North Houston Road and Huffmeister Road in Harris County, Texas. The treated effluent is discharged to an unnamed tributary; thence to Cypress Creek in Segment Number 1009 of the San Jacinto River Basin. The unclassified receiving water uses are high aquatic life uses for the unnamed tributary to Cypress Creek. The designated uses for Segment Number 1009 are high aquatic life uses, public water supply, and contact recreation.

TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 2, c/o James L. Dougherty Jr., 5300 Memorial Drive, Suite 1070, Houston, Texas 77077, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12900-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 840,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12900-001 will replace the existing NPDES Permit Number TX0095184 issued on June 6, 1992 and TNRCC Permit Number 12900-001. The plant site is located immediately West of New Sweden Road and approximately 0.25 mile South of U.S. Highway 290 in Travis County, Texas. The treated effluent is discharged to Wilbarger Creek, thence to the Colorado River Above La Grange in Segment Number 1434 of the Colorado River Basin. The unclassified receiving water uses are limited aquatic life uses for Wilbarger Creek. The designated uses for Segment Number 1434 are exceptional aquatic life uses, public water supply and contact recreation.

CITY OF TROUP, P.O. Box 637, Troup, Texas 75789, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0033529 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10304-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 308,000 gallons per day. The plant site is located approximately 0.25 mile south of the Cherokee-Smith county line and 0.38 mile east of State Highway 110 and south of the City of Troup in Cherokee County, Texas.

UNITED STATES DEPARTMENT OF THE ARMY has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0002313 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 02233. The draft permit authorizes the discharge of wash rack treated wastewaters via Outfalls 001, 002, and 003 at an intermittent variable flow; wash rack treated wastewaters commingled with stormwater via Outfalls 004, 005, and 006 at an intermittent variable flow; and treated sewage effluent via Outfall 010 at a daily average flow not to exceed 20,000 gallons per day. The applicant operates vehicle cleaning and sewage treatment facilities. The plant site is located in the main cantonment area and near Belton Lake at Fort Hood in Bell and Coryell County, Texas.

UNIVERSAL SERVICES FORT HOOD, INC, 2323 South Shepard, Suite 1100, Houston, Texas 77019, has applied for renewal of the existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0101869 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13358-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per

day. The plant site is located approximately 500 feet north of Water Crest Road, 3,700 feet east of the Clear Creek Road, and appromixately 4,400 feet southeast of the intersection of Clear Creek Road and U.S. Highway 190 in Bell County, Texas.

US ARMY CORP OF ENGINEERS, Lavon/Cooper Project Office, 3375 Skyview Drive, Wylie, Texas 75098-5775, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0057860 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 12060-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12060-001 will replace the existing NPDES Permit Number TX0057860 issued on October 27, 1989 and TNRCC Permit Number 12060-001. The plant site is located in Lakeland Park, on the east side of Lavon Lake at a point approximately 2 miles west of the intersection of State Highway 78 and State Highway Spur 509 in Collin County, Texas. The treated effluent is discharged to Lavon Lake in Segment Number 0821 of the Trinity River Basin. The designated uses for Segment Number 0821 are high aquatic life uses, public water supply, and contact recreation.

MARY SUE WARREN, 120 Oak Leaf Drive, North Richland Hills, Texas 76180, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 11175-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,500 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11175-001 will replace the existing NPDES Permit Number TX0066427 issued on December 16, 1986 and TNRCC Permit Number 11175-001 issued on March 12, 1993. The plant site is located at 140 Oak Leaf Drive, approximately 0.2 mile west of Precinct Line Road (Farm-to-Market Road 3029), approximately 2 miles northwest of State Highway 26, approximately 2.75 miles north of the intersection of State Highway 26 and Precinct Line Road (Farm-to-Market Road 3029), and approximately 13 miles northeast of the City of Fort Worth central business district, in North Richland Hills in Tarrant County, Texas. The treated effluent is discharged via a pipe to Little Bear Creek; thence to Big Bear Creek; thence to the Lower West Fork Trinity River in Segment Number 0841 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life uses for Little Bear Creek. The designated uses for Segment Number 0841 are intermediate aquatic life uses and contact recreation.

WADSWORTH WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit Number 12618-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 27,000 gallons per day. The plant site is located approximately 400 feet east of State Highway 60 and approximately 1100 feet south of Laird Road in Matagorda County.

CITY OF WALLER has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0032476 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10310-001. The draft permit 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 102 Walnut Street, approximately 4,500 feet southeast of the intersection of U.S. Highway 290 and Farm-to-Market Road 362 in Waller County, Texas.

WEBB COUNTY has applied for a renewal of TNRCC Permit Number 13577-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The plant site is located at 1847 Patricia Lane, approximately 12,500 feet west of the intersection of U.S. Highway 83 and Espejo Molina Road in Webb County, Texas.

WHARTON COUNTY WCID NUMBER 1, P.O. Box 395, Louise, Texas 77455, has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit Number TX0027456 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10849-001. The draft permit 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 approximately 850 feet north of the intersection of Farm-to-Market Road 1160 and Loop 525, between Farm-to-Market Road 1160 and East Mustang Creek in Wharton County, Texas.

The CITY OF WILLIS has applied for a renewal of TNRCC Permit Number 10315-001, 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 200 yards west of the U.S. Highway 75 crossing of the East Fork of Crystal Creek and approximately two miles south of the City of Willis in Montgomery County, Texas.

CITY OF WILLOW PARK has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 13834-001. The draft permit 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 on the southwest corner of the Clear Fork Trinity River crossing of Crown Road, approximately 3,000 feet east of Willow Springs Road, in the City of Willow Park in Parker County, Texas.

WILLOW RUN PUBLIC SERVICES, INC., P.O. Box 1208, Humble, Texas 77347, has applied for a Texas Pollutant Discharge Elimination System (TPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10699-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. Issuance of the proposed TPDES Permit Number 10699-001 will replace the existing TNRCC Permit Number 10699- 001. The plant site is located approximately 1-1/8 miles west southwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 149; approximately 1400 feet southwest of the intersection of Stuebner-Airline Road and Farm-to-Market Road 149 in Harris County, Texas. The treated effluent is discharged to a Harris County Flood Control Ditch; thence to Halls Bayou; thence to Greens Bayou Tidal; thence into the Houston Ship Channel Tidal in Segment Number 1006 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for Harris County Flood Control Ditch and limited aquatic life use for Halls Bayou. The designated uses for Segment Number 1006 are navigation and industrial water supply.

TOWN OF WOODLOCH has applied for a renewal of TNRCC Permit Number 11580-001, 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 approximately 3.25 miles southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 1488 and approximately 2.75 miles east-northeast of the intersection of Interstate Highway 45 and Needham Road in Montgomery County, Texas.

TRD-9903904

LaDonna Castañuela

Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 30, 1999

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Notice of Water Rights Application

LOUIS T. AND SONIA ROSENBERG, 1890 Virginia Ln., Floresville, TX 78114, applicants, seek a permit to appropriate public water pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Applicants seek authorization to construct and maintain an on channel reservoir on an unnamed tributary of the San Antonio River by excavating and enlarging the stream bed without a structural dam or spillway structure. The purpose of the excavated area is to impound drainage water originating from the unnamed tributary watershed, or to store water diverted from the San Antonio River prior to irrigation use. The reservoir will be located on an unnamed tributary of the San Antonio River at a point bearing North 45ø West approximately 1000 feet from the Southeast corner of the Survey Plat of the Louise C. Reinhard land, described in Volume 749, page 353 deed records, Luis Manchaca Grant, A-18, Wilson County, Texas, also being at Latitude 29.051ø North, Longitude 98.141ø West approximately 6 miles south-southwest of Floresville, and approximately 3.5 miles west of Poth. The proposed reservoir will have a surface area of approximately 10 acres and will impound a maximum of 200 ac-ft of water.

Applicants also seek authorization to divert and use not to exceed 130 ac-ft from the San Antonio river to irrigate 65 acres of land out of a 127.2 acre tract in the aforesaid survey and to store water diverted from the San Antonio River in the reservoir for subsequent diversion to irrigate the land when diversions from the San Antonio River are restricted. The maximum combined diversion rate shall not exceed 2.2 cubic feet per second (cfs). Applicant will divert water directly from the San Antonio River at a point bearing West approximately 300 feet distance from the Southeast corner of the aforesaid survey, at Latitude 29.049ø North, and Longitude 98.137ø West.

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 this 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 requested 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, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9903903
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 30, 1999

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 24, 1999, Jato Communications Corp. filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60203. Applicant intends to transfer its SPCOA to its wholly-owned subsidiary, JATO Operating Corp.

The Application: Application of Jato Communications Corp. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 21022.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public tility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 14, 1999. You may contact the PUC 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. All correspondence should refer to Docket Number 21022.

TRD-9903850
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 28, 1999

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Notice of Application for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 22, 1999, pursuant to Public Utility Commission Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Omniplex Communications Group for Approval of IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §26.275. Project Number 21013.

The Application: The intraLATA plan filed by Omniplex Communications Group (Omniplex) 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. Omniplex shall implement intraLATA equal access within 30 days of approval of its dialing parity plan. Omniplex holds Service Provider Certificate of Operating Authority (SPCOA) Number 60100.

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 tility Commission Office of Customer Protection at (512) 936-7120 on or before July 19, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference project number 21013.

TRD-9903851
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 28, 1999

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of the filing with the Public Utility Commission of Texas an application for sale, transfer, or merger on June 24, 1999, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 (Vernon 1998).

Docket Style and Number: Application of West Texas Utilities for Sale, Transfer, or Merger Regarding the sale of Distribution Facilities to the City of Coleman. Docket Control Number 21026.

The Application: West Texas Utilities Company seeks approval of its sale of certain distribution facilities to the City of Coleman, Texas, in accordance with Public Utility Regulatory Act §14.101. The facilities being sold were dedicated to serving the City of Coleman, prior to this transaction. West Texas Utilities Company asserts that the sale will not result in a change of rates for its Texas customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Consumer Protection at (512) 936-7120. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903875
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1999

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Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 23, 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 General Telecom Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21021 before the Public Utility Commission of Texas.

Applicant intends to provide basic exchange services, including but not limited to, basic lines, PBX trunks, Centrex and Centrex-like services, associated features, functions, services and options, and local calling services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 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 July 14, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903799
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 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 June 24, 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 1stel, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21027 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange switched services: (a) on a resale basis from the underlying incumbent local exchange carrier (ILECs) or other certificated carrier; (b) using unbundled network elements from ILECs; (c) using services and facilities provided by other carriers; and/or (d) using facilities owned or operated by the Applicant.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than July 14, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903870
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 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 June 25, 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 Alliance Network, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21028 before the Public Utility Commission of Texas.

Applicant intends to provide resold services of incumbent local exchange carriers, including but not limited to, basic residential services, residential custom calling and CLASS features, basic business exchange services, business custom calling and CLASS features, adjunct provided features, and business and residentially ancillary services

Applicant's requested SPCOA geographic area includes the entire state of Texas currently served by Southwestern Bell Telephone Company, GTE Southwest, Inc., and United Telephone Company of Texas, Inc.

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 July 14, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903871
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 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 June 25, 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 Twister Communications Network, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21029 before the Public Utility Commission of Texas.

Applicant intends to provide facilities-based and resale local telecommunications services to residential and business customers.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than July 14, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903872
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1999

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Notice of Application for Waiver of an IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §26.275

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on June 23, 1999, pursuant to Public Utility Commission Substantive Rule §26.275 for waiver of an intraLATA equal access implementation plan.

Project Number: Application of Preferred Carrier Services, Inc. for Waiver of an IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule §26.275. Project Number 21014.

The Application: An intraLATA equal access plan 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. PCS holds Service Provider Certificate of Operating Authority (SPCOA) Number 60031. PCS states it currently provides telephone service strictly as a reseller and as a non-facilities based provider of pre-paid basic local exchange service. As a provider of pre-paid local service, PCS blocks access to toll calling, including intraLATA toll dialing. PCS affirms it does allow the use of long distance calling cards with toll free access or access through an interexchange carrier's toll-free number. PCS states it will file a proposed intraLATA equal access plan for commission approval if, and when, it provides its customers with access to intraLATA toll dialing.

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 July 19, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference project number 21014.

TRD-9903852
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 28, 1999

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Notices of Applications to Introduce New or Modified Rates or Terms Pursuant to Public Utility Commission Substantive Rule §26.212

Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 28, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §26.212, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Pricing Flexibility for Residence Customers in Texas, Who Subscribe to THE WORKS Between August 2, 1999 and September 30, 1999 Pursuant to Public Utility Commission Substantive Rule §26.212. Tariff Control Number 21039.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public tility Commission of Texas that it is instituting pricing flexibility for residence customers in Texas who subscribe to THE WORKS between August 2, 1999 and September 30, 1999. During this period, new residence subscribers of THE WORKS will receive a bonus certificate redeemable for a $20 check made out to the customer. Eligible customers are those who do not already subscribe to THE WORKS.

Persons who wish to intervene in this proceeding 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 by July 16, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903894
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 30, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 28, 1999 to introduce new or modified rates or terms pursuant to Public Utility Commission Substantive Rule §26.212, Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).

Tariff Title and Number: Southwestern Bell Telephone Company Notification to Institute Pricing Flexibility for Caller ID-Name and Number Service Between August 2, 1999 and September 30, 1999 Pursuant to Public Utility Commission Substantive Rule §26.212. Tariff Control Number 21042.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public tility Commission of Texas that it is instituting pricing flexibility for Caller ID Name and Number service for residence customers in Texas. Residence customers in the Houston, Galveston, Texas City-La Marque, Orange and Nacogdoches exchanges will receive up to 45 days of free Caller ID Name and Number service and an installation charge waiver from August 2, 1999 through September 15, 1999. Customers will receive this free offer as a result of a universal network turn-up of the service. Customers who choose to subscribe to Caller ID Name and Number during this period will not be billed until after September 15, 1999. Other residence customers not in the those exchanges mentioned above, who subscribe to Caller ID Name and Number service between August 2 and September 30, 1999, will receive a bonus certificate redeemable for a $10 check made out to the customer. There are no retention requirements associated with this offer. Current subscribers are not eligible for this promotion.

Persons who wish to intervene in this proceeding 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 by July 16, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903893
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 30, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 25, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company to Institute Pricing Flexibility for Residence and Business Customers in Texas Who Change the Designated Number of Rings Associated with Call Forwarding-Busy Line and/or Don't Answer Services Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21031.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting pricing flexibility for residence and business customers in Texas, who change the designated number of rings associated with Call Forwarding-Busy Line and/or Don't Answer services. This application provides a change in terms so that installation charges do not apply when a customer changes his designated number of rings associated with Call Forwarding-Busy Line and/or Don't Answer services.

Persons who wish to intervene in this proceeding 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 by July 16, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903876
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1999

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Notice is given to the public of an application filed with the Public Utility Commission of Texas on June 25, 1999 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §26.212, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs).*

Tariff Title and Number: Southwestern Bell Telephone Company to Institute Pricing Flexibility for Business Customers in Texas, Who Subscribe to THE WORKS or BizSaver Services Between August 2, 1999 and October 29, 1999 Pursuant to P.U.C. Substantive Rule §26.212. Tariff Control Number 21032.

The Application: Southwestern Bell Telephone Company (SWBT) has notified the Public Utility Commission of Texas that it is instituting pricing flexibility for business customers in Texas who subscribe to THE WORKS or BizSaver services between August 2, 1999 and October 29, 1999. During this period, new business subscribers of THE WORKS or BizSaver will receive a bonus certificate redeemable for a $40 check made out to the customer. Eligible customers are those who do not already subscribe to THE WORKS or BizSaver. Customers moving from THE WORKS to BizSaver or vice versa are not eligible for this promotion.

Persons who wish to intervene in this proceeding 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 by July 16, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9903877
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1999

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Notice of Complaint Regarding Reverse Directory Assistance

Notice is given to the public of the filing with the Public Utility Commission of Texas a complaint regarding reverse directory assistance on June 22, 1999, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §15.051 (Vernon 1998).

Docket Style and Number: Complaint of MCI WorldCom Against Southwestern Bell Telephone Company Regarding Reverse Directory Assistance. Docket Control Number 21011.

The Application: MCI WorldCom (MCIW) alleges that Southwestern Bell Telephone Company (SWBT) intends to provide interLATA reverse directory assistance (DA) service to its Texas end users without first filing a tariff with the commission. MCIW further alleges that SWBT intends to make reverse DA service available to requesting unaffiliated entities at SWBT's market price. MCIW asserts that the provision of reverse DA service in this manner violates the Public Utility Regulatory Act, the federal Telecommunications Act of 1996, and the Federal Communications Commission's Forbearance Order.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Consumer Protection at (512) 936-7120. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903873
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1999

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Notice of Reconciliation of Costs for Fiscal Year 1998

Notice is given to the public of the filing with the Public Utility Commission of Texas a petition to reconcile costs for fiscal year 1998, on June 25, 1999, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §36.205 (Vernon 1998).

Docket Style and Number: Application of Guadalupe-Blanco River Authority for Reconciliation of Costs of the Canyon Hydroelectric Division for Fiscal Year 1998. Docket Control Number 21033.

The Application: Guadalupe-Blanco River Authority (GBRA) seeks authority to credit New Braunfels Utilities (NBU) $58,764. GBRA asserts that it over-recovered this amount from NBU- the sole wholesale purchaser of all electricity produced by the Canyon Division and the only customer affected by this application–in fiscal year 1998. NBU concurs in the request.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Consumer Protection at (512) 936-7120. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903874
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1999

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Public Notice of Workshop on Limitations on Local Telephone Service Disconnections (SB 86, PURA §55.012) and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding Limitations on Local Telephone Service Disconnections (SB 86, PURA §55.012), on Monday, July 19, 1999, at 10:00 a.m. in the Commissioners Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21030, Amendments to Substantive Rule §§26.23, 26.24 and 26.28 Regarding Limitations on Local Telephone Service Disconnections (SB 86, PURA §55.012), has been established for this proceeding. The purpose of this workshop is to solicit input from interested parties that will assist in rulemakings necessary to implement the provisions of Senate Bill 86, 76th Legislature (1999) PURA §55.012, Limitations on Discontinuance of Basic Local Telecommunications Service. These provisions: (1) prohibit discontinuance of basic local service for nonpayment of long distance charges, (2) require that payment first be applied to local service, (3) require that the commission adopt and implement rules that require a local service provider to offer and implement toll blocking to limit long distance charges after nonpayment for long distance service, and that include provisions regarding fraudulent activity, which would allow a provider to discontinue local service, and (4) provide the commission authority to establish a maximum price that an incumbent local exchange company may charge a long distance service provider for toll blocking. The commission requests interested persons file comments to the following questions:

1. Should a provider be prohibited from refusing basic local service to an applicant for the nonpayment of long distance charges?

2. Should a provider be allowed to toll block up front when providing initial service to an applicant who has not established satisfactory credit?

3. Should a provider be prohibited from including estimated billings for long distance service in determining the deposit amount required from an applicant?

4. What is the current practice regarding toll block usage and charges?

5. What provisions should be adopted relating to toll block usage and charges?

a. When may a provider toll block?

b. When should a provider be required to toll block?

c. When may a provider charge a customer for toll blocking?

6. Are there technical issues or concerns that limit the effectiveness of toll blocking that should be considered during this rulemaking?

7. Is there still a need for Substantive Rule §26.29, Prepaid Local Telephone Service (PLTS)?

8. What activities would be regarded as fraudulent and allow a provider to discontinue local service?

9. How should the maximum price that an incumbent local exchange company may charge a long distance service provider for toll blocking be established?

10. What specific changes should be made to Substantive Rules §26.28, Suspension or Disconnection of Service, §26.23; Refusal of Service; and §26.24, Credit Requirements and Deposits?

11. What specific changes should be made to any additional substantive rules not listed in the previous question?

12. Are there any additional factors that should be considered in this rulemaking process?

The commission request workshop participants come prepared to discuss these questions. Workshop participants and interested persons are also requested to file written comments in response to the questions the same day as the workshop. Responses may be filed

by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 on July 19, 1999. All responses should reference Project Number 21030.

Questions concerning the workshop or this notice should be referred to John S. Capitano, Jr., Senior Enforcement Investigator, Office of Customer Protection, (512) 936-7127. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903853
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 28, 1999

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Public Notice of Workshop on Securitization by Electric Utilities

The Public Utility Commission of Texas (commission) will hold a workshop regarding Securitization by Electric Utilities, on Tuesday, July 13, 1999, at 10:00 a.m. in the Training Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21046, *Development of a Securitization Application Form*, has been established for this proceeding. Pursuant to the Texas Utilities Code, Subchapter G, Chapter 39, electric utilities may file an application for a financing order from the commission to use securitization financing to recover regulatory assets and stranded costs. These financing orders must be issued by the commission within 90 days of the utility's application. To facilitate an efficient process, the commission seeks to create an application form for securitization of regulatory assets that will ensure that sufficient information is submitted to satisfy the statutory requirements. Prior to the workshop, the commission requests interested person to file comments to the following questions:

1. What tasks need to be completed by the commission prior to the issuance of securitization bonds?

2. What essential findings must be made by the commission in a financing order authorizing securitization?

3. What type of analysis is required to establish the findings listed in question 2?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public tility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326 by July 12, 1999. All responses should reference Project Number 21046.

Seven days prior to the workshop the commission will make available in Central Records under Project Number 21046 an agenda for the format of the workshop, and/or a copy of a draft form.

The commission requests that persons planning on attending the workshop register by phone with Fran Hawley, Financial Review Division, 936-7429.

Questions concerning the workshop or this notice should be referred to Darryl Tietjen, Senior Financial Analyst, Financial Review Division, 936-7436. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9903900
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 30, 1999

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Texas Department of Transportation

Request for Proposal

The Airport Sponsor listed below, through its agent, the Texas Department of Transportation (TxDOT), intends to engage Aviation Professional Services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division, will solicit and receive proposals for professional services as described:

Airport Sponsor: City of Dallas, Redbird Airport; TxDOT Project Number: 9918RDBRD. Project Scope: Prepare an Airport Master Plan. Project Manager: Bruce Ehly.

The Proposal Shall Include:

1. Firm name, address, phone number and name of person to contact regarding the proposal.

2. Proposed project management structure identifying key personnel and subconsultants (if any).

3. Qualifications and recent, relevant experience (past five years) of the firm, key personnel and subconsultants relative to the performance of similar services for aviation planning projects.

4. Proposed project schedule, including major tasks and target completion dates.

5. Technical approach - a detailed discussion of the tasks or steps to accomplish the project.

6. List of in-state references including the name, address, and phone number of the person most closely associated with the firm's prior performance of similar airport planning projects.

7. Statement regarding an Affirmative Action Program.

8. Copy of the "Franchise Tax Certificate of Account Status" from the Texas State Comptroller office showing that all franchise taxes are paid or that consultant is not subject to franchise taxes.

9. Certification of Child Support payments. Forms are available by calling TxDOT, Grant Management, at (512) 416-4500 or 1-800-68-PILOT.

Those interested consultants should submit ten copies of a brief proposal consisting of the minimum number of pages sufficient to provide the above information for the project. Proposals must be postmarked by U. S. Mail by midnight August 9, 1999 (CDST). Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on August 10, 1999; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. August 10, 1999 (CDST); hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704.

The airport sponsor's duly appointed committee will review all proposals and may select three to five firms for interviews. The final consultant selection by the sponsor's committee will be made following completion of the review of proposals and/or interviews.

The airport sponsor reserves the right to reject any or all proposals and to reopen the consultant selection process.

If there are any questions, please contact Bruce Ehly, Project Manager, Aviation Division, Texas Department of Transportation, (512) 416-4543 or 1-800-68-PILOT.

TRD-9903897
Bob Jackson
Deputy General Counsel
Texas Department of Transportation

Filed: June 30, 1999

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