TEXAS REGISTER

Volume 24 Number 40 October 1, 1999 *Pages 8385-8650*

This month's front cover artwork:

Artist: *Monique Chalmon*

5th Grade

Levi Fry Intermediate

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

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

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

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

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

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

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

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us

Secretary of State - Elton Bomer

Director - Dan Procter
Assistant Director - Dee Wright

Receptionist - Brett Tiedt

Texas Administrative Code
Dana Blanton
John Cartwright

Texas Register
Carla Carter
Tricia Duron
Ann Franklin
Kris Hogan
Roberta Knight
Becca Williams

Circulation/Marketing
Jill S. Ledbetter
Liz Stern

THE GOVERNOR

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

Appointments

Appointments Made September 9, 1999

To be a member of the Pardons and Paroles Policy Board for a term to expire February 1, 2001: Daniel Ray Lang, 1212 North Velasco, Suite 201, Angleton, Texas 77515. Mr. Lang will be filling the unexpired term of Victor Rodriguez of San Antonio who know longer serves on the Board.

To be members of the Texas Real Estate Commission for terms to expire January 31, 2005: James N. Austin, Jr., 2017 Teakwood Trace, Fort Worth, Texas 76112-5430, who is replacing Hazel Lewis of Arlington whose term expired; Ramon M. Cantu, 2303 North Boulevard, Houston, Texas 77098-5222, who is replacing Mitchell Katine of Houston whose term expired; Lawrence D. Jokl, 1444 Mulberry, Brownsville, Texas 78520, who is replacing Pete Cantu of San Antonio whose term expired.

To be members of the Texas Workers' Compensation Insurance Fund Board of Directors for terms to expire February 1, 2005: Marion Luna Brem, 214 Naples Corpus Christi, Texas 78404, who is replacing Pat Crawford of El Paso who resigned; Richard A. Cooper, 4607 92nd Street, Lubbock, Texas 79424, who is being reappointed; George Wesch, Jr., Route 4 Box 2464, Lake Hills, Texas 78063, who is being reappointed.

George W. Brush, Governor of Texas

♦ ♦ ♦

OFFICE OF THE ATTORNEY GENERAL

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

Open Records Request

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than October 15, 1999.

ORQ-37. Requested by Ms. Bonnie Lee Goldstein, Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, 3000 Bank One Center, 1717 Main Street, Dallas, Texas 75201-4335, regarding whether the requested information falls under §552.022 of the Government Code, and if so, whether the information made public by §552.022 may be excepted from public disclosure by §552.103 of the Government Code and related questions (ID# 129360-99).

TRD-9906140
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: September 22, 1999

♦ ♦ ♦

Requests for Opinions

RQ-0109. Requested by Mr. Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, regarding whether a credit union may recover its costs in producing records in response to a grand jury subpoena, and related questions (Request Number 0109-JC). *Briefs to be submitted by October 16, 1999.*

RQ-0110. Requested by G. Granger MacDonald, President, Upper Guadalupe River Authority, 125 Lehman Drive, Suite 100, Kerrville, Texas 78028-5908, regarding authority of the Upper Guadalupe River Authority to compel septic tank users to participate in a regional wastewater system: Reconsideration of Attorney General Opinion Number JM-961 (1988) (Request Number 0110-JC). *Briefs to be submitted by October 22, 1999.*

TRD-9906156
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: September 22, 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 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 20. COTTON PEST CONTROL

Subchapter C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, amendments to §20.22, concerning the deadline for destruction and the authorized cotton destruction dates for Pest Management Zone 2, Area 1 and for Pest Management Zone 2, Area 2.

The department is acting on behalf of cotton farmers in Zone 2 Area 1, which includes Duval and Webb counties, and in Zone 2, Area 2, which includes Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

The current cotton destruction deadline is September 15 in both areas. The cotton destruction deadline will be extended through midnight September 29 for the specified counties. The department believes that changing the cotton destruction date is both necessary and appropriate. This filing is effective only for the 1999 crop year.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for these counties. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the September 15 deadline. A failure to act to extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendments to §20.22(a) clarify that stalks must be destroyed by midnight of the deadline and extend the date for cotton stalk destruction through midnight September 29 of this year in Zone 2, Area 1 which includes Duval and Webb counties, and in Zone 2, Area 2, which includes Jim Wells, Kleberg, Nueces, and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

The amendments are adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by midnight of the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:

Figure: 4 TAC §20.22(a)

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

Filed with the Office of the Secretary of State, on September 13, 1999.

TRD-9905947
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: September 13, 1999
Expiration date: September 30, 1999
For further information, please call: (512) 463-4075

♦ ♦ ♦

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 X. DEPARTMENT OF INFORMATION RESOURCES

Chapter 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.5

The Department of Information Resources proposes an amendment to §201.5, concerning agency planning. The amendment requires state agency information resources managers or agency heads to approve the submission of biennial operating plans (BOPs) to the department, and deletes the requirement that such BOPs must be "signed." The amendment is proposed in accordance with Texas Government Code §2054.052(a), which provides the department with the authority to adopt rules as necessary to implement its responsibilities.

Mr. Larry Zeplin, Director of the Oversight Operations Division, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendment. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Zeplin has determined that for each year of the first five years the proposed amendment will be in effect, there will be a benefit to the public in that state agencies and institutions of higher education will be able to submit BOPs electronically, without the need for a signed paper submission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to C.J. Brandt, Jr., General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas, 78711, no later than 5:00 p.m., within 30 days after publication. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The amendment is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

Texas Government Code §2054.102, Evaluation of Operating Plans by Department, is affected by the proposed amendment.

§201.5. Agency Planning.

(a) (No change.)

(b) Biennial Operating Plans.

(1) Submittal procedures.

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

(C) The information resources manager or agency head must authorize the submission of [~~sign~~] the biennial operating plan.

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

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

(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 September 15, 1999.

TRD-9905991
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 475-4700

♦ ♦ ♦

1 TAC §201.16

The Department of Information Resources proposes an amendment to §201.16, concerning minimum standards for meetings held by videoconference call. The amendment deletes the provision which caused the section to expire automatically on Au-

gust 31, 1999 without further action of the board. The amendment is proposed in accordance with Texas Government Code §2054.052(a), which provides the department with the authority to adopt rules as necessary to implement its responsibilities, and Texas Government Code §551.126(h), which requires the department to specify minimum standards for videoconference calls by administrative rule.

Mr. Larry Zeplin, Director of the Administrative Operations Division, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal implications for state government as a result of enforcing or administering the amendment. There will be no foreseeable fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Zeplin has determined that for each year of the first five years the proposed amendment will be in effect, there will be a benefit to the public in that state agencies and institutions of higher education will continue to be required to adhere to technical standards pertaining to the use of videoconference call technology in connection with open meetings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to C.J. Brandt, Jr., General Counsel, Department of Information Resources, P.O. Box 13564, Austin, Texas, 78711, no later than 5:00 p.m., within 30 days after publication. Envelopes must be clearly marked "Formal Comment to Proposed Action Enclosed."

The amendment is proposed under Texas Government Code §2054.052(a), which authorizes the department to adopt rules as necessary to carry out its responsibility under the Information Resources Management Act.

Texas Government Code §551.126, Videoconference Call, is affected by the proposed amendment.

§201.16. Minimum Standards for Meetings Held by Videoconference Call.

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

~~[(f) This section shall automatically expire on August 31, 1999, without further 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 September 16, 1999.

TRD-9906038
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 475-4700

♦ ♦ ♦

Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Chapter 355. MEDICAID REIMBURSEMENT RATES

Subchapter F. GENERAL REIMBURSEMENT METHODOLOGY FOR ALL MEDICAL ASSISTANT PROGRAMS

1 TAC §355.721

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Health and Human Services Commission (THHSC) proposes the repeal of §355.721, concerning spousal impoverishment provisions, of Chapter 355, Subchapter F, concerning general reimbursement methodology for all medical assistance programs.

The section is being repealed because it will conflict with level of need provisions in the new Chapter 419, Subchapter D, concerning home and community-based Services (HCS) which is published contemporaneously in this issue of the Texas Register for public review and comment.

Donald C. Green, chief financial officer, THHSC, has determined that for each year of the first five years the repeal as proposed is in effect, enforcing or administering the repeal will have no significant foreseeable implications relating to costs or revenues of state or local government.

Steve Svadlenak, associate commissioner for Medicaid reimbursement, THHSC, has determined that for each year of the first five years the amendment and new section as proposed are in effect the public benefit is expected to be compliance with the legislative mandates to review and revise, as needed, all department rules, and to reduce the average monthly cost of HCS services and supports during the current biennium It is not anticipated that the repeal will have an adverse economic effect on small businesses or micro businesses. It is not anticipated that the repeal will affect a local economy.

Comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication of this notice.

The repeal is proposed under the Texas Government Code, §531.033, which provides the commissioner of THHSC with broad rulemaking authority; the Texas Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provides THHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides THHSC with the authority to adopt rules governing the determination of Medicaid reimbursements.

Texas Government Code, §531.021(a) and §531.021(b), are affected by the proposed repeal.

§355.721. Payment Category Assignment and Provider Claims Payment.

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

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

TRD-9906088

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 424-6576

♦ ♦ ♦

1 TAC §355.723, §355.775

The Texas Health and Human Services Commission (THHSC) proposes amendments to §355.723, concerning reimbursement methodology for home and community-based services (HCS), and §355.775, concerning reimbursement methodology for the MRLA program, of Chapter 355, Subchapter F, concerning general reimbursement methodology for all medical assistance programs.

Subsection (e) of §355.723 is amended to address supervised living as a new service component in the HCS program. New subsection (g) of §355.723 establishes the department's authority to adjust a modeled rate for a new HCS service component or a current HCS service component modified after the general modeled rate is adopted. Subsections (e) and (f) of §355.775 are amended to address supervised living as a new service component in the Mental Retardation Local Authority (MRLA) pilot program. New subsection (g) of §355.775 establishes the department's authority to adjust a modeled rate for a new MRLA service component or a current MRLA service component modified after the general modeled rate is adopted.

The amendments will enable the Texas Department of Mental Health and Mental Retardation to establish or adjust a model rate for a new service component developed after general modeled rates for the HCS and MRLA programs are adopted, or for an existing service component that is modified after the general modeled rate is adopted.

Donald C. Green, chief financial officer, THHSC, has determined that for each year of the first five years the amendments as proposed are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local government. The amendments do not impose any new requirements on Medicaid providers and, therefore, there is no anticipated economic cost.

Steve Svadlenak, associate commissioner for Medicaid reimbursement, THHSC, has determined that for each year of the first five years the amendment and new section as proposed are in effect, the public benefit expected as a result of adoption is to give the state the flexibility to adjust reimbursement to Medicaid providers in response to changes, including changes to legislation, economic factors and funding. The amendments do not impose new requirements on HCS and MRLA program providers and, therefore, there is no anticipated economic cost to small or micros businesses as result of adopting the amendments. It is not anticipated that the amendment and new section will affect a local economy.

Comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication of this notice.

The amendments are proposed under the Texas Government Code, §531.033, which provides the commissioner of THHSC with broad rulemaking authority; the Texas Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provides THHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides THHSC with the authority to adopt rules governing the determination of Medicaid reimbursements.

Texas Government Code, §531.021(a) and §531.021(b), are affected by the proposed amendments

§355.723. Reimbursement Methodology for Home and Community-Based Services (HCS).

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

(e) Rates for service components may also take into account the individual's level of need as defined in 25 TAC §419.161 (relating to Level of Need Assignment) [~~409.103.~~] Rates vary by level of need for residential support, supervised living, HCS foster/companion[~~foster~~]care, and day habilitation.

(f) (No change.)

(g) The modeled rate for a service component developed or modified after January 1, 1997, but prior to the rebasing process initiated under subsection (h) of this section, and provided after the effective date of this rule, will be based on cost assumptions used in modeling existing rates, actual or projected utilization patterns, and the recommendations of an advisory panel consisting of program providers, department personnel, and advocates for persons with mental retardation.

(h) [~~(g)~~] The rates are derived for each type of service and, when appropriate, each level-of-need and include the following cost factors: direct service staffing costs (wages for direct care, direct care supervisors, benefits, modeled staffing ratios); non-personnel operating costs; facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administrative costs; and professional consultation and program support costs.

(1) Annual rates for the time period between the years that modeled rates are rebased are set by inflating the direct cost portion of the previous year's rates by the IPD-PCE as defined in this subchapter. TDMHMR will collect the direct costs on a survey during a three-month period of the current rate year. The data will reflect the provider's actual costs for the fiscal quarter ending during the three-month period. The direct service costs will be compared to the direct service cost component of the modeled rates.

(2) The modeled rates will be analyzed to determine if rebasing is necessary for the rates effective September 1, 2001, using the following process:

(A) TDMHMR will seek to retain an independent firm in accordance with Texas Government Code, Chapter 2254, to perform a detailed analysis of cost and operational information for a sample of providers throughout the state.

(B) Site visits will be made to each of the sample providers to collect cost data and discuss operations.

(C) An advisory panel will be formed consisting of service providers, advocates, and department personnel who will analyze available information regarding historical cost and operational data and level-of-need assessment. TDMHMR will use the analysis to make recommendations to the board for rates which are deemed appropriate.

(D) The advisory panel, TDMHMR, and the independent firm will recommend adjustments to rate factors if required,

based on the results of the analysis of the sample of cost and operational information.

(E) Revised rates, as well as the rationale supporting the rates, will be presented to the TDMHMR Board for interim approval and for referral to THHSC for final adoption.

(3) Refinement/adjustment of the cost factors and model assumptions will be considered, as appropriate, by the TDMHMR Board based on the overall industry results and recommendations of department staff. Final adoption of rates is made by the Health and Human Services Commission.

§355.775. Reimbursement Methodology for the MRLA Program.

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

(e) Rates for service components may also take into account the individual's level of need as defined in 25 TAC §409.507 (relating to Payment Category Assignment and Provider Claims Payment). Rates for residential support, supervised living, MRLA foster/companion care, and day habilitation vary by level of need and are paid on a daily basis.

(f) Rates for respite care are paid on a daily or hourly basis. Respite care is not a reimbursable service for individuals who are receiving MRLA program foster/companion care, supervised living, or residential support.

(g) The modeled rate for a service component developed or modified after January 1, 1997, but prior to the rebasing process initiated under subsection (i) of this section, and provided after the effective date of this rule, will be based on cost assumptions used in modeling existing rates, actual or projected utilization patterns, and the recommendations of an advisory panel consisting of program providers, department personnel, and advocates for persons with mental retardation.

(h) [~~(g)~~] The administrative rate for the indirect costs of the MRLA program is paid as a flat monthly fee to the program provider. Effective June 1, 1998, the administrative rate is determined by reducing the HCS modeled rate for case management by the amount of cost related to the tasks required of a HCS provider which are not required of a MRLA provider. This reduction will be based on a detailed task analysis. Case management is not a reimbursable service under the MRLA program.

(i) [~~(h)~~] The modeled rates will be analyzed to determine if rebasing is necessary in accordance with §355.723 of this title (relating to Reimbursement Methodology for Home and Community-based Services (HCS).

This 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 September 20, 1999.

TRD-9906089
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 424-6576

♦ ♦ ♦

TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM

The Texas Department of Agriculture (the department) proposes amendments to §§14.1, 14.10, and 14.13, concerning handling and marketing of perishable commodities, and the payment of claims from the Produce Recovery Fund (Fund) under the Texas Agriculture Code (the Code), Chapters 101 and 103. These amendments are proposed in order to comply with statutory changes made by the 76th Legislature, Regular Session, 1999, in accordance with Senate Bill 992.

Section 14.1 defines words used in Chapter 14 and is amended to delete references to the Code, Chapter 102, and to include a definition for the term "perishable commodities". In addition, the terms "citrus fruit and/or vegetables" are replaced by the term "perishable commodities" in this section and throughout Chapter 14.

Section 14.10 identifies requirements for filing a claim against the Fund and is amended to delete references to Chapter 102 and to substitute the term "perishable commodities" for "citrus fruit and/or vegetables".

Section 14.13 sets payment of claims made from the Fund and is amended to increase amounts payable from the Fund.

Margaret Alvarez, Director of Consumer and Commodity Programs, has determined that for the first five-year period the proposed sections are in effect there is an anticipated fiscal impact on state government as a result of administration and enforcement of the amendments. There is an anticipated fiscal impact on the Fund, as more money will be paid out to claimants due to an increase on the maximum amounts payable from the Fund. The amount of additional money paid from the Fund will depend on the number of claims filed and the amount of each claim, and is not determinable at this time. There is no anticipated fiscal impact on local governments.

Ms. Alvarez also has determined that for each year of the first five years the proposed amended sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be clear procedures on filing of claims under the Code, Chapter 103, and a greater recovery of losses by claimants awarded payment from the Fund, resulting in a benefits to the agricultural economy. There is no anticipated additional economic costs to small businesses or individuals required to comply with the amended sections.

Comments on the proposal may be submitted to Margaret Alvarez, Director, Consumer and Commodity Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

Subchapter A. GENERAL PROVISIONS

4 TAC §14.1

The amendments to §14.1 are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of the Code; and the Code, §103.012, which authorizes the department to adopt rules for the payment of claims from the Fund.

The code chapters affected by this proposal are the Texas Agriculture Code, Chapters 101 and 103.

§14.1. Definitions.

In addition to the definitions set out in Texas Agriculture Code, Chapters 101 [~~,~~ ~~102~~] and 103, and Chapter 1, Subchapter A of this title (relating to the General Rules of Practice), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Cash Dealer–A person who buys Texas grown perishable commodities [~~citrus fruit and/or vegetables~~] in United States currency before or at the time of delivery or taking possession.

(3)-(4) (No change.)

(5) Claim–A sworn complaint accompanied by the prescribed fee alleging a loss or damages occurred as a result of a violation of the terms or conditions of a contract involving the sale of perishable commodities [~~citrus fruit and/or vegetables~~] grown in Texas.

(6) Licensee–A person who holds a license issued under the Texas Agriculture Code, Chapter [~~Chapter(s)~~] 101 [~~and/or 102~~].

(7) (No change.)

(8) Perishable Commodity–Fresh produce grown in Texas and generally considered a perishable vegetable or fruit.

This 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 September 20, 1999.

TRD-9906082
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-7583

♦ ♦ ♦

Subchapter B. PRODUCE RECOVERY FUND CLAIMS

4 TAC §14.10, §14.13

The amendments to §14.10 and §14.13 are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the administration of the Code; and the Code, §103.012 which authorizes the department to adopt rules for the payment of claims from the Fund.

The code chapters affected by this proposal are the Texas Agriculture Code, Chapters 101 and 103.

§14.10. Claims Against the Fund.

(a) What claims can be filed. Only claims against a licensee for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities [~~vegetables and/or citrus fruit~~] grown in Texas may be filed. The following claims may not be accepted:

(1) Claims against a cash dealer, a person or company not licensed under Chapter [~~Chapters(s)~~] 101 [~~and/or 102,~~] and claims for perishable commodities [~~vegetables and/or citrus fruit~~] grown out-of-state.

(2) (No change.)

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

§14.13. Payment of Claims from the Fund.

(a) Claims of $2000 [~~$1000~~] or less may be paid in full.

(b) Claims of more than $2000 [~~$1000~~] may be paid in the following manner:

(1) If the claim was filed on or after September 1, 1999 [~~1995~~], the first $2000 [~~$1000~~] plus no more than 70% [~~60%~~] of the amount in excess of $2000, [~~$1000~~] may be paid.

(2) If the claim was filed prior to September 1, 1999 [~~1995~~], the first $1000 plus no more than 60% of the amount in excess of $1000, [~~60% of the total claim~~] may be paid.

(c) Claims Arising from Same Contract. Total payment for claims arising from the same contract shall not exceed $35,000 [~~$20,000~~].

(d) Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed $80,000 [~~$50,000~~] in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph, the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.

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

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

TRD-9906083
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-7583

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

Part 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

Chapter 6. STATE RECORDS

Subchapter A. RECORDS RETENTION SCHEDULING

13 TAC §6.1

The Texas State Library and Archives Commission proposes an amendment to 13 TAC §6.1 relating to records retention scheduling by state agencies. The amendment changes the definition of a state record to conform to the amended definition of a state record in House Bill 826 as enacted by the 76th Legislature.

Michael Heskett, State Records Administrator and Director of the State and Local Records Management Division of the Texas State Library and Archives Commission, has determined that for the first five years the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Government Code, Chapter 441, Subchapter L requires each state agency to manage and preserve the records of its activities in the interests of itself, the state, and its citizens. The records retention schedule developed, certified, and implemented under these rules is central to the effective fulfillment of that statutory duty. The anticipated public benefit of the adoption of the amendment is that there will be no conflict between the definition of a state record in administrative rules and the definition of a state record in statutory law. There are no cost implications to either small businesses or persons required to comply with the amended rule.

Comments on the proposed amendment may be submitted to Tim Nolan, Program Planning and Research Specialist, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas, 78711, by fax to 512-323-6100, or by e-mail to tim.nolan@tsl.state.tx.us.

The amendment is proposed under Government Code §441.185(e), which provides authorization for the commission to adopt rules relating to the submission of records retention schedules to the state records administrator.

This section affects Government Code §441.185.

§6.1. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise. Terms not defined in these sections shall have the meanings defined in Government Code, §441.180.

(1)-(16) (No change.)

(17) State record–Any written, photographic, machine-readable, or other recorded information created or received by or on behalf of a state agency or an elected state official that documents activities in the conduct of state business or use of public resources. The term does not include library or museum material made or acquired and preserved solely for reference or exhibition purposes; an extra copy of recorded information preserved only for reference; a stock of publications or blank forms; or any records, correspondence, notes, memoranda, or other documents, other than a final written agreement described by Section 2009.054(c), associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

(18)-(20) (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 September 17, 1999.

TRD-9906054
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission

Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-5440

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part 1. RAILROAD COMMISSION OF TEXAS

Chapter 3. OIL AND GAS DIVISION

16 TAC §3.56

The Railroad Commission of Texas withdraws its proposed repeal of and new §3.56 as published in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1891). The Commission believes that the rule, as previously published, would cause the loss of information necessary for a full accounting of hydrocarbon liquids to royalty and mineral interest owners. The Railroad Commission of Texas now proposes to repeal existing §3.56, concerning scrubber oil and skim hydrocarbons, and concurrently to propose new §3.56 with the same title. The new rule reduces the reporting requirements for gas plant operators. Because all of the requirements of existing §3.56 will be affected in the proposed rule, the Commission believes that the repeal of §3.56 and adoption of a new §3.56 would be less complicated than amending the current §3.56.

The Commission has determined that the reporting requirements for gas plant operators can be reduced. Under the proposed new rule, the total amount of recovered and retained scrubber oil must be reported to the Commission on Form R-3. It will no longer be necessary to allocate back to individual oil producing properties unidentified recovered and retained oil scrubbed at the inlet of a gas plant because the oil scrubbed from casinghead gas at the inlet of a gas plant has been accounted for in accordance with §3.27 of this title (relating to gas to be measured and surface commingling of gas). If the gas plant operator can identify the origin of the scrubber oil and does not return the identifiable scrubber oil, the operator of the oil producing property must be provided a copy of Form R-3 in accordance with the instructions for the form by the operator of the gas plant.

Rita E. Percival, Systems Analyst for the Oil and Gas Division, has determined that for each year of the first five-year period the proposed repeal and new rule will be in effect, there will be small positive fiscal implications to the state in that less documentation will be filed and processed at the Commission. There will be no fiscal implications for local governments. The reporting requirements set forth in the new rule are less burdensome on gas plant operators. Therefore, there will be a small decrease in the cost of compliance with the proposed new rule for small businesses as a result of enforcing or administering the new rule.

Marshall F. Enquist, Hearings Examiner, Office of General Counsel, has determined that for each year of the first five years the repeal and new rule are in effect, there will be reduced economic costs to individuals who are required to comply with the new rule as proposed because of reduced reporting requirements. In addition, for each year of the first five years the new rule is in effect, gas plant operators will benefit from reduced reporting requirements.

Comments may be submitted to Marshall F. Enquist, Hearings Examiner, Office of General Counsel–Oil & Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas, 78711-2967, or via electronic mail to marshall.enquist@rrc.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

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

The Commission proposes the repeal of §3.56 pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. Further, §85.202(a)(1) authorizes the Commission to promulgate rules to prevent the waste of oil and gas in its storage, piping and distribution and, under §88.011, to adopt rules to provide for the method of measuring oil and gas produced from any well in this state. The Commission is also authorized under §91.101(4) to promulgate rules relating to the reclamation of oil, condensate and gas.

The Texas Natural Resources Code, §§81.051, 81.052, 85.202(a)(1), 88.011, and 91.101(4) are affected by the proposed repeal.

Issued in Austin, Texas, on August 31, 1999.

§3.56. Scrubber Oil and Skim Hydrocarbons.

This 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 September 16, 1999.

TRD-9906043
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 475-1295

♦ ♦ ♦

The Commission proposes new §3.56 pursuant to Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. Further, §85.202(a)(1) authorizes the Commission to promulgate rules to prevent the waste of oil and gas in its storage, piping and distribution and, under §88.011, to adopt rules to provide for the method of measuring oil and gas produced from any well in this state. The Commission is also authorized under §91.101(4) to promulgate rules relating to the reclamation of oil, condensate and gas.

The Texas Natural Resources Code, §§81.051, 81.052, 85.202(a)(1), 88.011, and 91.101(4) are affected by the proposed repeal and new section.

Issued in Austin, Texas, on September 14, 1999.

§3.56. Scrubber Oil and Skim Hydrocarbons.

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

(1) Identifiable liquid hydrocarbons–Volume of scrubber oil/skim hydrocarbons that is received at a gas plant/produced water disposal facility where the origin of such liquid hydrocarbons can be clearly identified.

(2) Producing property–A location from which hydrocarbons are being produced that has been assigned a lease identification number by the Commission and which is used in reporting production.

(3) Scrubber oil–Liquid hydrocarbons which accumulate in lines that are transporting casinghead gas and which are captured at the inlet to a gas processing plant.

(4) Skim hydrocarbons–Oil and condensate which accumulate during produced water disposal operations.

(5) Tolerance–The amount of skim hydrocarbons that may be recovered before the produced water disposal system operator must allocate to the producing property.

(6) Unidentifiable liquid hydrocarbons–Scrubber oil/skim hydrocarbons received at a gas plant/produced water disposal facility where the origin of such liquid hydrocarbons cannot be identified.

(b) Disposition of scrubber oil, skim hydrocarbons, and identifiable liquid hydrocarbon volumes.

(1) Scrubber oil. Any scrubber oil that has not been returned to a producing property by the end of a monthly report period shall be reported by the operator of the gas plant on the monthly plant report, Form R-3 (Monthly Report for Gas Processing Plants).

(2) Skim hydrocarbons.

(A) Except as provided in subparagraph (E) of this paragraph, all unidentifiable liquid hydrocarbons recovered by a single operator produced water disposal system shall be reported on the Form P-18 (Skim Oil/Condensate Report) for each reporting period. Such unidentifiable liquid hydrocarbons shall be allocated to each producing property in the proportion that the volume of water received from the producing property bears to the total volume of water received by the system during a reporting period.

(B) The unidentifiable liquid hydrocarbons recovered and reported on Form P-18 may be disposed of at the point of accumulation. The accepted Form P-18 shall be the authority for the movement of the hydrocarbons to beneficial disposition.

(C) The produced water disposal system operator shall notify the operator of each producing property of any allocation to that property by furnishing a copy of the allocations as shown on the Form P-18 (Skim Oil/Condensate Report).

(D) The operator of each producing property shall report the volume skimmed and allocated to the producing property as production from the property on either Form P-1 (Producer's Monthly Report of Oil Wells) or Form P-2 (Producer's Monthly Report of Gas Wells). The volume allocated back shall be shown as skim oil or as skim condensate on the appropriate form.

(E) The operator of a produced water disposal system receiving produced water from more than one operator is only required to report and allocate the volume of unidentifiable liquid hydrocarbons that exceeds a tolerance ratio of one barrel of liquid hydrocarbons for each 2,000 barrels of water received.

(3) Identifiable liquid hydrocarbon volumes.

(A) Identifiable liquid hydrocarbon volumes returned to the producing property during the reporting period in which the volume is received at the gas plant/produced water disposal facility shall not be reported to the Commission by the gas plant/facility operator. The gas plant/produced water disposal facility operator shall notify the appropriate Commission district office by telephone prior to the return of such volumes. The movement of these volumes back to the producing property shall comply with §3.72 of this title (relating to manifest to accompany each transport of liquid hydrocarbons by vehicle), commonly referred to as Statewide Rule 85.

(B) Identifiable volumes not returned to the producing property shall be reported to the Commission and to the operator of the producing property on Form R-3 or Form P-18 as prescribed in paragraph (1) or (2) of this subsection. Volumes shall be specifically credited to the appropriate producing property. The operator of the producing property shall report the disposition of such identifiable volumes as either skim hydrocarbons or scrubber oil on the appropriate production report.

This 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 September 16, 1999.

TRD-9906042
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 475-1295

♦ ♦ ♦

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter J. COSTS, RATES AND TARIFFS

16 TAC §25.237

The Public Utility Commission of Texas (commission) proposes an amendment to §25.237 relating to Fuel Factors. The proposed amendment will conform the section to the requirement of Chapter 41 of the Public Utility Regulatory Act (PURA). The commission interprets this chapter as exempting electric cooperatives from fuel reconciliations after September 1, 1999. The proposed amendment will eliminate any reference to electric cooperatives in §25.237. Project Number 21232 has been assigned to this proceeding.

Harold Hughes, Sr. Electric Utility Engineer in the Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Hughes has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be to conform the commission's rule to the requirements of Senate Bill 7, 76th Legislature, Regular Session (1999). There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Hughes has also determined that for each year of the first five years the proposed section is in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 21232.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §41.004 which limits the commission's jurisdiction over electric cooperatives.

Cross Index to Statutes: Public Utility Regulatory Act §14.002, §41.001.

§25.237. Fuel Factors.

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

(d) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors may be filed with any general rate proceeding. Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors may only be filed during the first five business days of the month in accordance with the following schedule:

(1) January and July: El Paso Electric Company and Central Power and Light Company;

(2) February and August: Texas Utilities Electric Company [~~and Brazos Electric Power Cooperative, Inc.~~];

(3) March and September: West Texas Utilities Company and Entergy Gulf States, Inc.

(4) April and October: Houston Lighting & Power Company;

(5) May and November: Southwestern Electric Power Company, Southwestern Public Service Company, and Lower Colorado River Authority; and

(6) June and December: Texas-New Mexico Power Company, [~~South Texas Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc.,~~] and any other electric utility not named in this subsection that uses one or more fuel factors.

(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 September 16, 1999.

TRD-9906041
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 936-7308

♦ ♦ ♦

TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 61. SCHOOL DISTRICTS

Subchapter AA. COMMISSIONER'S RULES

Division 2. SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) proposes new §61.1012, concerning school finance. The new section sets a maximum tuition charge for transfer students, as well as the maximum of tuition that can be applied to a property value adjustment, authorized under Texas Education Code (TEC), Chapter 25, as amended by Senate Bill (SB) 4, 76th Texas Legislature, 1999.

Under prior law, the amount of tuition was determined by local school boards without a specific methodology in rule or statute. The change in law allows the commissioner of education to set a ceiling for tuition. The primary purpose of that limit is to assure that the cost of educating transfer students under the Foundation School Program is approximately recognized in the district providing the educational services.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the new section. There will be fiscal implications for local government. The proposed new section may reduce tuition charges in some school districts, especially in the 2000-2001 school year. The amount of reduction will depend on current rate practices and will vary from district to district. The change may represent reduced cost to some districts, but reduced revenue to others. Some school districts may experience a loss of revenue if they have been charging more for tuition than will be allowed under the proposed new rule, while other districts may experience a savings if they have been paying more.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have 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 setting limits on amounts charged for tuition for transfer students. The limits assure that the cost of educating transfer students under the Foundation School Program is recognized in the district providing the educational services. Also, the section clarifies the changes authorized by SB 4, 76th Texas Legislature, 1999, for school districts. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §25.039, as amended by Senate Bill 4, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules that specify the amount of tuition that can be charged for the education of students transferring outside the school district and apply that limitation to a property value adjustment.

The new section implements the Texas Education Code, §25.039, as amended by Senate Bill 4, 76th Texas Legislature, 1999.

§61.1012. Contracts and Tuition for Education Outside District.

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

(1) Home district - District of residence of a transferring student.

(2) Receiving district - District to which a student is transferring for the purposes of obtaining an education.

(3) Tuition - Amount charged to the home district by the receiving district to educate the transfer student.

(b) Maximum tuition charge for transfer students. Tuition that can be charged to a home district for a transferring student in payment for that student's education may not exceed the amount per student calculated as follows.

(1) Provided that the home district is not subject to the provisions of wealth equalization in accordance with the Texas Education Code (TEC), Chapter 41, tuition is limited to the amount that the receiving district's budgeted average state aid and local revenue per pupil exceeds the state funds gained by the receiving district from the additional (transfer) student for the applicable year, plus an additional amount for administrative overhead. The additional amount is limited to 10% of the Foundation School Program (FSP) cost of the student in accordance with TEC, Chapter 42. The commissioner of education will provide a worksheet and a description of the process to derive the tuition amount. The process, which is mandatory, will derive a state aid entitlement before and after the inclusion of the transfer student to the average daily attendance (ADA) count, with all other data items remaining the same.

(2) If the home district is subject to the provisions of wealth equalization in accordance with TEC, Chapter 41, the receiving district may not impose a tuition amount greater than its per pupil cost for the FSP in accordance with TEC, Chapter 42. The receiving district charging tuition for a transfer student will be subject to a reduced state aid amount. The reduction is calculated by first determining the receiving district's cost per weighted ADA (WADA), which is a ratio of the district's per pupil total revenue (state aid plus local contribution, limited by a maximum tax rate in accordance with TEC, §42.253(e)) divided by weighted students as defined by TEC, 42.302. The receiving district's cost per WADA is then multiplied by the number of WADA paid for through the tuition payment by the district impacted by TEC, Chapter 41. This amount is then used to

reduce the state aid of the receiving district. The number of WADA paid for by the district impacted by TEC, Chapter 41, may not exceed the number necessary for it to reach the hold harmless or equalized wealth level target after all other options to reduce wealth have been taken into account.

(c) Maximum tuition amount in property value adjustment. For the 1999-2000 school year, the maximum amount of tuition that can be applied to the property value adjustment for not offering all grade levels in accordance with TEC, §42.106, may not exceed the greater of the amount per student computed in subsection (b) of this section or the amount per student actually paid during the 1998-1999 school year. For subsequent years, the maximum amount is limited to the amount per student computed in subsection (b) of this section.

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

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

TRD-9906071
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 75. CURRICULUM

The Texas Education Agency (TEA) proposes the repeal of §§75.1001-75.1010 and new §§75.1001- 75.1014, concerning driver education. The new sections specify definitions, requirements, and procedures for the regulation and operation of driver education programs offered by public schools, education service centers, and colleges or universities.

House Bill 1224, 76th Texas Legislature, 1999, requires that alcohol awareness information be included in the curriculum of any driver education course. Senate Bill 777, 76th Texas Legislature, 1999, requires that information relating to litter prevention be included in the driver education course curriculum. Further, criteria for curriculum standards, program operation, and teachers need to be revised accordingly. To implement the legislative mandates, the TEA is reorganizing rules relating to driver education by proposing the repeal of 19 TAC §§75.1001- 75.1010, and new 19 TAC §§75.1001-75.1014.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The fees for driver education certificates referenced in proposed new §75.1014 have been a requirement since January 1990, and there are no additional fees proposed. Further, the changes to the administrative and program operations included in the proposed new sections are of the nature that no cost to the schools should be incurred. In several cases, the proposed new sections provide relief to schools that may save them costs associated with the operation of a driver education program.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have 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 enhancing the operation and quality of driver education programs conducted by public schools, education service centers, and colleges or universities by updating the curriculum requirements and amending the guidelines for operating driver education programs. The proposed sections would mandate the inclusion of alcohol awareness and litter prevention information in the driver education course curriculum and provide teachers with information needed to address the needs and challenges of today's novice drivers. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

Subchapter AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION

19 TAC §§75.1001-75.1010

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

The repeals are proposed under the Texas Education Code, §29.902, which directs the Texas Education Agency to develop a program of organized instruction in driver education and traffic safety for public school students and to establish standards for certifying professional and paraprofessional personnel who conduct the programs in the public schools; and Texas Education Code, §51.308, which authorizes the Texas Education Agency to approve driver education courses offered by institutions of higher education.

The repeals implement the Texas Education Code, §29.902 and §51.308.

§75.1001. Administration and Supervision.

§75.1002. Driver Education Teachers.

§75.1003. Teaching Assistants.

§75.1004. Course Requirements.

§75.1005. Scheduling.

§75.1006. Instructor Hours, Class Size, and Age Level.

§75.1007. Driver Education Course Records.

§75.1008. Signatures.

§75.1009. Control of Standards.

§75.1010. Procedures for Student Certification.

This 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 September 20, 1999.

TRD-9906072
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Subchapter AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §§75.1001-75.1014

The new sections are proposed under the Texas Education Code, §29.902, which directs the Texas Education Agency to develop a program of organized instruction in driver education and traffic safety for public school students and to establish standards for certifying professional and paraprofessional personnel who conduct the programs in the public schools; and Texas Education Code, §51.308, which authorizes the Texas Education Agency to approve driver education courses offered by institutions of higher education.

The new sections implement the Texas Education Code, §29.902 and §51.308.

§75.1001. Administration and Supervision.

(a) To be approved, a driver education course must be part of the course offerings of a public school, college, or university. An education service center (ESC) may manage and provide driver education programs for public schools if the course is part of the course offerings of the public school.

(b) The superintendent, ESC director, and college or university chief school official must:

(1) certify that the course meets Texas Education Agency (TEA) and Texas Department of Public Safety (DPS) standards for an approved course in driver education for Texas schools;

(2) certify that all driver education personnel and substitutes are properly certified to teach driver education, meet applicable state requirements, and the requirements of this subchapter;

(3) not falsify driver education records or allow driver education personnel and substitutes to falsify records;

(4) certify that all driver education teachers and teaching assistants annually (July 1 to June 30) complete a minimum of six hours of continuing education. Carryover credit of continuing education hours shall not be permitted. Instructors shall not receive credit for the same course each year. An instructor that teaches a continuing education course or instructor development course may receive credit for attending continuing education;

(5) document that each driver education instructor and teaching assistant providing instruction at the school, upon employment and once each year thereafter, has not accumulated ten or more penalty points in the past three-year period on a driving record evaluation. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the DPS that are the same as those used for Texas school bus drivers. Instructors that accumulated ten or more penalty points in a three-year period cannot conduct training in a driver education program until it is documented that the accumulated penalty is less than ten points;

(6) prohibit an instructor from giving instruction and prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(7) ensure that teachers and teaching assistants teach no more than eight hours of behind-the-wheel instruction per day. The limit of eight hours applies in all approved programs, regardless of the number of schools involved;

(8) ensure that at least twice each year that each driver education teaching assistant giving instruction is evaluated for quality by a supervising driver education teacher while providing actual instruction to students and that the evaluation is made part of the instructor's personnel file;

(9) provide each driver education instructor and administrator a copy of this subchapter; and

(10) conduct reviews on a periodic basis to assure that driver education programs and instructors are in compliance with all requirements specified for the programs and teachers and to ensure that training is being provided in a quality and ethical manner so as to promote respect for the purposes and objectives of driver training.

(c) The TEA may conduct on-site compliance surveys and complaint investigations.

§75.1002. Driver Education Teachers.

(a) To qualify to teach all phases of driver education to teens or adults and add a driver education endorsement as a specialization area on his or her current Texas teaching certificate after January 1, 1999, an individual must:

(1) possess a Bachelor's degree;

(2) complete nine semester hours of driver education classroom, in-car, simulation, and traffic safety instruction that include, as a minimum, learning activities that focus on preparing the prospective driver educator to conduct:

(A) driver education classroom knowledge courses with application to classroom organization; maintaining a learning environment; developing instructional modules for the classroom, observation, and simulator training; and facilitating learning experiences;

(B) learning activities which develop vehicle operational skills for a novice driver with emphasis placed on laboratory organization and administration; maintaining a learning environment; developing laboratory instructional modules; and conducting learning experiences; and

(C) driving task analysis that includes an introduction to the task of the driver within the highway transportation system with emphasis on risk perception and management and the decision-making process;

(3) possess a valid Texas teaching certificate as defined by the State Board for Educator Certification;

(4) possess a valid Texas driver's license for the type of vehicle used for instruction; and

(5) not have accumulated ten or more penalty points in the past three-year period on a driving record evaluation, using the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the Texas Department of Public Safety (DPS) that are the same as those used for Texas school bus drivers. Instructors that accumulated ten or more penalty points in a three-year period cannot be issued an endorsement until it is documented that the accumulated penalty is less than ten points.

(b) A fully certified teacher of driver education may be designated by the superintendent, college or university chief school official, or education service center (ESC) director as a supervising teacher. A school district, an ESC, or a college or university that uses teaching assistants must designate a minimum of one driver education supervising teacher to supervise, mentor, and evaluate teaching assistants.

(c) A student instructor may teach any practice teaching necessary for certification in the classroom phase of a driver education program under the direction and in the direct presence of a driver education teacher or supervising teacher or in accordance with the provisions of an approved alternative certification program. A student instructor may teach any practice teaching necessary for certification in the in-car phase of a driver education program under the direction and in the presence of a driver education teacher, supervising teacher or teaching assistant. The student teacher shall sign the student record for the training they instruct, and the driver education teacher, supervising teacher, or teaching assistant that observed the instruction shall co-sign.

(d) Driver education instructors and student instructors shall provide training in an ethical manner so as to promote respect for the purpose and objectives of a driver education program. A driver education instructor or student instructor shall not:

(1) make any sexual or obscene comments or gestures while performing the duties of an instructor or give instruction or allow a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(2) falsify driver education records; or

(3) accumulate ten or more penalty points in the past three-year period on a driving record, using the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the DPS that are the same as those used for Texas school bus drivers. Instructors that accumulated ten or more penalty points in a three-year period cannot provide instruction until it is documented that the accumulated penalty is less than ten points.

(e) Driver education teachers and student instructors shall not teach more than eight hours of behind-the-wheel instruction per day. The limit of eight hours applies in all approved programs, regardless of the number of schools involved.

§75.1003. Teaching Assistants.

(a) An individual may be employed as a teaching assistant in a driver education program under the direction of a supervising driver education teacher after completing one of the following programs.

(1) Teaching assistant (full). An individual may be approved as a teaching assistant (full) to conduct behind-the-wheel, observation, multicar range, and simulator training instruction to teens or adults; to assist certified teachers in the classroom phase of driver education provided the instructor is present and in the room; and to serve as a temporary substitute instructor in the classroom phase of driver education for no more than 25% of a driver education classroom program by successfully completing:

(A) a program of study in driver education developed by the Texas Education Agency (TEA). Applications are available from the TEA that must be submitted and approved by TEA before the training program begins;

(B) nine semester hours of driver and traffic safety education from an approved university that are required for driver education teacher endorsement; or

(C) nine semester hours of driver and traffic safety education instructor training as outlined in Texas Civil Statutes, Article 4413(29c), §15A(b).

(2) Teaching assistant (in-car only). An individual may be approved as a teaching assistant (in-car only) to conduct only behind-the-wheel and observation training instruction to teens or adults by completing one of the following requirements:

(A) six of the nine semester hours of driver and traffic safety education required for driver education teacher certification that include learning activities that focus on preparing the prospective driver educator to conduct vehicle operational skills for a novice driver with emphasis placed on laboratory organization and administration, maintaining a learning environment, developing laboratory instructional modules, conducting learning experiences, driving task analysis that includes an introduction to the task of the driver within the highway transportation system with emphasis on risk perception and management and the decision-making process; and driver education behind-the-wheel, observation, and traffic safety instructor development, and

(B) six semester hours of driver and traffic safety education instructor training as outlined in Texas Civil Statutes, Article 4413(29c), §15A(b).

(b) The TEA shall conduct criminal record evaluations and issue certificates of completed training for teaching assistants.

(c) To be approved, a teaching assistant in driver education must have a high school diploma or equivalent, have been a licensed driver for at least five years, possess a Texas driver's license valid for the type of vehicle used for instruction, and meet the driving record evaluation standards established by the Texas Department of Public Safety (DPS) for Texas school bus drivers.

(d) A teaching assistant may be trained by an approved university as described in subsection (a)(1)(B) of this section; or by a university, college, school district, or an education service center (ESC) as described in subsection (a)(1)(A) of this section. When the training is conducted by a college, school district, or an ESC, the program must be approved by TEA. A driver education school licensed under Texas Civil Statutes, Article 4413(29c), may train teaching assistants as described in subsection (a)(1)(C) or subsection (a)(2)(B) of this section.

(e) A school district, an ESC, or a college or university that uses teaching assistants must employ driver education supervising teachers to supervise, mentor, and evaluate the teaching assistants.

(f) A student instructor may teach any practice teaching necessary for certification in the in-car phase of a driver education program under the direction and in the direct presence of a driver

education teacher, supervising teacher, or teaching assistant. The student teacher shall sign the student record for the training they instruct, and the driver education teacher, supervising teacher, or teaching assistant that observed the instruction shall co-sign.

(g) All teaching assistants (full or in-car only) and student instructors shall provide training in an ethical manner so as to promote respect for the purpose and objectives of a driver education program. A teaching assistant or student instructor shall not:

(1) make any sexual or obscene comments or gestures while performing the duties of an instructor or give instruction or allow a student from securing instruction in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcohol Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(2) falsify driver education records; and

(3) accumulated ten or more penalty points in the past three-year period on a driving record, using the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the Texas Department of Public Safety (DPS) that are the same as those used for Texas school bus drivers. Instructors that accumulated ten or more penalty points in a three-year period cannot provide instruction until it is documented that the accumulated penalty is less than ten points.

(h) All teaching assistants (full or in-car only) and student instructors shall not teach more than eight hours of behind-the-wheel instruction per day. The limit of eight hours applies in all approved programs, regardless of the number of schools involved.

§75.1004. Classroom Instruction.

(a) Teenage driver education students shall receive classroom instruction that is provided directly by a fully certified driver education instructor who is in the classroom or vehicle and available to students during the entire hours of instruction, except that:

(1) a maximum of 25% of the classroom phase may be provided by an approved teaching assistant (full) when a certified instructor is ill or not available; and

(2) a student may earn a maximum of 20 minutes of classroom phase credit for obtaining an instruction permit.

(b) Instructors and substitutes shall not have other teaching assignments or administrative duties during the time the class is scheduled and students are present.

§75.1005. Course Requirements.

(a) To be approved under this subchapter, a driver education plan shall include one or more of the following course programs.

(1) Core program. This program shall consist of at least 32 hours of classroom instruction, seven hours of behind-the-wheel instruction, and seven hours of in-car observation. Under this plan, a student may receive only local credit for the course.

(2) In-car only program. This program shall consist of at least seven hours of behind-the-wheel instruction and seven hours of in-car observation. Under this plan, a student may receive only local credit for the course.

(3) Classroom only program. This program shall consist of at least 32 hours of classroom instruction. Under this plan, a student may receive only local credit for the course.

(4) School day credit program. This program shall consist of at least one class period per scheduled day of school, for a semester (traditional, condensed, accelerated, block, etc.), covering the driver education classroom and in-car program of organized instruction or only the classroom program of organized instruction. This class traditionally consists of at least 56 hours of driver education classroom instruction and, if in-car instruction is provided, must include seven hours of behind- the-wheel instruction and seven hours of in-car observation. Under this plan, a student may receive one-half unit of state credit toward graduation.

(5) Non-school day credit program. This program shall consist of at least 56 hours of driver education classroom instruction, and, if in-car instruction is provided, must include seven hours of behind- the-wheel instruction and seven hours of in-car observation. Under this plan, a student may receive one-half unit of state credit toward graduation.

(b) The minimum requirements of the driver education program must be met regardless of how the course is scheduled. The following applies to all teenage driver education programs.

(1) Driver education programs may be scheduled in block or concurrent form.

(A) Block form is when the classroom phase is taught as a separate, complete unit before the in-car phase begins.

(B) Concurrent form is when the classroom and the in-car phases are taught simultaneously or on alternating days.

(2) Instruction may be scheduled any day of the week, during regular school hours, before or after school, and during the summer.

(3) Instruction shall not be scheduled before 5:00 a.m. or after 11:00 p.m. The superintendent, college or university chief school official, or education service center (ESC) director may approve exceptions to the scheduled hours of instruction and must include acceptance in writing of the exception by the parents or legal guardians for each of the students involved.

(4) The driver education classroom phase must have uniform beginning and ending dates. Students shall proceed in a uniform sequence. Students shall be enrolled and in class before the seventh hour of classroom instruction in a 32-hour program and the twelfth hour of classroom instruction in 56-hour or semester-length programs.

(5) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(6) The driver education course shall be completed within the timelines established by the superintendent, college or university chief school official, or ESC director. This shall not circumvent attendance or progress. Variances to the established timelines shall be determined by the superintendent, college or university chief school official, or ESC director and must be agreed to by the parent or legal guardian.

(7) Schools are allowed five minutes of break within each instructional hour in all phases of instruction. A break is an interruption in a course of instruction occurring after the lesson introduction and before the lesson summation. It is recommended that the five minutes of break be provided outside the time devoted to behind-the-wheel instruction so students receive a total of seven hours of instruction.

(8) A student shall not receive more than four hours of driver education training in one calendar day no matter what combination of training is provided, including makeup. Further, for each calendar day, a student shall be limited to a maximum of:

(A) two hours of classroom instruction;

(B) an unlimited amount of observation time;

(C) two hours of multicar range driving;

(D) three hours of simulation instruction; and

(E) one hour of behind-the-wheel instruction; however, it is recommended that a student not be scheduled for behind-the-wheel instruction for more than one 30-minute session per calendar day.

(c) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education and meet the requirements of this subchapter. Copies of the instructional objectives and the sample instructional modules may be obtained from the Texas Education Agency (TEA). Schools may use sample instructional modules developed by TEA or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the following topics and include objectives for classroom and in-car training (behind-the-wheel and observation), simulation lessons, parental involvement activities and evaluation techniques. In addition, the instructional objectives include information relating to litter prevention and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle that must be provided to every student enrolled in a teenage driver education course. A teenage driver education program shall include:

(1) Module One: Texas Driver Responsibilities - Knowing Texas Traffic Laws. A student may apply to the Texas Department of Public Safety (DPS) for an instruction permit after completing six hours of instruction as specified by this module;

(2) Module Two: Preparing to Operate the Vehicle;

(3) Module Three: Basic Maneuvering Tasks - Low Risk Environment;

(4) Module Four: Basic Maneuvering Tasks - Moderate Risk Environment;

(5) Module Five: Information Processing - Moderate Risk Environment;

(6) Module Six: Information Processing - Multiple Lane Expressways;

(7) Module Seven: Driver Performance - Personal Factors;

(8) Module Eight: Driver Responsibilities - Adverse Conditions;

(9) Module Nine: Texas Driver Responsibilities - Vehicle Functions; and

(10) Module Ten: Texas Driver Responsibilities - The Wise Consumer & Driver Assessment.

(d) A school may use multimedia systems, simulators, and multicar driving ranges for instruction in a driver education program.

(e) Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specifications developed by the DPS and TEA. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depiction of traffic environments and driving emergencies. The specifications are available from TEA.

(f) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of behind-the-wheel and one hour observation instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of behind- the-wheel and one hour observation instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction and a minimum of four hours must be devoted to observation instruction.

(g) A school may not permit more than 36 students per driver education class, including make-up students.

(h) All behind-the-wheel lessons shall consist of actual driving instruction. Observation of the instructor, mechanical demonstrations, etc., shall not be counted for behind-the-wheel instruction. The instructor shall be in the vehicle with the student the entire time behind-the-wheel instruction is provided.

(i) Teenage driver education programs shall include the following components.

(1) Driver education instruction is limited to eligible students between the ages of 14-18 years of age, who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel instruction begins. Students officially enrolled in school who are 18-21 years of age may attend a teenage driver education program.

(2) Motion picture films, slides, videos, tape recordings, and other media that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these shall not exceed 640 minutes of the total classroom phase.

(3) Each classroom student shall be provided a driver education textbook currently adopted by the State Board of Education.

(4) A copy of the current edition of the "Texas Driver Handbook" published by DPS, shall be furnished to each student enrolled in the classroom phase of the driver education course.

(5) No school should permit a ratio of less than two, or more than four, students per instructor for behind-the-wheel instruction, except behind-the-wheel instruction may be provided for only one student when it is not practical to instruct more than one student, for make-up lessons, or if a hardship would result if scheduled instruction is not provided. In each case when only one student is instructed:

(A) the school shall obtain a waiver signed and dated by the parent or legal guardian of the student and the chief school official stating that the parent or legal guardian understands that the student may be provided behind-the-wheel instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction;

(B) the waiver may be provided for any number of lessons; however, the waiver shall specify the exact number of lessons for which the parent is providing the waiver; and

(C) the waiver shall be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction.

(j) Courses offered to adult persons who are 18 years of age or older shall only be offered by colleges and universities. Colleges and universities that offer driver education to adults shall submit and receive written approval for the course from the TEA prior to implementation of the program. The request for approval must include a syllabus, list of instructors, samples of instructional records that will be used with the course, and information necessary for approval of the program.

§75.1006. Driver Licensing.

(a) Students without a valid driver's license or instruction permit in his or her possession shall not receive behind-the-wheel instruction. The instructor must ensure that every student receiving behind-the-wheel instruction has a valid driver's license or instruction permit in his or her possession during all behind-the- wheel instruction.

(b) The student shall present a properly executed DE-964E to any Texas Department of Public Safety (DPS) driver's license office to apply for a driver's license or instruction permit.

(c) As soon as possible after a student receives an instruction permit or license from the DPS, the instructor must record the license number on the student's individual record.

(d) Under the block and concurrent programs a student may apply to the DPS for an instruction permit after completing all of the required classroom instruction or after completing six hours of classroom instruction devoted to the instructional objectives of classroom instruction designated by the commissioner of education found in Module One: Texas Driver Responsibilities - Knowing Texas Traffic Laws, as identified in §75.1005 of this title (Course Requirements).

(e) A licensee shall not apply to DPS to have the restriction removed from the instruction permit until the licensee is 16 years of age or older and presents a DE-964E certificate showing that he or she completed an approved driver education program. In this case, the approved program must include, as a minimum, 32 hours of classroom instruction, seven hours of behind-the-wheel instruction, and seven hours of observation. A licensee age of 18 or older is not required to complete a driver education program to apply.

(f) The DPS may revoke the student's instruction permit when the student does not complete the classroom phase no matter which plan was followed or how the program was scheduled. The instructor or superintendent, college or university chief school official, or education service center director shall complete DPS Form DL-42 and provide it to the DPS division responsible for license and driver records within a period of time determined by the school, when the student does not complete the classroom.

§75.1007. Verification of School Enrollment and Attendance for Issuance of a Driver License.

(a) School enrollment and attendance as a condition of licensing a student to operate a motor vehicle applies to persons under 18 years of age, unless a high school diploma or its equivalent has been obtained.

(b) The Texas Education Agency (TEA) is responsible for the development of the verification of attendance and enrollment (VOE) forms pursuant to Texas Transportation Code, §521.003. Schools may develop their own VOE form provided they incorporate as a minimum the information contained on the TEA form.

(c) Original signatures must appear on all completed VOE forms. The VOE form does not have to be signed by the student in the presence of the person certifying attendance.

(d) The expiration date of the VOE form shall be determined upon issuance by the school. If a specified issuance date is omitted, the form will expire 30 days from execution.

(e) The VOE document is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the form may result in denial of an application for a Texas driver's license and/or criminal prosecution.

§75.1008. Progress.

(a) Appropriate standards shall be implemented to ascertain the progress of teenage driver education students.

(b) Progress standards shall meet the requirements of the instructional objectives of the program of organized instruction outlined in this subchapter for driver education.

(c) Each school shall establish a procedure to ensure that each student demonstrates an acceptable level of mastery of the instructional objectives for driver education. Mastery is not related to passing the Texas Department of Public Safety (DPS) driver's license test. Successful completion and mastery is a prerequisite to awarding a grade of 70 or above. The instructors must certify that each student successfully mastered the course content before the student is awarded successful completion of a driver education program.

(d) One or more of the following methods and any methods implemented by the school shall determine evidence of successful completion, and mastery shall be utilized:

(1) unit tests;

(2) written assignments;

(3) skills performance checklists; and

(4) comprehensive examinations of knowledge and skills.

(e) The progress and mastery evaluation record shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to successfully complete all subject matter within the allotted time provided in the currently approved course of organized instruction for driver education.

(f) The school should provide parents and legal guardians with evaluations of the student progress and recommend parental involvement techniques to enhance the driver education training.

§75.1009. Attendance, Makeup, and Conduct Policy.

(a) Appropriate standards, which include positive records of student attendance, shall be implemented to ascertain the attendance of the students.

(b) A student must make up any time missed during the approved program of organized instruction. The make- up policy shall be developed by the school and shall ensure that all required hours of instruction are completed. Students shall not be allowed to make up missed lessons in a classroom session where the lesson missed is not being taught. Make-up lessons can be provided on an individual basis. All make-up lessons for classroom must be organized by a driver education teacher.

(c) A student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the timeline specified by a policy established by the school.

(d) The school shall establish policies pertaining to conduct that include conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy.

§75.1010. Motor Vehicles.

(a) All motor vehicles, including motor vehicles for students with disabilities or special needs, that are used to demonstrate or practice driving lessons shall:

(1) be equipped with dual control brake pedals so that there is a foot brake located within easy reach of the instructor that is capable of bringing the vehicle to a stop and otherwise be equipped in accordance with Texas motor vehicle laws;

(2) be equipped with safety belts, and all occupants in the driver education vehicle must be properly secured in a safety belt at all times;

(3) be properly registered in compliance with the motor vehicle registration laws of Texas and bear a current motor vehicle inspection certificate;

(4) be insured according to the insurance laws of Texas (including, specifically, for use as a driver education vehicle);

(5) be equipped with an extra inside rearview mirror on the instructor's side and an outside rearview mirror on both sides (a visor mirror shall not substitute for the instructor's inside rearview mirror);

(6) be maintained in safe mechanical and physical condition at all times; and

(7) if the student is a student with disabilities, be equipped with all applicable mechanical devices and/or other modifications or accommodations determined to be necessary and appropriate based on evaluation data.

(b) All occupants must be seated in forward-facing seats in the vehicle that are in compliance with seatbelt capacities. Only one student and one instructor shall be seated in the front seat.

§75.1011. Driver Education Course Records.

(a) A written record of instruction and observation time in minutes or hours shall be maintained by the school district, education service center, or college or university for a minimum of seven years for each driver education student who received instruction to include students who withdrew or were terminated. The record shall be made available to officials of the Texas Education Agency (TEA) or the Texas Department of Public Safety upon request.

(b) The entries on the individual student record form shall be made in ink and updated for each lesson.

(c) Sample forms provided by TEA may be used or appropriate forms may be developed by the school, provided they incorporate at least the following information:

(1) name and classroom address of the school;

(2) name, full address, telephone number of the student, and date of birth;

(3) type and number of license held by the student, including the expiration date;

(4) DE-964E control number;

(5) month, day, and year that the student is present, absent, participating in makeup, terminated, withdrawn, or transferred, etc.;

(6) title of each unit and lesson of classroom and in-car instruction;

(7) grade earned for each unit or lesson;

(8) length of instruction in minutes and hours for each classroom, simulator, behind-the-wheel, and observation lesson;

(9) initials next to each classroom session and in-car lesson entry by the instructor, and student instructor, if applicable;

(10) beginning and ending dates of each phase of instruction; and

(11) statement of assurance signed by the student and instructor certifying that the individual student record is true and correct.

§75.1012. Fees and Tuition.

(a) A school district or the education service center (ESC) may collect fees for driver education in accordance with Texas Education Code, §11.158. Each fiscal transaction for driver education must be handled through the district's regular accounting procedures as required in §109.41 of this title (relating to Financial Accountability System Resource Guide).

(b) Individuals, instructors, or non-approved entities shall not receive fees or tuition for driver education directly.

(c) Colleges and universities may collect tuition for driver education in accordance with the Texas Education Code, Chapter 54.

(d) Fees and tuition for a driver training course shall not exceed the actual cost per student in the program for the current school year.

(e) The public school, ESC, and college or university may withhold a DE-964E form, records, and instruction from a student for non-payment of fees or tuition.

(f) The Texas Education Agency may require the public school, ESC, and college or university to refund the driver education course fees and tuition for any violation of this subchapter or for an infraction that would conclusively establish the course as inadequate.

§75.1013. Control of Standards and Signatures.

(a) A school, education service center (ESC), college or university may have their approval to conduct a program suspended or revoked if any of the following occur in the driver education course. In addition, the endorsement of a teacher or the permit of a teaching assistant to teach driver education may be suspended or revoked for any of the following:

(1) signing a driver education certificate (Form DE-964E) when the certified driver education teacher did not personally instruct the student or personally verify records and instruction to determine that the student received adequate instruction according to this subchapter;

(2) signing a DE-964E certificate when the certified supervising driver education teacher did not supervise the teaching assistants or student instructors who aided in the instruction of the student during the course described on the certificate;

(3) signing a DE-964E certificate for instruction given during a period of certificate suspension;

(4) providing instruction when a driver education instructor and teaching assistant has accumulated ten or more penalty points

in the past three-year period on a driving record evaluation. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the Texas Department of Public Safety (DPS) that are the same as those used for Texas school bus drivers. Instructors that accumulated ten or more penalty points in a three-year period cannot conduct training in a driver education school until it is documented that the accumulated penalty is less than ten points;

(5) falsifying any record;

(6) permitting an unlicensed student to practice behind-the-wheel driving lessons on a public roadway;

(7) securing or aiding in securing illegal notarization of an application for an operator's license; or

(8) violating any section of this subchapter, or any other violation of law or the standards of the driver education program that, in the opinion of the commissioner of education, warrants suspension or revocation.

(b) The period of any suspension shall be at least one summer or one semester of a school year.

(c) When the endorsement of a driver education teacher or the permit of a teaching assistant is suspended or revoked, or when other action is taken, the Texas Education Agency (TEA) shall notify the DPS in writing, giving the full name of the teacher, his or her certificate number, the action taken, and the expiration date of any suspension. The DPS shall transmit this information to the appropriate driver license and safety education service field representative.

(d) A school district, an ESC, or a college or university may lose its authority to conduct an approved driver education course if the administration fails to provide supervision to prevent violation of the law or the standards of the driver education program.

(e) Based on information it receives directly, TEA may determine that evidence of a violation of the standards exists that may establish a course as inadequate or provide cause for suspending or revoking an instructor's driver education endorsement. The DPS may take the following steps to help enforce standards.

(1) Representatives of DPS may not accept a student for a driver's license examination when they have conclusive evidence of any violation of standards that may establish the course in which the student was enrolled as inadequate. Examples of such violations are:

(A) when fewer than the required number of hours of instruction have been given; or

(B) when the instructor of the course has not been properly certified.

(2) If, after accepting an application, DPS receives conclusive evidence that the course was inadequate, the license may not be issued. In such a case, DPS shall notify the student, TEA, and the chief administrator of the organization that initiated the application. If evidence of the violation is received after the license has been issued, the license may be revoked. When school officials discover a license has been erroneously issued and may be revoked under this paragraph, an authorized representative of the school shall submit to DPS, upon request, a completed Form DL-42 for each student enrolled in the course.

(3) An application may not be rejected and a license shall not be denied for a violation of standards that does not establish the course as inadequate. However, DPS may help TEA and the schools enforce the standards by consulting with school officials as requested or as may be deemed appropriate concerning other violations.

(4) When a DPS representative obtains conclusive evidence that a certified driver education instructor or state-approved teaching assistant may be subject to suspension or revocation under this section, the representative shall report the evidence in writing through proper channels to the director of DPS. The representative shall include the names of sources of information and attach copies of any documents that might help TEA enforce the standards. The director of DPS may notify the commissioner of education. The TEA shall then investigate the report. When a report from DPS concerning the standards results in a hearing before the commissioner of education, a DPS representative may be requested to be present.

§75.1014. Procedures for Student Certification and Transfers.

(a) The Texas Education Agency (TEA) shall be responsible for providing the driver education certificate (Form DE-964E) to public schools, education service centers (ESCs), and colleges or universities exempt from the Texas Driver and Traffic Safety Education Act. The TEA shall also provide the DE-964E certificate to the Texas Department of Public Safety (DPS) for driver education programs approved by DPS. On this form, the driver education instructor and the superintendent, college or university chief school official, ESC director, DPS director, or their designee must certify that the driver education course was conducted according to TEA and DPS education standards for an approved course in driver education for Texas schools.

(1) For schools exempt from the Texas Driver and Traffic Safety Education Act and programs approved by DPS, the DE-964E certificate shall consist of five parts to be designated as follows: Texas Department of Public Safety Copies (Instruction Permit and Driver's License), Insurance Copy, Texas Education Agency Copy, and School Copy. The DE-964E certificate is used to certify completion of an approved driver education course and is a government record.

(2) The TEA shall charge a fee of $2.00 for each DE-964E certificate provided.

(3) The DE-964E certificates shall be issued to the superintendent, college or university chief school official, ESC director, or individuals designated by the superintendent, college or university chief school official, or ESC director to be responsible for managing the certificates for the school. This does not remove the superintendent, college or university chief school official, or ESC director from obligations pursuant to this subchapter to oversee the program. The DPS shall be responsible for the DE-964E certificates provided to DPS-approved driver education programs.

(4) Unused DE-964Es shall not be transferred to another school without written approval by TEA.

(5) The DE-964E document is a government record as defined under Texas Penal Code, §37.01(2). Any misrepresentation by the applicant or person issuing the form as to the prerequisite set forth may result in suspension or revocation of instructor credentials or program approval and/or criminal prosecution.

(6) The superintendent, college or university chief school official, ESC director, or their designee may request to receive serially numbered DE-964E certificates for exempt schools and programs approved by DPS by submitting a completed order on the form provided by the commissioner of education stating the number of certificates to be purchased and including payment of all appropriate fees. TEA will accept purchase requisitions from school districts.

(7) The superintendent, college or university chief school official, ESC director, or their designee shall be responsible for accounting for each DE-964E certificate he or she has been issued. All DE-964E certificates and records of certificates shall be maintained in an orderly fashion.

(8) The DPS shall accept only the original signature of a certified driver education teacher. The signature of the chief school official or ESC director may be written, stamped, or omitted.

(9) All DE-964E certificates and records of certificates must be provided to TEA or DPS upon request. The superintendent, college or university chief school official, ESC director, or their designee shall maintain the school copies of the certificates and submit the TEA copies of all issued certificates to TEA no later than February 15, June 15, and September 15 of each year. The chief school official, ESC or DPS director, or their designee shall return unissued DE-964E certificates to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(10) Each superintendent, college or university chief school official, ESC director, or their designee shall ensure that the policies concerning DE-964E certificates are followed by all individuals who have responsibility for the certificates.

(11) The superintendent, college or university chief school official, ESC director, or their designee shall maintain effective protective measures to ensure that unissued DE-964E certificates and records of certificates are secure.

(12) The superintendent, college or university chief school official, ESC director, or their designee shall report any incident of unaccounted DE-964E certificates to TEA immediately upon discovering the incident. If such an incident occurs, the superintendent, college or university chief school official, ESC director, or their designee shall conduct an investigation to determine the circumstances of the unaccounted certificates. A report of the findings of the investigation, including measures taken to prevent the incident from recurring, shall be submitted to TEA within 30 days of the discovery.

(13) The superintendent, college or university chief school official, or ESC director must insure that employees complete, issue, or validate a DE-964E only to a person who has successfully completed the entire portion of the course for which the DE-964E is being used. The DPS must insure that the participants of the home taught driver education programs complete, issue, or validate a DE-964E only to a person who has successfully completed the entire portion of the course for which the DE-964E is being used. Issuance of the DE-964E is the assurance that the student has successfully achieved mastery of the course objectives.

(14) The right to receive DE-964E certificates may be immediately suspended for a period determined by TEA if:

(A) a TEA investigation is in progress and TEA has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(B) the superintendent, college or university chief school official, ESC director, or their designee fails to provide information on records requested by TEA or DPS within the allotted time.

(15) The DPS copy of a DE-964E certificate must contain the original signature of the certified instructor. The name of the superintendent, college or university chief school official, ESC director, or their designee may be written, stamped, or typed.

(16) The superintendent, college or university chief school official, ESC director, or their designee may issue a duplicate DE-964E certificate to a student who completed a course under the responsibility of the superintendent, college or university chief school official, ESC director, or their designee. The duplicate shall indicate the control number of the original DE-964E certificate.

(b) An authorized DPS employee shall accept a DE-964E certificate when a certified driver education instructor certifies by signing the DE-964E that the driver education program was completed according to this subchapter and that the student has achieved the competencies specified in this subchapter. The school official shall make a copy of the teacher's certificate for driver education available to authorized TEA or DPS representatives when requested.

(c) The superintendent, college or university chief school official, or ESC director may designate one certified driver education teacher to sign the DE-964E certificates for that school. In a concurrent program, only one teacher shall be required to sign a DE-964E certificate, but each teacher giving instruction in the concurrent program must be a fully certified driver education teacher or state-approved teaching assistant and must initial for each lesson they instruct. In each case, the teacher signing the DE-964E certificate must compile all records and verify the student's successful completion.

(d) TEA shall accept any part of the driver education instruction received by a student in another state; however, the student must complete all of the course requirements for a Texas driver education program. Driver education instruction completed in another state must be certified in writing by the chief official or course instructor of the school where the instruction was given and include the hours and minutes of instruction and a complete description of each lesson provided. The certification document must be attached to the student's individual record at the Texas school and be maintained with the record for seven years.

(e) Students who are licensed in another state and have completed that state's driver education program should contact the DPS for information on the licensing reciprocal agreement between that state and Texas.

(f) When it is impossible or inconvenient for the certified driver education instructor to sign the DE-964E (due to transfer, illness, or death, etc.), the superintendent, college or university chief school official, ESC director, or their designee may, by completing the driver education affidavit form on the reverse side of the DE-964E certificate, certify that official records show a particular student completed an approved driver education course as indicated on the DE-964E.

(g) All records of instruction shall be included as part of the student's final history when it is necessary to compile multiple records to verify that a student successfully completed a driver education course.

(h) A student may receive credit for course hours completed if there was a violation of this subchapter or before a teacher's endorsement was suspended provided the violation or suspension was not for an infraction that would conclusively establish the course as inadequate.

This 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 September 20, 1999.

TRD-9906073
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 100. CHARTERS

Subchapter A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.1

The Texas Education Agency (TEA) proposes new §100.1, concerning open-enrollment charter schools. The new section specifies standard application and selection procedures and criteria for granting and amending open- enrollment charters, as authorized under Texas Education Code, §7.102(c)(9) and §12.110. In the past, the State Board of Education adopted such procedures prior to each selection round. The proposed new section would establish standard procedures by rule.

Ron McMichael, deputy commissioner for finance and accountability, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Mr. McMichael and Criss Cloudt, associate commissioner for policy planning and research, have 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 strengthening the open-enrollment charter school selection process by adopting standard application and selection procedures and criteria by rule. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §7.102(c)(9) and §12.110, which authorizes the State Board of Education to adopt application and selection procedures and criteria for granting and amending open-enrollment charters.

The new section implements the Texas Education Code, §7.102(c)(9) and §12.110.

§100.1. Application, Selection, and Amendment Procedures and Criteria.

(a) Prior to each selection cycle, the State Board of Education (SBOE) shall adopt an application form for submission by applicants seeking a charter to operate an open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:

(1) the timeline for selection;

(2) scoring criteria and procedures for use by the review panel appointed under subsection (d) of this section;

(3) selection criteria, including the minimum score necessary for an application to be eligible for selection; and

(4) the earliest date an open-enrollment charter school selected in the cycle may open.

(b) The Texas Education Agency (TEA) shall review applications submitted under this section. If an application does not contain all required information and documentation, the TEA may notify the applicant of deficiencies. Further, the TEA may notify the applicant of substantive deviations from state and federal requirements affecting the operation of open-enrollment charter schools or the applicant's eligibility to be granted a charter. The TEA may establish procedures and schedules for responses to such notifications. Failure of the TEA to identify any deficiency or substantive deviation, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the SBOE.

(c) Upon written notice to the TEA, an applicant may withdraw an application.

(d) Eligible applications shall be reviewed and scored by an appointed review panel. Two-thirds of the panel members shall be appointed by the SBOE. One-third of the panel members shall be appointed by the commissioner of education. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with or accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately upon discovery any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(e) Applications that are not scored at or above the minimum score established in the application form are not eligible for SBOE selection during that cycle. The SBOE may at its sole discretion decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the SBOE, except as provided in this section.

(f) The SBOE or its designee(s) shall interview applicants whose applications received the minimum score established in the application form. The SBOE may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(g) The SBOE may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:

(1) indications that the charter school will improve student performance;

(2) innovation evident in the program(s) proposed for the charter school;

(3) impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;

(4) evidence of parental and community support for the proposed charter school;

(5) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;

(6) the history of the sponsoring entity of the proposed charter school, as defined in the application form;

(7) indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and

(8) indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:

(A) representation in urban, suburban, and rural communities;

(B) instructional settings;

(C) types of eligible entities;

(D) types of innovative programs;

(E) student populations and programs; and

(F) geographic regions.

(h) The SBOE may grant an open-enrollment charter subject to additional conditions not contained in the application and may require fulfillment of such conditions before the charter school is permitted to operate.

(i) An open-enrollment charter shall be in the form and substance of a written contract signed by the chair of the SBOE and the chief operating officer of the school. The chief operating officer of the school shall mean the chief executive officer of the open enrollment charter holder under TEC, §12.101.

(j) The terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by majority vote of the SBOE, subject to the following procedures.

(1) An amendment proposed by an open-enrollment charter holder must be transmitted to the SBOE in conformance with procedures established by the TEA.

(2) An open-enrollment charter may not be amended to permit a charter school to extend the grade levels it serves or increase its maximum allowable enrollment figure during its first year of operation.

(3) An amendment permitting an open-enrollment charter school to extend the grade levels it serves or increase its maximum allowable enrollment figure may not be approved later than the first day of June preceding the school year in which the amendment becomes effective.

(4) An open-enrollment charter holder proposing a substantive revision of its charter must submit, as directed by the TEA, information required by relevant portions of the last application form approved by the SBOE.

(5) The commissioner may approve a revision to an open-enrollment charter on a provisional basis pending action by the SBOE at its next regularly scheduled meeting.

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

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

TRD-9906074
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 137. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

Subchapter T. REPRIMAND, SUSPENSION, CANCELLATION, AND REINSTATEMENT OF CERTIFICATES

19 TAC §§137.581-137.587

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

The Texas Education Agency (TEA) proposes the repeal of §§137.581-137.587, concerning professional educator preparation and certification. The sections specify definitions, requirements, and procedures relating to reprimanding, suspending, cancelling, and reinstating certificates.

Texas Education Code (TEC), §21.031 and §21.041(b)(7), authorizes the State Board for Educator Certification (SBEC) to adopt rules to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators. The SBEC adopted 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases including Enforcement of the Educator's Code of Ethics, effective March 1999. Chapter 249 replaces rules codified in 19 TAC Chapter 137, Subchapter T. The repeal of rules governing educator certification actions before the commissioner of education is necessary since these cases are now presented to the State Office of Administrative Hearings and are decided by the SBEC in accordance with TEC, §21.031.

David Anderson, chief counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Anderson and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be ensuring that the public will be directed to the appropriate state agency with questions concerning certification actions. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative

Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §21.031, and Conforming Amendments to Senate Bill 1, 74th Texas Legislature, 1995, §63(h), which provides the authority to adopt rules relating to educator certification, including alternative certification, educator appraisals, and certification sanctions to the State Board for Educator Certification.

The repeals implement the Texas Education Code, §21.031, and Conforming Amendments to Senate Bill 1, 74th Texas Legislature, 1995, §63(h).

§137.581. Policy.

§137.582. Procedure for Suspending or Cancelling a Teaching Certificate.

§137.583. Procedure for Reissuing a Suspended Teaching Certificate.

§137.584. Procedure for Reprimand.

§137.585. Procedure for Reinstating a Cancelled Teaching Certificate.

§137.586. Reissuing Corrected Certificates.

§137.587. Request for and Notification of Cancellation or Suspension of a Certificate.

This 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 September 20, 1999.

TRD-9906075

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: October 31, 1999

For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 176. DRIVER TRAINING SCHOOLS

Subchapter AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

The Texas Education Agency (TEA) proposes the repeal of §§176.1001-176.1003 and new §§176.1001-176.1019, concerning driver training schools. The new sections establish minimum standards for operating a licensed driver education school in Texas. The sections specify definitions, requirements, and procedures relating to exemptions; driver education school licensure and instructor license; responsibility for employees; school and assistant directors and administrative staff members; courses of instruction; student enrollment contracts; attendance and makeup; conduct policy; cancellation and refund policy; facilities and equipment; motor vehicles; student complaints; records; names and advertising; driver education certificates; and application fees and other charges. Pertinent driver education requirements that were previously part of the driver education curriculum guide are also reflected in the new sections.

Senate Bill 777, 76th Texas Legislature, 1999, amended the Texas Driver and Traffic Safety Education Act and transferred all rulemaking authority for the regulation of driver training programs from the State Board of Education to the commissioner of education. Legislative changes have also mandated inclusion of litter prevention and alcohol awareness information in driver education courses. To implement the legislative mandates, the TEA is reorganizing rules relating to driver training programs by proposing the repeal of 19 TAC §§176.1001-176.1003 and new 19 TAC §§176.1001-176.1019.

Felipe Alanis, deputy commissioner for programs and instruction, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have 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 increased awareness of traffic safety and a move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

19 TAC §§176.1001-176.1003

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

The repeals are proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The repeals implement Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1001. Definitions.

§176.1002. Courses of Instruction.

§176.1003. Driver Education Certificates (DE-964).

This 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 September 20, 1999.

TRD-9906076

Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

19 TAC §§176.1001-176.1019

The new sections are proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The new sections implement Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1001. Definitions.

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

(1) Advertising - Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to arouse a desire to patronize that school and/or course.

(2) Branch school - A licensed driver education school that has the same ownership and name as a licensed primary driver education school.

(3) Break - An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.

(4) Change of ownership of a school - A change in the control of the school. Any agreement to transfer the control of a school is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(5) Chief school official - The owner, director, assistant director, or assigned liaison of a licensed driver education school.

(6) DE-964 - The driver education certificate of completion used for certifying completion of an approved driver education course. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. It is a government record.

(7) Division - The division of the Texas Education Agency (TEA) responsible for executing the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing Texas driver training programs.

(8) Division director - The person designated by the commissioner of education to carry out the functions and regulations governing the driver education schools and designated as director of the division responsible for licensing driver training programs.

(9) Good reputation - A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds; has never owned or operated a school with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a DE-964 or uniform certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

(10) Moral turpitude - Conduct that is inherently immoral or dishonest.

(11) New course - A driver education course is considered new when it has not been offered previously or has been offered and then discontinued.

(12) Primary or main school - A licensed driver education school that may have branch schools.

(13) Public or private school - An accredited public or non-public secondary school.

§176.1002. Exemptions.

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Civil Statutes, Article 4413(29c), §7, shall, upon request, ask for an exemption in writing and provide any information deemed necessary to the division director to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the Texas Education Agency in order to ensure continued operation in compliance with the exemption provisions.

§176.1003. Driver Education School Licensure.

(a) Application. An application for a school license for a primary or branch driver education school shall be made on forms supplied by the Texas Education Agency (TEA).

(b) Bond requirements. In the case of an original or a change of owner application, an original bond or approved alternate form of security shall be provided. In the case of a renewal application, an original bond or approved alternate form of security or a continuation agreement for the approved bond currently on file or continuation of an approved alternate form of security shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Approved alternate forms of security shall adhere to the following guidelines.

(1) An irrevocable letter of credit. The letter shall be in the name of the owner of the school. The letter shall specify the amount of credit extended, which shall be equivalent to the coverage required for a corporate surety bond, and the purpose of the credit. The letter shall contain the signature of an appropriate bank representative. The bank and the letter shall be approved by TEA.

(2) A cash deposit. An irrevocable account shall be established by the school owner in the name of TEA to be drawn upon as needed to pay student refunds as needed if the school closes owing refunds. The account shall be equivalent to the coverage required for a corporate surety bond. The bank and the terms of the account shall be approved by TEA. The TEA shall keep records of deposits and/or withdrawals on the account.

(c) Verification of ownership.

(1) In the case of an original or change of owner application for a primary school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) In the case of an original or change of owner application for a branch school, the owner shall submit an application on forms supplied by TEA.

(3) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(d) Effective date of the driver education school license. The effective date of the school license for a primary driver education school shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue. For a branch school, the expiration date of the driver education school license shall be concurrent with the driver education school license for the primary school.

(e) Purchase of a driver education school.

(1) A person or persons purchasing a licensed driver education school shall obtain an original license.

(2) A driver education school license for a branch school is transferable only to an applicant who owns a currently licensed primary driver education school. A purchaser of a branch school who does not own a currently licensed primary driver education school shall obtain an original driver education school license for a primary school.

(3) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(4) A change of ownership of a driver education school is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(f) New location.

(1) The division director shall be notified in writing of any change of address at least three working days before the move.

(2) The school must submit the appropriate fee and all documents designated by the division director as being necessary. A driver education school license may be issued for the new address after the new facilities have been inspected and the required documents are approved.

(3) If the move is beyond ten miles and, as determined by the division director, a student is prevented from completing the training at the new location, a full refund of all money paid and a release from all obligations are due.

(4) The school must maintain a current mailing address and telephone number at the division.

(g) Renewal of driver education school license. A complete application for the renewal of a license for a primary or branch driver education school shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a current list of instructors employed by the school;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA or approved alternate form of security; and

(5) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(h) Denial, revocation, or conditional license. The authority to operate a branch school ceases if a primary driver education school license is denied or revoked. The operation of a branch school license may be subject to any conditions placed on the continued operation of the primary driver education school. A driver education school license for a branch school may be denied, revoked, or conditioned separately from the license for the primary school.

(i) Notification of legal action. A school shall notify the division director in writing of any legal action that may concern the operation of, or is filed against, the school, its officers, any owner, or any school instructor within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(j) School closure.

(1) The school owner shall notify TEA at least 15 business days before the anticipated school closure. In addition, the school owner shall provide written notice of the actual discontinuance of the operation the day of cessation of classes. A school shall make all records available for review to TEA within 30 days of the date the school ceases operation.

(2) The division director may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school owner stating that the school will close;

(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate;

(C) when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate;

(D) when the school does not have the facilities, vehicles, instructors, or equipment to provide training pursuant to this subchapter;

(E) when the school owner allows the school license to expire; or

(F) when students are dismissed for more than ten consecutive days that were identified as class days in the approved class schedule.

(3) If a branch school closes and is located more than ten miles from the primary school and, as determined by the division director, a student is prevented from completing the training at the primary location, a full refund of all money paid and a release from all obligations are due.

(k) Non-exempt course at public or private school. A school shall receive approval from TEA prior to conducting a non-exempt course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driver education school and the public or private school. The course shall be subject to the same rules that apply at the licensed driver education school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.1004. Driver Education School Responsibility for Employees.

(a) All instruction in a driver education course shall be performed by Texas Education Agency (TEA)-licensed instructors in locations approved by TEA. However, a student instructor may teach any practice teaching necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed supervising teacher. If a licensed instructor leaves the employment of any driver education school, the school director shall notify the division director in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and the reason for termination.

(b) Each driver education school shall:

(1) ensure that each individual permitted to give classroom instruction or in-car instruction at the school or classroom location has a valid current driver education instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a DE-964 only to a person who has successfully completed the entire portion of the course for which the DE-964 is being issued;

(5) authorize, approve, or conduct instruction in a motor vehicle that meets the requirements stated in §176.1014 of this title (relating to Motor Vehicles);

(6) not falsify driver education records;

(7) ensure that no instructor provides more than eight hours of behind-the-wheel instruction per day. The limit of eight hours applies in all approved programs, regardless of the number of schools involved;

(8) document that each licensed driver education instructor providing instruction at the school, upon employment and once each year thereafter, has not accumulated ten or more penalty points in the past three-year period on a driving record evaluation. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the Texas Department of Public Safety (DPS) that are the same as those used for Texas school bus drivers. Instructors that accumulated ten or more penalty points in a three-year period cannot conduct training in a driver education school until it is documented that the accumulated penalty is less than ten points; and

(9) ensure that at least twice each year that each teaching assistant and teaching assistant (full) giving instruction is evaluated by a driver education teacher or owner for quality while providing actual instruction to students and that the evaluation is made part of the instructor's personnel file.

(c) For the purposes of Texas Civil Statutes, Article 4413(29c), and this chapter, each person employed by or associated with any driver education school shall be deemed an agent of the driver education school, and the school shall share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1005. School Directors, Assistant Directors, and Administrative Staff Members.

(a) Each school shall designate one person as the school director or assistant director.

(1) Duties. The school director or assistant director shall be responsible for all actions related to instruction, day-to-day operation and administration of the school. When the school director or assistant director is unavailable at the school, the owner shall designate a person to provide student records, contracts and schedules, as well as access to driver education vehicles, to division staff. This liaison person is not required to pay an application fee.

(2) Qualifications. The person designated as the school director or assistant director shall have one of the following:

(A) a baccalaureate degree from an accredited institution of higher learning (four-year college or university) and one year of paid experience in administration, supervision, or management of a driver education school;

(B) a total of five years of higher education and/or administrative/management experience; or

(C) a current license as a driver education instructor and at least three years experience as a driver education instructor.

(b) The school director for a driver education school may designate an administrative staff member.

(1) Duties. The administrative staff member may perform all the administrative functions of the school.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent or be a licensed driver education instructor.

(c) An individual shall be approved by the Texas Education Agency as the school director or administrative staff member before employment as such.

(d) Violations at the school or by the school director or the administrative staff member may result in removal of the approval of the school director and/or the administrative staff member.

§176.1006. Driver Education Instructor License.

(a) Application for licensing as a driver education instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driver education instructor license who:

(1) is of good reputation;

(2) has a high school diploma or equivalent; and

(3) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach, which has not been suspended, revoked, or forfeited in the past five years for traffic-related violations.

(b) A person applying for an original driver education instructor's license shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division director; and

(4) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driver education instructor license may qualify for the following endorsements.

(1) Supervising teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of all state examinations issued by the State Board for Educator Certification (SBEC) to the applicant and an official transcript indicating successful completion of 15 semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if TEA determines that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of all state examinations issued by SBEC to the applicant and evidence of successful completion of an appropriate instructor development course.

(B) Responsibilities of a supervising teacher include:

(i) instruction and administration of the classroom and in-car phases of driver education to teens and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter; and

(ii) instruction of approved driver education instructor development courses.

(2) Driver education teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of all state examinations issued by SBEC to the applicant and an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of all state examinations issued by SBEC to the applicant and evidence of successful completion of an appropriate instructor development course.

(B) Responsibilities of a driver education teacher include instruction and administration of the classroom and in-car phases of driver education to teens and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter.

(3) Teaching assistant.

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for in-car instruction only;

(ii) an official transcript indicating successful completion of six semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the six semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of an appropriate instructor development course.

(B) The duties of a teaching assistant are limited to in-car instruction.

(4) Teaching assistant (full).

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for all phases of laboratory instruction and limited non- instructional assistance in the classroom;

(ii) an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of an appropriate instructor development course.

(B) All teaching assistants (full) are allowed to assist certified teachers in the classroom provided the licensed driver education teacher is present for full-time instruction. A teaching assistant (full) may be allowed to act as a temporary substitute classroom instructor of no more than 25% of the classroom phase of a course. The full-time duties are limited to the following areas:

(i) grading or handing out written assignments;

(ii) operating audiovisual equipment; and

(iii) providing in-car instruction for teens and adults. A teaching assistant (full), if properly certified to do so, may also teach simulator and multicar driving range training.

(5) Rehabilitative driver education in-car instructor.

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division or evidence of completion of an approved driver education program for certification as a teaching assistant (six to nine semester hours); and

(ii) evidence of employment by, or a written contract with, the specific hospital or approved community rehabilitation program.

(B) The endorsement will be valid only during the time the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program and will entitle the instructor to provide driver education instruction only at the specified hospital or approved community rehabilitation program.

(6) Temporary non-renewable driver education teacher.

(A) The application shall include:

(i) a Texas teaching certificate with an effective date before February 1, 1986;

(ii) evidence of commitment on a TEA-generated form to take the next available Texas Examination of Current Administrators and Teachers (TECAT); and one of the following:

(I) an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(II) evidence of successful completion of an appropriate instructor development course.

(B) Responsibilities of a temporary non-renewable driver education teacher include instruction and administration of the classroom and in-car phases of driver education to teens and adults as prescribed in the program of organized instruction for driver education approved by TEA and this chapter.

(C) The application for the endorsement shall include payment of the processing and annual instructor licensing fees. The endorsement will be valid for a six-month period and shall not be renewed. If the instructor can provide evidence of successful completion of TECAT on or before the expiration date of the temporary license, an application for a license with an endorsement as a driver education teacher can be submitted as an application for an upgrade.

(d) A renewal application for a driver education instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and shall be accompanied by the annual instructor licensing fee and evidence of continuing education on a form provided by TEA or its equivalent.

(2) A complete license renewal application shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education.

(e) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education. Credit will be given only for courses that were completed during the appropriate licensing period.

(A) Instructors may participate in a TEA-approved driver education continuing education course provided by an approved driver education school. Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on TEA forms or the equivalent. The instructor receiving instruction, and the facilitator, presenter, or the school owner providing the instruction shall sign the form.

(B) Credit may be given for successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of official school documentation indicating a passing grade.

(C) Credit may be given for successful completion of an approved driver education instructor development course or TEA-approved alternative certification program for driver education. Evidence of completion shall be verifiable records of successful completion of the course.

(D) Credit may be given for successful completion of national, state, or regionally sponsored in-service workshops, seminars, or conferences. These programs must pertain to subject matters that relate to the practice of driver education or teaching techniques. Each program must receive approval by the division director in order to qualify as a continuing education program.

(E) Credit may be given for successful completion of an approved six-hour driving safety course once every three years. However, successful completion of an approved six-hour driving safety course will be allowed only if the licensee is not endorsed or has not been endorsed as a driving safety instructor for a period of one year previous to class attendance.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for completing the same course.

(4) A licensed driver education instructor who teaches an approved continuing education or instructor development course may receive credit for attending continuing education.

(5) A licensed driver education instructor may not receive credit for driver education continuing education by completing a driving safety continuing education course.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA and shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driver education instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual instructor licensing fee.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(i) The TEA shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division director and school owner in writing of any criminal complaint identified in subsection (o) of this section filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2.

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify driver education records.

(n) A driver education instructor may not teach more than eight hours of behind-the-wheel instruction per day. The limit of eight hours applies in all approved programs, regardless of the number of schools involved.

(o) The commissioner of education may suspend, revoke, or deny a license to any driver education instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with the state and members of the public. Driver education instruction involves supervision of inexperienced drivers on public highways and accurate record keeping and reporting for driver licensing, court documentation, and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and Article 6252-13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or in-car instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c).

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Department of Public Safety administrative rules, 37 TAC §15.81 (relating to Criteria for Driver Improvement Action), during the past two years or that such action is needed to protect the students and motoring public.

(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.

§176.1007. Courses of Instruction.

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This section contains requirements for driver education courses. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Teenage driver education.

(A) The driver education classroom phase for students ages 14-18 shall consist of a minimum of 32 hours of classroom instruction. The in-car phase must consist of 7 hours of behind-the-wheel instruction and 7 hours of in-car observation. Schools are allowed five minutes of break per instructional hour for all phases. Break times may not be accumulated for more than two instructional hours.

(B) Course content, minimum instruction requirements, and administrative guidelines for each phase of driver education classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the instructional objectives established by the commissioner of education and meet the requirements of this subchapter. Copies of the instructional objectives and the sample instructional modules may be obtained from the Texas Education Agency (TEA). Schools may use sample instructional modules developed by TEA or develop their own instructional modules based on the approved instructional objectives. The instructional objectives are organized into the following topics and include objectives for classroom and in-car training (behind- the-wheel and observation), simulation lessons, parental involvement activities, and evaluation techniques. In addition, the instructional objectives include information relating to litter prevention and alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle that must be provided to every student enrolled in a teenage driver education course. A teenage driver education program shall include:

(i) Module One: Texas Driver Responsibilities - Knowing Texas Traffic Laws. A student may apply to the Texas Department of Public Safety for an instruction permit after completing six hours of instruction as specified by this module;

(ii) Module Two: Preparing to Operate the Vehicle;

(iii) Module Three: Basic Maneuvering Tasks - Low Risk Environment;

(iv) Module Four: Basic Maneuvering Tasks - Moderate Risk Environment;

(v) Module Five: Information Processing - Moderate Risk Environment;

(vi) Module Six: Information Processing - Multiple Lane Expressways;

(vii) Module Seven: Driver Performance - Personal Factors;

(viii) Module Eight: Driver Responsibilities - Adverse Conditions;

(ix) Module Nine: Texas Driver Responsibilities - Vehicle Functions; and

(x) Module Ten: Texas Driver Responsibilities - The Wise Consumer and Driver Assessment.

(C) A student may earn a maximum of 20 minutes of classroom phase credit for obtaining an instruction permit.

(D) Driver education schools that desire to instruct students ages 14-18 shall provide classes with uniform beginning and ending dates. Students shall be enrolled and in attendance in the class before the seventh hour of classroom instruction.

(E) Students shall proceed in a sequence approved by the division director. The units of instruction shall meet the requirements of the instructional objectives.

(F) Students shall receive classroom instruction directly from an instructor who is certified and licensed by TEA, except that no more than 25% of the classroom phase may be provided by a licensed teaching assistant (full) when a certified instructor is not available. An instructor shall be in the classroom and available to students during the entire 32 hours of instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(G) Motion picture films, slides, videos, tape recordings, and other media approved by the division director that present concepts outlined in the instructional objectives may be used as part of the required instructional hours of the 32 hours of classroom instruction. Units scheduled to be instructed may also be conducted by guest speakers as part of the required hours of instruction. Together, these shall not exceed 640 minutes of the total 32 hours.

(H) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(I) Each classroom student shall be provided a driver education textbook currently adopted by the State Board of Education. Instructional materials must be in a condition that is legible and free of obscenities.

(J) A copy of the current edition of the "Texas Driver Handbook" shall be furnished to each student enrolled in the classroom phase of the driver education course.

(K) A school may not permit more than 36 students per driver education class, including make-up students.

(L) When a student changes schools, interrupting the driver education course, the school must follow the current transfer policy developed by TEA and Texas Department of Public Safety (DPS).

(M) The classroom phase of driver education shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(N) All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of less than two, or more than four, students per instructor, except in-car instruction may be provided for only one student when it is not practical to instruct more than one student or a hardship would result if scheduled instruction is not provided. The school shall obtain a waiver signed and dated by the parent or legal guardian of the student and the school director stating that the parent or legal guardian understands that the student may be provided in-car instruction on a one-on-one basis with only the instructor and student present in the vehicle during instruction. The waiver may be provided for any number of lessons; however, the waiver shall specify the exact number of lessons for which the parent is providing the waiver. The waiver shall be signed before the first lesson in which the parent is granting permission for the student to receive one-on-one instruction. The in-car phase shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(O) A student must have a valid driver's license or instruction permit in his or her possession during behind-the-wheel instruction.

(P) All in-car instruction shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. The division director may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.

(Q) A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and TEA. Simulators are electromechanical equipment that provides for teacher evaluation of perceptual, judgmental, and decision-making performance of individuals and groups. With simulation, group learning experiences permit students to operate vehicular controls in response to audiovisual depictations of traffic environments and driving emergencies. The specifications are available from TEA.

(R) A minimum of four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for one hour of in-car instruction. A minimum of two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for one hour of in-car instruction relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to behind-the-wheel instruction.

(S) A driver education program may be scheduled with the classroom phase of instruction presented in block form or concurrently with the in-car phase. Under the block form program, a student may apply to the DPS for an instruction permit after completing six hours of required classroom instruction devoted to the course content of classroom instruction established by the commissioner of education.

(T) When a student receives an instruction permit from DPS under the concurrent schedule provision, the instructor must record the license number. A student licensed under the concurrent program must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not complete the required hours of instruction. The DPS may then revoke the student's instruction permit. Form DL-42 should not be prepared and submitted to DPS when the student successfully completes the classroom phase of instruction.

(U) Driver education instruction is limited to eligible students who are at least 14 years of age when the driver education classroom phase begins and who will be 15 years of age or older when the behind-the-wheel and multicar range instruction begins.

(V) Each school owner that teaches driver education courses shall collect adequate student data to enable TEA to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Civil Statutes, Article 4413(29c).

(2) Adult driver education. Courses offered to persons who are over 18 years old must be offered in accordance with the following guidelines.

(A) Driver education schools that offer driver education to adults shall submit and receive approval of the course from TEA. The request for approval must include a syllabus, contract, and instructional records that will be used with the course.

(B) An adult driver education course may be approved as required under Texas Civil Statutes, Article 6687b, Chapter 173, §12, if the course meets the minimum standards outlined in this paragraph.

(i) Minimum course content. For students desiring to obtain an instruction permit under a concurrent program, the adult driver education course shall consist of six hours of classroom instruction that meets or exceeds the minimum requirements outlined in the program of organized instruction for driver education approved by TEA. Under the concurrent program, a student may apply to the DPS for an instruction permit after completion of six hours of classroom instruction devoted to the lessons in the instructional objectives that cover driving laws and procedures.

(ii) Course management. Approved adult driver education courses shall be presented in compliance with the following guidelines.

(I) Students shall receive classroom instruction directly from a TEA- approved driver education teacher or supervising teacher, who shall be in the classroom and available to students during the entire six hours of instruction. The teacher shall not have other teaching assignments or administrative duties during the six hours of classroom instruction.

(II) A copy of the current edition of the "Texas Driver Handbook" shall be furnished to each student enrolled in the course.

(III) A driver education school shall not permit more than 36 students per class in the six-hour adult driver education course.

(IV) Twenty-five minutes of time, exclusive of the 335 minutes of instruction, may be dedicated to break periods. All break periods shall be provided after the course has begun and before the conclusion of the course.

(V) Administrative procedures, such as enrollment and attendance, shall not be included in the 360 minutes of instruction.

(c) This section contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division director may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from TEA. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(2) Prior to enrolling a student in a driver education instructor development course, the school owner or representative must obtain proof that the student has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate a current official driving record from the student prior to enrollment. The individual must not have accumulated ten or more penalty points in

the past three-year period on a driving record evaluation. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements appearing on the instructor's current driving record established by the DPS that are the same as those used for Texas school bus drivers.

(3) Instruction records shall be maintained by the school and supervising teacher for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All student instruction records submitted for the approved instructor development courses shall be original documents.

(5) All driver education instructor development courses shall be taught at a licensed driver education school. A properly licensed supervising teacher shall teach the course.

(6) Schools desiring to teach driver education instructor development courses shall either submit course offerings as a part of the school application or, if offered periodically, submit the dates and scheduled instructors' names and license numbers before teaching the course.

(d) This section contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a six-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

(A) a description of the plan by which the course will be presented;

(B) the subject of each unit;

(C) the instructional objectives of each unit;

(D) time to be dedicated to each unit;

(E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(3) A continuing education course may be approved if TEA determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;

(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The division director may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to TEA for approval.

(5) The division director must be notified of the scheduled dates, times, and locations of all continuing education courses no less than 15 days prior to the class being held.

(e) A branch school may offer only a course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division director with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the division director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(i) The commissioner of education may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no facilities and equipment.

(4) The school has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(5) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.1008. Student Enrollment Contracts.

(a) A written legal student enrollment contract shall be executed prior to the school's receipt of any money. If no monies are received prior to enrollment or attendance, a driver education student's enrollment contract shall be executed no more than 72 hours after the start date of the driver education class or before the seventh hour of the driver education course, whichever is earliest.

(b) All driver education student enrollment contracts shall contain at least the following:

(1) the student's legal name and driver's license or social security number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the primary school or the branch school;

(6) the specific course to be taught;

(7) the agreed total contract charges that itemize all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the length of each lesson or course;

(11) the school's cancellation and refund policy;

(12) a statement indicating the specific location, date, and time that instruction is scheduled to begin; the date classroom instruction is scheduled to end; and the amount of time a student has to complete all make-up assignments and in-car instruction. The parent or guardian who signs the contract must initial this area;

(13) the number of in-car lessons;

(14) the rate per lesson or course for classroom instruction;

(15) the rate per lesson or course for in-car instruction;

(16) the rates for use of a school car for a road test (if an extra charge is made);

(17) a statement that the school maintains a business insurance policy for vehicles with coverage as required by Transportation Code, Chapter 601, and uninsured or underinsured coverage;

(18) the signature of a school representative; and

(19) the student's signature or, if the driver education student is younger than 18, the signature of the parent or guardian. The signature of the parent or guardian is not required for an individual younger than 18 who is, or has been, married or whose disabilities of minority have been removed generally by law. Instead, such an individual shall:

(A) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married;

(B) present a court order showing removal of disabilities of minority; or

(C) present a notarized parental authorization.

(c) In addition, all driver education student enrollment contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a DE-964 if the student has not met all of the requirements for course completion, and the student should not accept a DE-964 under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) The original of the enrollment contract shall be given to each driver education student.

(e) A copy of each enrollment contract shall be a part of the student files maintained by all driver education schools.

(f) Schools shall submit proposed or amended enrollment contracts to the division director, and those documents shall be approved prior to use by schools.

(g) Student enrollment contracts used at branch schools must be those approved for use at the primary school.

§176.1009. Progress.

Appropriate standards shall be implemented to ascertain the progress of the students.

(1) Progress standards shall meet the requirements of the instructional objectives of the program of organized instruction for driver education approved by the Texas Education Agency.

(2) Each primary school shall submit to the division director for approval an established procedure to ensure that each student who attends the primary school and all branch schools demonstrates an acceptable level of mastery of the instructional objectives for driver education. Mastery is not related to passing the written examination for a driver's license administered by the Texas Department of Public Safety. Successful completion is a prerequisite to awarding a grade of 70 or above.

(3) One or more of the following methods shall determine evidence of successful completion:

(A) unit tests;

(B) written assignments;

(C) skills performance checklist; and

(D) comprehensive examinations of knowledge and skills.

(4) The progress evaluation record shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the currently approved program of organized instruction for driver education.

(5) The instructor must certify that each student successfully mastered all course content before the student is awarded successful completion of a driver education program.

(6) The school should provide parents and legal guardians with evaluations of the student progress and recommend parental involvement techniques to enhance the driver education training.

§176.1010. Attendance and Makeup.

(a) Appropriate standards, which include positive records of student attendance, shall be implemented to ascertain the attendance of the students.

(b) A student must make up any time missed during the approved program of organized instruction. Schools are allowed five minutes of break per instructional hour.

(c) A student shall not receive more that four hours of driver education training in one calendar day no matter what combination of training is provided. Further, a student shall be limited to a maximum of two hours of classroom instruction, one hour of behind-the-wheel instruction, three hours of simulation instruction, and two hours of multicar range driving per calendar day. There is no limit on the amount of observation time that a student may receive in a calendar day. It is recommended that a student not be scheduled for more than one 30-minute session of behind-the-wheel instruction per calendar day.

(d) The attendance policy shall stipulate that students who accumulate absences of more than 25% of the scheduled classroom hours for teenage driver education shall be terminated, and a refund shall be totally consummated within 30 days. The student whose enrollment is terminated for violations of the attendance policy may not reenter before the start of the next new class. If the student enters the next new class and completes the scheduled classroom hours within the timeline specified in the original student enrollment contract, refunds that were due may be transferred to the new contract.

(e) The student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the timeline specified in the original student enrollment contract, starting from the first scheduled day of class on the original contract.

(f) The make-up policy shall be developed by the school and shall ensure that all instructional hours required for the classroom and in-car phases are completed within the timelines specified in the original student enrollment contract.

(g) The enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated.

(h) Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

§176.1011. Conduct Policy.

(a) The primary school shall submit a copy of the policies pertaining to conduct to the Texas Education Agency for approval. Branch schools shall use the policies approved for use at the primary school.

(b) A statement regarding the following shall be submitted:

(1) conditions for dismissal; and

(2) conditions for reentry of those students dismissed for violating the conduct policy.

§176.1012. Cancellation and Refund Policy.

(a) School cancellation and refund policies shall be in accordance with Texas Civil Statutes, Article 4413(29c).

(b) Refunds for all driver education schools shall be completed within 30 days after the effective date of termination except as allowed under §176.1010(d) of this title (relating to Attendance and Makeup). Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 75 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), the interest rate on unpaid refunds is set at 17.25%.

(d) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), a school is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address.

(e) If it is determined that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by Texas Civil Statutes, Article 4413(29c), §13(h)(2)(E), the school shall submit a report of an audit which includes any interest due as set forth in Texas Civil Statutes, Article 4413(29c), §13(h)(4), conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by the Texas Education Agency (TEA) for each student:

(1) name, address, and either social security number or driver's license number;

(2) last date of attendance or date of termination; and

(3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(f) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division director.

(g) Branch schools shall use the policies approved for use at the primary school.

§176.1013. Facilities and Equipment.

(a) Each driver education school licensed by the commissioner of education shall display, in a prominent place in each location, a sign or notice indicating the following:

(1) rates per lesson or course for classroom instruction;

(2) rates per lesson or course for in-car instruction;

(3) rates for use of school vehicle for road tests (if extra charge is made); and

(4) length of lessons and course for classroom and in-car instruction.

(b) No classroom facility shall be located in a private residence. Driver education schools, including primary and branch schools, that offer the classroom phase for adult or teenage driver education shall have a permanent year-round facility. The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities and tables or desks for all students being trained;

(2) a chalkboard, a dry-erase board, or felt display board for the driver education classroom, which is visible from all seating positions;

(3) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and

(4) any materials that have been approved as a part of the course approval.

(c) Each school shall conduct the Texas Education Agency-approved driver education course in a facility that promotes the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter. The school owner shall maintain the school's facilities and equipment in good condition and protect it against misuse, abuse, waste, and deterioration except for ordinary wear and tear resulting from its intended use. Good condition shall mean that the facilities and equipment shall be in at least an equivalent state as at the time of the original approval.

(d) Additional classrooms may be approved for use by a licensed driver education school for the purpose of offering driver education courses. The school owner shall provide a proposal that shall be approved before using the additional classroom facilities. The proposal shall include:

(1) a floor plan indicating the exact dimensions of the classroom facility and its location in respect to the school facilities. The classroom facilities shall be located in the same building as the main school, or in the case of portable facilities, the structure shall be on the property owned or leased by the school and immediately adjacent to the school facility;

(2) evidence that the school owner owns, has leased, or is able to lease the classroom facilities. In the case of portable facilities, evidence shall be submitted that the structure can be placed on the property leased or owned by the school owner in the location designated in the proposal; and

(3) any other items or assurances requested by the division director.

(e) A school offering any phase of teen driver education and/or adult classroom instruction shall maintain an office in a place other than a private residence.

(f) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(g) Enrollment shall not exceed the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

§176.1014. Motor Vehicles.

(a) All in-car instruction of students in driver education schools shall be conducted in motor vehicles owned or leased by the owner of the driver education school in the name of the driver education school. If the student is disabled, the school may use a motor vehicle that is owned by the student or student's parent that is equipped with special vehicle controls. All school motor vehicles and vehicles for students with physical disabilities that are used to demonstrate or practice driving lessons shall:

(1) be equipped with dual control brake pedals so that there is a foot brake located within easy reach of the instructor that is capable of bringing the vehicle to a stop and otherwise be equipped in accordance with Texas motor vehicle laws;

(2) be equipped with safety belts, and students and instructors shall comply with requirements of Transportation Code, §545.413;

(3) be properly registered in compliance with the motor vehicle registration laws of Texas and bear a current motor vehicle inspection certificate;

(4) be insured by a company authorized to do business in Texas with a continuous liability business insurance policy in the amount specified in Transportation Code, Chapter 601, and include coverage for uninsured or underinsured motorists;

(5) be equipped with an extra inside rearview mirror on the instructor's side and an outside rearview mirror on both sides. The visor mirror shall not substitute for the instructor's inside rearview mirror;

(6) be maintained in safe mechanical and physical condition at all times; and

(7) if the student is a student with disabilities, be equipped with all applicable mechanical devices and/or other modifications or accommodations as determined to be necessary and appropriate based on evaluation data provide by a professional assessment.

(b) School owners shall ensure that the division director is notified at all times of all vehicles that are to be used for instruction purposes. Notification shall be made on forms provided by the Texas Education Agency (TEA).

(c) All vehicles shall be insured in accordance with subsection (a)(4) of this section and shall have evidence available for inspection by TEA representatives.

(d) If it is found that the school has used an uninsured vehicle, TEA shall impose a civil penalty not to exceed $1,000 per day that the uninsured vehicle was used. Each vehicle shall constitute a separate offense.

(e) If it is found that the school is using an unsafe vehicle, TEA shall disapprove use of the vehicle until evidence of safety has been reviewed and approved by the division director.

(f) All students must be seated in forward-facing seats in the vehicle that are in compliance with seatbelt capacities. Only one student and one instructor shall be seated in the front seat.

§176.1015. Student Complaints.

(a) The primary school shall have a written grievance procedure approved by the division director that is disclosed to all students. Branch schools shall follow the procedures approved for the primary school. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Adequate records shall be maintained.

(b) The branch or primary school shall make every effort to resolve complaints.

§176.1016. Records.

(a) A driver education school shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). The records shall include timecards for instructors and schedules that reflect the duties and instruction times for instructors that correlate to the times that are shown on timecards. There may be announced

or unannounced on-site visits at each school each year. Other compliance surveys may be announced at the discretion of the division director.

(b) The schools shall retain all student records for at least three years. A school shall maintain the records of the students who completed driver education classes at the school for the most current 12 months, except that branch schools may transfer completed student records to the primary school. The school owner shall maintain all other driver education records at a location accessible by the school owner. All records pertaining to each completed student must be kept at one location. Schools with no current enrollment may request approval from the division director to transfer records to a fully operational school or another approved location.

(c) A driver education school licensed by TEA shall maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated.

(1) Individual students.

(A) The entries on the individual student record form shall be made in ink and updated on a daily basis. The minimum requirements indicating attendance entries shall be maintained by using symbols or abbreviations of the following:

(i) absent;

(ii) makeup;

(iii) present;

(iv) termination;

(v) withdraw; and

(vi) transfer.

(B) The individual student record form for driver education shall include the following:

(i) name and classroom address of the school;

(ii) name, full address, telephone number of the student, and date of birth;

(iii) date instruction terminated, if applicable;

(iv) type and number of license held by the student, including the expiration date and licensing state;

(v) month, day, year, and time of day of instruction;

(vi) each unit of instruction;

(vii) grade earned for each unit;

(viii) instruction hours for classroom, simulators, behind-the-wheel, and observation;

(ix) initials of each instructor for each classroom session or in-car lesson. The instructor's signature and license number shall appear at least once on the front or back of the form;

(x) beginning and ending dates of the course;

(xi) statement of assurance signed by student and instructor that the record is true and correct;

(xii) adult classroom;

(xiii) adult behind-the-wheel;

(xiv) adult simulation;

(xv) teen classroom;

(xvi) teen behind-the-wheel and observation; and

(xvii) teen simulation.

(2) DE-964. Each driver education school shall retain a copy of the DE-964 in the appropriate student files.

(d) Each driver education school shall, upon request, furnish each individually contracted student a duplicate of his or her instruction record when all of the courses contracted for are completed or the student otherwise ceases taking instruction at or with the school, providing all financial obligations have been met by the student.

(e) Each driver education school shall maintain a list of students enrolled in each class. An enrolled student, for purposes of this requirement, shall mean any person who has received classroom or in-car instruction or for whom a student enrollment contract has been executed or monies paid.

§176.1017. Names and Advertising.

(a) No primary school shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another licensed driver education or driving safety school without written consent of that school. Schools holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driver education school after August 31, 1995, with a name like, or deceptively similar to, a name used by another licensed driver education or driving safety school.

(b) A school license shall not contain more than one school name. Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule. Use of names other than the approved school name may constitute a violation of this section.

(c) Branch schools shall adopt, use, and conduct business with the same name as the primary school.

(d) A school shall not, by advertisement or otherwise, state or imply that a driver's license, permit, or DE-964 is guaranteed or assured to any student or individual who will take or complete any instruction or enroll or otherwise receive instruction in any driver education school.

(e) A school shall not advertise without including the school name or the school number exactly as it appears on the driver education school license.

(f) The division director may require that a school furnish proof to TEA that substantiates any advertising claims made by the school. Failure to provide acceptable proof may require that the school publish a retraction of such advertising claims in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension of student enrollments or DE-964s and/or revocation of the school license.

(g) Continuance of an advertisement that has been determined to be false, misleading or deceptive, without action to discontinue the advertisement after notice, shall result in assessment of a civil penalty. The penalty shall be assessed regardless of who was responsible for an error or misprint in the original placement of the advertisement.

§176.1018. Driver Education Certificates (DE-964).

(a) The DE-964 shall be issued only to primary driver education schools. The primary driver education school shall maintain a record reconciling all DE-964s that are distributed to

branch driver education schools and courses offered by the primary school at public or private schools.

(b) School owners shall be responsible for the DE-964 in accordance with this subsection.

(1) A licensed or exempt driver education school may request to receive the serially numbered DE- 964s by submitting an order form provided by the Texas Education Agency (TEA) stating the number of DE-964s to be purchased and including payment of all appropriate fees. The form shall have the original signature of the driver education school owner or school director when submitted.

(2) A driver education school shall not transfer DE-964s to a school other than the school for which the certificates were ordered from TEA, without written approval from the division director.

(3) Each driver education school owner shall maintain the TEA copies of the DE-964s in ascending numerical order. The driver education school owner shall submit the TEA copies of all issued certificates to TEA as soon as a batch of certificates has been used. The school owner shall return unissued DE-964s to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(4) Each driver education school owner shall ensure that the policies concerning the DE-964 are followed and communicated to all instructors and employees of the school and that the DE-964s are signed and issued in accordance with the current certificate format developed by TEA.

(5) The driver education school owner or school director shall maintain effective protective measures to ensure that unissued DE-964s are secure. The driver education school owner or school director shall report all unaccounted DE-964s to the division director within two days of the discovery of the incident. In addition, the driver education school shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted DE-964s. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the division director within 30 days of the discovery. Failure to provide adequate security may result in action against the instructor and/or school approvals and licenses. Each unaccounted or missing DE-964 may be considered a separate violation within the meaning of Texas Civil Statutes, Article 4413(29c), §24(a). This may include lost, stolen, or otherwise unaccounted DE-964s.

(6) No driver education school owner-operator or employee shall complete, issue, or validate a DE- 964 to a person who has not successfully completed the entire portion of the course for which the DE-964 is being issued.

(c) Licensed driver education instructors shall be responsible for the DE-964 in accordance with this subsection.

(1) Each driver education instructor shall ensure that the DE-964s are kept in such a manner as to ensure security of the DE-964s.

(2) An instructor signature on the DE-964 shall indicate successful completion of the instruction designated.

(d) If a driver education school issues a duplicate DE-964, the duplicate shall indicate the control number of the original DE-964.

§176.1019. Application Fees and Other Charges.

(a) If a driver education school changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.1003(e)(4) of this title (relating to Driver Education School Licensure), the change of ownership is substantially similar, the new owner shall pay the statutory fees allowed by Texas Civil Statutes, Article 4413(29c), §13(d)(3)(A).

(b) A late renewal fee shall be paid in addition to the annual renewal fee if the school fails to postmark a complete application for renewal at least 30 days before the expiration date of the driver education school license. The requirements for a complete application for renewal are found in §176.1003(g) of this title (relating to Driver Education School Licensure). The complete renewal application must be postmarked or hand-delivered with a date on or before the due date.

(c) Driver education instructors applying for school licensure as required by Texas Civil Statutes, Article 4413(29c), §13(b)(2), shall pay the fee amount set forth in statute.

(d) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The initial fee for a primary school is $1,000.

(2) The initial fee for a branch school is $850.

(3) The renewal fee for a driver education school is $200.

(4) The fee for a change of address of a driver education school is $180.

(5) The fee for a change of name of a driver education school or to change the name of an owner is $100.

(6) The application fee for each additional driver education course is $25.

(7) The application fee for each school director is $30.

(8) The application fee for each administrative staff member is $15.

(9) Each application for an original driver education instructor's license shall be accompanied by a processing fee of $50, except that the fee may not be collected for an applicant who is currently teaching a driver education course in a public school in this state.

(10) The annual instructor license fee is $25.

(11) The late instructor renewal fee is $25.

(12) The duplicate driver education instructor license fee is $8.

(13) The fee for an investigation at a school to resolve a complaint is $1,000.

(14) The driver education school late renewal fee is $200.

(15) The fee for a DE-964 is $2.00.

This 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 September 20, 1999.

TRD-9906077

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: October 31, 1999

For further information, please call: (512) 463-9701

♦ ♦ ♦

Subchapter BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

The Texas Education Agency (TEA) proposes the repeal of §176.1101 and §176.1102 and new §§176.1101-176.1116, concerning driver training schools. The new sections establish minimum standards for operating a licensed driving safety school or course provider in Texas. The sections specify definitions, requirements, and procedures relating to exemptions; driving safety school licensure; course provider licensure; driving safety school and course provider responsibilities; administrative staff members; driving safety instructor license; courses of instruction; student enrollment contracts; cancellation and refund policy; facilities and equipment; student complaints; records; names and advertising; uniform certificate of course completion for driving safety course; and application fees and other charges.

Senate Bill 777, 76th Texas Legislature, 1999, amended the Texas Driver and Traffic Safety Education Act and transferred all rulemaking authority for the regulation of driver training programs from the State Board of Education to the commissioner of education. Legislative changes have also mandated inclusion of litter prevention and alcohol awareness information in driving safety courses. To implement the legislative mandates, the TEA is reorganizing rules relating to driving safety programs by proposing the repeal of 19 TAC §176.1101 and §176.1102 and new 19 TAC §§176.1101-176.1116.

Felipe Alanis, Deputy Commissioner for Programs and Instruction, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Alanis and Criss Cloudt, Associate Commissioner for Policy Planning and Research, have 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 increased awareness of traffic safety and a move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register.*

19 TAC §176.1101, §176.1102

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

The repeals are proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The repeals implement Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1101. Definitions.
§176.1102. Uniform Certificate of Course Completion for Driving Safety Course.

This 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 September 20, 1999.

TRD-9906078
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

19 TAC §§176.1101-176.1116

The new sections are proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The new sections implement Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1101. Definitions.

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

(1) Advertising–Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to arouse a desire to patronize that school and/or course.

(2) Break–An interruption in a course of instruction occurring after the course introduction and before the course summation.

(3) Change of ownership of a school or course provider–A change in the control of the school or course provider. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(4) Clock hour–50 minutes of instruction in a 60-minute period for a driving safety course.

(5) Division–The division of the Texas Education Agency (TEA) responsible for executing the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(6) Division director–The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

(7) Good reputation–A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school or course provider, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school or course provider currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds; has never owned or operated a school or course provider with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a DE-964 or uniform certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

(8) Instructor trainer–A driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

(9) Moral turpitude–Conduct that is inherently immoral or dishonest.

(10) New course–A driving safety course is considered new when it has not been approved by TEA to be offered previously, or has been approved by TEA and offered and then discontinued, or the content or lessons of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(11) Public or private school–For the purpose of these rules, a public or private school is an accredited public or non-public secondary school.

(12) Uniform certificate of course completion–A document that is printed, administered, and supplied by TEA to owners or primary consignees for issuance to students who successfully complete an approved driving safety course and that meets the requirements of Transportation Code, Chapter 543. This term encompasses all parts of a uniform certificate of course completion with the same serial number. It is a government record.

§176.1102. Exemptions.

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Civil Statutes, Article 4413(29c), §7, shall upon request, ask for an exemption in writing and provide any information deemed necessary to the division director to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the Texas Education Agency in order to ensure continued operation in compliance with the exemption provisions.

§176.1103. Driving Safety School Licensure.

(a) Application for driving safety school. An application for a license for a driving safety school shall be made on forms supplied by the Texas Education Agency (TEA) and submitted to TEA by the course provider. The application shall include:

(1) individual requests for approval for each multiple classroom of the school. The applications shall be made on forms provided by TEA. The driving safety school shall receive TEA approval for each location prior to advertising or offering a driving safety course at the location; and

(2) verification from the licensed course provider that the school is authorized to provide the approved driving safety course and that the school will operate in compliance with all course provider policies and procedures.

(b) Verification of ownership for driving safety school.

(1) In the case of an original or change of owner application for a driving safety school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(c) Effective date of the driving safety school license. The effective date of the driving safety school license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(d) Purchase of driving safety school.

(1) A person or persons purchasing a licensed driving safety school shall obtain an original license.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(e) New location.

(1) The division director shall be notified in writing of any change of address of a driving safety school at least three working days before the move.

(2) The school must submit the appropriate fee and all documents designated by the division director as being necessary. The documents shall be submitted to TEA by the course provider on behalf of the school. A driving safety school license may be issued after the required documents are approved.

(3) If the move is beyond ten miles and, as determined by the division director, a student is prevented from completing the training at the new location, a full refund of all money paid and a release from all obligations are due.

(4) The school must maintain a current mailing address at the division.

(f) Renewal of driving safety school license. A complete application for the renewal of a license for a driving safety school shall be submitted to TEA by the course provider before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable; and

(3) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(g) Denial, revocation, or conditional license. For schools approved to offer only one driving safety course, the authority to operate a driving safety school shall cease if the course provider license is denied or revoked or if the course provider removes all authorization to teach the course. The license of the driving safety school may continue for 60 calendar days to allow the school owner to obtain approval to operate under a different course provider license. At the end of the 60-day period, the school license shall be revoked unless the school will offer an approved course. A current driving safety school license shall not be renewed without an approved course. A driving safety school license may be denied, revoked, or conditioned separately from the license of the course provider.

(h) Notification of legal action. A school shall notify the division director in writing of any legal action that is filed against the school, its officers, any owner, or any school instructor that might concern the operation of the school within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(i) School closure.

(1) The school owner shall notify TEA and the course provider at least 15 business days before the anticipated school closure. The school owner shall provide written notice to TEA and the course provider of the actual discontinuance of the operation within five working days after the cessation of classes. A school shall forward all records to the course provider responsible for the records within five days.

(2) The course provider shall provide TEA with written notice of a school closure within five working days after knowledge of cessation of classes.

(3) The division director may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school owner or course provider stating that the school will close;

(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate;

(C) when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate;

(D) when the school owner allows the school license to expire; or

(E) when the school does not have the facilities and equipment to operate pursuant to this subchapter.

(j) Course at public or private school. A school shall receive approval from TEA prior to conducting a course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driving safety school and the public or private school. The course shall be subject to the same rules that apply at the licensed driving safety school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.1104. Course Provider Licensure.

(a) Application for course provider. An application for a license for a course provider shall be made on forms supplied by the Texas Education Agency (TEA). An application from a course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Posting of a $25,000 bond shall satisfy the requirements for financial stability for a course provider.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider.

(1) In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the course provider shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications in order to carry out the responsibilities of a course provider. Verifiable education and/or experience in administration and/or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(1) A course provider who has owned or been a primary consignee of an approved driving safety course and has been fully operational as a course provider in the State of Texas for a continuous 12-month period before September 1, 1995, satisfies the educational and experience qualifications.

(2) A course provider who has an approved driving safety course but has not been fully operational as a course provider for a continuous 12-month period must submit evidence of at least one year of experience in administration and/or supervision.

(3) A new course provider shall submit evidence of:

(A) at least 30 semester credit hours of education from an accredited postsecondary institution and two years of paid experience in administration and/or supervision; or

(B) a combined total of three years of driver and traffic safety education or experience and administrative/management experience; however, a minimum of six months in each shall be required.

(f) Effective date of the course provider license. The effective date of the course provider license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school or course provider shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school or course provider shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the course provider shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(3) A change of ownership of a course provider is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(4) In the event a change of ownership is substantially similar, the applicant pays a change in ownership fee as opposed to an initial application fee.

(h) New location.

(1) The division director shall be notified in writing of any change of address of a course provider at least three working days before the move.

(2) The course provider must submit the appropriate fee and all documents designated by the division director as being necessary. A course provider license may be issued after the complete required documents are approved.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a revised continuing education course for the next year;

(4) executed bond or executed continuation agreement for the bond currently approved by, and on file with, TEA or approved alternate form of security, if applicable; and

(5) any other revision or evidence of which the course provider has been notified in writing that is necessary to bring the course provider's application for a renewal license to a current and accurate status.

(j) Notification of legal action. A course provider shall notify the division director in writing of any legal action that is filed against the course provider, its officers, any owner, or any school instructor that might concern the operation of the course provider within five working days after the course provider becomes aware of the fact that the legal action has commenced or the legal process has been served. Included with the written notification, the course provider shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) Course provider closure. In reference to Texas Civil Statutes, Article 4413(29c), §9, a course provider owner shall notify TEA at least 15 business days before the course provider closure. The course provider shall provide written notice of the actual discontinuance of the operation the day of cessation of business. A course provider shall make all records available for review to TEA within 30 days of the date the course provider ceases operation.

§176.1105. Driving Safety School and Course Provider Responsibilities.

(a) All instruction in a driving safety course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor may teach the 12 hours necessary for licensing in a TEA-approved lo-

cation under the direction and in the presence of a licensed driving safety instructor trainer who has been trained in the curriculum being instructed. If a licensed instructor leaves the employment of any driving safety school, the school administrative staff member shall notify the course provider in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and the reason for termination. The course provider shall provide the information to TEA in writing within five working days of receipt of notification.

(b) Each course provider or employee shall:

(1) ensure that instruction of the course is provided in schools currently approved to offer the course and in the manner in which the course was approved;

(2) ensure that the course is provided by persons who have a valid current driving safety instructor license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(3) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to driving safety;

(4) not falsify driving safety records; and

(5) ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year.

(c) Each driving safety school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current driving safety instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a verification of course completion only for a person who has successfully completed the entire course;

(5) not falsify driving safety records;

(6) ensure that instructors give students the opportunity to evaluate the course and instructor on an official evaluation form; and

(7) evaluate instructor performance in accordance with the course provider plan.

(d) For the purposes of Texas Civil Statutes, Article 4413(29c), and this chapter, each person employed by or associated with any driving safety school shall be deemed an agent of the driving safety school, and the school shall share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1106. Administrative Staff Members.

(a) Each driving safety school shall designate one person as the administrative staff member.

(1) Duties. The school administrative staff member shall be responsible for all actions related to day-to-day operation and administration of the school, which includes supervising instructors, organizing and scheduling classes, maintaining the school plant, and maintaining proper administrative records.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent, or be a licensed driving safety instructor.

(b) During any period when the school administrative staff member is required to be absent from the school, the owner shall designate a liaison to provide student records, contracts, and schedules to Texas Education Agency (TEA) staff. The liaison is not required to pay an application fee; however, the school shall notify TEA in writing as to who will be appointed as liaison.

(c) An individual shall be approved by TEA as the administrative staff member before employment as such.

(d) The school administrative staff member or liaison shall assist TEA representatives during any announced compliance visit by TEA.

(e) Violations at the school or by the administrative staff member may result in removal of the approval of the administrative staff member.

§176.1107. Driving Safety Instructor License.

(a) Application for licensing as a driving safety instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driving safety instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach, which has not been suspended, revoked, or forfeited in the past five years for traffic-related violations.

(b) A person applying for an original driving safety instructor's license shall submit to the course provider, who shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division director; and

(4) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driving safety instructor license may qualify for the following endorsements.

(1) Driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety

curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a driving safety instructor include instructing a TEA-approved driving safety course specific to the curriculum in which the individual is trained.

(2) Driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 60 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 60 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach; or

(iii) completion of all the requirements of a driving safety instructor and 150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same driving safety course for which the individual is to teach.

(B) The responsibilities of a driving safety instructor trainer include instructing a TEA-approved driving safety course, supervising instructor trainees, and signing as a driving safety instructor trainer for the 12 hours of practice teaching required for driving safety instructor trainees.

(3) Instructor development course driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a driving safety instructor trainer plus an additional 150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 60 hours shall be in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course with 300 hours experience as a driving safety instructor. An author of an approved course may hire an instructor with 300 verifiable hours of experience to be trained and licensed as an instructor development course driving safety instructor trainer. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director the ability to teach the course prior to being licensed; and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the instructor as an instructor development course instructor trainer.

(B) The responsibilities of an instructor development course driving safety instructor trainer include instructing a TEA-approved driving safety course, training individuals to teach a TEA-approved driving safety course, and signing student instruction records for driving safety trainees.

(d) A renewal application for a driving safety instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and submitted by the course provider. The annual instructor licensing fee and evidence of continuing education shall accompany the application.

(2) A complete license renewal application shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education for each driving safety course endorsement.

(e) Continuing education requirements include the following.

(1) Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms approved by TEA. A verification form indicating completion shall be provided to TEA by the course provider on behalf of the instructors. The form shall be signed by the instructor receiving the training and the course provider or designee.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(4) A licensed individual who teaches an approved continuing education course may receive credit for attending continuing education.

(5) A driving safety continuing education course shall not be used for the continuing education requirement for a driver education instructor license.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA that is submitted by the course provider. The application shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driving safety instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes;

(2) the annual instructor licensing fee; and

(3) completion of renewal requirements for current endorsements.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing by the course provider and shall include payment of the duplicate instructor license fee.

(i) The course provider shall notify the TEA of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division director, school owner, and course provider in writing of any criminal complaint identified in subsection (n) of this section filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2.

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify driving safety records.

(n) The commissioner of education may suspend, revoke, or deny a license to any driving safety instructor trainer or instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Driving safety instruction involves accurate record keeping and reporting for court documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and Article 6252-13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement, conditional release, or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or behind-the-wheel instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c).

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Department of Public Safety administrative rules, 37 TAC §15.81 (relating to Criteria for Driver Improvement Action), during the past two years or that such action is needed to protect the students and motoring public.

(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.

§176.1108. Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by subsection (a)(1)(J) of this section, all course content shall be delivered under the direct observation of a licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval of any course that has not purchased and issued uniform certificates of completion since January 1, 1996, will be revoked as of September 1, 2000.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to: promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subsection (a)(1)(F) of this section;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed; and

(V) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy; and

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall consist of a minimum of 60 minutes of videos, including audio, but cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials that shall be provided for use by each student as a guide to the course. The division director may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course management. Approved driving safety courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive exam.

(iv) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch, which is exclusive of the total course length of 360 minutes.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided prior to the last unit of the instructional day or the comprehensive exam, whichever is appropriate.

(vii) The order of topics shall be approved by Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) The TEA shall produce and supply to course providers, at no cost to the course providers, copies of a short video that will provide information about the requirements for completing a six-hour driving safety course and the penalties involved for accepting a uniform certificate of course completion for a course that was not six hours in length. The course provider shall ensure that the video is shown to all students of each class prior to the final examination. Alternative methods for providing the required information to the students may be submitted by the course provider and approved at the discretion of the division director.

(x) No more than 50 students per class are permitted in driving safety courses.

(xi) The driving safety school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A driving safety course shall include, as a minimum, materials adequate to address the following topics and to comply with the minimum time requirements for each unit and the course as a whole.

(i) Course introduction–minimum of ten minutes (instructional objective–to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The traffic safety problem–minimum of 15 minutes (instructional objectives–to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) five leading causes of motor vehicle crashes in Texas as identified by the Department of Public Safety (DPS).

(iii) Factors influencing driver performance–minimum of 20 minutes (instructional objective–to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures–minimum of 30 minutes (instructional objectives–to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings safety;

(-a-) statistics;

(-b-) causes; and

(-c-) evasive actions;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) litter prevention;

(XIII) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the DPS on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XIV) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments–minimum of 20 minutes (instructional objectives–to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions–hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control–minimum of 15 minutes (instructional objective–to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving–minimum of 20 minutes (instructional objective–to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies–minimum of 40 minutes (instructional objective–to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; and

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.).

(ix) Driving emergencies–minimum of 40 minutes (instructional objective–to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment–minimum of 15 minutes (instructional objective–to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive); and

(V) helmets and other protective equipment.

(xi) Alcohol and traffic safety–minimum of 40 minutes (instructional objective–to identify the effects of alcohol on roadway users). Instruction shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects;

(IV) synergistic effects; and

(V) countermeasures.

(xii) Comprehensive examination–minimum of 15 minutes (this shall be the last unit of instruction).

(xiii) The remaining required 20 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised of courses providing alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(H) Performance report. Two years after approval of a driving safety course, an evaluation of the course based on criteria established by TEA shall be submitted to TEA by the course owner. The performance report will be used to determine whether the course is meeting its purpose and objectives and operating as approved. The performance report may be used as a basis for continued approval.

(I) State-level evaluation of driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education may determine a level of effectiveness that serves the purposes of Texas Civil Statutes, Article 4413(29c).

(J) Driving safety courses delivered by an alternative delivery method.

(i) The commissioner of education may approve an alternative delivery method for an approved driving safety course and waive any rules to accomplish this approval if:

(I) the educational objectives, minimum course content, applicable areas of course management, examination, and student course evaluation requirements are met;

(II) the course materials are written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor;

(III) with the exception of circumstances beyond the control of the course owner, the student has adequate access to a licensed instructor (on the average, within two minutes) throughout the course such that the flow of instructional information is not delayed;

(IV) the equipment and course materials are available only through and at the approved driving safety school or classroom; and

(V) there is sufficient evidence to demonstrate the security of the course and that the general public cannot circumvent it.

(ii) Performance report. Two years after approval of the alternative delivery method, an evaluation of the delivery method based on criteria established by TEA shall be submitted to TEA by the course owner. The performance report will be used to determine whether the course is meeting its purpose and objectives and operating as approved. The performance report will be used as a basis for continued approval.

(K) Requirements for authorship. The course materials shall be written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor.

(2) Instructor development courses.

(A) Driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for driving safety instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 36 hours of training in the driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Continuing education requirements include the following.

(i) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course and providing the approved course to each instructor currently endorsed to teach the course.

(ii) The request for course approval shall contain the following:

(I) a description of the plan by which the course will be presented;

(II) the subject of each unit;

(III) the instructional objectives of each unit;

(IV) time to be dedicated to each unit;

(V) instructional resources for each unit, including names or titles of presenters and facilitators;

(VI) any information that TEA mandates to ensure quality of the education being provided;

(VII) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course; and

(VIII) a course evaluation form to be completed by each instructor attending the course. The course provider must maintain each instructor's completed evaluation form for one year.

(iii) A continuing education course may be approved if TEA determines that:

(I) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the driving safety instructor;

(II) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(III) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division director; and

(IV) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(B) Course providers shall notify the division director of the scheduled dates, times, and locations of all continuing education courses no less than 15 calendar days prior to the class being held, unless otherwise excepted by the division director.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division director and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(4) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.1109. Student Enrollment Contracts.

(a) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed. A contract shall be executed prior to the school's receipt of any money.

(b) All driving safety contracts shall contain at least the following:

(1) the student's legal name and driver's license number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the driving safety school or approval number of the classroom location, as applicable;

(6) the specific name of the approved driving safety course to be taught;

(7) a statement indicating the agreed total contract charges that itemizes all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the number of behind-the-wheel lessons, if applicable;

(11) the length of each lesson or course;

(12) the course provider's cancellation and refund policy;

(13) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(14) the signature and license number of the instructor; and

(15) the signature of the student or the approved equivalent for a driving safety course delivered by an alternative delivery method.

(c) In addition, all driving safety school contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a uniform certificate of course completion if the student has not met all of the requirements for course completion, and the student should not accept a uniform certificate of course completion under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and verbal assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to the course provider (identify name and address) and to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) Driving safety may use a group contract that includes more than one student's name.

(e) A copy of each contract shall be a part of the student files maintained by the driving safety school and/or course provider.

(f) Course providers shall submit proposed or amended contracts to the division director, and those documents shall be approved prior to use by schools.

(g) Contracts for group instruction must meet all legal requirements.

(h) Contracts executed in an electronic format shall be considered to contain original signatures for purposes of this section.

§176.1110. Cancellation and Refund Policy.

(a) Course provider cancellation shall be in accordance with Texas Civil Statutes, Article 4413(29c). Driving safety schools shall use the cancellation policy approved for the course provider.

(b) Refunds for all driving safety schools or course providers shall be completed within 30 days after the effective date of termination. Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 120 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the

check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), a school or course provider is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address; and

(2) certified mail to the student's permanent address.

(d) If it is determined that the school does not routinely pay refunds within the time required by Texas Civil Statutes, Article 4413(29c), §13(h)(2)(E), the school shall submit a report of an audit which includes any interest due as set forth in Texas Civil Statutes, Article 4413(29c), §13(h)(4), conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by Texas Education Agency (TEA) for each student:

(1) name, address, and either social security number or driver's license number;

(2) last date of attendance or date of termination; and

(3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(e) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division director.

§176.1111. Facilities and Equipment.

(a) No classroom facility shall be located in a private residence.

(b) The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities for all students being trained;

(2) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and

(3) any materials that have been approved as a part of the course approval.

(c) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(d) Each school and classroom shall conduct the Texas Education Agency-approved driving safety course in a facility that promotes the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter.

(e) Enrollment shall not exceed the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

(f) A violation of the law or rules by any multiple classroom location constitutes a violation by the driving safety school.

(g) All classroom approvals are contingent on the driving safety school license and shall be subject to denial or revocation if such action is taken against the license of the driving safety school that has responsibility for the classroom location.

(h) Course provider facilities shall be staffed in such a manner that an employee of the course provider is available to answer questions and take messages during regular business hours.

(i) The course provider location shall be the physical address as stated on the course provider license.

§176.1112. Student Complaints.

(a) The course provider shall have a written grievance procedure approved by the division director that is disclosed to all students. Driving safety schools shall follow the procedures approved for the course provider. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Adequate records shall be maintained.

(b) The driving safety school or course provider shall make every effort to resolve complaints.

§176.1113. Records.

(a) A driving safety school or course provider shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency. There may be announced or unannounced compliance surveys at each school or course provider each year.

(b) The course provider shall retain all student records for at least three years. A course provider shall maintain the records of the students who completed driving safety classes for the most current 12 months at the course provider location. The actual driving safety comprehension test does not have to be retained; however, the test score must be in the student's records. The division director may require a course provider to retain the actual test of each student for a designated period of time if deemed necessary by the division director to show compliance with the legal requirements.

(c) A course provider shall maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated.

§176.1114. Names and Advertising.

(a) No driving safety school or course provider shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another licensed driving safety or driver education school without written consent of that school. Schools or extensions holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driving safety school or course provider after August 31, 1995, with a name like, or deceptively similar to, a name used by another licensed driving safety or driver education school.

(b) A school license shall not contain more than one school name. Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule. Use of names other than the approved school name may constitute a violation of this section.

(c) A driving safety school shall not advertise without including the school name exactly as it appears on the driving safety school license. In addition, all driving safety school advertisements

shall contain the course provider name exactly as it appears on the course provider license or the TEA-approved course provider code. All advertisements of a multiple classroom location shall meet these same requirements.

(d) The division director may require that a school furnish proof to TEA that substantiates any advertising claims made by the school. Failure to provide acceptable proof may require that the school publish a retraction of such advertising claims in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension or revocation of the school license.

(e) A school or course provider shall not design, manufacture, or supply to any court of the state any written materials that may be false, misleading, or deceptive.

§176.1115. Uniform Certificate of Course Completion for Driving Safety Course.

(a) Course provider responsibilities. Course providers shall be responsible for uniform certificates of course completion in accordance with this subsection.

(1) The course provider of a driving safety course shall ensure that each instructor completes the verification of course completion document approved by the Texas Education Agency (TEA). The verification of course completion document shall contain a statement to be signed by the instructor that states: "Under penalty of law, I attest to the fact that the student whose name and signature appears on this document has successfully completed the number of hours as required under Texas Civil Statutes, Article 4413(29c), and that any false information on this document will be used as evidence in a court of law and/or administrative proceeding." This verification of course completion document shall be returned to the course provider upon completion of each driving safety class and maintained for no less than three years.

(2) The course provider shall maintain a policy which effectively ensures protective measures are implemented by the course provider to ensure that unissued uniform certificates of course completion are secure at all times. The records and unissued uniform certificates of course completion shall be readily available for review by representatives of TEA.

(3) The course provider shall maintain electronic files with data pertaining to all uniform certificates of course completion purchased from TEA. The course provider shall make available to TEA upon request an ascending numerical accounting record of the students receiving the uniform certificates of completion. The course provider shall ensure security of the data.

(4) The course provider shall electronically transmit data pertaining to issued uniform certificates of completion within seven calendar days of issuance of the certificates. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student.

(5) The course provider shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all certificates that have been issued.

(6) Course providers shall issue and mail uniform certificates of course completion only to students who have successfully completed the course provider's approved driving safety course taught by TEA-licensed instructors in TEA-approved locations.

(7) The course provider must keep all parts of all voided uniform certificates of course completion.

(8) Course providers shall ensure that adequate training is provided regarding course provider policies and updates on course provider policies to all driving safety schools and instructors offering their approved driving safety course.

(9) Course providers shall report all unaccounted uniform certificates of course completion to the division director within two business days of the discovery of the incident. In addition, the course provider shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted uniform certificates of course completion. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the division director within 30 days of the discovery on a form provided by TEA.

(10) Each unaccounted or missing uniform certificate of completion may be considered a separate violation within the meaning of Texas Civil Statutes, Article 4413(29c), §24(a). This may include lost, stolen, or otherwise unaccounted uniform certificates of course completion.

(11) Course providers shall mail all uniform certificates of course completion using first-class postage.

(12) Course providers shall not transfer uniform certificates of course completion to a course other than the course for which the certificates were ordered from TEA.

(13) No course provider or employee shall complete, issue, or validate a uniform certificate of course completion to a person who has not successfully completed the entire course.

(b) School owner responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety school owners shall ensure that:

(1) the course provider policies are followed and communicated to all instructors and employees of the school; and

(2) all records are returned to the course provider in a timely manner as set forth by the course provider.

(c) Instructor responsibilities. In order to prevent misuse of uniform certificates of course completion, driving safety instructors shall ensure that:

(1) all records are returned to the driving safety school to be forwarded to the course provider within the time allowed by course provider policy;

(2) the verification of course completion document provided by the course provider is signed by the instructor who conducted the class upon completion of the class;

(3) the entire course is completed prior to signing the verification of course completion document;

(4) the court information is obtained from each student taking the driving safety class for the purposes of Code of Criminal Procedure, Article 45.541. Students who want an insurance reduction only shall have "insurance only" indicated in the court information area on the verification of course completion document provided to the course provider; and

(5) the instructor adheres to the school and course provider policies.

§176.1116. Application Fees and Other Charges.

(a) If a driving safety school or course provider changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to

§176.1104(g)(3) of this title (relating to Course Provider Licensure), the change of ownership of a course provider is substantially similar, the new owner shall pay the statutory fees allowed by Texas Civil Statutes, Article 4413(29c), §13(d)(3)(A).

(b) A late renewal fee shall be paid in addition to the annual renewal fee if a driving safety school or course provider fails to postmark a complete application for renewal at least 30 days before the expiration date of the driving safety school license. The requirements for a complete application for renewal are found in §176.1103(f) of this title (relating to Driving Safety School Licensure) and §176.1104(i) of this title (relating to Course Provider Licensure). The complete renewal application must be postmarked or hand-delivered with a date on or before the due date.

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a driving safety course approval is $9,000.

(2) The initial fee for a course provider is $2,000.

(3) The initial fee for a driving safety school is $150.

(4) The annual renewal fee for a course provider is $200.

(5) The fee for a change of address of a course provider or driving safety school is $50.

(6) The fee for a change of name of a course provider or name of owner is $100.

(7) The fee for a change of name of a driving safety school or name of owner is $50.

(8) The application fee for each additional course for a driving safety school is $25.

(9) The application fee for each administrative staff member is $15.

(10) A processing fee of $50 shall accompany each application for an original driving safety instructor's license.

(11) The annual instructor license fee is $25.

(12) The late instructor renewal fee is $25.

(13) The duplicate driving safety instructor license fee is $8.

(14) The fee for an investigation at a driving safety school or course provider to resolve a complaint is $1,000.

(15) The course provider late renewal fee is $200.

(16) The driving safety school late renewal fee is $100.

(17) The fee for a duplicate uniform certificate of course completion is $10.

(18) The fee for a uniform certificate of course completion is $1.70.

This 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 September 20, 1999.

TRD-9906079
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Subchapter CC. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF TEXAS DRUG AND ALCOHOL DRIVING AWARENESS PROGRAMS

19 TAC §§176.1201-176.1210

The Texas Education Agency (TEA) proposes new §§176.1201-176.1210, concerning driver training schools. The new sections establish minimum standards for operating a licensed drug and alcohol driving awareness school in Texas. The sections specify definitions, requirements, and procedures relating to drug and alcohol driving awareness school licensure; drug and alcohol driving awareness school responsibilities; drug and alcohol driving awareness instructor license; courses of instruction; student enrollment forms; facilities and equipment; records; and application fees and other charges.

House Bill (HB) 3757, 76th Texas Legislature, 1999, amended the Texas Driver and Traffic Safety Education Act by requiring the TEA to develop standards for school certification and educational curricula pertaining to drug and alcohol driving awareness programs. Senate Bill 777, 76th Texas Legislature, 1999, transferred all rulemaking authority for the regulation of driver training programs from the State Board of Education to the commissioner of education. To implement the legislative mandates, the TEA is proposing new 19 TAC §§176.1201-176.1210.

TEA staff have obtained information from the Texas Commission on Alcohol and Drug Abuse (TCADA), Texas A&M University (TAMU), and other interested parties to establish the proposed new sections. TCADA and TAMU worked cooperatively to approve a drug and alcohol driving awareness program previously. The proposed new sections, upon adoption, will be included as part of a memorandum of understanding between TCADA and the TEA as required by Texas Civil Statutes, Article 4413(29c), §4A(b).

Felipe Alanis, Deputy Commissioner for Programs and Instruction, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government will include estimated additional costs and increases in revenue. The estimated additional cost will be $56,088 in FY2000; $13,375 in FY2001; $22,206 in FY2002; $13,375 in FY2003; and $20,102 in FY2004. The estimated loss of revenues will be $1,488 in FY2000; $11,000 in FY2001; $7,081 in FY2002; $11,000 in FY2003; and $13,977 in FY2004. The TEA was not appropriated any additional full-time employees to carry out the requirements of HB 3757, but was given authority to assess fees in amounts reasonable and necessary to implement and administer the legislation. In addition, the proposed new sections were developed based on the estimated income projections. The TEA is only regulating those areas mandated by HB 3757, which include school licensing, instructor licensing, and course approval. The estimated yearly fee revenue for the Texas drug and alcohol driving awareness program, as discussed previously, will be less than the projected costs as-

sociated with administering the program. The total five-year estimated cost expenditure for TEA is $44,546. There will be no fiscal implications for local government.

The effect on small businesses cannot be precisely determined due to lack of information about their complete operation. Small businesses may incur a cost as a result of the proposed new sections; however, the costs associated with owning a drug and alcohol driving awareness program and/or school can be recovered through the assessment of fees for providing the course. There will be no differentiation in cost of compliance for small businesses versus the largest businesses affected.

Mr. Alanis and Criss Cloudt, Associate Commissioner for Policy Planning and Research, have 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 increased awareness of traffic safety and a move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. The anticipated economic cost to persons who are required to comply with the sections as proposed will be $49,200 in FY2000; $2,375 in FY2001; $15,125 in FY2002; $2,375 in FY2003; and $6,125 in FY 2004. These costs are based on the projected number of instructors, schools, and course owners submitting applications for either licenses or approvals, respectively. Each new drug and alcohol driving awareness instructor must pay $75 to apply for a license that must be renewed every two years at a cost of $25. Each new drug and alcohol driving awareness school must pay $150 to apply for a license. There is no school renewal fee. Lastly, the application fee for a new drug and alcohol driving awareness program is $9,000.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Article 4413(29c), §4A, as amended by House Bill 3757, 76th Texas Legislature, 1999, which directs the Texas Education Agency to develop standards for drug and alcohol driving awareness programs; and Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The new sections implement Texas Civil Statutes, Article 4413(29c), §4A, as amended by House Bill 3757, 76th Texas Legislature, 1999; and Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1201. General Provision.

All drug and alcohol driving awareness programs will be regulated in accordance with the rules adopted in this subchapter and the specific sections of the Texas Driver and Traffic Safety Act (Act) that provide authorization for these rules. Any portion of the Act that is not included by rule is considered excepted as mandated by Vernon's Texas Civil Statutes, Article 4413(29c), §4A(a), and will not apply to the drug and alcohol driving awareness programs.

§176.1202. Definitions.

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

(1) Break–An interruption in a course of instruction occurring after the course introduction and before the course summation.

(2) Certificate of course completion–Serially numbered certificates that are printed, administered, and supplied by the course owner that have been approved by the Texas Education Agency (TEA) as part of the drug and alcohol driving awareness program.

(3) Change of ownership of a school–A change in the control of the school. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(4) Clock hour–50 minutes of instruction in a 60-minute period.

(5) Division–The division of TEA responsible for executing the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

(6) Division director–The person designated by the commissioner of education to carry out the functions and regulations governing the drug and alcohol driving awareness schools and course owners and designated as director of the division responsible for licensing driver training programs.

(7) Drug and alcohol driving awareness course owner–An enterprise that has received an approval for a drug and alcohol driving awareness program.

(8) Drug and alcohol driving awareness school–An enterprise that maintains a place of business in this state for the education and training of persons in drug and alcohol driving awareness. A drug and alcohol driving awareness school may use multiple classroom locations to teach a drug and alcohol driving awareness course if each location is approved by the parent school and TEA and bears the same name and has the same ownership as the parent school.

(9) Good reputation–A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school or course currently in violation of the legal requirements involving fraud,

deceptive trade practices, student safety, or quality of education; has never owned or operated a school or course provider with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, selling, trading, or transferring a certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

(10) Instructor trainer–A licensed drug and alcohol driving awareness instructor who has been authorized to prepare instructors to give instruction in a specified curriculum.

(11) Moral turpitude–Conduct that is inherently immoral or dishonest.

(12) New course–A drug and alcohol driving awareness course is considered new when it has not been approved by TEA to be offered previously, or has been approved by TEA and offered and then discontinued, or has been inactive for 36 months or more, or the content or lessons of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(13) Self-assessment–A tool used by program participants to evaluate one's own risk for developing problems with alcohol.

§176.1203. Drug and Alcohol Driving Awareness School Licensure.

(a) Application for school. An application for a license for a drug and alcohol driving awareness school shall be made on forms supplied by the Texas Education Agency (TEA) and shall include:

(1) individual requests for approval for each multiple classroom of the school. The applications shall be made on forms provided by TEA. The school shall receive TEA approval for each location prior to advertising or offering a course at the location; and

(2) verification from the course owner that the school is authorized to provide the approved drug and alcohol driving awareness course.

(b) Approval. TEA shall approve the application of a drug and alcohol driving awareness school if TEA finds that the school does not owe a civil penalty under Texas Civil Statutes, Article 4413(29c).

(c) Verification of ownership for drug and alcohol driving awareness school.

(1) In the case of an original or change of owner application for a school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(d) School name. A drug and alcohol driving awareness school license shall not contain more than one school name.

(e) Effective date of the drug and alcohol driving awareness school license. The effective date of the school license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue. The license will be effective for two years subsequent to the effective date.

(f) Purchase of drug and alcohol driving awareness school.

(1) A person or persons purchasing a licensed school shall obtain an original license.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the drug and alcohol driving awareness school shall include the following statements.

(A) The sale of the school shall be subject to approval by TEA.

(B) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(g) New location.

(1) The division director shall be notified in writing of any change of address of a drug and alcohol driving awareness school at least three working days before the move.

(2) The school must submit the appropriate fee and all documents designated by the division director as being necessary.

(3) The school must maintain a current mailing address and telephone number at the division.

(h) Renewal of drug and alcohol driving awareness school license. A complete application for the renewal of a license for a drug and alcohol driving awareness school shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) renewal fee, if applicable; and

(3) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(i) Denial, revocation, or conditional license. For schools approved to offer only one drug and alcohol driving awareness course, the authority to operate a school shall cease if the course approval is revoked or if the course owner removes all authorization to teach the course. The license of the school may continue for 60 calendar days to allow the school owner to obtain approval to provide a different course. At the end of the 60-day period, the school license will be revoked unless an approved course will be offered. The current school license shall not be renewed without an approved course. Denial, revocation, or conditioning of licenses shall be in accordance with Vernon's Texas Civil Statutes, Article 4413(29c), §17.

(j) Notification of legal action. A school shall notify the division director in writing of any legal action that is filed against the school, its officers, any owner, or any school instructor that might concern the operation of the school within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) School closure.

(1) The school owner shall notify TEA and the course owner at least 15 business days before the anticipated school closure. The school owner shall provide written notice to TEA and the course owner of the actual discontinuance of the operation within five working days after the cessation of classes. A school shall forward all records to the course owner responsible for the records within five days.

(2) The course owner shall provide TEA with written notice of a school closure within five working days after knowledge of cessation of classes.

(3) The division director may declare a school to be closed:

(A) as of the last day of attendance when written notification is received by TEA from the school or course owner stating that the school will close;

(B) when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate;

(C) when the school owner allows the school license to expire; or

(D) when the school does not have the appropriate facilities and equipment to operate.

§176.1204. Drug and Alcohol Driving Awareness School Responsibilities.

(a) All instruction in a drug and alcohol driving awareness course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. If a licensed instructor leaves the employment of any school, the school administrative staff member shall notify TEA in writing within five days, indicating the name and license numbers of the school and the instructor, the termination date, and the reason for termination.

(b) Each school owner or employee shall:

(1) ensure that instruction of the course is provided in locations currently approved to offer the course;

(2) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(3) ensure that persons who have a valid current instructor license provide the course;

(4) ensure that instructors are provided with the most recent approved course materials and relevant data and information pertaining to drug and alcohol driving awareness;

(5) ensure the course does not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies;

(6) not falsify drug and alcohol driving awareness records;

(7) prohibit an instructor from giving instruction or prohibit a student from securing instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001; and

(8) complete, issue, or validate a certificate of course completion only for a person who has successfully completed the entire course.

(c) For the purposes of Texas Civil Statutes, Article 4413(29c), and this chapter, each person employed by or associated with any drug and alcohol driving awareness school shall be deemed an agent of the school, and the school shall share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.1205. Drug and Alcohol Driving Awareness Instructor License.

(a) Application for licensing as a drug and alcohol driving awareness instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a drug and alcohol driving awareness instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years which has not been suspended, revoked, or forfeited in the past five years for traffic-related violations.

(b) A person applying for an original instructor's license shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and instructor renewal fees;

(3) evidence of completion of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the drug and alcohol driving awareness curriculum in which the individual is being trained and a statement signed by the course owner recommending the applicant for licensing. Original documentation shall be provided upon the request of the division director; and

(4) any other information necessary to show compliance with applicable state and federal requirements.

(c) The responsibilities of a drug and alcohol driving awareness instructor include instructing a TEA-approved drug and alcohol driving awareness course specific to the curriculum in which the individual is trained.

(d) A drug and alcohol driving awareness instructor license shall be valid for two years.

(e) A renewal application for drug and alcohol driving awareness instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and shall be accompanied by the instructor renewal fee.

(2) A complete license renewal application shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal; and

(B) renewal fee.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA and shall include the processing and instructor renewal fees. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) Drug and alcohol driving awareness instructors who want to add a course endorsement to a license shall submit the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the instructor renewal fee.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(i) The TEA shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division director, school owner, and course owner in writing of any criminal complaint identified in subsection (n) of this section filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2. Further, the instructor must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies.

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) An instructor shall not falsify drug and alcohol driving awareness records.

(n) The commissioner of education may suspend, revoke, or deny a license to any drug and alcohol driving awareness instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Drug and alcohol driving awareness instruction involves accurate record keeping and reporting for insurance documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and Article 6252-13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when a court of competent jurisdiction enters an adjudication of guilt on an offense against the person, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or behind-the-wheel instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c).

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Department of Public Safety administrative rules, 37 TAC §15.81 (relating to Criteria for Driver Improvement Action), during the past two years or that such action is needed to protect the students and motoring public.

(7) If an instructor or applicant has received deferred adjudication of guilt from a court of competent jurisdiction, a determination can be made upon satisfactory review of evidence that the conduct underlying the basis of the deferred adjudication has rendered the person unworthy to provide driver training instruction.

§176.1206. Courses of Instruction.

(a) This section contains requirements for drug and alcohol driving awareness and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. All course content shall be delivered under the direct observation of a licensed instructor. Any changes and updates to a course shall be submitted and approved prior to being offered.

(1) Drug and alcohol driving awareness courses.

(A) Educational objectives. The educational objectives of drug and alcohol driving awareness courses shall include, but not be limited to: educating participants on the risks associated with alcohol or other drug use/abuse and problems associated with such use; providing information on the physiological and psychological effects of alcohol and drugs, legal aspects of alcohol and drug use; the effects of alcohol and drugs on the driving task; signs of abuse; and assisting participants in developing a plan to reduce the probability that they will be involved in alcohol/drugs and driving situations.

(B) Drug and alcohol driving awareness course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's drug and alcohol driving awareness goal and philosophy. The course must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct.

The following policies and administrative provisions shall be used by each school that offers the course and include the following requirements;

(I) progress standards that meet the requirements of subsection (a)(1)(F) of this section;

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed; and

(IV) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. The course shall consist of a minimum of 60 minutes of videos, including audio, but cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) a clear identification of the order in which the units of instruction will be presented, and for each student, the course shall be taught in the order identified in the approved application;

(vii) written or printed materials that shall be provided for use by each student as a guide to the course. The division director may make exceptions to this requirement on an individual basis;

(viii) units of instruction sufficient to present the topics identified in subsection (a)(1)(B) of this section and any additional topics unique to the course. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course content guide. The evaluative technique may be used throughout the unit or at the end; and

(ix) a document that identifies the instructional units and topics and the order in which they are provided.

(C) Course management. Approved drug and alcohol driving awareness courses shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the post-course exam.

(iv) Courses conducted in a single day shall allow a minimum of 30 minutes for lunch, which is exclusive of the total course length of 360 minutes.

(v) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided prior to the last unit of the instructional day or the post-course exam, whichever is appropriate.

(vi) The order of topics shall be approved by the Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(vii) Students shall not receive a certificate of course completion unless that student received a grade of at least 70% on the post-course exam.

(viii) The course must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies.

(ix) No more than 50 students per class are permitted in drug and alcohol driving awareness courses, unless the class size is limited by a restriction under another law or rule.

(x) The drug and alcohol driving awareness school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A drug and alcohol driving awareness course shall include, as a minimum, materials adequate to address the following topics and instructional objectives and the course as a whole.

(i) Course administration. The objective is to enable the instructor to handle any basic in-class administrative details that are necessary prior to beginning instruction. This unit shall be limited to 15 minutes.

(ii) Course introduction and background. The objective is to present an overview of the course and to demonstrate the nature of the problem as it relates to the use of alcohol or other drugs.

(iii) Texas laws. The objective is to provide basic information about laws related to alcohol/drug use in Texas.

(iv) Physiological and psychological effects of alcohol/drugs. The objective is to provide basic information about the physiological and psychological effects of alcohol and other drugs on humans.

(v) Effects of alcohol/drugs on the driving task. The objective is to explain the relationship of alcohol and other drugs to driving task abilities.

(vi) Signs of a problem. The objective is to help participants recognize and understand the warning signs of a potential alcohol/drug problem.

(vii) Decision making. The objective is to help participants make quality decisions about alcohol/drug use that will prevent future problems.

(viii) Post-course exam. This unit shall be a maximum of 15 minutes.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved drug and alcohol driving awareness course described in the applicant's drug and alcohol driving awareness course guide. Each course owner shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course. The course must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course; and

(VI) time to be dedicated to each training lesson; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course owner shall submit for approval, as part of the application, pre- and post-course exams designed to measure the knowledge of students at the completion of the drug and alcohol driving awareness course.

(G) Student course evaluation. Each student instructed in a drug and alcohol driving awareness course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA.

(2) Instructor development courses.

(A) Drug and alcohol driving awareness instructors shall successfully complete 24 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the drug and alcohol driving awareness course to be taught, under the supervision of a licensed drug and alcohol driving awareness instructor who is designated by the course owner. Supervision is considered to have occurred when the licensed instructor is present and personally provides the 24 clock hours of training for drug and alcohol driving awareness instructors, excluding clock hours approved by TEA that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course owner and licensed instructor for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include unit, pre- and post-course exam grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify a copy of the instruction record for attachment to the trainee's application for licensing.

(C) The course owner shall sign all student instruction records submitted for the TEA-approved instructor development course. Original documents shall be submitted.

(D) Instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the drug and alcohol driving awareness course being taught. A properly licensed instructor shall present the course.

(b) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division director with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division director shall be notified within 3 working days of discontinuance. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal

requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course given to a course owner or school under any of the following circumstances.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(4) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.1207. Student Enrollment Forms.

(a) No person shall be instructed in a drug and alcohol driving awareness course until after being enrolled.

(b) All drug and alcohol driving awareness enrollment forms shall provide students with the following information.

(1) Grievances not resolved by the school may be forwarded to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(2) The school is prohibited from issuing a certificate of course completion if the student has not met all of the requirements for course completion, and the student should not accept a uniform certificate of course completion under such circumstances.

§176.1208. Facilities and Equipment.

(a) No classroom facility shall be located in a private residence.

(b) The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities for all students being trained;

(2) equipment needed to provide the course as it has been approved; and

(3) any materials that have been approved as a part of the course approval.

(c) Enrollment shall not exceed the design characteristics of the student workstations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

(d) A violation of the law or rules by any multiple classroom location constitutes a violation by the drug and alcohol driving awareness school.

(e) All classroom approvals are contingent on the drug and alcohol driving awareness school license and shall be subject to denial or revocation if such action is taken against the license of the school that has responsibility for the classroom location.

§176.1209. Records.

(a) A drug and alcohol driving awareness school or course owner shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure, and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency. There may be announced or unannounced compliance surveys at drug and alcohol awareness schools.

(b) The school shall retain all student records for at least three years. The actual pre- and post-course exams do not have to be retained; however, the exam scores must be in the student's records.

§176.1210. Application Fees and Other Charges.

(a) If a drug and alcohol driving awareness school changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school.

(b) A late renewal fee shall be paid in addition to the renewal fee if a drug and alcohol driving awareness school fails to postmark a complete application for renewal at least 30 days before the expiration date of the drug and alcohol driving awareness school license. The requirements for a complete application for renewal are found in §176.1203(h) of this title (relating to Drug and Alcohol Driving Awareness School Licensure). The complete renewal application must be postmarked or hand-delivered with a date on or before the due date.

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a drug and alcohol driving awareness course approval is $9,000.

(2) The initial fee for a drug and alcohol driving awareness school is $150.

(3) The fee for a change of address of a drug and alcohol driving awareness school is $50.

(4) The fee for a change of name of a drug and alcohol driving awareness school or name of owner is $50.

(5) The application fee for each additional course for a drug and alcohol driving awareness school is $25.

(6) A processing fee of $50 shall accompany each application for an original drug and alcohol driving awareness instructor's license.

(7) The instructor renewal fee is $25.

(8) The late instructor renewal fee is $25.

(9) The duplicate drug and alcohol driving awareness instructor license fee is $8.

(10) The fee for an investigation at a drug and alcohol driving awareness school to resolve a complaint is $1,000.

(11) The drug and alcohol driving awareness school late renewal fee is $100.

This 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 September 20, 1999.

TRD-9906080
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Subchapter DD. COMMISSIONER'S RULES ON HEARINGS HELD UNDER THE TEXAS DRIVER AND TRAFFIC SAFETY EDUCATION ACT

19 TAC §176.1301

The Texas Education Agency (TEA) proposes new §176.1301, concerning driver training schools. The new section establishes requirements for hearings pertaining to any license or approval issued pursuant to the Texas Driver and Traffic Safety Education Act.

Senate Bill 777, 76th Texas Legislature, 1999, amended the Texas Driver and Traffic Safety Education Act and transferred all rulemaking authority for the regulation of driver training programs from the State Board of Education to the commissioner of education. Currently, provisions specifying the rules of procedure for hearings and appeals brought under the Texas Driver and Traffic Safety Education Act are codified in 19 TAC Chapter 157, Hearings and Appeals, Subchapter C, Hearings Held Under the Texas Driver and Traffic Safety Education Act. To implement the legislative mandate, the TEA is proposing new 19 TAC §176.1301. The new section reflects no substantive changes to current rule. It is anticipated that the TEA will begin the repeal process of 19 TAC Chapter 157, Subchapter C, after proposed new §176.1301 becomes effective.

Felipe Alanis, Deputy Commissioner for Programs and Instruction, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Alanis and Criss Cloudt, Associate Commissioner for Policy Planning and Research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increased awareness of traffic safety and a move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas, 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary to implement the Texas Driver and Traffic Safety Education Act.

The new section implements Texas Civil Statutes, Article 4413(29c), §6, as amended by Senate Bill 777, 76th Texas Legislature, 1999.

§176.1301. Rules of Procedure.

(a) Applicability. This section applies to all hearings and appeals brought under the Texas Driver and Traffic Safety Education Act (TDTSEA), Texas Civil Statutes, Article 4413(29c). Hearings under this section are also governed by Chapter 157, Subchapter AA, of this title (relating to General Provisions for Hearings Before the Commissioner of Education) for the administration of all appeals before the state commissioner of education. If this section conflicts with Chapter 157, Subchapter AA, or any other rule governing hearings, the requirements of this section prevail for all hearings conducted under TDTSEA unless expressly provided otherwise.

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

(1) Adverse action–Written notification that:

(A) denies, suspends, revokes, assesses a penalty against, or otherwise imposes conditions on a license or other form of approval held or sought by an applicant or licensee; and

(B) specifically provides the applicant or licensee with an opportunity for an adjudicative hearing under TDTSEA.

(2) Applicant–A party seeking a license or other permission under TDTSEA.

(3) Commissioner–The state commissioner of education or other person designated by the commissioner to render a decision under TDTSEA.

(4) Licensee–A party holding a license or similar form of permission required under TDTSEA.

(5) Party–A person or state agency named or admitted as a party to an appeal.

(6) Party representative–A lawyer or non-lawyer who acts on behalf of himself or herself or on behalf of another person during an adjudicative hearing.

(7) TDTSEA–The Texas Driver and Traffic Safety Education Act, Texas Civil Statutes, Article 4413(29c).

(c) Grounds for hearing. An applicant or licensee may request a hearing before the commissioner upon receiving notice of an adverse action.

(d) Procedures to schedule hearing.

(1) To obtain a hearing, an applicant or licensee shall submit a written request for a hearing to the agency representative identified in the written notice of adverse action. The written request shall be submitted not later than the 15th day after the date the notice of an adverse action is received. The written request shall be submitted in person, by courier receipted delivery, or by certified or registered mail.

(2) A request for hearing shall include a specific statement of each issue the applicant or licensee intends to raise in the hearing to contest the adverse action. An applicant or licensee may be denied the opportunity to present evidence on issues that should reasonably have been raised in the written request for hearing.

(3) The agency representative shall forward the request for hearing and the notice of adverse action to the division of hearings for scheduling. A hearing shall be held within 30 days after the date the written request for a hearing is received unless all parties agree to a later date for the hearing.

(4) A licensee who is issued a summary suspension under TDTSEA, §25, shall be scheduled for a hearing on the suspension on an expedited basis.

(5) Petitions for review, answers, exceptions, and replies to exceptions need not be filed unless directed by a hearings examiner.

(e) Amendments. A notice of adverse action or request for hearing may be amended or supplemented at any time up to ten calendar days before the hearing and thereafter with approval of the hearings examiner. Amendments and supplements shall be submitted to the division of hearings in the manner prescribed for the service of pleadings, pleas, and motions.

(f) Classification of parties.

(1) An applicant or licensee issued a notice of adverse action that denies an initial license or renewal license shall be classified as a petitioner, and the agency shall be classified as a respondent.

(2) A licensee issued a notice of adverse action that revokes an existing license, imposes conditions on a license, or assesses a penalty, shall be classified as a respondent, and the agency shall be classified as petitioner.

(g) Motions for continuance.

(1) Continuances may be granted by the hearings examiner under TDTSEA; Chapter 157, Subchapter AA; and all other applicable law.

(2) If a continuance is sought by an applicant or licensee who is entitled to a hearing within 30 days, the motion may be construed by the hearings examiner as a waiver of the right to the hearing within the statutory 30-day time line. The party representative for the agency may request, and the hearings examiner may grant, a waiver of the 30-day time line absent an objection by the applicant or licensee.

(h) Service of documents.

(1) Every pleading, plea, or motion filed with the division of hearings shall be served by delivering a copy to all party representatives of record in person, by agent, by courier receipted delivery, or by certified or registered mail, to the party's current address of record, or by facsimile to the recipient's current telecopier number of record.

(2) All other communications not specified in subsection (h)(1) of this section that are filed with the division of hearings may be served by first class mail.

(3) Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.

(4) Service by facsimile completed after midnight local time of the recipient shall be deemed served on the following day.

(5) A party representative shall serve all party representatives by the same method as the document was filed with the division of hearings. Service by facsimile may be substituted for personal service. If one of the parties to be served does not have the ability to receive service by facsimile, service by certified mail shall be an adequate substitute for personal service.

(6) The party representative shall certify compliance with this rule in writing over the signature of the party representative on the filed document. The following form of certification shall be sufficient. "I certify that on this _____ day of _____, 19___, I served copies of the foregoing pleading upon all other parties to this proceeding by (state the manner of service). Signature."

(7) If a filing does not contain a required certificate of service or otherwise show service on all other parties, the division of hearings may:

(A) return the document to the filing party;

(B) send a notice to all parties that the filing does not show service on all parties and will not be considered unless the division is notified that all parties have been served with the filing; or

(C) in the interest of economy of effort, send a copy of the filing to all parties.

(i) Stipulations.

(1) By stipulation, the parties may agree to any substantive or procedural matter.

(2) A stipulation may be filed in writing or entered on the record at the hearing.

(3) The hearings examiner may permit or require additional development of stipulated matters if needed to evaluate the issues presented on appeal.

(j) Decision.

(1) The hearings examiner shall prepare a decision that shall contain findings of fact and conclusions of law, separately stated. If deemed warranted, the hearings examiner may direct a party to draft and submit a proposal, which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings.

(2) The commissioner or his designee shall issue a decision on the appeal within ten days after the hearing unless the parties agree to a later date.

(k) Motion for rehearing. As a prerequisite to judicial appeal, a party may file a motion for rehearing. The motion shall satisfy all applicable requirements of law and Chapter 157, Subchapter AA.

This 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 September 20, 1999.

TRD-9906081
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part 15. TEXAS STATE BOARD OF PHARMACY

Chapter 291. PHARMACIES

Subchapter A. ALL CLASSES OF PHARMACIES

22 TAC §§291.6, 291.10, 291.14

The Texas State Board of Pharmacy proposes amendments to §291.6, concerning Pharmacy License Fees, §291.10, concerning Pharmacy Balance Registration/Inspection, and §291.14, concerning Pharmacy License Renewals. The amendments, if adopted, will implement a biennial renewal system for pharmacy licenses and prescription balance registrations.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for the Texas State Board of Pharmacy as a result of enforcing or administering the rules. The 76th Texas Legislature requires the agency to assess fees sufficient to generate, during the 2000/01 biennium, additional licensing revenue in the amount of $969,500, to fund the agency's FY2000/01 appropriations. The implementation of a biennial renewal system will generate an additional $430,929 in pharmacy licensure fees over a two year period, as these licenses are assigned a two year license period. This additional revenue, coupled with the revenue projected for the biennial renewal system for pharmacists, will allow the agency to generate the necessary revenue required by the General Appropriations Act, without raising licensure fees during the FY2000/01 biennium.

Ms. Dodson has also determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the rules will be increased efficiencies with respect to pharmacy licensing and prescription balance registration. In addition, there will be a reduction in the amount of information and paperwork necessary to renew pharmacy licenses and prescription balance registrations biennially rather than annually. Pharmacy owners will pay the same amount to renew pharmacy licenses and prescription balance registrations for a two year period as is currently paid for two annual renewals. Administrative costs for pharmacy owners to process license renewals will be halved over a two year period by going to a biennial rather than an annual renewal. The surcharge paid by pharmacy owners to fund a program to aid impaired pharmacists and pharmacy students will decrease by $4 biennially. Thus, the total cost to the licensee will decrease by $2 each year or $4 over the biennium.

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(a)(2), 17(b)(5), 29(a) and 31(f) 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 and the licensing of pharmacies. 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(a)(2) as authorizing the agency to renew licenses to operate pharmacies. The Board interprets section 17(b)(5), as amended by Senate Bill 730 passed by the 76th Legislature, as authorizing the agency to register prescription balances. The Board interprets section 29(a), as amended by Senate Bill 730 passed by the 76th Legislature, as authorizing the agency to renew a pharmacy license every one or two years as determined by the Board. The Board interprets section 31(f), as amended by Senate Bill 730 passed by the 76th Legislature, as authorizing the agency to adopt a biennial system for pharmacy license renewals.

The statute affected by these amendments: Texas Civil Statutes, Article 4542a-1, now codified as Occupations Code Subtitle J.

§291.6. Pharmacy License Fees.

(a) The Texas State Board of Pharmacy (board) shall require annual or biennial renewal of all licenses provided under the Pharmacy Act, §31. In order to evenly distribute the revenue received from license fees, a pharmacy license fee may renew on an annual or biennial basis during the first 12 months of the implementation of the biennial renewal cycle, beginning March 1, 2000. After the implementation of the biennial renewal system, all pharmacy licenses shall renew on a biennial basis.

(b) The board shall charge the following fees for the issuance or renewal of a pharmacy license.

(1) Renewals prior to March 1, 2000. The fee for initial or annual renewal of a pharmacy license shall be [~~as follows:~~]

[~~(A) $152 for licenses with an expiration date on or after January 1, 1992. (This $152 fee includes $147 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $5.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A);~~]

[~~(B)~~] $164 for licenses with an expiration date on or after January 1, 1996. (This $164 fee includes $157 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $7.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A.)

(2) Annual Renewal Cycle. The fee for initial or annual renewal of a pharmacy license shall be $162 for licenses with an expiration date on or after March 1, 2000. (This $162 fee includes $157 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $5.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A.) [~~The pharmacy license renewal fee for the 1988-1989 renewal cycle shall be prorated to establish staggered expiration dates for licensure.~~]

(3) Biennial Renewal Cycle. The fee for initial or biennial renewal of a pharmacy license shall be $324 for licenses with an expiration date on or after March 1, 2000. (This $324 fee includes $314 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A.)

(c) [~~(3)~~] New pharmacy licenses [~~issued after April 1, 1988,~~] shall be assigned an expiration date.

(d) [~~(b)~~] The fee for issuance of an amended pharmacy license [~~for change of name or change of location of a pharmacy~~] shall be $20.

§291.10. Pharmacy Balance Registration/Inspection.

(a) (No change.)

(b) Registration.

(1) A pharmacy shall annually or biennially register each pharmacy balance which may be used in the compounding of drugs. The fee for the annual registration shall be $12.50 per pharmacy

balance. The fee for the biennial registration shall be $25.00 per pharmacy balance.

(2) (No change.)

(c) (No change.)

§291.14. Pharmacy License Renewal

For the purposes of Texas Civil Statutes, Article 4542a-1, §31.

(1) A license to operate a pharmacy expires on the last day of the assigned expiration month [~~of each year~~].

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

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

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

TRD-9906060
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 305-8028

♦ ♦ ♦

Subchapter B. Community Pharmacy (Class A)

22 TAC §291.35

The Texas State Board of Pharmacy proposes the repeal of §291.35, and simultaneously proposes new §291.35, concerning triplicate prescription requirements. This repeal of §291.35 and the adoption of the new §291.35 will delete the current triplicate prescription requirements and adopt by reference the virtually identical triplicate prescription requirements for pharmacists and pharmacies promulgated by the Texas Department of Public Safety (DPS).

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 during a time of change to the triplicate prescription program. Amendments by the 76th Legislature to the Texas Controlled Substances Act (Health and Safety Code, Chapter 481), require changes to the DPS triplicate prescription requirements. Texas State Board of Pharmacy §291.35 currently contains virtually identical requirements for pharmacists and pharmacies as the DPS requirements. Rather than have inconsistencies between these two sets of requirements during a time of change, the Board of Pharmacy proposes to repeal its requirements and adopt by reference the DPS requirements.

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.

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

The repeal is proposed under section 16(a) of the Texas Pharmacy Act (Article 4542a-1, Texas Civil Statutes). The Board interprets section 16(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statute affected by this rule: Texas Civil Statutes, Article 4542a-1, now codified as Occupations Code Subtitle J.

§291.35. Triplicate Prescription 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.

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

TRD-9906062
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 305-8028

♦ ♦ ♦

The new rule is proposed under sections 4, 16(a), 17(b)(3), 17(l), 26(a)(9), and 26(b)(8 & 9) 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 and the licensing of pharmacies. 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)(3) as authorizing the agency to set standards for prescription recordkeeping ad dispensing within the practice of pharmacy. The Board interprets section 17(l) as authorizing the agency to cooperate with other state agencies in the enforcement of controlled substance laws pertaining to the practice of pharmacy. The Board interprets section 26(a)(9) as authorizing the agency to enforce the provision of the Texas Controlled Substances Act or related rules as they pertain to the practice of pharmacy. The Board interprets section 26(b)(8) & (9) as authorizing the agency to enforce record keeping and security requirements of the Texas Controlled Substances Act as they pertain to the practice of pharmacy.

The statute affected by this rule: Texas Civil Statutes, Article 4542a-1, now codified as Occupations Code Subtitle J.

§291.35. Triplicate Prescription Requirements.

The Texas State Board of Pharmacy adopts by reference the rules promulgated by the Texas Department of Public Safety, which are set forth in Subchapter F of 37 TAC §§13.101-13.113 concerning triplicate prescriptions.

This 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 September 17, 1999.

TRD-9906063
Gay Dodson, R.Ph.

Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 305-8028

♦ ♦ ♦

Chapter 295. PHARMACISTS

22 TAC §§295.1, 295.5, 295.7-295.9

The Texas State Board of Pharmacy proposes amendments to §295.1, concerning Change of Address and/or Name, §295.5, concerning Pharmacist License or Renewal Fees, §295.7, concerning Pharmacist License Renewal, §295.8, concerning Continuing Education Requirements, and §295.9, concerning Inactive Licenses. The amendments, if adopted, will implement a biennial renewal system for licenses to practice pharmacy.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rules are in effect, there will be fiscal implications for the Texas State Board of Pharmacy as a result of enforcing or administering the rules. The 76th Texas Legislature requires the agency to assess fees sufficient to generate, during the 2000/01 biennium, additional licensing revenue in the amount of $969,500, to fund the agency's FY2000/01 appropriations. The implementation of a biennial renewal system will generate an additional $785,336 in pharmacist licensure fees over a two year period, as these licenses are assigned a two year license period. This additional revenue, coupled with the revenue projected for the biennial renewal system for pharmacies and the registration of prescription balances, will allow the agency to generate the necessary revenue required by the General Appropriations Act, without raising licensure fees during the FY2000/01 biennium.

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 efficiencies with respect to pharmacist licensing. In addition, there will be a reduction in the amount of information and paperwork necessary to renew pharmacists licenses biennially rather than annually. Pharmacists will pay the same amount to renew their license to practice pharmacy for a two year period as is currently paid for two annual renewals. Administrative costs for pharmacists to process license renewals will be halved over a two year period by going to a biennial rather than an annual renewal. The surcharge paid by pharmacists to fund a program to aid impaired pharmacists and pharmacy students will decrease by $4 biennially. Thus, the total cost to the licensee will decrease by $2 each year or $4 over the biennium.

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(a)(2), and 24(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 and the licensing of pharmacies. 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(a)(2) as authorizing the agency to renew licenses to practice pharmacy. The Board interprets section 24(b) as authorizing the agency to renew a license to practice pharmacy every one or two years as determined by the Board.

The statute affected by this rule: Texas Civil Statutes, Article 4542a-1, now codified as Occupations Code Subtitle J.

§295.1. Change of Address and/or Name

(a) (No change.)

(b) Change of name.

(1) A pharmacist shall notify the board in writing within 10 days of a change of name by:

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

(C) [~~effective June 1, 1992,~~] paying a fee of $20.

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

§295.5. Pharmacist License or Renewal Fees.

(a) The Texas State Board of Pharmacy (board) shall require annual or biennial renewal of all licenses provided under the Pharmacy Act, §31. In order to evenly distribute the revenue received from license fees, a pharmacist license fee may renew on an annual or biennial basis during the first 12 months of the implementation of the biennial renewal cycle, beginning March 1, 2000. After the implementation of the biennial renewal system, all pharmacist licenses shall renew on a biennial basis. The fee for issuance of a pharmacist license and for each renewal shall be as follows. [~~:~~]

[~~(1) $86 for licenses with an expiration date on or after January 1, 1992. (This $86 fee includes $81 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $5.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A);~~]

(1) [~~(2)~~] Renewals prior to March 1, 2000. The fee for initial or annual renewal of a pharmacist license shall be $96 for licenses with an expiration date on or after January 1, 1996. (This $96 fee includes $89 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $7.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A).

(2) Annual Renewal Cycle. The fee for initial or annual renewal of a pharmacist license shall be $94 for licenses with an expiration date on or after March 1, 2000. (This $94 fee includes $89 for processing the application and issuance of the pharmacy license or renewal as authorized by the Act, §39, and a $5.00 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §27A.)

(3) Biennial Renewal Cycle. The fee for initial or biennial renewal of a pharmacist license shall be $188 for licenses with an expiration date on or after March 1, 2000. (This $188 fee includes $178 for processing the application and issuance of the pharmacist license or renewal as authorized by the Act, §39, and a $10 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §27A.)

(b) Pursuant to Texas Civil Statutes, Article 4542a-1, § 39(5), effective September 1, 1985, the license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years and which such pharmacist is not actively practicing pharmacy, shall be renewed without payment of a fee. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may

not engage in the active practice of pharmacy without first paying the fee as set out in subsection (a) of this section.

[(c) The pharmacist fee for the 1985 renewal cycle shall be prorated to establish staggered expiration dates for licensure.]

(c) [(d) Effective June 1, 1992, the] The fee for issuance of am amended pharmacist's license renewal certificate shall be $20.

(d) [(e)] The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be $35.

§295.7. Pharmacist License Renewal.

For the purposes of Texas Civil Statutes, Article 4542a-1, §24.

(1) A license to practice pharmacy expires on the last day of the assigned expiration month [of each year].

(2) Timely receipt of the completed application and renewal fee means the receipt in the board's office of such application and renewal fee on or before the last day of the assigned expiration month [of each year].

(3) (No change.)

§295.8. Continuing Education Requirements

(a) Authority and purpose.

(1) Authority. In accordance with the Texas Pharmacy Act, §24A (Texas Civil Statutes, Article 4542a-1) effective September 1, 1999 [1991], all pharmacists must submit proof of completion of 12 contact hours (1.2 CEUs) of approved continuing education for each year of their license period in order to renew their license to practice pharmacy (i.e., 12 contact hours (1.2 CEUs) for annual renewals and 24 contact hours (2.4 CEUs) for biennial renewals).

(2) (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)-(11) (No change.)

(12) License period [year] The time period between consecutive expiration dates of a license.

(13)-(14) (No change.)

(c) Methods for obtaining continuing education. A pharmacist may satisfy the continuing education requirements by either:

(1) successfully completing 12 contact hours (1.2 CEUs) of board approved programs for each year of their [during the] preceding license period (i.e., 12 contact hours (1.2 CEUs) for annual renewals and 24 contact hours (2.4 CEUs) for biennial renewals) [year];

(2) successfully completing during the preceding license period [year], one credit hour for each year of their license period, which is a part of the professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE; or

(3) taking and passing the standardized pharmacy examination (NAPLEX) during the preceding license period [year], which shall be equivalent to 24 contact hours (2.4 CEUs) [12 contact hours (1.2 CEUs)] of continuing education.

(d) Reporting Requirements.

(1) Renewal of a pharmacist license. To renew a license to practice pharmacy [on or after September 1, 1991], a pharmacist must report on the renewal application completion of the required number of contact hours of continuing education. The following is applicable to the reporting of continuing education contact hours.

(A) The pharmacist shall record on the renewal application the number of contact hours of approved continuing education completed during the preceding license period [reporting period as follows].

[(i) For licenses renewed between September 1, 1991, and August 31, 1992, pharmacists shall report the total number of contact hours of approved continuing education completed after September 1, 1989.]

[(ii) For licenses renewed after September 1, 1992, pharmacists shall report the total number of contact hours of approved continuing education completed during the preceding license year.]

[(B) A pharmacist who reports the completion of more than 12 contact hours of approved programs during a license year may carry forward to the next license year up to 12 contact hours (1.2 CEUs).]

(B) [(C)] The renewal application issued by the board shall state the number of contact hours the pharmacist must complete in order to be eligible to renew the license[, including credit for any contact hours carried forward from the previous license year].

(C) [(D)] Any continuing education requirements which are imposed upon a pharmacist as a part of a board order or agreed board order shall be in addition to the requirements of this section.

(2) Failure to report completion of required continuing education. The license of a pharmacist who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacist shall not be issued a renewal certificate for the license period [year]. A pharmacist who practices pharmacy without a current renewal certificate is subject to all penalties of practicing pharmacy without a license. The following is also applicable if a pharmacist fails to report completion of the required continuing education.

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

(3) Extension of time for reporting. The board may grant an extension of time for a pharmacist to comply with the continuing education requirements. Such extension may be granted for good cause as follows:

(A) A pharmacist who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacist from obtaining continuing education credit during the preceding license period [year] may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension.

(i)-(ii) (No change.)

(iii) An extension of time to complete continuing education credit does not relieve a pharmacist from the continuing education requirement during the current license period [year].

(iv) (No change.)

(B) Pharmacists who have been licensed for 50 years are subject to the following.

(i) (No change.)

(ii) Pharmacists who are not actively practicing pharmacy shall be granted an indefinite extension to the report-

ing requirement for continuing education provided the pharmacists [~~annually~~] submit a completed renewal application for each license period which states that they are not practicing pharmacy. Upon submission of the completed renewal application, the pharmacist shall be issued a renewal certificate which states that pharmacist is inactive.

(iii) Pharmacists who wish to return to the practice after being granted an extension to the continuing education requirements as specified in clause (ii) of this subparagraph must:

(I)-(II) (No change.)

(III) submit documentation of completion of the required number of continuing education hours for each license period [~~year~~] they have been granted an extension up to a maximum of 36 contact hours (3.6 CEUs).

(C) (No change.)

(4) (No change.)

(e) Approved Programs.

(1) Any program presented by an ACPE approved provider subject to the following conditions.

(A) Pharmacists may receive credit for the completion of the same course only once during each year of a license period [~~year~~].

(B) Pharmacists who present approved continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacists may receive credit for the same presentation only once during each year of a license period [~~year~~].

(2) Courses which are part of a professional degree program in a college of pharmacy the professional degree program of which has been accredited by ACPE.

(A) Pharmacists may receive credit for the completion of the same course only once during each year of a license period [~~year~~].

(B) Pharmacists who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during each year of a license period [~~year~~].

(3) Cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association shall be recognized as approved programs. Pharmacists may receive credit for one contact hour (0.1 CEU) towards their continuing education requirement for completion of a CPR course only once during each year of a license period [~~year~~]. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association.

(4) (No change.)

(f) Retention of continuing education records and audit of records by the board.

(1) (No change.)

(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacist shall provide to the board copies of certificates of completion for all continuing education contact hours reported during a specified license period(s) [~~year(s)~~]. Failure to provide all requested records during the specified time period constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board.

(B) Credit for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits copies of certificates of completion reflecting that the hours were completed during the specified license period(s) [~~year(s)~~]. Any other reported hours shall be disallowed. A pharmacist who has received credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action.

(C) (No change.)

(g) Reinstatement of pharmacist's license.

(1) [~~After September 1, 1991, any~~] Any person seeking reinstatement of a license which has been revoked or canceled by the board shall submit documentation of completion of the required number of continuing education contact hours for all years the license has been revoked or canceled prior to reinstatement of the license.

(2) (No change.)

§295.9. Inactive License

(a) Placing a license on inactive status. A person who is licensed by the board to practice pharmacy but who is not eligible to renew the license for failure to comply with the continuing education requirements of the Act, §24, and who is not engaged in the practice of pharmacy in this state, may place the license on inactive status at the time of license renewal or during a license period [~~year~~] as follows.

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

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

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

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

TRD-9906061
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 305-8028

♦ ♦ ♦

Part 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

Chapter 361. ADMINISTRATION

Subchapter A. GENERAL PROVISIONS

22 TAC §361.10

The Texas State Board of Plumbing Examiners proposes new §361.10, concerning Historically Underutilized Business. The new section is being proposed to comply with House Bill 1, General Appropriations Act, 75th legislature, Article IX, Section 124.5 (1997), which directs State agencies to adopt the rules of the General Services Commission based on that Commission's State Disparity Study. The proposed rule adopts the Commission's rules by reference.

Bruce Hammond, Director of Administration, has determined that for the first five-year period the amended rule is in effect there will be no additional cost to local governments. Mr. Hammond estimates no additional cost to the State as a result of enforcing or administering the new section.

Mr. Hammond also has determined that the public benefit anticipated as a result of the new section will be a reduction in the underutilization of minority and women owned businesses in State contracting and promotion of equal business opportunity for all business in the State. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed new section may be submitted to Doretta A. Conrad, Administrator, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas, 78765 no later than 30 days from the date that the proposed action is published in the *Texas Register*.

The new section is proposed under House Bill 1, General Appropriations Act, 75th Legislature, Article IX, Section 124.5 (1997). The Texas State Board of Plumbing Examiners interprets this section as requiring it to adopt the rules of the General Services Commission based on the Commission's State Diversity Study.

No other statutory or code section is affected by the proposed new section.

§361.10. Historically Underutilized Business (HUB) Program.

The Texas State Board of Plumbing Examiners adopts the rules of the General Services Commission relating to the Historically Underutilized Business (HUB) Program and codified at 1 Texas Administrative Code, Part V, Subchapter B, Chapter 111, §§111.11-111.16.

This 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 September 15, 1999.

TRD-9906036
Robert L. Maxwell
Chief of Field Services/Investigations
Texas State Board of Plumbing Examiners
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 458-2145

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Chapter 409. MEDICAID PROGRAMS

Subchapter D. HOME AND COMMUNITY-BASED SERVICES (HCS)

25 TAC §§409.100-409.106, 409.108-409.117, 409.119, 409.120

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal to §§409.100-409.106, 409.108-409.117, 409.119, and 409.120 of Chapter 409, Subchapter D, concerning home and community-based services (HCS).

The repeal is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature). Key provisions of the subchapter are incorporated into new Chapter 419, Subchapter D, concerning home and community-based services (HCS) program, which is proposed contemporaneously in this issue of the *Texas Register* for public review and comment.

William R. Campbell, chief financial officer, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no significant foreseeable implications relating to costs or revenues of state or local government.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the repeal is in effect, the public benefit is expected to be compliance with the legislative mandates to review and revise, as needed, all department rules. It is not anticipated that the repeal will have an adverse economic effect on small businesses or micro businesses because many of the current requirements are included in new Chapter 419, Subchapter P. It is not anticipated that the repeal will affect a local economy.

Comments concerning proposed repeal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

The repeal is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS program.

Texas Health and Safety Code, §532.015, Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c), are affected by the proposed repeal.

§409.100. Service Components of Home and Community-based Services (HCS) Program.

§409.101. Eligibility Criteria.

§409.102. Process for Applicant Referral to Contracted HCS Provider Agencies.

§409.103. Payment Category Assignment and Provider Claims Payment.

§409.104. Delegation of Signature Authority.

§409.105. Rejected Claims.

§409.106. Provider's Right to Administrative Hearing.

§409.108. Other Provider Requirements.

§409.109. Corrective Action and Provider Sanction.

§409.110. Hazards to Health, Safety, and Welfare.

§409.111. Level I Action.

§409.112. Level II Action.

§409.113. Level III Action.

§409.114. Unannounced or Intermittent Review Visits.

§409.115. Discretionary Certification Sanctions.

§409.116. Calculation of Client Copayment.

§409.117. Spousal Impoverishment Provisions.

§409.119. Gaps in Level-of-Care Coverage.

§409.120. Utilization Review.

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

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

TRD-9906097

Charles Cooper

Chair, Texas MHMR Board

Texas Department of Mental Health Mental Retardation

Earliest possible date of adoption: October 31, 1999

For further information, please call: (512) 206-4516

♦ ♦ ♦

Subchapter E. HOME AND COMMUNITY-BASED WAIVER SERVICES-OBRA (HCS-O)

25 TAC §§409.151-409.163, 409.165-409.173

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal to §§409.151-409.163, 409.165-409.173 of Chapter 409, Subchapter E, concerning home and community-based waiver services - OBRA (HCS-O).

The repeal is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039. Many provisions of the subchapter are incorporated into new Chapter 419, Subchapter P, concerning home and community-based services-OBRA (HCS-O) program, which is proposed contemporaneously in this issue of the *Texas Register* for public review and comment.

William R. Campbell, chief financial officer, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no significant foreseeable implications relating to costs or revenues of state or local government.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the repeal is in effect, the public benefit is expected to be compliance with the legislative mandates to review and revise, as needed, all department rules. It is not anticipated that the repeal will have an adverse economic effect on small businesses or micro businesses because many of the current requirements are included in new Chapter 419, Subchapter P. It is not anticipated that the repeal will affect a local economy.

Comments concerning proposed repeal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

The repeal is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS-O program.

Texas Health and Safety Code, §532.015, Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c), are affected by the proposed repeal.

§409.151. Introduction.

§409.152. Definitions.

§409.153. Eligibility Criteria.

§409.154. Level-of-Care Criteria.

§409.155. Individual Plan of Care for Waiver Services.

§409.156. Financial Eligibility Criteria.

§409.157. Calculation of Client Copayment.

§409.158. Right To Appeal.

§409.159. Provider Claims Payment.

§409.160. Delegation of Signature Authority.

§409.161. Rejected Claims.

§409.162. Provider's Right To Appeal.

§409.163. Cost Report

§409.165. Other Provider Requirements

§409.166. Spousal Impoverishment Provisions.

§409.167. Corrective Action and Provider Sanction.

§409.168. Hazards to Health, Safety, and Welfare

§409.169. Level I Action.

§409.170. Level II Action.

§409.171. Level III Action.

§409.172. Unannounced or Intermittent Review Visits.

§409.173. Discretionary Certification Sanctions.

This 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 September 20, 1999.

TRD-9906099

Charles Cooper

Chair, Texas MHMR Board

Texas Department of Mental Health Mental Retardation

Earliest possible date of adoption: October 31, 1999

For further information, please call: (512) 206-4516

♦ ♦ ♦

Subchapter L. MENTAL RETARDATION LOCAL AUTHORITY (MRLA) PILOT PROGRAM

25 TAC §§409.501, 409.503, 409.505, 409.507, 409.509, 409.511, 409.519, 409.523, 409.525, 409.527, 409.530, 409.531, 409.541, 409.542

The Texas Department of Mental Health and Mental Retardation (department) proposes amendments to §§409.501, 409.503, 409.505, 409.509, 409.511, 409.523, 409.525, 409.527, 409.531, and 409.541 and proposes new §§409.507, 409.519, 409.530, and 409.542 of Chapter 409, Subchapter L, concerning the mental retardation local authority (MRLA) program. Existing §§409.507, 409.519, and 409.521 are proposed contemporaneously for repeal in this issue of the *Texas Register*.

The amendments and new sections include provisions that are responsive to the 76th Legislature's direction to reduce the average cost of MRLA program services during the current biennium.

The proposal describes a fundamental change in the provision of residential support in the MRLA program. Under the current rules, no more than three individuals receiving MRLA residential support services may live in a residence at any one time. The proposal permits up to four individuals receiving MRLA supervised living or residential support services to live in a single residence if at least one individual requires supervision and assistance from a service provider who is present and awake when that individual is in the residence – including during normal sleeping hours – to assure the individual's health and safety. The proposal redefines the residential support component to specify that service providers must be present and awake in a residence at all times an individual is present in the residence. A new service component – supervised living – is defined to include residential assistance provided to individuals who do not require supervision or assistance from staff who are awake during normal sleeping hours. Both the residential support and supervised living components include licensed nursing care as an integral part of these components. Therefore, nursing care will not be reimbursed on a separate fee-for –service basis when provided to an individual receiving supervised living or residential support.

The MRLA Program Principles for Program Providers in §409.531 have been revised to incorporate new provisions relating to program provider operations, including requirements to assure direct service delivery is supervised and managed by an individual with previous experience in planning and delivering services to the program population, requirements for residential settings serving four persons, and requirements related to alleged abuse, neglect, and exploitation.

Revisions have also been made to the MRLA Program Principles for Authorities in §409.541 to update minimum qualifications for service coordinators and describe mental retardation authorities' (MRA) responsibilities for review of residences in which four individuals live and receive services.

In addition, the proposal includes provider payment procedures and limitations currently contained in the program billing guidelines, documentation requirements for billing for minor home modifications, new procedures related to disputed enrollment effective dates, and requirements for the MRA's reassessment of individuals' level-of-need assignments.

William R. Campbell, chief financial officer, has determined that for each year of the first five years the proposed new subchapter is in effect, enforcing or administering subchapter is anticipated to result in a savings to state government as follows: Fiscal Year (FY) 2000, $599,815; FY 2001, 1,199,630; FY 2002, 1,199,630; FY 2003, 1,199,630; and FY 2004, 1,199,630. There is no anticipated fiscal impact on local government.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the amendments and new sections are in effect, the public benefit is expected to be provision of services more closely aligned with individual needs of consumers. It is not anticipated that the proposed amendments and new sections will have an adverse economic effect on small or micro businesses because reimbursement to a program provider will be sufficient to compensate the provider for the services covered under this rule. The probable economic cost to MRLA program providers is the cost of complying with requirements of the National Fire Protection Association (NFPA) *Life Safety Code* if four individuals are served in a single residential setting. It is not anticipated that the proposed amendments will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposed amendments is scheduled for 1:30 p.m., Tuesday, October 26, 1999, in the auditorium of the department's Central Office, Building 2, 909 West 45 Street, Austin. Persons requiring an interpreter for the deaf or hearing impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify the Office of Policy Development, at least 72 hours prior to the hearing at (512) 206-4516 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

The amendments are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the MRLA program.

Texas Health and Safety Code, §532.015, Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c), are affected by the proposed amendments and new sections.

§409.501. Description of the Mental Retardation Local Authority (MRLA) Program.

(a) The Mental Retardation Local Authority (MRLA) [~~MRLA~~] program is a pilot program that is limited to certain geographic areas of the state in accordance with a waiver approved by Health Care Financing Administration (HCFA) pursuant to §1915(c) of the Social Security Act. The counties included in the MRLA program are: Lubbock, Cochran, Crosby, Hockley, Lynn, Travis, and Tarrant. TDMHMR may extend the MRLA Program geographic area to include additional counties when approved by Health Care Financing Administration (HCFA).

(b) The Home and Community-based Services (HCS) program and Home and Community-based Services – OBRA (HCS-O) program are not [~~will no longer be~~] available in the geographic locations noted in subsection (a) of this section [~~after the MRLA program is implemented~~].

(c)-(e) (No change.)

§409.503. Service Components of the MRLA Program.

(a) Service Coordination [~~Case management~~] as defined in §412.453 [~~§409.201~~] of this title (relating to Definitions) [~~will be referred to in this subchapter as "service coordination" and~~] is not a reimbursable service under the MRLA program. Service coordination must be provided to all enrolled individuals in the MRLA program by the local mental retardation authority (MRA) and is reimbursed in accordance with 1 TAC §355.743 of this title (relating to Reimbursement Methodology for Service Coordination) [~~Subchapter F of this chapter (Relating to Case Management Program Requirements)~~].

(b) MRLA program service components are selected for inclusion in a person's Individual Plan of Care (IPC) to supplement rather than replace that individual's natural community supports. MRLA program service components are selected based on assessments which identify specific services and supports necessary for the individual to continue living in the community, assure the individual's health and welfare in the community, and prevent the individual's admission to institutional services. The following service components are available to all individuals enrolled in the MRLA program, unless indicated otherwise:

(1) Counseling and therapies, consisting of physical therapy, occupational therapy, speech and language pathology, audiology, social work, psychology, and dietary services[~~, may be provided according to the IPC~~].

(2) Nursing care provided by licensed nurses [~~may be provided in accordance with the IPC~~].

(3) Residential assistance in the individual's residence does not include room and board and may be provided [~~in accordance with the IPC~~] in one of the following four [~~three~~] ways:

(A) supported home living for individuals who are living in their own homes or the homes of their natural or adoptive families;

(B) foster/companion care for individuals who are living in the home of a MRLA foster family provider or with a paid companion; [~~or~~]

(C) supervised living for individuals who reside in homes where paid staff of the program provider are present in the home and able to provide assistance at all times individuals are present in the home; and

(D) [~~(C)~~] residential support for individuals who reside in homes where paid staff of the program provider provide assistance on a scheduled shift basis and are present and awake at all times individuals are present in the home.

(4) Day habilitation [~~may be provided to individuals in accordance with their IPCs. Day habilitation~~] must be provided separately from services funded by any other source including, but not limited to, public educational services, rehabilitative services for persons with mental illness, programs funded by the Texas Department of Human Services (TDHS), or programs funded by a state rehabilitation agency. [~~Day habilitation is provided outside the individual's residence six or more hours per day, five days per week unless justified and documented as contraindicated by the service planning team.~~]

(5) Supported employment is provided in conjunction with day habilitation and is [~~will be~~] paid for up to an IPC year (defined by the begin and end dates of the plan) maximum of $3,000 per individual when[~~. An IPC year is defined by the begin and end dates of the plan. Supported employment payment is available only if~~] documentation verifies that supported employment services have been denied or are otherwise unavailable to the individual through either the state rehabilitation agency or the public educational agency. [~~Any person receiving supported employment must have an identified need and desire for employment.~~]

(6) Adaptive aids may be provided up to a maximum of $10,000 per IPC year per individual. [~~The individual's service planning team must approve the provision of all adaptive aids. Adaptive aids costing in excess of $500 require the recommendation of a licensed professional.~~]

(7) Minor home modifications may be provided up to a life-time limit of $7,500 per individual. After the $7,500 limit has been reached, persons are eligible for up to an additional $300 per IPC year for additional modifications or maintenance of home modifications [~~that enhance accessibility~~].

(8) Dental services may be provided [~~according to the IPC~~] up to a maximum of $1,000 per individual per IPC year.

(9) Respite care may be provided for individuals who are living in the homes of their natural or adoptive family. Respite care is not a reimbursable service for individuals who are receiving MRLA foster/companion care, supervised living, or residential support. [~~Respite may be provided in an individual's residence or in an~~

approved setting outside of the individual's residence.] Reimbursement for respite care provided in a setting other than the individual's residence includes payment for room and board. The maximum annual reimbursement per IPC year is equal to 30 multiplied by the daily reimbursement rate for respite care.

(c) (No change.)

(d) The department will specify, through the MRLA automated enrollment and billing system, the counties the program provider is authorized to serve pursuant to each waiver program provider agreement. The counties specified for a single provider agreement must be contiguous. The program provider may enter into more than one provider agreement to provide MRLA program services, but may have only one provider agreement to provide MRLA program services per county.

§409.505. Eligibility Criteria.

(a) To be determined eligible by TDMHMR for MRLA program services, an applicant and individuals enrolled in MRLA program must:

(1) meet the eligibility requirements for Medicaid services as set forth in §419.155(b) [§409.101(a)] of this title (relating to Eligibility Criteria for the Home and Community-based Services Program (HCS)); and

(2) be enrolled in the HCS or HCS-O program immediately prior to enrollment in the MRLA program or meet the:

(A) ICF/MR I, V, or VI level-of-care criteria as determined by TDMHMR in accordance with Chapter 406, Subchapter E of this title (relating to Eligibility and Review) [according to applicable state and federal regulations] and documented on a current MR/RC Assessment [level-of-care (LOC) assessment form and be next on the referral list to receive MRLA services]; or

(B) ICF/MR I, V, VI, or VIII level-of-care criteria as determined by TDMHMR in accordance with Chapter 406, Subchapter E of this title (relating to Eligibility and Review) and be part of the targeted population eligible for the HCS-O program in accordance with Chapter 419, Subchapter P of this title [Subchapter E of this chapter](relating to Home and Community-based Services – OBRA); [or]

[(C) be an individual enrolled in the HCS or HCS-O program immediately prior to enrollment in the MRLA program;] and

(3) live in the geographic area defined in §409.501(a) of this title (relating to Description of the Mental Retardation Local Authority (MRLA) Pilot Program); [and]

(4) have an IPC with an annual cost of services which does not exceed [100% of the estimated annualized per capita cost for ICF/MR services. If an individual's IPC exceeds 100% of the estimated annualized per capita cost for ICF/MR services, the individual will be eligible for MRLA program services if TDMHMR approves reimbursement and the IPC cost does not exceed] 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (Rate Setting Methodology), for the individual's level of need as it would be assigned under §406.204(b) of this title (relating to Level-of-Care Determination and Level-of-Need Assignment) or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater; and

(5) be an individual who is not enrolled in another Medicaid 1915(c) waiver program, other than HCS or HCS-O at the time of enrollment.

(b) An applicant who meets the criteria described in subsection (a) of this section must have an IPC developed by an appropriately constituted service planning team. The team must include a service coordinator from the mental retardation authority (MRA) and the individual and [and/or] the individual's legally authorized representative.

(1) The individual's initial IPC must be [is] submitted by the MRA to TDMHMR for approval [and approved by TDMHMR. Revisions and updates to the initial IPC are submitted by the MRA and approved by TDMHMR].

(2) The IPC must be updated by the MRA at least annually. Revisions and updates of the IPC must be submitted by the MRA to TDMHMR for approval [to subsequent plans of care made by the MRA are reviewed and approved by TDMHMR].

(c)-(e) (No change.)

(f) If the MRLA program geographic area is extended to include additional counties:

(1) individuals transitioning from the HCS program will retain the IPC in effect at the time of transition with the exception that the case management service component will be discontinued;

(2) individuals transitioning from the HCS-O program will receive an MRLA IPC with services comparable to those provided in their HCS-O IPC with the exception that the case management service component will be discontinued;

(3) the effective date of IPCs established for the HCS or HCS-O program will not be changed; and

(4) any modifications of or billing against the MRLA IPC will take into consideration previous billing against the HCS or HCS-O IPC. [Individuals who enter the MRLA program from the HCS program will retain the HCS IPC in effect at the time of transfer to the MRLA program The effective date of the individual's IPC established for the HCS or HCS-O program will not be changed. Any modifications or billing against the MRLA IPC will take into consideration previous billing against the HCS or HCS-O IPC. At the time of transition to the MRLA program, the only portion of the IPC that must be modified for HCS consumers will be the deletion of case management from the IPC.]

§409.507. Level of Need Assignment.

(a) A LON for an individual must be requested by the MRA from the department by electronically transmitting a completed MR/RC Assessment indicating the recommended LON.

(b) Documentation supporting the recommended LON must be maintained in the individual's record. Such documentation may include but is not limited to the individual's PDP, including the deliberations and conclusions of the individual's service planning team, the individual's ICAP assessment booklet, assessments and interventions by qualified professionals, behavioral intervention plans, and time sheets of program provider staff.

(c) The department will assign a LON to an individual based on the individual's ICAP service level score, information reported on the individual's MR/RC Assessment, and required supporting documentation. Documentation supporting a recommended LON must be submitted to the department by the MRA in accordance with department guidelines.

(d) The department will assign one of five LONs as follows:

(1) An intermittent LON (LON 1) will be assigned if the individual's ICAP service level score equals 7, 8 or 9.

(2) A limited LON (LON 5) will be assigned if the individual's ICAP service level score equals 4, 5 or 6.

(3) An extensive LON (LON 8) will be assigned if the individual's ICAP service level score equals 2 or 3.

(4) A pervasive LON (LON 6) will be assigned if the individual's ICAP service level score equals 1.

(5) Regardless of an individual's ICAP service level score, a pervasive plus LON (LON 9) will be assigned if the individual meets the criteria set forth in subsection (f) of this section.

(e) A LON 1, 5, or 8, determined in accordance with subsection (d) of this section, will be increased to the next LON by TDMHMR due to an individual's dangerous behavior, if supporting documentation submitted to the department proves that:

(1) the individual exhibits dangerous behavior that could cause serious physical injury to the individual or others;

(2) a written behavior intervention plan has been implemented that meets department guidelines and is based on ongoing written data, targets the dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) more staff members are needed and available than would be needed if the individual did not exhibit dangerous behavior;

(4) staff members are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(5) the individual's MR/RC Assessment is correctly scored with a "1" in the "Behavior" section.

(f) A LON 9 will be assigned by TDMHMR if supporting documentation submitted the MRA to TDMHMR proves that:

(1) the individual exhibits extremely dangerous behavior that could be life threatening to the individual or to others;

(2) a written behavior intervention plan has been implemented that meets department guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) management of the individual's behavior requires a staff member to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the staff member assigned to supervise the individual has no other duties during such assignment; and

(5) the individual's MR/RC Assessment is correctly scored with a "2" in the "Behavior" section.

§409.509. Lapsed [~~Gaps in~~] Level-of-Care [~~Coverage~~].

(a) To reinstate authorization for payment for days when services were delivered to an enrolled individual without a current LOC determination, the MRA shall electronically submit to TDMHMR a MR/RC Assessment [~~new LOC assessment form~~] for each period of time for which there was a lapsed level-of-care. The MRA must keep on file:

(1) a copy [~~photocopy~~] of the most recent MR/RC Assessment [~~LOC assessment form~~] approved by [~~either~~] TDMHMR [~~or TDHS~~] for the enrollment of the individual or for a continued stay review;

(2) a [~~new~~] MR/RC Assessment [~~LOC assessment form~~] identical to that in [~~the form mentioned in~~] paragraph (1) of this subsection for each period of time for which there was a lapsed LOC including:

(A) The letter "E" is marked as the purpose code indicating [~~for item 16, which indicates~~] that a lapse [~~gap~~] in level of care coverage has occurred;

(B) the beginning and ending dates of the period for which no valid LOC existed are written in the comment section;

(C) a physician's signature certifying that the person required an ICF/MR LOC during that time period; and

(D) the physician's initials in the comment section acknowledging the request for authorization for payment; and

(3) a completed Statement of Verification signed by the CEO of the program provider and the MRA service coordinator, copies of which are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668 [~~verification statement~~].

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

(e) LOCs that are used to reinstate authorization for payment may not be used to establish initial program eligibility, to renew a LOC determination, or request a revision of an individual's LON [~~or to enroll a individual into the MRLA program~~].

§409.511. TDMHMR [~~Utilization~~] Review of Level of Need and Individual Plan of Care.

(a) TDMHMR may conduct a utilization review prior to authorization of MRLA program reimbursement in any circumstance, including, but not limited to, the following:

(1) the MRA submits an initial, revised, or renewal IPC having an annual cost exceeding 100% of the estimated annualized average per capita cost for ICF/MR services;

(2) [~~the program provider reports to~~] the MRA reports an increase in an individual's LON either at the time of the annual eligibility reevaluation or at any other time;

(3) the MRA reports that the individual's LON is 9 (Pervasive Plus); or [~~and/or~~]

(4) the MRA reports a LON for the individual which appears inconsistent with other clinical or service provision evidence/ history about the individual.

(b) TDMHMR may [~~will not~~] approve reimbursement in the circumstances described [~~set forth~~] in subsection (a)[~~(1)-(3)~~] of this section when TDMHMR determines that documentation submitted by the MRA supports the request [~~until the MRA has submitted documentation supporting the request~~].

(1) The [~~In order for reimbursement to be approved by the TDMHMR, the~~] MRA must submit documentation that [~~which~~] demonstrates the following, as appropriate:

(A) [~~that~~] the IPC services proposed for the individual are derived from assessments of the individual's needs, are necessary to prevent the individual from being institutionalized, are necessary to assure the individual's health and welfare in the community, and supplement [~~support~~] rather than replace the individual's natural community supports; and

(B) [~~that~~] the recommended [~~proposed initial or revised~~] LON assignment reflects the individual's current service level need which is expected to continue for at least 12 months.

(2) Information submitted to TDMHMR by the MRA must include the PDP [~~Person-Directed Plan~~] containing the service planning team deliberations and conclusions justifying the services included on the recommended IPC and, as applicable:

(A) documentation of assessments or interventions by qualified psychologists or other professional staff/consultants;

(B) staff requirements to conduct behavioral intervention plans;

(C) medical and physical assessment results and recommendations;

(D) time sheets of assigned service providers; and

(E) any other documentation providing support of the LON assignment or the level or type of IPC services.

(3) TDMHMR will notify the MRA and the program provider of the approval or disapproval of the requested LON or the level or type of IPC services [~~of service delivery~~]. TDMHMR will establish the effective date of approved requests. If additional documentation is requested by TDMHMR, the program provider must assist the MRA in providing the requested information to the MRA within five working days of receipt of the request.

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

§409.519. Calculation of Co-payment.

(a) Individuals and eligible couples determined to be financially eligible based on the special institutional income limit may be required to share in the cost of MRLA Program services. The method for determining the individual's or couple's co-payment is described in subsections (b) and (c) of this section and documented on the Texas Department of Human Services Medical Assistance Only Worksheet.

(b) The co-payment amount is the individual's or couple's remaining income after all allowable expenses have been deducted. The co-payment amount is applied only to the cost of home and community-based services funded through the MRLA Program and specified on each individual's IPC. The co-payment must not exceed the cost of services actually delivered. The co-payment must be paid by the individual or couple, authorized representative, or trustee directly to the program provider in accordance with the TDHS determination. When calculating the co-payment amount for individuals or couples with incomes that exceed the maximum Personal Needs Allowance the following are deducted:

(1) the cost of the individual's or couple's maintenance needs which must be equivalent to the special institutional income limit for eligibility under the Texas Medicaid program;

(2) the cost of the maintenance needs of the individual's or couple's dependent children. This amount is equivalent to the TANF basic monthly grant for children or a spouse with children, using the recognizable needs amounts in the TANF Budgetary Allowances Chart; and

(3) the costs incurred for medical or remedial care which are necessary but are not subject to payment by Medicare, Medicaid, or any other third party. These include the cost of health insurance premiums, deductibles, and co-insurance.

(c) When calculating the co-payment amount for individuals with community spouses, the Texas Department of Human Services determines the amount of the recipient's income applicable to payment in accordance with §1924 of the Social Security Act and 42 CFR 435.726.

§409.523. Maintenance of MRLA Program Waiting [~~Referral~~] List.

The local MRA will maintain an up-to-date waiting [~~referral~~] list of individuals living in and waiting to receive MRLA Program services in the MRA's local service area.

(1) The MRA will register the individual on the waiting [~~referral~~] list chronologically by date of request for MRLA Program services.

(2) The MRA will provide written notification to MRLA program providers in its local service area of the process that program providers should use to refer individuals who wish to be placed on the MRLA Program referral list.

(3) The MRA must [~~may~~] remove an individual's name from the waiting [~~referral~~] list only when it is documented that [~~the following exists~~]:

(A) written permission has been obtained from [~~of~~] the individual or the individual's legally authorized representative (LAR) to remove the individual's name from the waiting [~~referral~~] list;

(B) [~~documentation that~~] the individual is deceased;

(C) [~~documentation that~~] the individual does not reside in the local service area; [~~or~~]

(D) [~~documentation that~~] TDMHMR has denied the individual enrollment and the individual or [~~and/or~~] the LAR has had an opportunity to exercise the individual's right to appeal the decision according to §409.505 of this title (relating to Eligibility Criteria);

(E) the individual's name has been transferred in accordance with paragraph (4) of this section;

(F) the individual or the individual's LAR has not responded to the MRA's notification of a placement vacancy within 60 calendar days of the date of the MRA's notification;

(G) the applicant or the applicant's LAR chooses participation in the ICF/MR Program instead of in the MRLA Program when offered this choice in accordance with §419.164(a) of this title (relating to Process for Enrollment of Applicants) or;

(H) the applicant or the applicant's LAR refuses MRLA services.

(4) At the written request of an individual or [~~and/or~~] the LAR of an individual who moves to the local service area of a different MRA, the original MRA will transfer the individual's name and date of request for MRLA Program services to the MRA in the local service area where the individual has moved. The MRA receiving the information [~~referral transfer~~] will add the individual's name to its waiting [~~referral~~] list using the date of the request for MRLA Program services provided by the transferring [~~to the original~~] MRA.

§409.525. Process for Referral and Enrollment of Individuals.

(a) An individual who seeks MRLA Program services must submit a request to the MRA serving the area where the individual lives.

(1) The MRA will register the individual on the MRA's waiting [~~referral~~] list as specified in §409.523 of this title (relating to Maintenance of MRLA Program Waiting [~~Referral~~] List).

(2) Upon written notification by TDMHMR of a placement vacancy in the MRA's local service area, the [~~The~~] MRA notifies [~~will notify~~] the first individual on the waiting [~~referral~~] list of

the vacancy [~~when a placement vacancy occurs in the MRA's local service area~~] and begins [~~begin~~] the enrollment process by informing the individual or [~~and/or~~] the LAR of the individual's right to choose between participation in the ICF-MR Program or the MRLA Program. The MRA must document the individual's or [~~and/or~~] the LAR's choice of services.

(3) If the individual or [~~and/or~~] the LAR chooses participation in the MRLA Program, the MRA will assign a service coordinator who will develop, in conjunction with the service planning team (including the individual and [~~and/or~~] the LAR), a person-directed plan (PDP). At a minimum, the PDP must [~~will~~] include the following:

(A) a description of the services and supports the individual requires to continue living in the community;

(B) a description of the individual's current services and supports, identifying those that will be available if the individual is enrolled in the MRLA Program;

(C) a description of individual outcomes to be achieved through MRLA Program service components and justification for each service component to be included in the IPC;

(D) documentation that the type and amount of each service component included in the individual's IPC:

(i) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services;

(ii) do not replace existing natural supports or other non-program sources for the service components; and

(iii) when the proposed IPC includes residential support, the reasons the team concluded that the individual requires supervision and assistance from awake service providers during normal sleeping hours to assure the individual's health and welfare;

(E) [~~(D)~~] a description of all determinations needed to establish the individual's eligibility for SSI or Medicaid benefits and for an ICF-MR level-of-care (LOC); and

(F) [~~(E)~~] a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion.

(4) The MRA compiles and maintains information necessary to process the individual's or [~~and/or~~] LAR's request for enrollment in the MRLA Program.

(A) If the individual's financial eligibility for the MRLA Program must be established, the MRA will initiate, monitor, and support the processes necessary to obtain a financial eligibility determination.

(B) The MRA will complete a MR/RC Assessment [~~an LOC assessment form~~] if necessary.

(i) The MRA will determine or validate a determination that the applicant has mental retardation in accordance with Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services); or

(ii) The MRA will verify that the individual has been diagnosed by a licensed physician as having a related condition as defined in §406.202 of this title (relating to Definitions for Level-of-Care and Level-of-Need Criteria); and

(iii) The MRA will administer the *Inventory for Client and Agency Planning* (ICAP) and recommend an LON assignment to TDMHMR in accordance with §409.507 of this title (relating to Level of Need Assignment [~~Payment Category Assignment and Provider Claims Payment~~]).

(C) The MRA will develop a proposed IPC with the individual or [~~and/or~~] the LAR based on the PDP and §409.503(b) of this title (relating to Service Components of the MRLA Program).

(5) The service coordinator will inform the individual or [~~and/or~~] the LAR of all available MRLA program providers in the local service area. The service coordinator will:

(A) provide information to the individual or [~~and/or~~] the LAR regarding all MRLA program providers in the MRA's local service area;

(B) review the proposed IPC with potential MRLA program providers selected by the individual or [~~and/or~~] the LAR;

(C) arrange for meetings/visits with potential MRLA program providers as desired by the individual or [~~and/or~~] the LAR;

(D) assure that the individual's or [~~and/or~~] LAR's choice of a MRLA program provider is documented, signed by the individual or [~~and/or~~] the LAR, and retained by the MRA in the individual's record; and

(E) negotiate/finalize the proposed IPC with the selected MRLA program provider.

(b) When the selected MRLA program provider has agreed to deliver the services delineated on the IPC, the MRA will transmit the enrollment information to TDMHMR. TDMHMR will notify the individual or [~~and/or~~] the LAR, the selected MRLA program provider, and the MRA of its approval or denial of the individual's MRLA Program enrollment.

(c) (No change.)

§409.527. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and prior to the expiration of an individual's IPC, the service coordinator, the individual, [~~and/or~~] the LAR, and the MRLA program provider must review the PDP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The service coordinator, in collaboration with the service planning team, will initiate revisions to the IPC in response to changes in the individual's needs as documented in the current PDP.

(2) The service coordinator submits annual reviews and necessary revisions of the IPC to TDMHMR for approval and retains documentation as described in §409.525(a)(3-4) of this title relating to (Process for Referral and Enrollment of Individuals).

(b) The service coordinator submits annual reevaluations and revisions of LON or LOC to TDMHMR for approval.

(1) The MRA must re-administer the ICAP to an individual under the following circumstances and must submit an MR/RC Assessment to the department recommending a revision of the individual's LON assignment if the ICAP results and MR/RC Assessment indicate a revision of the individual's LON assignment may be appropriate. The ICAP must be re-administered:

(A) at least three years after the individual's enrollment and every third year thereafter;

(B) if changes in an individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature or;

(C) if the individual's skills and behavior are inconsistent with individual's assigned LON.

(2) As appropriate, the service coordinator must submit supporting documentation to the department in accordance with §409.511 (relating to Department Review of Level of Need (LON) and Individual Plan of Care(IPC)).

(3) The service coordinator must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment.

§409.530. Provider Reimbursement.

(a) The department will pay the program provider for service components as follows:

(1) supported home living, counseling and therapies, nursing, respite care, and supported employment are paid for in accordance with the reimbursement rate for the specific service component;

(2) MRLA foster/companion care, supervised living, residential support, and day habilitation are paid for in accordance with the individual's LON and the reimbursement rate for the specific service component; and

(3) adaptive aids, minor home modifications, and dental services are paid for based on the actual cost of the item.

(b) The program provider must accept the department's payment for a service component as payment in full for the service component.

(c) If the program provider disagrees with the enrollment date of an individual as determined by TDMHMR, the program provider must notify the MRA and TDMHMR in writing of its disagreement, including the reasons for the disagreement, within 180 days after the end of the month in which the provider receives the enrollment letter. If the program provider disagrees with an enrollment date of which the program provider received notice prior to March 1, 2000, the program provider must notify the MRA and TDMHMR in writing of its disagreement, including the reasons for the disagreement, by September 1, 2000. The department will review the information submitted by the program provider and notify the program provider of its determination regarding the individual's enrollment date.

(d) The program provider must prepare and submit claims for service components in accordance with this subchapter, the Waiver Program Provider Agreement and the *MRLA Service Definitions and Billing Guidelines*.

(e) The program provider must submit an initial claim for a service component as follows:

(1) day habilitation, MRLA foster/companion care, supported home living, supervised living, residential support, respite care, supported employment, counseling and therapies, and nursing must be electronically transmitted to the department via the MRLA automated enrollment and billing system; and

(2) adaptive aids, minor home modifications, and dental services must be submitted in writing to TDMHMR for entry into the automated enrollment and billing system.

(f) The program provider must submit a claim for a service component to TDMHMR by the latest of the following dates:

(1) within 95 calendar days after the end of the month in which the service component was provided;

(2) within 45 calendar days after the date of the enrollment approval letter issued by TDMHMR.

(3) within 95 calendar days after the end of the month in which the program provider obtains from the service coordinator a dated response from a source other than the MRLA Program to a timely request for payment for the service component.

(g) If an individual is temporarily or permanently discharged from the MRLA program:

(1) the program provider may submit a claim for day habilitation, supported home living, respite care, supported employment, counseling and therapies, and nursing for the day of the individual's discharge; and

(2) the program provider must not submit a claim for MRLA foster/companion care, supervised living, or residential support for the day of the individual's discharge.

(h) If TDMHMR rejects a claim for adaptive aids, minor home modifications, or dental services, the program provider may submit a corrected claim to TDMHMR. The corrected claim must be received by TDMHMR within 180 days after the end of the month in which the service component was provided or within 45 days after the date of the notification of the rejected claim, whichever is later.

(i) If the program provider submits a claim for an adaptive aid or dental services, the program provider's claim must be accompanied by written verification obtained from the MRA that sources of payment other than the MRLA program, including Medicare, Medicaid (such as Texas Health Steps and Home Health), Texas Rehabilitation Commission, the public school system, and private insurance, denied the submitted claim.

(j) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1,000 or more, the program provider must submit an individualized assessment by a qualified professional stating that the aid or modification is necessary and appropriate.

(k) The department will not pay the program provider for a service component or will recoup any payments made to the program provider for a service component if:

(1) the individual receiving the service component is, at the time the service component was provided, ineligible for the MRLA program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF-MR;

(2) the service component is not included on the signed and dated IPC of the individual in effect at the time the service component was provided;

(3) the service component does not meet the service definition in the *MRLA Service Definitions and Billing Guidelines*;

(4) the service component is not provided in accordance with the *MRLA Service Definitions and Billing Guidelines*;

(5) the service component is not documented in accordance with the *MRLA Service Definitions and Billing Guidelines*;

(6) the claim for the service component is not prepared and submitted in accordance with the *MRLA Service Definitions and Billing Guidelines;*

(7) written documentation of an individualized assessment by a qualified professional regarding the necessity and appropriate-

ness of an adaptive aid that costs $500.00 or more or for minor home modifications that cost $1000.00 or more is not provided by the program provider;

(8) the service component is provided by a service provider who does not meet the qualifications to provide the service component as delineated in the *MRLA Service Definitions and Billing Guidelines;*

(9) the service component is not provided in accordance with a signed and dated IPC meeting the requirements set forth in §409.525 and §409.527 of this title (relating to Process for Referral and Enrollment of Individuals and Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals, respectively);

(10) the service component is not provided in accordance with the plan for services described in the individual's PDP;

(11) the service component of foster/companion care, residential support, or supervised living is provided on the day of the individual's temporary or permanent discharge from the MRLA program; or

(12) the service component is provided prior to the individual's enrollment date into the MRLA program.

(l) The program provider must keep any records necessary to disclose the extent of the service components provided by the program provider and, on request, provide TDMHMR any such records and any information regarding claims filed by the program provider.

(m) The program provider must refund to TDMHMR any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from the department, whichever is earlier.

(n) The program provider may not claim reimbursement of administrative fees for a month in which a service component is not provided to an individual.

(o) Payments by TDMHMR to a program provider will not be withheld in the event the MRA erroneously fails to submit an enrolled individual's IPC for renewal and the program provider continues to provide services in accordance with the most recent IPC as approved by TDMHMR.

§409.531. Certification Status.

(a) MRLA program providers contracting with TDMHMR for participation in the MRLA Program must be in continuous compliance with the MRLA Program Principles for Program Providers as described in Mental Retardation Local Authority Program Principles for Program Providers. Each MRLA program provider participating in the MRLA Program will receive a certification review conducted by TDMHMR or its designee at least annually in order to maintain certification status.
Figure 1: 25 TAC §409.531(a)

(1) TDMHMR personnel will conduct all certification reviews of MRLA program providers operated by the local MRA.

(2) TDMHMR or its designee will conduct all certification reviews of non-MRA operated program providers.

(b) Certification review corrective actions required from the program provider as determined by prior reviews under the HCS or MRLA Consumer Principles for Certification and related timelines remain in effect until the first certification review as an MRLA program provider.

§409.541. Compliance with MRLA Program Principles for Mental Retardation Authorities (MRAs)

(a) MRAs participating in the MRLA Program must be in continuous compliance with the MRLA Program Principles for Authorities as described in Mental Retardation Local Authority Program Principles for Mental Retardation Authority.
Figure 1: 25 TAC § 409.541(a).

(b) Each MRA participating in the MRLA Program will receive a compliance review conducted by TDMHMR at least annually.

(c) If any item of noncompliance remains uncorrected by the MRA at the time of the review exit conference, the MRA will develop a plan of correction, with timelines, to be implemented after approval by TDMHMR. TDMHMR may take action as specified in the performance contract between the local MRA and TDMHMR if the MRA fails to develop or implement an approved plan of correction.

§409.542. TDMHMR Approval of Residences.

(a) Prior to initiating the residential support service component for an individual, the program provider must request and obtain TDMHMR's or its designee's approval of a residence in which residential support is to be provided.

(b) To request approval of a residence in which a maximum of four individuals or other persons receiving similar services will live and at least one individual will receive residential support, the program provider must submit the following documentation for review by TDMHMR or its designee:

(1) the address of the residence at which the provider intends to provide residential support;

(2) the date on which the provider intends to initiate residential support in the residence;

(3) the written certification required by Principle 34 of the MRLA Program Principles for Program Providers;

(4) written verification from the program provider that the residence to be approved is not the residence of any direct service provider.

(c) TDMHMR or its designee may approve a residence described in subsection (b) of this section if TDMHMR or its designee:

(1) authorizes provision of residential support for at least one individual who will live in the residence; and

(2) determines that the MRLA program provider has demonstrated compliance with the Principle 33 of the MRLA Program Principles for Program Providers

(d) MRLA program providers may not initiate residential support services in a residence until the department approves the residence.

This 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 September 20, 1999.

TRD-9906101
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health Mental Retardation

Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 206-4516

♦ ♦ ♦

25 TAC §§409.507, 409.519, 409.521

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of §§409.507, 409.519, and 409.521 of Chapter 409, Subchapter L, concerning mental retardation local authority (MRLA) program.

Provisions of §409.507 which address level of need assignment have been revised and incorporated into new §409.507, while those provisions of the repealed section concerning MRLA provider payments are revised and incorporated into new §409.530. The information in §409.519 has been reorganized, clarified, and updated in new §409.519. New §§409.507, §409.519, and 409.530 are proposed for public review and comment in this issue of the *Texas Register*. The information in §409.521 is incorporated into §419.155, concerning eligibility criteria, and §419.156, concerning calculation of co-payment of Chapter 419, Subchapter D, concerning home and community-based services (HCS) program, which is proposed for public review and comment in this issue of the *Texas Register*.

William R. Campbell, chief financial officer, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal will have no significant foreseeable implications relating to costs or revenues of state or local government.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the repeal is in effect, the public benefit is expected to be compliance with the legislative mandates to review and revise, as needed, all department rules. It is not anticipated that the repeal will have an adverse economic effect on small businesses or micro businesses because the current requirements are included in the proposed revised sections. It is not anticipated that the repeal will affect a local economy.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

The repeals are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the MRLA program.

Texas Health and Safety Code, §532.015, Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c), are affected by the proposed repeals.

§409.507. Payment Category Assignment and Provider Claims Payment.

§409.519. Calculation of Individual Co-Payment.

§409.521. Spousal Impoverishment Provisions.

This 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 September 20, 1999.

TRD-9906100
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health Mental Retardation
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 206-4516

♦ ♦ ♦

Chapter 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

Subchapter D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

25 TAC §§419.151-419.166, 419.169-419.182

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§419.151-419.166, 419.169-419.182 of new Chapter 419, Subchapter D, concerning home and community-based services (HCS) program.

The new subchapter replaces existing Chapter 409, Subchapter D, concerning home and community-based services (HCS), which is proposed contemporaneously for repeal in this issue of the *Texas Register*. The new subchapter is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature). The new subchapter includes provisions that are responsive to the 76th Legislature's direction to reduce the average cost of HCS services during the current biennium.

The existing subchapter has been revised and extensively reorganized into the new subchapter and new requirements have been added.

The new subchapter describes a fundamental change in the process for the initial enrollment of individuals in the Home and Community-Based Services (HCS) program. The role of local mental retardation authorities (MRAs) is expanded to include responsibility for developing an individual's initial plan of care and recommending an individual's level of care, level of need, and initial plan of care to the department for its approval. Currently, HCS program providers are responsible for completing these initial enrollment activities.

The new subchapter also describes a fundamental change in the provision of residential support in the HCS program. Under the current rules, no more than three individuals receiving HCS services or similar services for which the service provider is reimbursed may live in a residence at any one time. The new subchapter permits up to four individuals receiving HCS supervised living or residential support services to live in a single residence if at least one individual requires supervision and assistance from a service provider who is present and awake when that individual is in the residence–including during normal sleeping hours–to assure the individual's health and safety. The new subchapter redefines the residential support component to specify that service providers must be present and awake in a residence at all times an individual is present in the residence. A new service component–supervised living–is defined to include residential assistance provided to individuals who do not require supervision or assistance from staff who are awake during normal sleeping hours. In the new subchapter, licensed nursing care is included as an integral part of the residential support and supervised living components. Therefore, nursing care will not be reimbursed on a separate fee-for-service basis when provided to an individual receiving supervised living or residential support.

The provider sanctions process is revised in the proposed new subchapter to reduce the levels of sanctions from three to two levels, revise the criteria for application of program provider sanctions, and reduce the number of follow-up visits conducted by the department prior to placing the program provider on vendor hold.

The HCS Consumer Principles for Evidentiary Certification have been incorporated into the subchapter as §419.172-419.178. The principles have been revised to conform to the format and style requirements of the *Texas Register* and to incorporate minor clarifications to the existing language. Principles have been added which relate to program provider operations, including requirements to assure direct service delivery is supervised and managed by an individual with previous experience in planning and delivering services to the program population, requirements related to residential settings serving four persons, and requirements related to alleged abuse, neglect, and exploitation.

In addition, the new subchapter includes provider payment procedures and limitations currently contained in the program billing guidelines, documentation requirements for billing for minor home modifications, new procedures related to disputed enrollment effective dates, and requirements for reassessment of individuals' level-of-need assignments.

William R. Campbell, Chief Financial Officer, has determined that for each year of the first five years the proposed new subchapter is in effect, enforcing or administering the subchapter is anticipated to result in a savings to state government as follows: Fiscal Year (FY) 2000, $3,583,183; FY 2001, $7,166,365; FY 2002, $7,166,365; FY 2003, $7,166,365; and FY 2004, $7,166,365. There is no anticipated fiscal impact on local government.

Barry Waller, Director, Long Term Services and Supports, has determined that for each year of the first five-year period the new subchapter is in effect, the public benefit is expected to be the provision of HCS services and supports which more closely address the individual needs of consumers. It is not anticipated that the new subchapter will have an adverse economic effect on small businesses or micro businesses because reimbursement to a program provider will be sufficient to compensate the provider for the services covered under this rule. The probable economic cost to HCS program providers is the cost of complying with requirements of the National Fire Protection Association (NFPA) *Life Safety Code* if four individuals are served in a single residential setting. It is not anticipated that the proposed new subchapter will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposed amendments is scheduled for 1:30 p.m., Tuesday, October 26, 1999, in the auditorium of the department's Central Office, Building 2, 909 West 45 Street, Austin. Persons requiring an interpreter for the deaf or hearing impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify the Office of Policy Development, at least 72 hours prior to the hearing at (512) 206-4516 or at the TDY phone number of Texas Relay, 1/800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

The new sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS program.

Texas Health and Safety Code, §532.015, Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c), are affected by the proposed new subchapter.

§419.151. Purpose.

The purpose of this subchapter is to describe:

(1) the eligibility criteria for applicants seeking enrollment in the Home and Community-based Services (HCS) program;

(2) the process for enrollment of applicants in the HCS program

(3) the process for certifying and sanctioning program providers in the HCS program; and

(4) requirements for reimbursement of program providers.

§419.152. Application.

This subchapter applies to all local mental retardation authorities (MRAs) and HCS program providers.

§419.153. Definitions.

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

(1) Applicant–A Texas resident seeking services in the HCS Program.

(2) Department–The Texas Department of Mental Health and Mental Retardation

(3) HCS–The Home and Community-Based Services Program operated by the department as authorized by the Health Care Financing Administration (HCFA) in accordance with §1915(c) of the Social Security Act.

(4) HCS case manager–An employee of the program provider who is responsible for the overall coordination and monitoring of services provided to an individual enrolled in the HCS Program.

(5) ICF/MR–The Intermediate Care Facilities Program for Persons with Mental Retardation or Related Conditions.

(6) IDT (interdisciplinary team)–A planning team constituted by the program provider for each individual consisting of, at a minimum, the individual and LAR, HCS case manager, and a nurse. Other applicable persons assigned to provide or who are currently providing direct services to the individual and, as appropriate, a physician and other professional personnel may be included as team members as necessary.

(7) IPC (individual plan of care)–A document that describes the type and amount of each HCS program service component to be provided to an individual and describes medical and other services and supports to be provided through non-program resources.

(8) IPC cost–Estimated annual cost of program services included on an IPC.

(9) IPC year–A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(10) Individual–A person enrolled in the HCS program.

(11) ISP (individual service plan)–A document developed by the IDT, from which the IPC is derived, which describes the assessments, deliberations, conclusions, justifications and outcomes regarding the specific services provided to the individual by the program provider.

(12) LAR (legally authorized representative)–A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(13) LOC (level of care)–A determination given to an individual as part of the eligibility determination process based on data submitted on the MR/RC Assessment.

(14) LON (level of need)–An assignment given by the department to an individual upon which reimbursement for foster/companion care, supervised living, residential support and day habilitation is based. The LON assignment is derived from the service level score obtained from the administration of the Inventory for Client and Agency Planning (ICAP) to the individual and from selected items on the MR/RC Assessment.

(15) MRA (mental retardation authority)–An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation, and for supervising and ensuring the provision of mental retardation services to people with mental retardation in one or more local service areas.

(16) MR/RC Assessment–A form used by the department for LOC determination and LON assignment.

(17) PDP (person-directed plan)–A plan developed for an applicant in accordance with §419.164 of this title (relating to Process for Enrollment of Applicants) that describes a person's desired outcomes and identifies the supports and services necessary to achieve them.

(18) Program provider–An entity that provides HCS program services under a waiver program provider agreement with the department as defined in Chapter 419, Subchapter O of this title (relating to Enrollment of Medicaid Waiver Program Providers)

(19) Service coordinator–An employee of an MRA responsible for assisting an individual in accessing medical, social, educational, and other appropriate services including HCS Program services

(20) Service planning team–A planning team constituted by an MRA consisting of an applicant, the applicant's LAR, service coordinator, and other persons chosen by the applicant and the LAR.

§419.154. Description of the Home and Community-Based Services (HCS) Program.

(a) The Home and Community-based Services (HCS) program is a Medicaid waiver program approved by the Health Care Financing Administration (HCFA) pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to the Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICF/MR) Program. The HCS program is operated by the Texas Department of Mental Health and Mental Retardation under the authority of the Texas Health and Human Services Commission.

(b) Enrollment in the HCS program is limited to the number of individuals in specified target groups and to the geographic areas approved by HCFA.

(c) HCS program service components, described in §419.174 of this title (relating to Service Delivery), are selected for inclusion in an individual's Individual Plan of Care (IPC) to assure the individual's health and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following service components are available under the HCS Program:

(1) case management

(2) counseling and therapies provided by appropriately licensed professionals including:

(A) physical therapy;

(B) occupational therapy;

(C) speech and language pathology;

(D) audiology;

(E) social work;

(F) psychology; and

(G) dietary services;

(3) nursing care provided by licensed nurses;

(4) residential assistance, excluding room and board, provided in one of the following four ways:

(A) supported home living;

(B) HCS foster/companion care;

(C) supervised living; or

(D) residential support provided in residences serving four individuals.

(5) Respite includes room and board when provided in a setting other than the individual's home. The total amount of reimbursement for respite available per IPC year cannot exceed an amount equal to 30 multiplied by the daily reimbursement rate for respite. Respite is not a reimbursable service for individuals receiving HCS foster/companion care, supervised living, or residential support.

(6) Day habilitation is provided exclusive of any other separately funded service including but not limited to, public school services, rehabilitative services for persons with mental illness, or programs funded by the Texas Department of Human Services (TDHS) or the Texas Rehabilitation Commission (TRC).

(7) Supported employment may be provided when the service has been denied or is otherwise unavailable to an individual through a program operated by a state rehabilitation agency or the public school system. The maximum reimbursement for supported employment is $3,000 per IPC Year.

(8) Adaptive aids are provided up to a maximum of $10,000 per IPC year.

(9) Minor home modifications are provided up to a lifetime maximum of $7,500, after which up to $300 per IPC year is provided for maintenance or additional modifications.

(10) Dental services are provided up to a maximum of $1,000 per IPC year.

(d) The department specifies, through the HCS automated enrollment and billing system, the counties the program provider is authorized to serve pursuant to each waiver program provider agreement. The counties specified for a single provider agreement must be contiguous. The program provider may enter into more than one provider agreement to provide HCS Program services, but may have only one provider agreement to provide HCS Program services per county.

§419.155. Eligibility Criteria.

(a) An applicant or individual is eligible for HCS program services if he or she:

(1) meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) meets the ICF/MR I, V, or VI ICF/MR level of care criteria (LOC) as determined by the department according to §419.159 of this title (relating to Level of Care Determination);

(3) has had a determination of mental retardation performed in accordance with state law (Texas Health and Safety Code, Chapter 593, Admission and Commitment to Mental Retardation Services, Subchapter A) or has been diagnosed by a licensed physician as having a related condition as defined in §406.202 of this title (relating to Definitions for Level of Care and Level of Need) prior to enrollment in the HCS Program; and

(4) has an approved IPC for which the IPC cost does not exceed 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (relating to Rate Setting Methodology) for the individual's level of need as it would be assigned under §406.204(b) of this title (relating to Level of Care Determination and Level of Need Assignment) or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater.

(b) An applicant or individual is financially eligible for the HCS Program if he or she:

(1) is categorically eligible for Supplemental Security Income (SSI) benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under age 18 and:

(A) residing with parents or a spouse;

(B) eligible for Medicaid benefits only if institutionalized;

(C) meets the SSI criteria for disability;

(D) meets the SSI criteria for institutional deeming; and

(E) has income and resources which meet the requirements of the SSI program; or

(4) is under age 19 and financially the responsibility of the Texas Department of Protective and Regulatory Services (TDPRS), in whole or in part (not to exceed Level II foster care payment), and being cared for in a family foster home licensed or certified and supervised by:

(A) TDPRS; or

(B) a licensed public or private nonprofit child placing agency; or

(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Aid to Needy Families (TANF); or

(6) is eligible for SSI benefits in the community, except on the basis of income, and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income.

(c) For individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in the Social Security Act, §1924 and as specified in the Medicaid State Plan.

§419.156. Calculation of Co-payment.

(a) Individuals and eligible couples determined to be financially eligible based on the special institutional income limit may be required to share in the cost of HCS Program services. The method for determining the individual's or couple's co-payment is described in subsections (b) and (c) of this section and documented on the Texas Department of Human Services (TDHS) Medical Assistance Only Worksheet.

(b) The co-payment amount is the individual's or couple's remaining income after all allowable expenses have been deducted. The co-payment amount is applied only to the cost of home and community-based services funded through the HCS Program and specified on each individual's IPC. The co-payment must not exceed the cost of services actually delivered. The co-payment must be paid by the individual or couple, authorized representative, or trustee directly to the program provider in accordance with the

TDHS determination. When calculating the co-payment amount for individuals or couples with incomes that exceed the maximum Personal Needs Allowance the following are deducted:

(1) the cost of the individual's or couple's maintenance needs which must be equivalent to the special institutional income limit for eligibility under the Texas Medicaid program;

(2) the cost of the maintenance needs of the individual's or couple's dependent children. This amount is equivalent to the TANF basic monthly grant for children or a spouse with children, using the recognizable needs amounts in the TANF Budgetary Allowances Chart; and

(3) the costs incurred for medical or remedial care which are necessary but are not subject to payment by Medicare, Medicaid, or any other third party. These include the cost of health insurance premiums, deductibles, and co-insurance.

(c) When calculating the co-payment amount for individuals with community spouses, TDHS determines the amount of the recipient's income applicable to payment in accordance with §1924 of the Social Security Act and 42 CFR 435.726.

§419.157. Individual Plan of Care.

(a) An initial IPC must be developed for each applicant in accordance with §419.164 (relating to Process for Enrollment of Applicants) and reviewed and up-dated for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §419.166 (relating to Revisions and Renewals of Individual Plans of Care, Levels of Care and Levels of Need for Enrolled Individuals).

(b) The IPC must specify the type and amount of each service component to be provided to the individual, as well as services and supports to be provided by other sources during the IPC year. The type and amount of each service component must be supported by:

(1) documentation that other sources for the service component are unavailable and the service component does not replace existing supports;

(2) assessments of the individual that identify specific service components necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services; and

(3) documentation of deliberations and conclusions of the service planning team or IDT, as appropriate, that the service components are necessary for the individual to live in the community and prevent the need for institutional services.

(c) An individual's IPC must be approved by the department and is subject to review in accordance with §419.158 (relating to Department Review of Individual Plan of Care).

(1) The IPC must be signed and dated by the individual's service planning team or the IDT indicating the team member's concurrence that the services recommended in the IPC are necessary to prevent institutionalization and are appropriate to assure the individual's health and welfare in the community.

(2) The IPC must be signed and dated by the team members prior to submission to the department and the original must be maintained in the individual's record.

(3) If the IPC is submitted for approval electronically, the submitted IPC must contain information identical to that on the signed copy of the IPC.

(d) The program provider must provide services in accordance with an individual's approved IPC.

(e) The program provider must retain in the individual's record results and recommendations of individualized assessments documenting the current need for each service component included in the IPC.

§419.158. Department Review of Individual Plan of Care (IPC).

(a) The department may review an approved or recommended IPC at any time to determine if the type and amount of HCS program services specified in the IPC are appropriate and supported by documentation specified in §419.157(b) of this title (relating to Individual of Plan of Care). If the department reviews an IPC, documentation supporting the IPC must be submitted to the department in accordance with the department's request. The department may modify an IPC based on its review.

(b) Before approving an IPC having an IPC Cost that exceeds 100% of the estimated annualized average per capita cost for ICF/MR services, the department will review the IPC to determine if the type and amount of HCS program services specified in the IPC are appropriate and supported by documentation specified in §419.157(b) of this title (relating to Individual of Plan of Care). A recommended IPC with such an IPC Cost must be signed and dated by the IDT and submitted to the department with documentation supporting the IPC, as described in §419.157(b) of this title (relating to Individual Plan of Care) prior to the electronic submission of the IPC. After reviewing the supporting documentation, the department may request additional documentation. The department will review any additional documentation submitted in accordance with its request, and electronically approve the recommended IPC or send written notification that the recommended IPC has been approved with modifications.

§419.159. Level of Care (LOC) Determination.

(a) A LOC for an individual must be requested from the department by electronically transmitting a completed MR/RC Assessment, indicating the recommended LOC. The electronically transmitted MR/RC Assessment must contain information identical to the information on the signed MR/RC Assessment.

(b) A LOC determination will be made by the department in accordance with Chapter 406, Subchapter E of this title (relating to ICF/MR Programs: Eligibility and Review).

(c) Information on the MR/RC Assessment must supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social and cognitive factors. The signed MR/RC Assessment and documentation supporting the recommended LOC must be maintained in the individual's record.

(d) The department will approve and enter the appropriate LOC into the HCS billing and enrollment system or send written notification to the program provider that a LOC has been denied.

(e) A LOC determination is valid for 364 calendar days after the LOC effective date determined by the department.

§419.160. Lapsed Level of Care (LOC).

(a) The department will not pay the program provider for HCS program services provided during a period of time in which the individual's LOC has lapsed unless the program provider requests and is granted a reinstatement of the LOC determination in accordance with this section. The department will not grant a request for reinstatement of a LOC determination to establish program eligibility, to renew a LOC determination, to obtain a LOC determination for a

period of time for which a LOC has been denied, to revise a LON, or for a period of time for which an individual's IPC is not current.

(b) To request reinstatement of a LOC determination, the program provider must electronically transmit to the department an MR/RC Assessment indicating:

(1) a code "E" in the "Purpose" section; and

(2) the beginning and ending dates of the period of time for which the individual's LOC lapsed.

(c) The program provider must request reinstatement of a LOC determination within 180 calendar days after the end of any month during which services were provided to the individual while the individual's LOC was lapsed.

(d) The department will notify the program provider of its decision to grant or deny the request for reinstatement of a LOC determination within 45 calendar days after the department's receipt of the program provider's request.

(e) The program provider must retain in the individual's record:

(1) a completed MR/RC Assessment, signed by the individual's physician and an appropriate representative of the program provider, containing information identical to that on the MR/RC Assessment electronically transmitted to the department, and

(2) a Statement of Verification, signed by the CEO of the program provider, copies of which are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

§419.161. Level of Need Assignment.

(a) A LON for an individual must be requested from the department by electronically transmitting a completed MR/RC Assessment, indicating the recommended LON.

(b) Documentation supporting the recommended LON must be maintained in the individual's record. Such documentation may include but is not limited to the individual's ISP, including the deliberations and conclusions of the individual's service planning team or IDT, the individual's ICAP assessment booklet and PDP, assessments and interventions by qualified professionals, behavioral intervention plans, and time sheets of program provider staff.

(c) The department will assign a LON to an individual based on the individual's ICAP service level score, information reported on the individual's MR/RC Assessment and required supporting documentation. Documentation supporting a recommended LON must be submitted to the department in accordance with department guidelines.

(d) The department will assign one of five LONs as follows:

(1) An intermittent LON (LON 1) will be assigned if the individual's ICAP service level score equals 7, 8 or 9;

(2) A limited LON (LON 5) will be assigned if the individual's ICAP service level score equals 4, 5 or 6;

(3) An extensive LON (LON 8) will be assigned if the individual's ICAP service level score equals 2 or 3;

(4) A pervasive LON (LON 6) will be assigned if the individual's ICAP service level score equals 1; and

(5) Regardless of an individual's ICAP service level score, a pervasive plus LON (LON 9) will be assigned if the individual meets the criteria set forth in subsection (f) of this section.

(e) A LON 1, 5, or 8, determined in accordance with subsection (d) of this section, will be increased to the next LON by the department, due to an individual's dangerous behavior, if supporting documentation submitted to the department proves that:

(1) the individual exhibits dangerous behavior that could cause serious physical injury to the individual or others;

(2) a written behavior intervention plan has been implemented that meets department guidelines and is based on ongoing written data, targets the dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) more staff members are needed and available than would be needed if the individual did not exhibit dangerous behavior;

(4) staff members are constantly prepared to physically prevent the dangerous behavior or intervene when the behavior occurs; and

(5) the individual's MR/RC Assessment is correctly scored with a "1" in the "Behavior" section.

(f) A LON 9 will be assigned by the department if supporting documentation submitted to the department proves that:

(1) the individual exhibits extremely dangerous behavior that could be life threatening to the individual or to others;

(2) a written behavior intervention plan has been implemented that meets department guidelines and is based on ongoing written data, targets the extremely dangerous behavior with individualized objectives, and specifies intervention procedures to be followed when the behavior occurs;

(3) management of the individual's behavior requires a staff member to exclusively and constantly supervise the individual during the individual's waking hours, which must be at least 16 hours per day;

(4) the staff member assigned to supervise the individual has no other duties during such assignment; and

(5) the individual's MR/RC Assessment is correctly scored with a "2" in the "Behavior" section.

§419.162. Department Review of Level of Need (LON).

(a) The department may review a recommended or assigned LON at any time to determine if it is appropriate. If the department reviews a LON, documentation supporting the LON must be submitted to the department in accordance with the department's request. The department may modify a LON and recoup or deny payment based on its review.

(b) Before assigning a LON, TDMHMR will review documentation supporting the recommended LON if:

(1) a LON is requested that is an increase from the individual's current LON;

(2) a LON 9 is requested; or

(3) a LON is requested in accordance with subsection 419.161(e) or (f) of this title (relating to LON Assignment).

(c) Documentation supporting a recommended LON described in subsection (b) of this section must be submitted to the department in accordance with this subchapter and received by the

department within 7 calendar days after electronically transmitting the recommended LON. Within 21 calendar days after receiving the supporting documentation, the department will request additional documentation, electronically approve the recommended LON, or send written notification that the recommended LON has been denied. The department will review any additional documentation submitted in accordance with the department's request and electronically approve the recommended LON or send written notification that the recommended LON has been denied.

§419.163. Reconsideration of Level of Need Assignment.

(a) If the program provider disagrees with a LON assignment, the program provider may request that the department reconsider the assignment.

(b) The program provider may receive reconsideration only if the program provider submitted documentation supporting the recommended LON in accordance with this subchapter.

(c) To request reconsideration of a LON assignment, the program provider must submit a written request for reconsideration to the department within 10 calendar days after receipt of the notice that the recommended LON was denied.

(d) Within 21 calendar days after receipt of a request for reconsideration, the department will electronically approve the recommended LON or send written notification to the program provider that the recommended LON has been denied.

§419.164. Process for Enrollment of Applicants.

(a) An applicant must submit a request for HCS Program services to the MRA serving the area where the applicant wishes to receive services.

(1) The MRA must register the applicant on the MRA's waiting list as specified in §419.165 of this title (relating to Maintenance of HCS Program Waiting List).

(2) Upon written notification by the department of a placement vacancy in the MRA's local service area, the MRA notifies the first applicant on the waiting list of the vacancy and begins the enrollment process by informing the applicant or the LAR of the applicant's right to choose between participation in the ICF/MR Program or the HCS Program. The MRA must document the applicant's choice of programs or the LAR's choice on behalf of the applicant on the HCS Verification of Choice form. Copies of the HCS Verification of Choice form are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

(3) If the applicant or the LAR chooses participation in the HCS Program, the MRA will assign a service coordinator who develops a person-directed plan (PDP) in conjunction with the service planning team. The service planning team must include the applicant and the LAR and may include other persons chosen by the applicant and the LAR. At minimum, the PDP must include the following:

(A) a description of the applicant's current services and supports, identifying those that will be available if the applicant is enrolled in the HCS Program;

(B) a description of outcomes to be achieved for the applicant through the HCS Program, including determinations of further service needs through assessments to be accomplished after enrollment, and justification for each service component to be included in the IPC;

(C) documentation that the type and amount of each service component included in the individual's IPC:

(i) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services;

(ii) do not replace existing natural supports or other non-program sources for the service components; and

(iii) when the proposed IPC includes residential support, the reasons the team concluded that the individual requires supervision and assistance from awake service providers during normal sleeping hours to assure the individual's health and safety;

(D) a description of all determinations needed to establish the applicant's eligibility for SSI or Medicaid benefits and for a LOC; and

(E) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion.

(4) The MRA compiles and maintains information necessary to process the applicant's request or LAR's request on behalf of the applicant for enrollment in the HCS Program.

(A) If the applicant's financial eligibility for the HCS Program must be established, the MRA initiates, monitors, and supports the processes necessary to obtain a financial eligibility determination.

(B) The MRA must complete an MR/RC Assessment if a LOC determination is necessary, in accordance with §419.159 and §419.161 of this title (relating to Level of Care Determination and Level of Need Assignment, respectively).

(i) The MRA must perform or endorse a determination that the applicant has mental retardation in accordance with Chapter 405, Subchapter D of this title (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services); or

(ii) The MRA must verify that the applicant has been diagnosed by a licensed physician as having a related condition as defined in §406.202 of this title (relating to Definitions for Level of Care and Level of Need Criteria); and

(iii) The MRA must administer the ICAP and recommend a LON assignment to the department in accordance with §§419.161 and 419.162 of this title (relating Level of Need and Department Review of Level of Need, respectively).

(C) The MRA must develop a proposed IPC with the applicant or the LAR based on the PDP and in accordance with this subchapter.

(5) The service coordinator must inform the applicant or the LAR of all available HCS program providers in the local service area. The service coordinator must:

(A) provide information to the applicant or the LAR regarding program providers in the MRA's local service area;

(B) review the proposed IPC with potential program providers as requested by the applicant or the LAR;

(C) arrange for meetings/visits with potential program providers as desired by the applicant or the LAR;

(D) assure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or the LAR, and retained by the MRA in the applicant's record; and

(E) negotiate/finalize the proposed IPC and the date services will begin with the selected program provider. If the service coordinator and the selected program provider are unable to agree on the proposed IPC, the service coordinator and program provider will consult jointly with the department to achieve resolution.

(b) When the proposed IPC is finalized and the selected program provider has agreed to deliver the services delineated on the IPC, the MRA will submit the enrollment information to the department. When appropriate, the MRA will also submit supporting documentation as required in §419.158(b) of this title (relating to Department Review of Individual Plan of Care (IPC)) and §419.162(b) of this title (relating to Department Review of Level of Need).

(c) The department will notify the applicant or the LAR, the selected program provider, and the MRA of its approval or denial of the applicant's enrollment. When enrollment is approved, the department must authorize the applicant's enrollment in the HCS Program through the automated enrollment and billing system and issue an enrollment letter that includes the effective date of the applicant's enrollment in the HCS Program.

(d) Upon notification of an applicant's enrollment approval, the MRA must provide the selected program provider copies of all enrollment documentation, and associated supporting documentation including relevant assessment results and recommendations and the applicant's PDP.

(e) The selected program provider must not initiate services until notified of the department's approval of the individual's enrollment.

(f) The selected program provider must develop an initial ISP in accordance with §419.174 of this title (relating to Service Delivery) based on the PDP and IPC as developed by the service planning team.

(g) When the department assigns a placement vacancy to an applicant who is a member of a specific target group identified in the approved waiver, the MRA must assist the applicant with the enrollment process in accordance with this section.

§419.165. Maintenance of HCS Program Waiting List.

The local MRA must maintain an up-to-date waiting list of applicants living in and waiting to receive HCS Program services in the MRA's local service area.

(1) The MRA must assign an applicant's placement on the waiting list chronologically by date of request for HCS Program services.

(2) The MRA must provide written notification to HCS program providers in its local service area of the process that program providers should use to refer applicants who wish to be placed on the HCS Program waiting list.

(3) The MRA must remove an applicant's name from the waiting list only if it is documented that:

(A) written permission has been obtained from of the applicant or the LAR to remove the individual's name from the waiting list;

(B) the applicant is deceased;

(C) the applicant moved out of the local service area;

(D) the department has denied the applicant enrollment and the applicant or the LAR has had an opportunity to exercise the applicant's right to appeal the decision according to §419.169 of this title (relating to Fair Hearing);

(E) the applicant's name has been transferred in accordance with subparagraph (4) of this section;

(F) the applicant has not responded to the MRA's notification of a placement vacancy within sixty calendar days of the date of the MRA's notification;

(G) the applicant or the applicant's LAR chooses participation in the ICF/MR Program instead of in the HCS Program when offered this choice in accordance with §419.164(a) of this title (relating to Process for Enrollment of Applicants) or;

(H) the applicant or the applicant's LAR refuses HCS services.

(4) At the written request of an applicant or the LAR of an applicant who moves to the local service area of a different MRA, the original MRA must provide the applicant's name and date of request for HCS Program services to the MRA in the local service area where the applicant has moved. The MRA receiving the information must add the applicant's name to its waiting list using the date of the request for HCS Program services provided by the transferring MRA.

§419.166. Revisions and Renewals of Individual Plans of Care (IPCs), Levels of Care (LOCs) and Levels of Need (LONs) for Enrolled Individuals.

(a) At least annually, and prior to the expiration of an individual's IPC, the individual's IDT must review the ISP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The IDT must initiate revisions to the IPC in response to changes in the individual's needs as documented in the current ISP.

(2) The ISP must include documentation that the type and amount of each service component included in the individual's IPC:

(A) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services;

(B) do not replace existing natural supports or other non-program sources for the service components; and

(C) when the proposed IPC includes residential support, the reasons that the team concluded that the individual requires supervision and assistance from awake service providers during normal sleeping hours to assure the individual's health and safety.

(3) The program provider must submit annual reviews and necessary revisions of the IPC to the department for approval.

(4) The program provider must submit supporting documentation in accordance with §419.158 (relating to Department Review of Individual Plan of Care (IPC)).

(b) Prior to the expiration date of an individual's LOC determination, the program provider must request department approval to renew an individual's LOC and LON by submitting an MR/RC Assessment to the department.

(1) The program provider must re-administer the ICAP to an individual under the following circumstances and must submit an MR/RC Assessment to the department recommending a revision of the individual's LON assignment if the ICAP results and MR/RC

Assessment indicate a revision of the individual's LON assignment may be appropriate. The ICAP must be re-administered:

(A) at least three years after the individual's enrollment and every third year thereafter;

(B) if changes in an individual's functional skills or behavior occur that are not expected to be of short duration or cyclical in nature or;

(C) if the individual's skills and behavior are inconsistent with individual's assigned LON.

(2) As appropriate, the program provider must submit supporting documentation to the department in accordance with §419.162(b) (relating to Department Review of Level of Need (LON)).

(3) The provider must retain in the individual's record results and recommendations of individualized assessments and other pertinent records documenting the recommended LON assignment

§419.169. Fair Hearing.

Any individual whose request for eligibility for the HCS Program is denied or is not acted upon with reasonable promptness, or whose services have been terminated, suspended or reduced by the department is entitled to a fair hearing, conducted by TDHS in accordance with 40 TAC Chapter 79, Subchapters L, M, and N, except that a request for fair hearing must be submitted to the department's Office of Medicaid Administration and received within 90 calendar days from the date of the notice of denial of eligibility for the HCS Program or notice of termination, suspension, or reduction of services.

§419.170. Provider Reimbursement.

(a) The department will pay the program provider for service components as follows:

(1) case management, supported home living, counseling and therapies, nursing, respite care, and supported employment are paid for in accordance with the reimbursement rate for the specific service component;

(2) foster/companion care, residential support, supervised living, and day habilitation are paid for in accordance with the individual's LON and the reimbursement rate for the specific service component; and adaptive aids, minor home modifications and dental services are paid for based on the actual cost of the item.

(b) The program provider must accept the department's payment for a service component as payment in full for the service component.

(c) If the program provider disagrees with the enrollment date of an individual as determined by the department, the program provider must notify the department in writing of its disagreement, including the reasons for the disagreement, within 180 days after the end of the month in which the provider receives the enrollment letter. If the program provider disagrees with an enrollment date of which the program provider received notice prior to March 1, 2000, the program provider must notify the department in writing of its disagreement, including the reasons for the disagreement, by September 1, 2000. The department will review the information submitted by the program provider and notify the program provider of its determination regarding the individual's enrollment date.

(d) The program provider must prepare and submit claims for service components in accordance with this subchapter, the HCS Provider Agreement, the *HCS Service Definitions and Billing Guidelines* , and the HCS Billing and Payment Review Protocol.

(e) The program provider must submit an initial claim for a service component as follows:

(1) day habilitation, foster/companion care, supported home living, residential support, supervised living, respite care, supported employment, case management, counseling and therapies, and nursing must be electronically transmitted to the department via the HCS automated enrollment and billing system; and

(2) adaptive aids, minor home modifications, and dental services must be submitted in writing to the department for entry into the automated enrollment and billing system.

(f) The program provider must submit a claim for a service component with the department by the latest of the following dates:

(1) within 95 calendar days after the end of the month in which the service component was provided;

(2) within 45 calendar days after the date of the enrollment approval letter issued by the department; or

(3) within 95 calendar days after the end of the month in which the program provider receives a dated response from a source other than the HCS Program to a correctly submitted request to that source for payment for the service component.

(g) If an individual is temporarily or permanently discharged from the HCS program:

(1) the program provider may submit a claim for day habilitation, supported home living, respite care, supported employment, case management, counseling and therapies, and nursing for the day of the individual's discharge; and

(2) the program provider must not submit a claim for foster/companion care, residential support, or supervised living for the day of the individual's discharge.

(h) If the department rejects a claim for adaptive aids, minor home modifications, or dental services, the program provider may submit a corrected claim to the department. The corrected claim must be received by the department within 180 days after the end of the month in which the service component was provided or within 45 days after the date of the notification of the rejected claim, whichever is later.

(i) If the program provider submits a claim for an adaptive aid or dental services, the program provider must submit documentation that sources of payment other than the HCS program, including Medicare, Medicaid (such as Texas Health Steps and Home Health), TRC, the public school system, and private insurance denied the submitted claim. Such documentation includes evidence that a proper and timely request for payment was made to the other payment source and that payment was not made.

(j) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1000 or more, the program provider must submit an individualized assessment by a qualified professional that the aid or modification is necessary and appropriate.

(k) The department will not pay the program provider for a service component or will recoup any payments made to the program provider for a service component if:

(1) the individual receiving the service component is, at the time the service component was provided, ineligible for the HCS program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF-MR;

(2) the service component is provided to an individual during a period of time for which the program provider does not provide a signed and dated IPC for the individual;

(3) the service component is not included on the signed and dated IPC of the individual in effect at the time the service component was provided;

(4) the service component does not meet the service definition in the *HCS Service Definitions and Billing Guidelines*;

(5) the service component is not provided in accordance with the*HCS Service Definitions and Billing Guidelines* and the HCS Billing and Payment Review Protocol;

(6) the service component is not documented in accordance with the *HCS Service Definitions and Billing Guidelines* and the HCS Billing and Payment Review Protocol;

(7) the claim for the service component is not prepared and submitted in accordance with the *HCS Service Definitions and Billing Guidelines* and the HCS Billing and Payment Review Protocol;

(8) written documentation of an individualized assessment by a qualified professional regarding the necessity and appropriateness of an adaptive aid that costs $500.00 or more or for minor home modifications that cost $1000.00 or more is not provided by the program provider;

(9) the department determines that the service component would have been paid for by a source other than the HCS Program if the program provider had submitted to the other source a proper and timely request for payment for the service component;

(10) the service component is provided during a period of time for which the program provider does not provide a signed and dated MR/RC Assessment for the individual;

(11) the service component is provided during a period of time for which the individual did not have a LOC determination;

(12) the service component is provided by a service provider who does not meet the qualifications to provide the service component as delineated in the *HCS Service Definitions and Billing Guidelines* and the approved HCS Waiver;

(13) the service component is not provided in accordance with a signed and dated IPC meeting the requirements set forth in §419.157 of this title (relating to Individual Plan of Care);

(14) the service component is not provided in accordance with the plan for services described in the individual's ISP, staffing summary or PDP;

(15) the service component of foster/companion care, residential support, or supervised living is provided on the day of the individual's temporary or permanent discharge from the HCS program;

(16) the service component is provided prior to the individual's enrollment date into the HCS program; or

(17) the service component was paid at an incorrect LON because the MR/RC Assessment electronically transmitted to the department does not contain information identical to information on the signed MR/RC Assessment.

(l) The program provider must keep any records necessary to disclose the extent of the service components provided by the program provider and, on request, provide the department any such records and any information regarding claims filed by the program provider.

(m) The program provider must refund to the department any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from the department, whichever is earlier.

§419.171. Program Provider Certification and Review.

(a) The program provider must be in continuous compliance with the HCS program certification principles contained in §§419.172-419.178 of this chapter.

(b) The department conducts an on-site certification review of the program provider to evaluate evidence of the program provider's compliance with certification principles. Based on its review, the department takes action as described in §419.179 of this title (relating to Corrective Action and Program Provider Sanctions).

(c) Following the initial on-site certification review by the department conducted in accordance with Chapter 419, Subchapter O of this title (relating to Enrollment of Waiver Program Providers), the department conducts an on-site certification review at least annually.

(d) The department certifies a program provider for a period of 365 calendar days after the date of an initial or annual certification review.

(e) The department may conduct announced or unannounced reviews of the program provider at any time.

(f) During any review, including a follow-up review or a review in which corrective action from a previous review is being evaluated, the department may review the HCS program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) The department conducts an exit conference at the end of all on-site reviews, at a time and location determined by the department, to inform the program provider of the department's findings, determination, any proposed actions, and any actions required of the program provider.

§419.172. Certification Principles: Mission, Development, and Philosophy of Program Operations.

The program provider must:

(1) implement a teaching and training philosophy that emphasizes improved, independent functioning for each individual;

(2) ensure that each individual's humanity and dignity is respected;

(3) ensure that the rights of the individual are protected;

(4) ensure that the individual, the LAR, and family members participate in making choices about where the individual will live, attend school, work, and take part in leisure activities.

§419.173. Certification Principles: Rights of Individuals.

(a) The program provider shall assist the:

(1) individual in exercising the same rights and responsibilities exercised by people without disabilities; and

(2) individual's LAR or family members in encouraging the individual to exercise the same rights and responsibilities exercised by people without disabilities.

(b) The program provider shall protect and promote the following rights of the individual:

(1) to manage, be trained to manage or have assistance in managing financial affairs upon documentation of the individual's written request for assistance;

(2) to access public accommodations;

(3) to be informed of requirements for participation;

(4) to be informed both orally and in writing of all the HCS Program services available and rules pertaining to the individual's enrollment and participation in the program provider's program as well as any changes in these that occur;

(5) to be informed of the individual's ISP and IPC including any restrictions affecting the individual's rights;

(6) to participate in decisions and be informed of the reasons for decisions regarding plans for enrollment, service termination, transfer, relocation, or denial of HCS Program services;

(7) to be informed about the individual's own health, mental condition, and related progress;

(8) to be informed of the name and qualifications of any person serving or treating the individual and to choose among various available service providers;

(9) to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals;

(10) to have privacy in visitation with family and other visitors;

(11) to make and receive telephone calls;

(12) to send and to receive sealed and uncensored mail;

(13) to attend religious activities of choice;

(14) to participate in developing a pre-discharge plan that addresses assistance for the individual after he or she leaves the program;

(15) to be free from restraints;

(16) to live in a normative residential living environment;

(17) to access free public schooling according to the Texas Education Code;

(18) to live where the individual is within proximity of and can access treatment and services that are best suited to meet the individual's needs and abilities and enhance that individual's strengths;

(19) to have a personalized ISP and IPC based on individualized assessments that meet the individual's needs and abilities and enhance that individual's strengths;

(20) to help decide what the ISP will be;

(21) to be informed as to the progress and/or lack of progress being made in the execution of the ISP;

(22) to choose from the same services that are available to all community members;

(23) to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the ISP;

(24) to complain at any time to any member of the program provider's personnel;

(25) to receive appropriate support and encouragement from any member of the program provider's personnel if the individual dislikes or disagrees with the services being rendered or thinks that his or her rights are being violated;

(26) to live free from abuse, neglect or exploitation in a healthful, comfortable, and safe environment;

(27) to participate in decisions regarding the individual's living environment including location, furnishings, other individuals residing in the residence, and moves to other residential locations;

(28) to have personnel who are accountable to the individual and, at the same time, are responsible to the overall functioning of the HCS Program;

(29) to have active personal assistance in exercising civil and self-advocacy rights attainment by provisions for:

(A) complaints,

(B) voter's registration,

(C) citizenship information and education,

(D) advocacy services, and

(E) guardianship;

(30) to receive counseling concerning the use of money;

(31) to possess and to use money in personal and individualized ways or be learning to do so;

(32) to access all financial records regarding the individual's funds;

(33) to have privacy during treatment and care of personal needs;

(34) to have privacy during visits by his or her spouse if living apart;

(35) to share a room when both the husband and wife are living in the same residence;

(36) to be free from serving as a source of labor when residing with persons other than family members;

(37) to communicate, associate and to meet privately with individuals of his or her choice, unless this violates the rights of another individual;

(38) to participate in social, recreational, and community group activities;

(39) to have his or her LAR involved in activities including but not limited to:

(A) being informed of all rights and responsibilities when the individual is enrolled in the program provider's program as well as of any changes in rights or responsibilities before they become effective;

(B) participating in the planning for HCS Program services; and

(C) advocating for all rights of the individual;

(40) to be informed of the individual's option to transfer to other HCS Programs as chosen by the individual or LAR as often as desired;

(41) to be informed orally and in writing of any charges assessed by the provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status;

(42) to complain to the department when the provider's resolution of a complaint is unsatisfactory to the individual or LAR,

and to be informed of the TDMHMR telephone number to initiate complaints (1-800-252-8154).

(c) The program provider shall provide the individual, the individual's LAR, or family member, with a written copy of those rights listed in subsection (b) of this section.

(d) The program provider shall document that the individual, LAR, or family member is informed orally of the rights described in subsection (b) of this section and is presented with a current copy of those rights:

(1) upon enrollment of the individual in the program provider's program;

(2) upon revisions of subsection (b) of this section by the department; and

(3) upon request.

(e) The documentation required in subsection (d) of this section shall be signed by:

(1) the individual or the individual's LAR;

(2) the program provider or employee who explained the rights to the individual, LAR, or family member; and

(3) a third-party witness.

§419.174. Certification Principles: Service Delivery.

The program provider shall:

(1) enroll eligible applicants who have chosen the program provider on a zero-reject basis;

(2) enroll eligible applicants without regard to age, sex, race or level of disability;

(3) provide or obtain as needed and without delay all HCS Program services;

(4) ensure that each applicant or individual, or LAR on behalf of the applicant or individual, has chosen where the individual or applicant is to reside from available options consistent with the individual's needs;

(5) encourage involvement of the individual's LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) ensure that a minor individual who is unable to live in the natural or adoptive family home is supported in a family-like environment, such as a foster family;

(7) justify the reasons for serving a minor individual outside the natural or adoptive family home;

(8) make every possible effort to return a minor individual being served outside his or her natural or adoptive family home to his or her family home as soon as possible;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's IDT, documented in the ISP, and approved by program provider's chief executive officer;

(10) ensure that an individual's residential, educational, and work settings are changed as necessitated by changes in the individual's age, skills, attitudes, likes, dislikes, and conditions;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that each individual has a current:

(A) IPC;

(B) ISP; and

(C) LOC and LON;

(13) ensure that the ISP of each individual is different from others and reflects the results of assessments of the individual's and his or her family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than what services are available;

(14) ensure that the ISP of each individual includes service objectives derived from assessments of the individual's strengths, personal goals, and needs and are described in observable, measurable, or outcome-oriented terms;

(15) ensure that the ISP and IPC for each individual is reviewed and completed at least annually by the:

(A) individual;

(B) individual's LAR or members of the individual's family, as appropriate; and

(C) other members of the IDT, as described in §419.175 of this title (relating to Interdisciplinary Team Operations);

(16) ensure that each individual's progress or lack of progress toward goals and objectives is documented in observable, measurable, or outcome-oriented terms;

(17) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support when the individual chooses to develop such relationships;

(18) unless contraindications are documented with justification by the IDT, ensure that a school-age individual receives educational services in a six-hour-per-day program five days a week provided by the local school district and that no individual receives educational services at a state school/state center educational setting;

(19) unless contraindications are documented with justification by the IDT, ensure that an adult individual under retirement age is participating, based on choice, in a day activity which promotes achievement of ISP outcomes for at least six hours per day, five days per week;

(20) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on local, state and federal regulations, including Department of Labor regulations, as applicable.

(21) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(22) ensure that individuals provide no training, supervision or care to other individuals unless they are qualified and compensated in accordance with local, state and federal regulations, including Department of Labor regulations;

(23) unless contraindications are documented with justification by the IDT, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including but not limited to small group and individual play with peers without disabilities;

(24) unless contraindications are documented with justification by the IDT, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days-off, consistent with the individual's choice and the routines of other members of the community;

(25) unless contraindications are documented with justification by the IDT, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with an individual's or his or her LAR's choice;

(26) unless contraindications are documented with justification by the IDT, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(27) assist the individual to meet as many of his or her needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(28) ensure that each individual lives in a home that is a typical residence within the community;

(29) ensure that the residence, neighborhood and community meet the needs and choices of each individual and provide an environment that assures the health, safety, comfort and welfare of the individual;

(30) unless contraindications are documented with justification by the IDT, assist an individual to live near family and friends and needed or desired community resources consistent with the individual's choice, if possible;

(31) ensure that an individual experiences residential relocation in a planned manner as indicated by his or her needs;

(32) provide adaptive aids including the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs and in compliance with the definition in the *HCS Service Definitions and Billing Guidelines*;

(33) ensure that adaptive aids costing less than $500 each are authorized by the IDT and that adaptive aids costing more than $500 each are authorized by the IDT based on written evaluations and recommendations by the individual's physician, a licensed occupational or physical therapist, a psychologist, a licensed nurse, a licensed dietician, or a licensed speech and language pathologist qualified to assess the individual's need for the specific adaptive aid;

(34) ensure that the HCS case manager is employed by the program provider, serves no more than 30 individuals, and that case management is available as determined by individual need;

(35) provide case management in compliance with the definition in the *HCS Service Definitions and Billing Guidelines* including:

(A) coordinating the development and implementation of the individual's ISP;

(B) coordinating the delivery of the individual's IPC;

(C) coordinating and monitoring the delivery of HCS Program services and services from other sources;

(D) integrating various aspects of services delivered under the HCS Program and through other sources;

(E) recording each individual's progress;

(F) developing a pre-discharge plan;

(G) record keeping; and

(H) arranging transportation.

(36) ensure that the HCS case manager provides only case management and that the provision of such is exclusive of any other assignments or services pertaining to an individual;

(37) ensure that the primary purpose of case management is to provide a single identified person accountable to the individual and his or her LAR for coordinating the individual's overall program;

(38) ensure that the individual and his or her LAR are informed of the name and telephone number of the HCS case manager and are informed whenever there is a change in the case manager or the case manager's telephone number;

(39) ensure that the HCS case manager informs the individual and his or her LAR about the individual's ISP, the individual and his or her LAR agree to changes in the individual's ISP prior to implementing the changes, and the HCS case manager is available to answer questions asked by the individual or by his or her LAR about the ISP;

(40) provide the following counseling and therapy services in compliance with the definition in the *HCS Service Definitions and Billing Guidelines* as determined by individual needs:

(A) audiology services;

(B) speech/language pathology services;

(C) occupational therapy services;

(D) physical therapy services;

(E) dietary services;

(F) social work services; and

(G) psychology services.

(41) provide day habilitation, which may not include services funded by other sources such as §110 of the Rehabilitation Act of 1973 or §602(16) and (17) of the Individuals with Disabilities Education Act, as determined by the individual's needs and in compliance with the definition in the *HCS Service Definitions and Billing Guidelines* including:

(A) assisting individuals in acquiring, retaining, and improving self-help, socialization, and adaptive skills necessary to reside successfully in the community;

(B) providing individuals with age-appropriate activities that enhance self-esteem and maximize functional level;

(C) complementing any counseling and therapies listed in the IPC;

(D) reinforcing skills or lessons taught in school, therapy, or other settings;

(E) training and support activities which promote the individual's integration and participation in the community;

(F) providing assistance for the individual who cannot manage his or her personal care needs during day habilitation activities; and

(G) providing transportation during day habilitation activities as necessary for the individual's participation in day habilitation activities.

(42) ensure that dental treatment is provided as determined by individual needs and is delivered in compliance with the *HCS Service Definitions and Billing Guidelines* including:

(A) emergency dental treatment;

(B) preventive dental treatment;

(C) therapeutic dental treatment; and,

(D) orthodontic dental treatment, excluding cosmetic orthodontia.

(43) provide minor home modifications when determined necessary by the IDT for the health and safety of the individual and in compliance with the *HCS Service Definitions and Billing Guidelines*, including:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations/additions, including repair and maintenance.

(44) provide nursing services as determined by individual needs and in compliance with the *HCS Service Definitions and Billing Guidelines* and ensure that nursing services consist of performing health care procedures and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health data and information;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by licensed nursing personnel; and

(G) delegating and monitoring of tasks assigned to other service providers by a registered nurse in accordance with state law.

(45) ensure that supported home living is available to an individual living in his or her own home or the home of his or her natural or adoptive family members, or to an individual receiving foster care services from TDPRS;

(46) ensure that supported home living is provided in accordance with the definition in the *HCS Service Definitions and Billing Guidelines* and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of counseling and therapy activities;

(G) assistance with medications and the performance of tasks delegated by a Registered Nurse;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation.

(47) ensure that HCS foster/companion care is provided:

(A) by a foster/companion care provider who lives in the residence in which no more than three individuals or other persons receiving similar services are living at any one time; and

(B) in a residence in which the program provider does not hold a property interest;

(48) ensure that HCS foster/companion care is provided in accordance with the definition in the *HCS Service Definitions and Billing Guidelines* and includes:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of counseling and therapy activities;

(G) assistance with medications and the performance of tasks delegated by a Registered Nurse;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors; and

(J) habilitation, exclusive of day habilitation.

(49) ensure that supervised living is provided:

(A) by a supervised living provider who is present in the residence and able to respond to the needs of individuals whenever an individual is present in the residence, and

(B) in a residence in which no more than three individuals receiving supervised living or other persons receiving similar services are living at any one time; and

(C) in a residence in which the program provider holds a property interest.

(50) ensure that supervised living is provided in accordance with the definition contained in the *HCS Service Definitions and Billing Guidelines* and includes:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of counseling and therapy activities;

(G) assistance with medications and the performance of tasks delegated by a Registered Nurse;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors;

(J) habilitation, exclusive of day habilitation;

(K) licensed nursing care.

(51) ensure that residential support is provided:

(A) by a residential support provider who is present in the residence and awake whenever an individual is present in the residence;

(B) by residential support providers assigned on a daily shift schedule that includes at least one complete change of provider staff each day;

(C) in a residence in which no more than four individuals and other persons receiving similar services are living at any one time and which is approved in accordance with §419.182 of this subchapter (relating to Department Approval of Residences); and

(D) in a residence in which the program provider holds a property interest.

(52) ensure that residential support is provided in accordance with the definition contained in the *HCS Service Definitions and Billing Guidelines* and includes the following elements:

(A) direct personal assistance with activities of daily living (grooming, eating, bathing, dressing, and personal hygiene);

(B) assistance with meal planning and preparation;

(C) securing and providing transportation;

(D) assistance with housekeeping;

(E) assistance with ambulation and mobility;

(F) reinforcement of counseling and therapy activities;

(G) assistance with medications and the performance of tasks delegated by a Registered Nurse;

(H) supervision of individuals' safety and security;

(I) facilitating inclusion in community activities, use of natural supports, social interaction, participation in leisure activities, and development of socially valued behaviors;

(J) habilitation, exclusive of day habilitation; and

(K) licensed nursing care;

(53) if four individuals and other persons receiving similar services live in a residence at any one time, ensure that the provision of residential support has been approved for at least one of the individuals in accordance with §419.158 of this subchapter (relating to Department Review of Individual Plan of Care);

(54) ensure that respite is available on a 24-hour increment or any part of that increment to individuals living in their family homes and are provided as determined by individual needs;

(55) ensure that respite is provided in compliance with the definition contained in the *HCS Service Definitions and Billing Guidelines* and includes:

(A) training in self-help and independent living skills;

(B) provision of room and board when respite is provided in a setting other than the individual's normal residence;

(C) support for individuals who are eligible for respite and who are in need of emergency or planned short-term care;

(D) assistance with on-going provision of needed waiver services, excluding supported home living; and,

(E) assistance with securing and providing transportation.

(56) provide respite in the residence of an individual or in other locations, including residences in which HCS foster/companion care, supervised living, or residential support is provided or in a respite facility, that meet HCS programmatic requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual;

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or the individual's LAR and ensure that the interdisciplinary team for each individual makes a determination that the respite visit will cause no threat to the health, safety and welfare, or rights and needs of that individual.

(B) If respite is provided in the residence of another individual, the provider must ensure that:

(i) no more than three individuals receiving HCS program services and persons receiving similar services for which the provider is reimbursed are served in a residence in which HCS foster/companion care is provided;

(ii) no more than three individuals receiving HCS program services and persons receiving similar services for which the provider is reimbursed are served in a residence in which only supervised living is provided; and

(iii) no more than four individuals receiving HCS program services and persons receiving similar services for which the provider is reimbursed are served in a residence in which residential support is provided.

(C) If respite is provided in a respite facility, the provider must:

(i) ensure that the facility is not a residence,

(ii) ensure that no more than six individuals receive services in the facility at any one time and,

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility

when more than three individuals receive services in the facility at any one time.

(D) The provider must not provide respite services in an institution.

(57) provide supported employment (employment in an integrated work setting–generally a setting where no more than one employee or 3% of the work force members have disabilities) as determined by individual needs and ensure that supported employment, provided away from the individual's residence, is delivered in compliance with the definition contained in the *HCS Service Definitions and Billing Guidelines*, and includes:

(A) on-going individualized support services needed to sustain paid work by the individual, including supervision and training;

(B) compensation by the employer to the individual in accordance with the Fair Labor Standards Act;

(C) provision of services not available or funded through the state education agency or a state rehabilitation agency.

§419.175. Certification Principles: Interdisciplinary Team Operations.

(a) The program provider must maintain a system of service planning and service delivery that is continuously responsive to changes in the individual's condition, personal goals, abilities, and needs.

(b) The program provider must ensure that, at minimum, the individual's IDT consists of the individual and his or her LAR or family member, the HCS case manager, and a nurse; and, when necessary to the service planning process, the team includes other persons who may be assigned to provide or who are currently providing direct services to the individual, a physician and other professional personnel, and other persons chosen by the individual or LAR.

(c) The program provider must ensure that IDT members necessary to address the needs of the individual attend or have verifiable input into any meetings regarding the individual's ISP or IPC.

(d) The program provider must maintain current information about the individual that includes a description of the individual's service needs and justification for the service components included in the individual's IPC.

(e) The program provider must maintain current service information that clearly communicates appropriate changes as they occur pertaining to the development and delivery of the individual's IPC and ISP.

(f) The individual's IDT must use objective, observable, or measurable criteria to define the need for services included in the individual's IPC.

(g) The program provider shall promote the development and maintenance of effective communication among its personnel, service providers and the individual's IDT.

(h) The program provider must assess the legal status of an individual at least annually and take actions as necessary based on the assessment to support the individual in accessing appropriate resources for assistance.

(i) The IDT must review at least annually the individual's physical condition, health status and other assessments and take actions based on the results of each review.

§419.176. Certification Principles: Discharge from Services.

(a) Within ten calendar days of permanent discharge of an individual, the program provider must submit the following to TDMHMR for approval:

(1) Request for Permanent Discharge Form, copies of which are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668;

(2) written justification for the discharge; and

(3) a written discharge plan documenting:

(A) that the individual or his or her LAR was informed of the individual's option to transfer to another program provider and the consequence of permanent discharge for receiving future HCS Program services; and

(B) the service linkages that are in place following the individual's discharge from the HCS Program.

(b) The program provider must review the status of an individual who is temporarily discharged at least every 90 calendar days following the effective date of the temporary discharge and document in the individual's record the reasons for continuing the discharge. If the temporary discharge continues 270 calendar days, the program provider must submit written documentation of the 90, 180, and 270 calendar day reviews to the department for review and approval to continue the temporary discharge status.

(c) At least annually the program provider shall review the reasons for any discharges to identify any implications for improvement of the program provider's service delivery.

§419.177. Certification Principles: Personnel Operations.

(a) The program provider must ensure the continuous availability of trained and qualified employees and/or contractual service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and personnel or subcontractors meet state certification, licensure or regulation for any tasks performed or services delivered in part or in entirety for the HCS Program.

(c) The program provider must implement and maintain a plan for initial and continuous training of personnel with periodic updates as required or indicated by the needs of the individuals.

(d) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and/or communicable diseases.

(e) The program provider's operations must prevent:

(1) conflicts of interest between program provider personnel and individuals;

(2) financial impropriety toward individuals;

(3) abuse, neglect, or exploitation of an individual; or

(4) threats of harm or danger toward an individual's possessions.

(f) No later than September 1, 2000, the program provider must ensure that the provision of direct services to individuals is managed and supervised by an employee or subcontractor who has a minimum of three years work experience in planning and providing direct services to people with mental retardation or

other developmental disabilities as verified by written professional references.

(g) In evaluating the qualifications of personnel for positions requiring the equivalent of a high school education, the program provider shall assure that the personnel or service provider involved is at least age 18 and either possesses a General Equivalency Degree (GED) or successfully completes a proficiency evaluation of experience and competence to perform the job tasks. The evaluation of experience and competency shall include:

(1) a written competency-based assessment of the applicant's ability to document service delivery and observations of the individuals to be served; and,

(2) at least three personal references from persons not related by blood which indicate the applicant's ability to provide a safe, healthy environment for the individuals being served.

(h) The program provider must ensure that the HCS case manager is currently qualified by having a:

(1) bachelor's degree with major specialization in social, behavioral or human services or related fields;

(2) high school diploma or GED with related volunteer experience comparable to two years full-time work in a social, behavioral, or human services or related fields;

(3) high school diploma or GED with a minimum of two years full-time work experience in social, behavioral, human services or related work; or

(4) license by the State of Texas as an LVN or RN with one year of experience in human services.

(i) The program provider shall ensure that each provider of counseling and therapies is currently qualified by being licensed and/or certified by the State of Texas in the specific area for which services are delivered or be providing services in accordance with state law. Psychologists employed by State Operated Community Service Divisions and Community MHMR Centers are required to be licensed in accordance with State law or certified as described in Chapter 405 Subchapter D (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services).

(j) The program provider shall ensure that the provider of day habilitation or supported employment is currently qualified by having a high school diploma or its equivalent as described in subsection (g) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated by a Registered Nurse are performed in accordance with state law.

(k) The program provider must ensure that dental treatment is provided by a dentist currently qualified by being licensed in the State of Texas by the Texas State Board of Dental Examiners in accordance with Texas Revised Civil Statutes Article 4543.

(l) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by:

(1) being licensed as a registered nurse in Texas by the Board of Nurse Examiners for the State of Texas; or

(2) being licensed as a licensed vocational nurse in Texas by the Board of Vocational Nurse Examiners for the State of Texas.

(m) The program provider must ensure that supported home living, HCS foster/companion care, supervised living, residential support and respite services providers are currently qualified by having a high school diploma or its equivalent as described in subsection (h) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated to the provider by a Registered Nurse are performed in accordance with state law.

(n) The program provider shall comply with Texas Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities.

§419.178. Certification Principles: Quality Assurance.

(a) The program provider must pursue and promote the active and maximum cooperation with generic service agencies, other service providers, individuals and advocates in planning and developing a full range of services and resources to match the needs of the individual as those needs are identified.

(b) The program provider must ensure a personalized service delivery program based upon the choices made by each individual and those choices that are available to persons without mental retardation and other disabilities.

(c) The program provider shall:

(1) conduct an initial and, thereafter, at least an annual on-site inspection of all residences in which foster/companion care, supervised living, or residential support is provided to assure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives; and

(2) ensure that the individual's IDT reviews the results of the on-site inspection initially and at least annually thereafter and takes action as required to assure that the residence is appropriate and meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained for each residence in which foster/companion care, supervised living or residential support is provided;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location and the individuals living in the residence; and

(3) the individuals and service provider staff follow the plans during drills and actual emergencies.

(e) The program provider must assure that a residence in which four individuals live:

(1) is in continuous compliance with the appropriate chapter of the most recent edition of the Life Safety Code published by the National Fire Protection Association or the edition used by the authority having jurisdiction for the location of the residence;

(2) is certified by the authority having jurisdiction as being in compliance with applicable codes based on an inspection by the authority having jurisdiction prior to initiating services in the residence and at least annually thereafter; and

(3) is in continuous compliance with all applicable health and safety laws, ordinances, and regulations.

(f) The program provider shall establish an on-going consumer/advocate advisory committee composed of individuals, indi-

viduals' LARs, community representatives, and family members to assist the program provider at least quarterly in:

(1) evaluating and addressing the satisfaction of individuals or individuals' LARs with the program provider's services;

(2) soliciting, addressing, and reviewing complaints from individuals or their LARs about the operations of the program provider; and

(3) participating in a continuous quality improvement audit of the program provider's operations and offering recommendations for improvement of program operations for action by the program provider as necessary.

(g) The program provider shall make available all records, reports and other information related to the delivery of HCS Program services as requested by the department, other authorized agencies, or HFCA and deliver such items, as requested, to a specified location.

(h) The program provider shall conduct at least annually, a satisfaction survey of individuals and their LARs and take action regarding any areas of dissatisfaction.

(i) The program provider shall publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families or LARs

(2) program provider's personnel or service providers; and

(3) the general public.

(j) The program provider must ensure that:

(1) the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to the Texas Department of Protective and Regulatory Services (DPRS) and are provided with the DPRS toll-free telephone number (1-800-647-7418) in writing; and

(2) all service provider personnel are instructed to immediately report allegations of abuse, neglect, or exploitation to DPRS and are provided with the DPRS toll-free telephone number (1-800-647-7418) in writing.

(k) Upon notification of an allegation of abuse, neglect or exploitation, the program provider shall take necessary actions to secure the safety of the alleged victim(s) involved in the allegation, including but not limited to:

(1) obtaining immediate and on-going medical or psychological services for the alleged victim as necessary;

(2) securing the safety of the alleged victim and, if necessary, restricting access by the alleged perpetrator of the abuse, neglect or exploitation to the alleged victim pending investigation of the allegation; and

(3) notifying the alleged victim, if appropriate, the individual's LAR; and, with the consent of the individual or the LAR, the individual's correspondent.

(l) The program provider personnel shall cooperate with the DPRS investigation of an allegation of abuse, neglect, or exploitation, including but not limited to:

(1) providing complete access to all HCS Program service sites owned, operated, or controlled by the program provider; and

(2) providing complete access to individuals and program provider personnel.

(m) In all respite facilities and all residences where foster/companion care, supervised living, and residential support are provided, program providers must post in a conspicuous location:

(1) the name, address and telephone number of the program provider;

(2) the effective date of the TDMHMR Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must report the outcome of all DPRS investigations of abuse and neglect to the department in accordance with department procedures within 10 calendar days of the conclusion of the investigation.

(o) If abuse, neglect, or exploitation is confirmed by the DPRS investigation, the program provider shall take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the DPRS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must review incidents of confirmed abuse, neglect, or exploitation, complaints, and unusual incidents to identify program operations modifications that will prevent the reoccurrence of such incidents and improve service delivery.

(q) The program provider shall ensure that all personal information concerning an individual, such as lists of names, addresses and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the HCS Program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider shall apply a consistent method in assessing charges against the individual's personal funds that ensures that charges for items or services, including but not limited to room and board, are reasonable and comparable to the costs of similar items and services generally available in the community.

(s) The program provider shall assure the individual or his or her LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds prior the charges being assessed.

(t) The program provider shall not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS Program.

(u) At the written request of an individual or his or her LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(v) When behavior management techniques involving restriction of individual rights or intrusive techniques are used, the program

provider shall ensure that the implementation of such techniques includes:

(1) approval by the individual's IDT;

(2) written consent of the individual or LAR;

(3) written notification to the individual or LAR of the right to discontinue participation at any time;

(4) assessment of the individual's needs and current level/severity of the targeted behavior(s);

(5) use of techniques appropriate to the level/severity of the targeted behavior(s);

(6) a written program developed by a psychologist with input from the individual, LAR, the individual's IDT, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior(s);

(8) allowance for the decrease in the use of intervention based on behavioral data;

(9) allowance for revision of the program when desired behavior(s) are not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least an annual review by the IDT to determine the effectiveness of the program and the need to continue the techniques.

§419.179. Corrective Action and Program Provider Sanctions.

(a) If the department determines that the program provider is in compliance with all certification principles, including all principles found out of compliance in the previous review, at the end of the review exit conference, the department certifies the program provider and no action by the program provider is required.

(b) If the department determines that the program provider is out of compliance with ten percent or fewer of the certification principles at the end of the review exit conference, but the program provider is in compliance with all principles found out of compliance in the previous review, the program provider must submit a corrective action plan to the department within 14 calendar days after the program provider receives the department's certification report.

(1) The corrective action plan must specify a date by which corrective action will be completed, and such date must be no later than 90 calendar days after the certification review exit conference.

(2) If the program provider submits a corrective action plan in accordance with this subsection and the plan is approved by the department, the department certifies the program provider. The department evaluates the program provider's required corrective action during the department's first review of the program provider after the corrective action completion date.

(3) If the program provider does not submit a corrective action plan in accordance with this subsection or the plan is not approved by the department, the department initiates termination of the program provider's Waiver Program Provider Agreement.

(c) If the department determines that the program provider is out of compliance with ten percent or fewer of the certification principles at the end of the review exit conference, including any principles found out of compliance in the previous review, the department:

(1) certifies the program provider, if the program provider:

(A) presents evidence before the end of the current certification period that it is in compliance with all principles found out of compliance in the previous review; and

(B) submits a corrective action plan in accordance with subsection (b) of this section addressing any new principles found out of compliance; or

(2) does not certify the program provider and initiates termination of the program provider's Waiver Program Provider Agreement, if the provider does not:

(A) present evidence before the end of the current certification period that it is in compliance with all principles found out of compliance in the previous review; and

(B) submit a corrective action plan in accordance with subsection (b) of this section addressing any new principles found out of compliance.

(d) If the department determines that the program provider is out of compliance with between ten and twenty percent of the certification principles at the end of the review exit conference, including any principles found out of compliance in the previous review, the department does not certify the program provider and applies Level I sanctions against the program provider.

(1) Under Level I sanctions, the program provider must complete corrective action within 30 calendar days after the review exit conference; and the department conducts an on-site follow-up review within 30 to 45 calendar days after the review exit conference.

(2) Based on the results of the follow-up review, the department:

(A) certifies the program provider, if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance; or

(B) denies certification of and implements vendor hold against the program provider if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance.

(3) If the department implements vendor hold against the provider, the department conducts a second on-site follow-up review between 30 and 45 calendar days from the effective date of the vendor hold. Based on the results of the review, the department:

(A) certifies the program provider and removes the vendor hold if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance; or

(B) denies certification of the program provider and initiates termination of the program provider's Waiver Program Provider Agreement if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance.

(e) If the department determines that the program provider is out of compliance, at the end of the review exit conference, with twenty or more percent of the certification principles, including any principles found out of compliance in the previous review, the

department does not certify the program provider, implements vendor hold, and applies Level II sanctions against the program provider.

(1) Under Level II sanctions:

(A) the program provider must complete corrective action within 30 calendar days after the review exit conference; and

(B) the department conducts an on-site follow-up review within 30 to 45 calendar days after the required correction date.

(2) Based on the results of the follow-up review, the department:

(A) certifies the program provider and removes the vendor hold, if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with all principles found out of compliance; or

(B) denies certification of the program provider and initiates termination of the program provider's Waiver Program Provider Agreement if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with all principles found out of compliance.

(f) Notwithstanding subsections (b)-(e) of this section, if the department determines that a hazard to the health, safety, or welfare of one or more individuals exists and the hazard is not eliminated before the end of the review exit conference, the department denies certification of the program provider, initiates termination of the program provider's Waiver Program Provider Agreement, implements vendor hold against the program provider, and coordinates the provision of alternate services for individuals receiving HCS program services from the program provider. A hazard to health, safety or welfare is any condition which could result in life-threatening harm, serious injury, or death of an individual or other person within 48 hours. If hazards are identified by the department during a review and the program provider corrects the hazards before the end of the review exit conference, the correction will be designated in the department's report of the review.

(g) Notwithstanding subsections (b)-(e) of this section, if the department determines that a program provider's failure to comply with one or more of the certification principles is of a serious or pervasive nature, the department may, at its discretion, take any action described in this section against the program provider.

§419.180. Program Provider's Right to Administrative Hearing.

(a) A program provider may request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions), if the department takes or proposes to take the following action:

(1) vendor hold;

(2) termination of the provider agreement;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's claim for payment, including denial of a retroactive LOC and denial of a proposed LON.

(b) If the basis of an administrative hearing requested this section is a dispute regarding a LON assignment, the program provider may receive an administrative hearing only if reconsideration was requested by the program provider in accordance with §419.163 of this title (relating to Reconsideration of Level of Need Assignment). §419.181 Other Provider Responsibilities. Program providers must comply with requirements of the Omnibus Budget Reconciliation Act of 1990, 42 United States Code §139a(w)(1), regarding advanced directives under state plans for medical assistance.

§419.182. Department Approval of Residences.

(a) Prior to initiating the residential support service component for an individual, the program provider must request and obtain the department's approval of a residence in which residential support is to be provided.

(b) To request approval of a residence in which a maximum of four individuals or other persons receiving similar services will live and at least one individual will receive residential support, the program provider must submit the following documentation to the department for the department's review:

(1) the address of the residence at which the provider intends to provide residential support;

(2) the date on which the provider intends to initiate residential support in the residence;

(3) the written certification required by §419.178(e) of this title (relating to Certification Principles: Quality Assurance);

(4) written verification from the program provider that the residence to be approved is not the residence of any direct service provider.

(c) The department may approve a residence described in subsection (b) of this section if the department:

(1) authorizes provision of residential support for at least one individual who will live in the residence; and

(2) determines that the program provider has demonstrated compliance with §419.178(e) of this title (relating to Certification Principles: Quality Assurance).

(d) Program providers may not initiate residential support services in a residence until the department approves the residence.

This 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 September 20, 1999.

TRD-9906096
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 206-4516

♦ ♦ ♦

Subchapter P. HOME AND COMMUNITY-BASED SERVICES–OBRA (HCS-O) PROGRAM

25 TAC §§419.651-419.662, 419.665-419.678

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§419.651-419.662, 419.665-419.678 of new Chapter 419, Subchapter P, concerning home and community-based services–OBRA (HCS-O) program.

The new subchapter replaces existing Chapter 409, Subchapter E, concerning home and community-based waiver services–OBRA (HCS-O), which is proposed contemporaneously for repeal in this issue of the *Texas Register*. The new subchapter is part of a comprehensive reorganization of chapters and sub-

chapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature). The new subchapter includes provisions that are responsive to the 76th Legislature's direction to reduce the average cost of HCS-O services during the current biennium.

The existing subchapter has been revised and extensively reorganized and new requirements have been added. Rules related to cost-reporting by program providers were previously administratively transferred to the Texas Health and Human Services Commission and, therefore, are being removed from the new subchapter.

The new subchapter describes a fundamental change in the process for the initial enrollment of individuals in the Home and Community-Based Services–OBRA (HCS-O) program. The role of local mental retardation authorities (MRAs) is expanded to include responsibility for developing an individual's initial plan of care and recommending an individual's level of care and initial plan of care to the department for approval. Currently, HCS-O program providers are responsible for completing these initial enrollment activities.

Under the current rules, no more than three individuals receiving HCS-O services or similar services for which the service provider is reimbursed may live in a residence at any one time. In order to prevent potential disruption in a living arrangement of a current HCS-O consumer who shares a home with consumers in the HCS Program, the proposal allows an HCS-O consumer receiving services in a residence that is not a "foster/companion care home" to live with three other individuals when one of the individuals requires HCS residential support (i.e., requires supervision and assistance from a service provider who is present and awake when that individual is in the residence–including during normal sleeping hours–to assure the individual's health and safety). This change is consistent with changes being proposed contemporaneously for the HCS Program.

The provider sanctions process is revised in the proposed new subchapter to reduce the levels of sanctions from three to two levels, revise the criteria for application of program provider sanctions, and reduce the number of follow-up visits conducted by the department prior to placing the program provider on vendor hold.

The HCS-O Consumer Principles for Evidentiary Certification have been incorporated into the subchapter as §419.669-419.674. The principles have been revised to conform with the format and style requirements of the *Texas Register* and to incorporate minor clarifications to the existing language. Principles have been added which relate to program provider operations, including requirements to assure direct service delivery is supervised and managed by an individual with previous experience in planning and delivering services to the program population, requirements related to residential settings serving four persons, and requirements related to alleged abuse, neglect, and exploitation.

In addition, the new subchapter includes clarification of the department's process for utilization review of individual plans of care, updated and detailed provider payment procedures and limitations, documentation requirements for billing for minor home modifications, and new procedures related to disputed enrollment effective dates.

William R. Campbell, chief financial officer, has determined that for each year of the first five years the proposed new subchapter is in effect, enforcing or administering the subchapter is not anticipated to have a significant fiscal impact on state or local governments.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five-year period the new subchapter is in effect, the public benefit is expected to be the provision of HCS-O services and supports which more closely address the individual needs of consumers. It is not anticipated that the new subchapter will have an adverse economic effect on small businesses or micro businesses because reimbursement to a program provider will be sufficient to compensate the provider for the services covered under this rule. The probable economic cost to HCS-O program providers is the cost of complying with requirements of the National Fire Protection Association (NFPA) *Life Safety Code* if four individuals are served in a single residential setting. It is not anticipated that the proposed new subchapter will affect a local economy.

A hearing to accept oral and written testimony from members of the public concerning the proposed amendments is scheduled for 1:30 p.m., Tuesday, October 26, 1999, in the auditorium of the department's Central Office, Building 2, 909 West 45 Street, Austin. Persons requiring an interpreter for the deaf or hearing impaired should contact the TDMHMR Central Office operator at least 72 hours prior to the hearing at TDD (512) 206-5330. Persons requiring other accommodations for a disability should notify the Office of Policy Development, at least 72 hours prior to the hearing at (512) 206-4516 or at the TDY phone number of Texas Relay, 1-800-735-2988.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. 12668, Austin, Texas 78711, or by fax to 512/206-4750, within 30 days of publication of this notice.

The new rules are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Board of Mental Health and Mental Retardation with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a), which provide the Texas Health and Human Services Commission (THHSC) with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of THHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. THHSC has delegated to the department the authority to operate the HCS-O program.

Texas Health and Safety Code, §532.015, Texas Government Code, §531.021(a), and the Texas Human Resources Code, §32.021(a) and (c), are affected by the proposed new subchapter.

§419.651. Purpose.

The purpose of this subchapter is to describe:

(1) the eligibility criteria for applicants seeking enrollment in the Home and Community-based Services–OBRA (HCS-O) program;

(2) the process for enrollment of applicants in the HCS-O program

(3) the process for certifying and sanctioning program providers in the HCS-O program; and

(4) requirements for reimbursement of program providers.

§419.652. Application.

This subchapter applies to all local mental retardation authorities (MRAs) and HCS-O program providers.

§419.653. Definitions.

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

(1) Applicant–A Texas resident seeking services in the HCS-O program.

(2) Department–The Texas Department of Mental Health and Mental Retardation

(3) HCS-O–The Home and Community-Based Services–OBRA program operated by the department as authorized by the Health Care Financing Administration (HCFA) in accordance with §1915(c) of the Social Security Act.

(4) HCS-O case manager–An employee of the program provider who is responsible for the overall coordination and monitoring of services provided to an individual enrolled in the HCS-O program.

(5) ICF/MR–The Intermediate Care Facilities Program for Persons with Mental Retardation or Related Conditions.

(6) IDT (interdisciplinary team)–A planning team constituted by the program provider for each individual consisting of, at a minimum, the individual and LAR, HCS-O case manager, and a nurse. Other applicable persons assigned to provide or who are currently providing direct services to the individual and, as appropriate, a physician and other professional personnel may be included as team members as necessary.

(7) IPC (individual plan of care)–A document that describes the type and amount of each HCS-O program service component to be provided to an individual and describes medical and other services and supports to be provided through non-program resources.

(8) IPC cost–Estimated annual cost of program services included on an IPC.

(9) IPC year–A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(10) Individual–A person enrolled in the HCS-O program.

(11) ISP (individual service plan)–A document developed by the IDT, from which the IPC is derived, which describes the assessments, deliberations, conclusions, justifications and outcomes regarding the specific services provided to the individual by the program provider.

(12) LAR (legally authorized representative)–A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(13) LOC (level of care)–A determination given to an individual as part of the eligibility determination process based on data submitted on the MR/RC Assessment.

(14) MRA (mental retardation authority)–An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation, and for supervising and ensuring the provision of mental retardation services to people with mental retardation in one or more local service areas.

(15) MR/RC Assessment–A form used by the department for LOC determination and LON assignment.

(16) PDP (person-directed plan)–A plan developed for an applicant in accordance with §419.661 of this title (relating to Process for Enrollment of Applicants) that describes a person's desired outcomes and identifies the supports and services necessary to achieve them.

(17) Program provider–An entity that provides HCS-O program services under a waiver program provider agreement with the department as defined in Chapter 419, Subchapter O of this title (relating to Enrollment of Medicaid Waiver Program Providers)

(18) Service coordinator–An employee of an MRA responsible for assisting an individual in accessing medical, social, educational, and other appropriate services including HCS-O program services

(19) Service planning team–A planning team constituted by an MRA consisting of an applicant, the applicant's LAR, service coordinator, and other persons chosen by the applicant and the LAR.

§419.654. Description of the Home and Community-Based Services-OBRA (HCS-O) Program.

(a) The Home and Community-based Services–OBRA (HCS-O) program is a Medicaid waiver program approved by the Health Care Financing Administration (HCFA) pursuant to §1915(c) of the Social Security Act. It provides community-based services and supports to eligible individuals as an alternative to the Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICF/MR) Program. The HCS-O program is operated by the Texas Department of Mental Health and Mental Retardation under the authority of the Texas Health and Human Services Commission.

(b) Enrollment in the HCS-O program is limited to the number of individuals in specified target groups and to the geographic areas approved by HCFA.

(c) HCS-O program service components, described in §419.670 of this title (relating to Certification Principles: Service Delivery), are selected for inclusion in an individual's Individual Plan of Care (IPC) to assure the individual's health and welfare in the community, supplement rather than replace that individual's natural supports and other community services for which the individual may be eligible, and prevent the individual's admission to institutional services. The following service components are available under the HCS-O program:

(1) case management

(2) counseling and therapies provided by appropriately licensed professionals including:

(A) physical therapy;

(B) occupational therapy;

(C) speech and language pathology;

(D) social work;

(E) psychology; and

(F) dietary services;

(3) nursing care provided by licensed nurses;

(4) habilitation, including:

(A) supported living, excluding room and board;

(B) habilitation training;

(C) pre-vocational training; and

(D) supported employment, if the service has been denied or is otherwise unavailable to an individual through a program operated by a state rehabilitation agency or the public school system;

(5) Respite is available up to a maximum of 30 days per IPC year.

(6) Adaptive aids are provided up to a maximum of $5,000 per IPC year.

(7) Minor home modifications are provided up to a lifetime maximum of $7,500, after which up to $300 per IPC year is provided for maintenance or additional modifications.

(d) The department specifies, through the HCS-O automated enrollment and billing system, the counties the program provider is authorized to serve pursuant to each waiver program provider agreement. The counties specified for a single provider agreement must be contiguous. The program provider may enter into more than one provider agreement to provide HCS-O program services, but may have only one provider agreement to provide HCS-O program services per county.

§419.655. Eligibility Criteria.

(a) An applicant or individual is eligible for HCS-O program services if he or she:

(1) meets the financial eligibility criteria as defined in subsection (b) of this section;

(2) meets the ICF/MR I, V, VI, or VIII ICF/MR level of care criteria (LOC) as determined by the department in accordance with §419.659 of this title (relating to Level of Care Determination);

(3) has been determined by the department to have mental retardation or a related condition, to need specialized services/active treatment, to be inappropriately placed in a Medicaid certified nursing facility based on a resident review conducted in accordance with Chapter 402, Subchapter E of this title (relating to Preadmission Screening and Annual Resident Review (PASARR) and Alternate Placement);

(4) has an approved IPC for which the IPC cost does not exceed 125% of the annual ICF/MR reimbursement rate paid to a small ICF/MR, as defined in 1 TAC §355.456 (relating to Rate Setting Methodology) for the individual's level of need as it would be assigned under §406.204(b) of this title (relating to Level of Care Determination and Level of Need Assignment) or 125% of the estimated annualized per capita cost for ICF/MR services, whichever is greater; and

(5) is directly discharged from a Medicaid certified nursing facility to HCS-O program services.

(b) An applicant or individual is financially eligible for the HCS-O program if he or she:

(1) is categorically eligible for Supplemental Security Income (SSI) benefits;

(2) has once been eligible for and received SSI benefits and continues to be eligible for Medicaid as a result of protective coverage mandated by federal law;

(3) is under age 18 and:

(A) residing with parents or a spouse;

(B) eligible for Medicaid benefits only if institutionalized;

(C) meets the SSI criteria for disability;

(D) meets the SSI criteria for institutional deeming; and

(E) has income and resources which meet the requirements of the SSI program; or

(4) is under age 19 and financially the responsibility of the Texas Department of Protective and Regulatory Services (TDPRS), in whole or in part (not to exceed Level II foster care payment), and being cared for in a family foster home licensed or certified and supervised by:

(A) TDPRS; or

(B) a licensed public or private nonprofit child placing agency; or

(5) is a member of a family who receives full Medicaid benefits as a result of qualifying for Temporary Aid to Needy Families (TANF); or

(6) is eligible for SSI benefits in the community, except on the basis of income, and meets the special institutional income limit for Medicaid benefits in Texas without regard to spousal income.

(c) For individuals with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in the Social Security Act, §1924 and as specified in the Medicaid State Plan.

§419.656. Calculation of Co-payment.

(a) Individuals and eligible couples determined to be financially eligible based on the special institutional income limit may be required to share in the cost of HCS-O program services. The method for determining the individual's or couple's co-payment is described in subsections (b) and (c) of this section and documented on the Texas Department of Human Services (TDHS) Medical Assistance Only Worksheet.

(b) The co-payment amount is the individual's or couple's remaining income after all allowable expenses have been deducted. The co-payment amount is applied only to the cost of home and community-based services funded through the HCS-O program and specified on each individual's IPC. The co-payment must not exceed the cost of services actually delivered. The co-payment must be paid by the individual or couple, authorized representative, or trustee directly to the program provider in accordance with the TDHS determination. When calculating the co-payment amount for individuals or couples with incomes that exceed the maximum Personal Needs Allowance the following are deducted:

(1) the cost of the individual's or couple's maintenance needs which must be equivalent to the special institutional income limit for eligibility under the Texas Medicaid program;

(2) the cost of the maintenance needs of the individual's or couple's dependent children. This amount is equivalent to the TANF basic monthly grant for children or a spouse with children, using

the recognizable needs amounts in the TANF Budgetary Allowances Chart; and

(3) the costs incurred for medical or remedial care which are necessary but are not subject to payment by Medicare, Medicaid, or any other third party. These include the cost of health insurance premiums, deductibles, and co-insurance.

(c) When calculating the co-payment amount for individuals with community spouses, TDHS determines the amount of the recipient's income applicable to payment in accordance with §1924 of the Social Security Act and 42 CFR 435.726.

§419.657. Individual Plan of Care.

(a) An initial IPC must be developed for each applicant in accordance with §419.661 (relating to Process for Enrollment of Applicants) and reviewed and up-dated for each individual whenever the individual's needs for services and supports change, but no less than annually, in accordance with §419.662 (relating to Revisions and Renewals of Individual Plans of Care and Levels of Care for Enrolled Individuals).

(b) The IPC must specify the type and amount of each service component to be provided to the individual, as well as services and supports to be provided by other sources during the IPC year. The type and amount of each service component must be supported by:

(1) documentation that other sources for the service component are unavailable and the service component does not replace existing supports;

(2) assessments of the individual that identify specific service components necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services; and

(3) documentation of deliberations and conclusions of the service planning team or IDT, as appropriate, that the service components are necessary for the individual to live in the community and prevent the need for institutional services.

(c) An individual's IPC must be approved by the department and is subject to review in accordance with §419.658 (relating to Department Review of Individual Plan of Care).

(1) The IPC must be signed and dated by the individual's service planning team or the IDT indicating the team member's concurrence that the services recommended in the IPC are necessary to prevent institutionalization and are appropriate to assure the individual's health and welfare in the community.

(2) The IPC must be signed and dated by the team members prior to submission to the department and the original must be maintained in the individual's record.

(3) If the IPC is submitted for approval electronically, the submitted IPC must contain information identical to that on the signed copy of the IPC.

(d) The program provider must provide services in accordance with an individual's approved IPC.

(e) The program provider must retain in the individual's record results and recommendations of individualized assessments documenting the current need for each service component included in the IPC.

§419.658. Department Review of Individual Plan of Care (IPC).

(a) The department may review an approved or recommended IPC at any time to determine if the type and amount of HCS-O program services specified in the IPC are appropriate and supported by documentation specified in §419.657(b) of this title (relating to Individual of Plan of Care). If the department reviews an IPC, documentation supporting the IPC must be submitted to the department in accordance with the department's request. The department may modify an IPC based on its review.

(b) Before approving an IPC having an IPC Cost that exceeds 100% of the estimated annualized average per capita cost for ICF/MR services, the department will review the IPC to determine if the type and amount of HCS-O program services specified in the IPC are appropriate and supported by documentation specified in §419.657(b) of this title (relating to Individual of Plan of Care). A recommended IPC with such an IPC Cost must be signed and dated by the IDT and submitted to the department with documentation supporting the IPC, as described in §419.657(b) of this title (relating to Individual Plan of Care) prior to the electronic submission of the IPC. After reviewing the supporting documentation, the department may request additional documentation. The department will review any additional documentation submitted in accordance with its request, and electronically approve the recommended IPC or send written notification that the recommended IPC has been approved with modifications.

§419.659. Level of Care (LOC) Determination.

(a) A LOC for an individual must be requested from the department by electronically transmitting a completed MR/RC Assessment, indicating the recommended LOC. The electronically transmitted MR/RC Assessment must contain information identical to the information on the signed MR/RC Assessment.

(b) A LOC determination will be made by the department in accordance with Chapter 406, Subchapter E of this title (relating to ICF/MR Programs, Eligibility and Review).

(c) Information on the MR/RC Assessment must supported by current data obtained from standardized evaluations and formal assessments that measure physical, emotional, social and cognitive factors. The signed MR/RC Assessment and documentation supporting the recommended LOC must be maintained in the individual's record.

(d) The department will approve and enter the appropriate LOC into the HCS-O billing and enrollment system or send written notification to the program provider that a LOC has been denied.

(e) A LOC determination is valid for 364 calendar days after the LOC effective date determined by the department.

§419.660 Lapsed Level of Care (LOC).

(a) The department will not pay the program provider for HCS-O program services provided during a period of time in which the individual's LOC has lapsed unless the program provider requests and is granted a reinstatement of the LOC determination in accordance with this section. The department will not grant a request for reinstatement of a LOC determination to obtain an initial LOC determination, to renew a LOC determination, to obtain a LOC determination for a period of time for which a LOC has been denied, or for a period of time for which an individual's IPC is not current.

(b) To request reinstatement of a LOC determination, the program provider must electronically transmit to the department a MR/RC Assessment indicating:

(1) a code "E" in the "Purpose" section; and

(2) the beginning and ending dates of the period of time for which the individual's LOC lapsed.

(c) The program provider must request reinstatement of a LOC determination within 180 calendar days after the end of any month during which services were provided to the individual while the individual's LOC was lapsed.

(d) The department will notify the program provider of its decision to grant or deny the request for reinstatement of a LOC determination within 45 calendar days after the department's receipt of the program provider's request.

(e) The program provider must retain in the individual's record:

(1) a completed MR/RC Assessment, signed by the individual's physician and an appropriate representative of the program provider, containing information identical to that on the MR/RC Assessment electronically transmitted to the department, and

(2) a Statement of Verification, signed by the CEO of the program provider, copies of which are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

§419.661. Process for Enrollment of Applicants.

(a) The MRA will assist an applicant for HCS-O program services in accordance with §402.155 of this title (relating to Provision of Specialized Services and Alternate Placement Services).

(b) The service coordinator will inform the applicant or the LAR of the applicant's right to choose between participation in the ICF/MR program or the HCS-O program. The MRA must document the applicant's choice of programs or the LAR's choice on behalf of the applicant on the HCS-O Verification of Choice form. Copies of the HCS-O Verification of Choice form are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.

(1) If the applicant, or the LAR on behalf of the applicant, chooses participation in the HCS-O program, the MRA will assign a service coordinator who develops a person-directed plan (PDP) in conjunction with the service planning team. The service planning team must include the applicant and the LAR and may include other persons chosen by the applicant and the LAR. At minimum, the PDP must include the following:

(A) a description of the applicant's current services and supports, identifying those that will be available if the applicant is enrolled in the HCS-O program;

(B) a description of outcomes to be achieved for the applicant through the HCS-O program, including determinations of further service needs through assessments to be accomplished after enrollment, and justification for each service component to be included in the IPC;

(C) documentation that the type and amount of each service component included in the individual's IPC:

(i) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services; and

(ii) do not replace existing natural supports or other non-program sources for the service components.

(D) a description of all determinations needed to establish the applicant's eligibility for SSI or Medicaid benefits and for an LOC; and

(E) a description of actions and methods to be used to reach identified service outcomes, projected completion dates, and person(s) responsible for completion.

(2) The MRA compiles and maintains information necessary to process the applicant's request or LAR's request on behalf of the applicant for enrollment in the HCS-O program.

(A) If the applicant's financial eligibility for the HCS-O program must be established, the MRA initiates, monitors, and supports the processes necessary to obtain a financial eligibility determination.

(B) The MRA must complete an MR/RC Assessment if a LOC determination is necessary, in accordance with §419.659 of this title (relating to Level of Care Determination).

(C) The MRA must develop a proposed IPC with the applicant or the LAR based on the PDP and in accordance with this subchapter.

(3) The service coordinator must inform the applicant or the LAR of all available HCS-O program providers in the local service area. The service coordinator must:

(A) provide information to the applicant or the LAR regarding program providers in the MRA's local service area;

(B) review the proposed IPC with potential program providers as requested by the applicant or the LAR;

(C) arrange for meetings/visits with potential program providers as desired by the applicant or the LAR;

(D) assure that the applicant's or LAR's choice of a program provider is documented, signed by the applicant or the LAR, and retained by the MRA in the applicant's record; and

(E) negotiate/finalize the proposed IPC and the date services will begin with the selected program provider. If the service coordinator and the selected program provider are unable to agree on the proposed IPC, the service coordinator and program provider will consult jointly with the department to achieve resolution.

(c) When the proposed IPC is finalized and the selected program provider has agreed to deliver the services delineated on the IPC, the MRA will submit the enrollment information to the department. When appropriate, the MRA will also submit supporting documentation as required in §419.658 (b) (relating to Department Review of Individual Plan of Care (IPC)).

(d) The department will notify the applicant or the LAR, the selected program provider, and the MRA of its approval or denial of the applicant's enrollment. When enrollment is approved, the department must authorize the applicant's enrollment in the HCS-O program through the automated enrollment and billing system and issue an enrollment letter that includes the effective date of the applicant's enrollment in the HCS-O program.

(e) Upon notification of an applicant's enrollment approval, the MRA must provide the selected program provider copies of all enrollment documentation, and associated supporting documentation including relevant assessment results and recommendations and the applicant's PDP.

(f) The selected program provider must not initiate services until notified of the department's approval of the individual's enrollment.

(g) The selected program provider must develop an initial ISP in accordance with §419.670 of this title (relating to Certification

Principles: Service Delivery) based on the PDP and IPC as developed by the service planning team.

§419.662. Revisions and Renewals of Individual Plans of Care (IPCs) and Levels of Care (LOCs) for Enrolled Individuals.

(a) At least annually, and prior to the expiration of an individual's IPC, the individual's IDT must review the ISP and IPC to determine whether individual outcomes and services previously identified remain relevant.

(1) The IDT must initiate revisions to the IPC in response to changes in the individual's needs as documented in the current ISP.

(2) The ISP must include documentation that the type and amount of each service component included in the individual's IPC:

(A) are necessary for the individual to live in the community, to ensure the individual's health and welfare in the community, and to prevent the need for institutional services; and

(B) do not replace existing natural supports or other non-program sources for the service components.

(3) The program provider must submit annual reviews and necessary revisions of the IPC to the department for approval.

(4) The program provider must submit supporting documentation in accordance with §419.658 (relating to Department Review of Individual Plan of Care (IPC)).

(b) Prior to the expiration date of an individual's LOC determination, the program provider must request department approval to renew an individual's LOC by submitting an MR/RC Assessment to the department.

§419.665. Fair Hearing.

Any individual whose request for eligibility for the HCS-O program is denied or is not acted upon with reasonable promptness, or whose services have been terminated, suspended or reduced by the department is entitled to a fair hearing, conducted by TDHS in accordance with 40 TAC Chapter 79, Subchapters L, M, and N, except that a request for fair hearing must be submitted to the department's Office of Medicaid Administration and received within 90 calendar days from the date of the notice of denial of eligibility for the HCS-O program or notice of termination, suspension, or reduction of services.

§419.666. Provider Reimbursement.

(a) The department will pay the program provider for service components as follows:

(1) case management, habilitation, counseling and therapies, nursing, and respite are paid for in accordance with the reimbursement rate for the specific service component; and

(2) adaptive aids and minor home modifications are paid for based on the actual cost of the item.

(b) The program provider must accept the department's payment for a service component as payment in full for the service component.

(c) If the program provider disagrees with the enrollment date of an individual as determined by the department, the program provider must notify the department in writing of its disagreement, including the reasons for the disagreement, within 180 days after the end of the month in which the provider receives the enrollment letter. If the program provider disagrees with an enrollment date of which the program provider received notice prior to March 1, 2000, the program provider must notify the department in writing of its disagreement, including the reasons for the disagreement, by September 1, 2000. The department will review the information submitted by the program provider and notify the program provider of its determination regarding the individual's enrollment date.

(d) The program provider must prepare and submit claims for service components in accordance with this subchapter, the HCS-O Provider Agreement and the HCS-O Provider Manual.

(e) The program provider must submit an initial claim for a service component as follows:

(1) habilitation, respite care, case management, counseling and therapies, and nursing must be electronically transmitted to the department via the HCS-O automated enrollment and billing system; and

(2) adaptive aids and minor home modifications must be submitted in writing to the department for entry into the automated enrollment and billing system.

(f) The program provider must submit a claim for a service component with the department by the latest of the following dates:

(1) within 95 calendar days after the end of the month in which the service component was provided;

(2) within 45 calendar days after the date of the enrollment approval letter issued by the department; or

(3) within 95 calendar days after the end of the month in which the program provider receives a dated response from a source other than the HCS-O program to a correctly submitted request for payment for the service component.

(g) If an individual is temporarily or permanently discharged from the HCS-O program the program provider may submit a claim for habilitation, respite care, case management, counseling and therapies, and nursing for the day of the individual's discharge.

(h) If the department rejects a claim for adaptive aids or minor home modifications, the program provider may submit a corrected claim to the department. The corrected claim must be received by the department within 180 days after the end of the month in which the service component was provided or within 45 days after the date of the notification of the rejected claim, whichever is later.

(i) If the program provider submits a claim for an adaptive aid, the program provider must submit documentation that sources of payment other than the HCS-O program, including Medicare, Medicaid (such as Texas Health Steps and Home Health), TRC, the public school system, and private insurance, denied the submitted claim. Such documentation includes evidence that a proper and timely request for payment was made to the other payment source and that payment was not made.

(j) If the program provider submits a claim for an adaptive aid that costs $500 or more or for a minor home modification that costs $1000 or more, the program provider must submit an individualized assessment by a qualified professional that the aid or modification is necessary and appropriate.

(k) The department will not pay the program provider for a service component or will recoup any payments made to the program provider for a service component if:

(1) the individual receiving the service component is, at the time the service component was provided, ineligible for the HCS-O program or Medicaid benefits, or was an inpatient of a hospital, nursing facility, or ICF-MR;

(2) the service component is provided to an individual during a period of time for which the program provider does not provide a signed and dated IPC for the individual;

(3) the service component is not included on the signed and dated IPC of the individual in effect at the time the service component was provided;

(4) the service component does not meet the service definition in the HCS-O Provider Manual;

(5) the service component is not provided in accordance with the HCS-O Provider Manual;

(6) the service component is not documented in accordance with the HCS-O Provider Manual;

(7) the claim for the service component is not prepared and submitted in accordance with the HCS-O Provider Manual;

(8) written documentation of an individualized assessment by a qualified professional regarding the necessity and appropriateness of an adaptive aid that costs $500.00 or more or for minor home modifications that cost $1000.00 or more is not provided by the program provider;

(9) the department determines that the service component would have been paid for by a source other than the HCS-O program if the program provider had submitted to the other source a proper and timely request for payment for the service component;

(10) the service component is provided during a period of time for which the program provider does not provide a signed and dated MR/RC Assessment for the individual;

(11) the service component is provided during a period of time for which the individual did not have a LOC determination;

(12) the service component is provided by a service provider who does not meet the qualifications to provide the service component as delineated in the HCS-O Provider Manual and the approved HCS-O Waiver;

(13) the service component is not provided in accordance with a signed and dated IPC meeting the requirements set forth in §419.657 of this title (relating to Individual Plan of Care);

(14) the service component is not provided in accordance with the plan for services described in the individual's ISP or PDP; or

(15) the service component is provided prior to the individual's enrollment date into the HCS-O program.

(l) The program provider must keep any records necessary to disclose the extent of the service components provided by the program provider and, on request, provide the department any such records and any information regarding claims filed by the program provider.

(m) The program provider must refund to the department any overpayment made to the program provider within 60 days after the program provider's discovery of the overpayment or receipt of a notice of such discovery from the department, whichever is earlier.

§419.667. Program Provider Certification and Review.

(a) The program provider must be in continuous compliance with the HCS-O program certification principles contained in §§419.668-419.674 of this chapter.

(b) The department conducts an on-site certification review of the program provider to evaluate evidence of the program provider's compliance with certification principles. Based on its review, the department takes action as described in §419.675 of this title (relating to Corrective Action and Program Provider Sanctions).

(c) Following the initial on-site certification review by the department conducted in accordance with Chapter 419, Subchapter O of this title (relating to Enrollment of Waiver Program Providers), the department conducts an on-site certification review at least annually.

(d) The department certifies a program provider for a period of 365 calendar days after the date of an initial or annual certification review.

(e) The department may conduct announced or unannounced reviews of the program provider at any time.

(f) During any review, including a follow-up review or a review in which corrective action from a previous review is being evaluated, the department may review the HCS-O program services provided to any individual to determine if the program provider is in compliance with the certification principles.

(g) The department conducts an exit conference at the end of all on-site reviews, at a time and location determined by the department, to inform the program provider of the department's findings, determination, any proposed actions, and any actions required of the program provider.

§419.668. Certification Principles: Development and Philosophy of Program Operations.

The program provider must:

(1) implement a teaching and training philosophy that emphasizes improved, independent functioning for each individual;

(2) ensure that each individual's humanity and dignity is respected;

(3) ensure that the rights of the individual are protected;

(4) ensure that the individual, the LAR, and family members participate in making choices about where the individual will live, attend school, work, and take part in leisure activities.

§419.669. Certification Principles: Individual's Rights.

(a) The program provider shall assist the:

(1) individual in exercising the same rights and responsibilities exercised by people without disabilities; and

(2) individual's LAR or family members in encouraging the individual to exercise the same rights and responsibilities exercised by people without disabilities.

(b) The program provider shall protect and promote the following rights of the individual:

(1) to manage, be trained to manage or have assistance in managing financial affairs upon documentation of the individual's written request for assistance;

(2) to access public accommodations;

(3) to be informed of requirements for participation;

(4) to be informed both orally and in writing of all the HCS-O program services available and rules pertaining to the individual's enrollment and participation in the program provider's program as well as any changes in these that occur;

(5) to be informed of the individual's ISP and IPC including any restrictions affecting the individual's rights;

(6) to participate in decisions and be informed of the reasons for decisions regarding plans for enrollment, service termination, transfer, relocation, or denial of HCS-O program services;

(7) to be informed about the individual's own health, mental condition, and related progress;

(8) to be informed of the name and qualifications of any person serving or treating the individual and to choose among various available service providers;

(9) to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals;

(10) to have privacy in visitation with family and other visitors;

(11) to make and receive telephone calls;

(12) to send and to receive sealed and uncensored mail;

(13) to attend religious activities of choice;

(14) to participate in developing a pre-discharge plan that addresses assistance for the individual after he or she leaves the program;

(15) to be free from restraints;

(16) to live in a normative residential living environment;

(17) to access free public schooling according to the Texas Education Code;

(18) to live where the individual is within proximity of and can access treatment and services that are best suited to meet the individual's needs and abilities and enhance that individual's strengths;

(19) to have a personalized ISP and IPC based on individualized assessments that meet the individual's needs and abilities and enhance that individual's strengths;

(20) to help decide what the ISP will be;

(21) to be informed as to the progress and/or lack of progress being made in the execution of the ISP;

(22) to choose from the same services that are available to all community members;

(23) to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the ISP;

(24) to complain at any time to any member of the program provider's personnel;

(25) to receive appropriate support and encouragement from any member of the program provider's personnel if the individual dislikes or disagrees with the services being rendered or thinks that his or her rights are being violated;

(26) to live free from abuse, neglect or exploitation in a healthful, comfortable, and safe environment;

(27) to participate in decisions regarding the individual's living environment including location, furnishings, other individuals residing in the residence, and moves to other residential locations;

(28) to have personnel who are accountable to the individual and, at the same time, are responsible to the overall functioning of the HCS-O program;

(29) to have active personal assistance in exercising civil and self-advocacy rights attainment by provisions for:

(A) complaints,

(B) voter's registration,

(C) citizenship information and education,

(D) advocacy services, and

(E) guardianship;

(30) to receive counseling concerning the use of money;

(31) to possess and to use money in personal and individualized ways or be learning to do so;

(32) to access all financial records regarding the individual's funds;

(33) to have privacy during treatment and care of personal needs;

(34) to have privacy during visits by his or her spouse if living apart;

(35) to share a room when both the husband and wife are living in the same residence;

(36) to be free from serving as a source of labor when residing with persons other than family members;

(37) to communicate, associate and to meet privately with individuals of his or her choice, unless this violates the rights of another individual;

(38) to participate in social, recreational, and community group activities;

(39) to have his or her LAR involved in activities including but not limited to:

(A) being informed of all rights and responsibilities when the individual is enrolled in the program provider's program as well as of any changes in rights or responsibilities before they become effective;

(B) participating in the planning for HCS-O program services; and

(C) advocating for all rights of the individual;

(40) to be informed of the individual's option to transfer to other HCS-O programs as chosen by the individual or LAR as often as desired;

(41) to be informed orally and in writing of any charges assessed by the provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status;

(42) to complain to the department when the provider's resolution of a complaint is unsatisfactory to the individual or LAR, and to be informed of the TDMHMR telephone number to initiate complaints (1-800-252-8154).

(c) The program provider shall provide the individual, the individual's LAR, or family member, with a written copy of those rights listed in subsection (b) of this section.

(d) The program provider shall document that the individual, LAR, or family member is informed orally of the rights described in subsection (b) of this section and is presented with a current copy of those rights:

(1) upon enrollment of the individual in the program provider's program;

(2) upon revisions of subsection (b) of this section by the department; and

(3) upon request.

(e) The documentation required in subsection (d) of this section shall be signed by:

(1) the individual or the individual's LAR;

(2) the program provider or employee who explained the rights to the individual, LAR, or family member; and

(3) a third-party witness.

§419.670 Certification Principles: Service Delivery

The program provider shall:

(1) enroll eligible applicants who have chosen the program provider on a zero-reject basis;

(2) enroll eligible applicants without regard to age, sex, race or level of disability;

(3) provide or obtain as needed and without delay all HCS-O program services;

(4) ensure that each applicant or individual, or LAR on behalf of the applicant or individual, has chosen where the individual or applicant is to reside from available options consistent with the individual's needs;

(5) encourage involvement of the individual's LAR or family members and friends in all aspects of the individual's life and provide as much assistance and support as is possible and constructive;

(6) ensure that a minor individual who is unable to live in the natural or adoptive family home is supported in a family-like environment, such as a foster family;

(7) justify the reasons for serving a minor individual outside the natural or adoptive family home;

(8) make every possible effort to return a minor individual being served outside his or her natural or adoptive family home to his or her family home as soon as possible;

(9) allow the individual's family members and friends access to an individual without arbitrary restrictions unless exceptional conditions are justified by the individual's IDT, documented in the ISP, and approved by program provider's chief executive officer;

(10) ensure that an individual's residential, educational, and work settings are changed as necessitated by changes in the individual's age, skills, attitudes, likes, dislikes, and conditions;

(11) ensure that the individual who is living outside the family home is living in a residence that maximizes opportunities for interaction with community members to the greatest extent possible;

(12) ensure that each individual has a current:

(A) IPC;

(B) ISP; and

(C) LOC;

(13) ensure that the ISP of each individual is different from others and reflects the results of assessments of the individual's and his or her family's strengths, the individual's personal goals and the family's goals for the individual, and the individual's needs rather than what services are available;

(14) ensure that the ISP of each individual includes service objectives derived from assessments of the individual's strengths, personal goals, and needs and are described in observable, measurable, or outcome-oriented terms;

(15) ensure that the ISP and IPC for each individual is reviewed and completed at least annually by the:

(A) individual;

(B) individual's LAR or members of the individual's family, as appropriate; and

(C) other members of the IDT, as described in §419.671 of this title (relating to Interdisciplinary Team Operations);

(16) ensure that each individual's progress or lack of progress toward goals and objectives is documented in observable, measurable, or outcome-oriented terms;

(17) ensure that each individual has opportunities to develop relationships with peers with and without disabilities and receives support when the individual chooses to develop such relationships;

(18) unless contraindications are documented with justification by the IDT, ensure that a school-age individual receives educational services in a six-hour-per-day program five days a week provided by the local school district and that no individual receives educational services at a state school/state center educational setting;

(19) unless contraindications are documented with justification by the IDT, ensure that an adult individual under retirement age is participating, based on choice, in a day activity which promotes achievement of ISP outcomes for at least six hours per day, five days per week;

(20) ensure that individuals who perform work for the program provider are paid on the basis of their production or performance and at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on local, state and federal regulations, including Department of Labor regulations, as applicable;

(21) ensure that individuals who produce marketable goods and services in habilitation training programs are paid at a wage level commensurate with that paid to persons who are without disabilities and who would otherwise perform that work. Compensation is based on requirements contained in the Fair Labor Standards Act which include:

(A) accurate recordings of individual production or performance;

(B) valid and current time studies or monitoring as appropriate; and

(C) prevailing wage rates;

(22) ensure that individuals provide no training, supervision or care to other individuals unless they are qualified and compensated in accordance with local, state and federal regulations, including Department of Labor regulations;

(23) unless contraindications are documented with justification by the IDT, ensure that a pre-school-age individual receives an early childhood education with appropriate activities and services, including but not limited to small group and individual play with peers without disabilities;

(24) unless contraindications are documented with justification by the IDT, ensure that an individual's routine provides opportunities for leisure time activities, vacation periods, religious observances, holidays, and days-off, consistent with the individual's choice and the routines of other members of the community;

(25) unless contraindications are documented with justification by the IDT, ensure that an individual of retirement age has opportunities to participate in day activities appropriate to individuals of the same age and consistent with an individual's or his or her LAR's choice;

(26) unless contraindications are documented with justification by the IDT, ensure that each individual is offered choices and opportunities for accessing and participating in community activities and experiences available to peers without disabilities;

(27) assist the individual to meet as many of his or her needs as possible by using generic community services and resources in the same way and during the same hours as these generic services are used by the community at large;

(28) ensure that each individual lives in a home that is a typical residence within the community;

(29) ensure that the residence, neighborhood and community meet the needs and choices of each individual and provide an environment that assures the health, safety, comfort and welfare of the individual;

(30) unless contraindications are documented with justification by the IDT and, if possible, assist an individual to live near family and friends and needed or desired community resources consistent with the individual's choice;

(31) ensure that an individual experiences residential relocation in a planned manner as indicated by his or her needs;

(32) provide adaptive aids including the full range of lifts, mobility aids, control switches/pneumatic switches and devices, environmental control units, medically necessary supplies, and communication aids and repair and maintenance of the aids as determined by the individual's needs and in compliance with the definition in the approved waiver request;

(33) ensure that adaptive aids costing less than $500 each are authorized by the IDT and that adaptive aids costing more than $500 each are authorized by the IDT based on written evaluations and recommendations by the individual's physician, a licensed occupational or physical therapist, a psychologist, a licensed nurse, a licensed dietician, or a licensed speech and language pathologist qualified to assess the individual's need for the specific adaptive aid;

(34) ensure that the HCS-O case manager is employed by the program provider, serves no more than 30 individuals, and that case management is available as determined by individual need;

(35) provide case management in compliance with the definition in the approved waiver request including:

(A) coordinating the development and implementation of the individual's ISP;

(B) coordinating the delivery of the individual's IPC;

(C) coordinating and monitoring the delivery of HCS-O program services and services from other sources;

(D) integrating various aspects of services delivered under the HCS-O program and through other sources;

(E) recording each individual's progress;

(F) developing the pre-discharge plan;

(G) record keeping; and

(H) arranging transportation.

(36) ensure that the HCS-O case manager provides only case management and that the provision of such is exclusive of any other assignments or services pertaining to an individual;

(37) ensure that the primary purpose of case management is to provide a single identified person accountable to the individual and his or her LAR for coordinating the individual's overall program;

(38) ensure that the individual and his or her LAR are informed of the name and telephone number of the HCS-O case manager and are informed whenever there is a change in the case manager or the case manager's telephone number;

(39) ensure that the HCS-O case manager informs the individual and his or her LAR about the individual's ISP, the individual and his or her LAR agree to changes in the individual's ISP prior to implementing the changes, and the HCS-O case manager is available to answer questions asked by the individual or by his or her LAR about the ISP;

(40) provide the following counseling and therapy services in compliance with the definition in the approved waiver request as determined by individual needs:

(A) speech/language pathology services;

(B) occupational therapy services;

(C) physical therapy services;

(D) dietary services;

(E) social work services; and

(F) psychology services.

(41) provide supported living services in compliance with the definition in the approved waiver request including:

(A) direct assistance with daily living and personal adjustment;

(B) attendant care;

(C) assistance with medications that are normally self-administered;

(D) reporting changes in the individual's condition and needs;

(E) reinforcement of counseling and therapy activities;

(F) assistance with ambulation and exercise;

(G) household services essential to health care at home; and

(H) assistance with activities of daily living (grooming, bathing, and dressing).

(42) provide habilitation training services in compliance with the definition in the approved waiver request including instruction and support in:

(A) self-care and personal hygiene;

(B) self-administration of medication;

(C) household tasks;

(D) money management;

(E) interpersonal communication;

(F) socialization and development of relationships;

(G) community integration;

(H) mobility;

(I) use of adaptive equipment or augmentative communication devices;

(J) self-advocacy;

(K) accessing leisure time and recreational activities and other community resources;

(L) behavior management;

(M) consumer management of service providers; and

(N) assistance with personal problem-solving and decision-making.

(43) provide pre-vocational services when these services are not available to the individual through a state rehabilitation agency or public school and in compliance with the definition in the approved waiver request including:

(A) individualized assessment;

(B) individualized and group counseling;

(C) training in related skills essential to obtaining and retaining employment, such as the effective use of community resources and break or lunch areas, transportation, and mobility training;

(D) training in the use of adaptive equipment or augmentative communication devices;

(E) transportation between the individual's place of residence and workplace when other forms of transportation are unavailable or inaccessible.

(44) provide supported employment (employment in an integrated work setting–generally a setting where no more than one employee or 3% of the work force members have disabilities) as determined by individual needs and ensure that supported employment is provided away from the individual's residence, is delivered in compliance with the definition in the approved waiver request and includes:

(A) on-going individualized support services needed to sustain paid work by the individual, including supervision and training;

(B) compensation by the employer to the individual in accordance with the Fair Labor Standards Act;

(C) individualized assessment;

(D) individualized and group counseling;

(E) individualized job placement services that produce an appropriate job match for the individual's employer;

(F) on-the-job training in work and work-related skills required to perform the job;

(G) on-going supervision and monitoring of the individual's job performance;

(H) transportation between the individual's place of residence and workplace when other forms of transportation are unavailable or inaccessible;

(45) ensure that supported employment services are provided only when these services are not available to an individual through the state education agency or a state rehabilitation agency and that documentation of the unavailability of the service is maintained in the individual's record;

(46) provide minor home modifications when determined necessary by the IDT for the health and safety of the individual and in compliance with definition in the approved waiver request, including:

(A) purchase and repair of wheelchair ramps;

(B) modifications to bathroom facilities;

(C) modifications to kitchen facilities; and

(D) specialized accessibility and safety adaptations/additions, including repair and maintenance.

(47) provide nursing services as determined by individual needs and in compliance with the definition in the approved waiver request and ensure that nursing services consist of performing health care procedures and monitoring the individual's health conditions, including:

(A) administering medication;

(B) monitoring the individual's use of medications;

(C) monitoring health data and information;

(D) assisting the individual to secure emergency medical services;

(E) making referrals for appropriate medical services;

(F) performing health care procedures ordered or prescribed by a physician or medical practitioner and required by standards of professional practice or law to be performed by licensed nursing personnel; and

(G) delegating and monitoring of tasks assigned to other service providers by a registered nurse in accordance with state law.

(48) ensure that respite is provided on a 24 hour increment or any part of that increment as determined by individual needs and is provided in compliance with the approved waiver request including:

(A) training in self-help and independent living skills;

(B) provision of room and board when respite is provided in a setting other than the individual's normal residence;

(C) support for individuals who are in need of emergency or planned short-term care;

(D) assistance with on-going provision of needed waiver services, excluding supported home living; and,

(E) assistance with securing and providing transportation.

(49) provide respite in the residence of an individual or in other locations that meet HCS-O programmatic requirements and afford an environment that ensures the health, safety, comfort, and welfare of the individual;

(A) If respite is provided in the residence of another individual, the program provider must obtain permission from that individual or the individual's LAR and ensure that the interdisciplinary team for each individual makes a determination that the respite visit will cause no threat to the health, safety and welfare, or rights and needs of that individual;

(B) If respite is provided in the residence of another individual, the provider must ensure that:

(i) no more than three individuals receiving HCS-O program services and persons receiving similar services for which the provider is reimbursed are served in a foster/companion care arrangement;

(ii) no more than three individuals receiving program services or and persons receiving similar services for which the provider is reimbursed are served in a residence;

(iii) no more than four individuals receiving HCS-O program services and persons receiving similar services for which the provider is reimbursed are served in a residence if the department has approved the program provider to provide supported living to four individual in accordance with §419.678 of this title (relating to Department Approval of Residences);

(C) If respite is provided in a respite facility, the provider must:

(i) ensure that the facility is not a residence,

(ii) ensure that no more than six individuals receive services in the facility at any one time and,

(iii) obtain written approval from the local fire authority having jurisdiction stating that the facility and its operation meet the local fire ordinances before initiating services in the facility when more than three individuals receive services in the facility at any one time.

(D) The provider must not provide respite services in an institution.

§419.671. Certification Principles: Interdisciplinary Team Operations.

(a) The program provider must maintain a system of service planning and service delivery that is continuously responsive to changes in the individual's condition, personal goals, abilities, and needs.

(b) The program provider must ensure that, at minimum, the individual's IDT consists of the individual and his or her LAR or family member, the HCS-O case manager, and a nurse; and, when necessary to the service planning process, the team includes other persons who may be assigned to provide or who are currently providing direct services to the individual, a physician and other professional personnel, and other persons chosen by the individual or LAR.

(c) The program provider must ensure that IDT members necessary to address the needs of the individual attend or have verifiable input into any meetings regarding the individual's ISP or IPC.

(d) The program provider must maintain current information about the individual that includes a description of the individual's service needs and justification for the service components included in the individual's IPC.

(e) The program provider must maintain current service information that clearly communicates appropriate changes as they occur pertaining to the development and delivery of the individual's IPC and ISP.

(f) The individual's IDT must use objective, observable, or measurable criteria to define the need for services included in the individual's IPC.

(g) The program provider shall promote the development and maintenance of effective communication among its personnel, service providers, and the individual's IDT.

(h) The program provider must assess the legal status of an individual at least annually and take actions as necessary based on the assessment to support the individual in accessing appropriate resources for assistance.

(i) The IDT must review at least annually the individual's physical condition, health status and other assessments and take actions based on the results of each review.

§419.672. Certification Principles: Discharge from Services.

(a) Within ten calendar days of permanent discharge of an individual, the program provider must submit the following to TDMHMR for approval:

(1) Request for Permanent Discharge Form, copies of which are available by contacting the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas, 78711-2668;

(2) written justification for the discharge; and

(3) a written discharge plan documenting:

(A) that the individual or his or her LAR was informed of the individual's option to transfer to another program provider and the consequence of permanent discharge for receiving future HCS-O program services; and

(B) the service linkages that are in place following the individual's discharge from the HCS-O program.

(b) The program provider must review the status of an individual who is temporarily discharged at least every 90 calendar days following the effective date of the temporary discharge and document in the individual's record the reasons for continuing the discharge. If the temporary discharge continues 270 calendar days, the program provider must submit written documentation of the 90, 180, and 270 calendar-day reviews to the department for review and approval to continue the temporary discharge status.

(c) At least annually, the program provider shall review the reasons for any discharges to identify any implications for improvement of the program provider's service delivery.

§419.673. Certification Principles: Personnel Operations.

(a) The program provider must ensure the continuous availability of trained and qualified employees and/or contractual service providers to deliver the required services as determined by the individual's needs.

(b) The program provider must comply with each applicable regulation required by the State of Texas in ensuring that its operations and personnel or subcontractors meet state certification, licensure or regulation for any tasks performed or services delivered in part or in entirety for the HCS-O program.

(c) The program provider must implement and maintain a plan for initial and continuous training of personnel with periodic updates as required or indicated by the needs of the individuals.

(d) The program provider must implement and maintain personnel practices that safeguard individuals against infectious and/or communicable diseases.

(e) The program provider's operations must prevent:

(1) conflicts of interest between program provider personnel and individuals;

(2) financial impropriety toward individuals;

(3) abuse, neglect, or exploitation of an individual; or

(4) threats of harm or danger toward an individual's possessions.

(f) No later than September 1, 2000, the program provider must ensure that the provision of direct services to individuals is managed and supervised by an employee or subcontractor who has a minimum of three years work experience in planning and providing direct services to people with mental retardation or other developmental disabilities as verified by written professional references.

(g) In evaluating the qualifications of personnel for positions requiring the equivalent of a high school education, the program provider shall assure that the personnel or service provider involved is at least age 18 and either possesses a General Equivalency Degree (GED) or successfully completes a proficiency evaluation of experience and competence to perform the job tasks. The evaluation of experience and competency shall include:

(1) a written competency-based assessment of the applicant's ability to document service delivery and observations of the individuals to be served; and,

(2) at least three personal references from persons not related by blood which indicate the applicant's ability to provide a safe, healthy environment for the individuals being served.

(h) The program provider must ensure that the HCS-O case manager is currently qualified by having a:

(1) bachelor's degree with major specialization in social, behavioral or human services or related fields;

(2) high school diploma or GED with related volunteer experience comparable to two years full-time work in a social, behavioral, or human services or related fields;

(3) high school diploma or GED with a minimum of two years full-time work experience in social, behavioral, human services or related work; or

(4) license by the State of Texas as an LVN or RN with one year of experience in human services.

(i) The program provider shall ensure that each provider of counseling and therapies is currently qualified by being licensed and/or certified by the State of Texas in the specific area for which services are delivered or be providing services in accordance with state law. Psychologists employed by State Operated Community Service Divisions and Community MHMR Centers are required to be licensed in accordance with State law or certified as described in Chapter 405 Subchapter D (relating to Determination of Mental Retardation and Appropriateness for Admission to Mental Retardation Services).

(j) The program provider shall ensure that the provider of habilitation or respite is currently qualified by having a high school diploma or its equivalent as described in subsection (g) of this section, that transportation is provided in accordance with applicable state laws, and that tasks delegated by a Registered Nurse are performed in accordance with state law.

(k) The program provider must ensure that nursing services are provided by a nurse who is currently qualified by:

(1) being licensed as a registered nurse in Texas by the Board of Nurse Examiners for the State of Texas; or

(2) being licensed as a licensed vocational nurse in Texas by the Board of Vocational Nurse Examiners for the State of Texas.

(l) The program provider shall comply with Texas Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities.

§419.674. Certification Principles: Quality Assurance.

(a) The program provider must pursue and promote the active and maximum cooperation with generic service agencies, other service providers, individuals and advocates in planning and developing a full range of services and resources to match the needs of the individual as those needs are identified.

(b) The program provider must ensure a personalized service delivery program based upon the choices made by each individual and those choices that are available to persons without mental retardation and other disabilities.

(c) The program provider shall:

(1) conduct an initial and, thereafter, at least an annual on-site inspection of all residences of individuals living outside their own or family home to assure that, based on the individual's needs, the environment is healthy, comfortable, safe, appropriate and typical of other residences in the community, suited for the individual's abilities, and is in compliance with applicable federal, state, and local regulations for the community in which the individual lives; and

(2) ensure that the individual's IDT reviews the results of the on-site inspection initially and at least annually thereafter and takes action as required to assure that the residence is appropriate and meets the needs of the individual.

(d) The program provider must ensure that:

(1) emergency plans are maintained for each residence other than an individual's own or family home;

(2) the emergency plans address relevant emergencies appropriate for the type of service, geographic location and the individuals living in the residence; and

(3) the individuals and service provider staff follow the plans during drills and actual emergencies.

(e) The program provider must assure that a residence in which four individuals live:

(1) is in continuous compliance with the appropriate chapter of the most recent edition of the Life Safety Code published by the National Fire Protection Association or the edition used by the authority having jurisdiction for the location of the residence;

(2) is certified by the authority having jurisdiction as being in compliance with applicable codes based on an inspection by the authority having jurisdiction prior to initiating services in the residence and at least annually thereafter; and

(3) is in continuous compliance with all applicable health and safety laws, ordinances, and regulations.

(f) The program provider shall establish an on-going consumer/advocate advisory committee composed of individuals, individuals' LARs, community representatives, and family members to assist the program provider at least quarterly in:

(1) evaluating and addressing the satisfaction of individuals or individuals' LARs with the program provider's services;

(2) soliciting, addressing, and reviewing complaints from individuals or their LARs about the operations of the program provider; and

(3) participating in a continuous quality improvement audit of the program provider's operations and offering recommendations for improvement of program operations for action by the program provider as necessary.

(g) The program provider shall make available all records, reports and other information related to the delivery of HCS-O program services information as requested by the department, other authorized agencies, or HFCA and deliver such items, as requested, to a specified location.

(h) The program provider shall conduct, at least annually, a satisfaction survey of individuals and their LARs and take action regarding any areas of dissatisfaction.

(i) The program provider shall publicize and make available a process for eliciting complaints and maintain a record of verifiable resolutions of complaints received from:

(1) individuals, their families or LARs

(2) program provider's personnel or service providers; and

(3) the general public.

(j) The program provider must ensure that:

(1) the individual and the LAR are informed of how to report allegations of abuse, neglect, or exploitation to the Texas Department of Protective and Regulatory Services (TDPRS) and are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing; and

(2) all service provider personnel are instructed to immediately report allegations of abuse, neglect, or exploitation to TDPRS and are provided with the TDPRS toll-free telephone number (1-800-647-7418) in writing.

(k) Upon notification of an allegation of abuse, neglect or exploitation, the program provider shall take necessary actions to secure the safety of the alleged victim(s) involved in the allegation, including but not limited to:

(1) obtaining immediate and on-going medical or psychological services for the alleged victim as necessary;

(2) securing the safety of the alleged victim and, if necessary, restricting access by the alleged perpetrator of the abuse, neglect or exploitation to the alleged victim pending investigation of the allegation; and

(3) notifying the alleged victim, if appropriate, the individual's LAR, and, with the consent of the individual or the LAR, the individual's correspondent.

(l) The program provider personnel shall cooperate with the TDPRS investigation of an allegation of abuse, neglect, or exploitation, including but not limited to:

(1) providing complete access to all HCS-O program service sites owned, operated, or controlled by the program provider; and

(2) providing complete access to individuals and program provider personnel.

(m) In all respite facilities and all residences where foster/companion care, supervised living, and residential support are provided, program providers must post in a conspicuous location:

(1) the name, address and telephone number of the program provider;

(2) the effective date of the TDMHMR Waiver Program Provider Agreement; and

(3) the name of the legal entity named on the Waiver Program Provider Agreement.

(n) The program provider must report the outcome of all TDPRS investigations of abuse and neglect to the department in accordance with department procedures within 10 calendar days of the conclusion of the investigation.

(o) If abuse, neglect, or exploitation is confirmed by the TDPRS investigation, the program provider shall take appropriate action to prevent the reoccurrence of abuse, neglect or exploitation including, when warranted, disciplinary action against or termination of the employment of program provider personnel confirmed by the TDPRS investigation to have committed abuse, neglect, and exploitation.

(p) At least annually, the program provider must review incidents of confirmed abuse, neglect, or exploitation, complaints, and unusual incidents to identify program operations modifications that will prevent the reoccurrence of such incidents and improve service delivery.

(q) The program provider shall ensure that all personal information concerning an individual, such as lists of names, addresses and records obtained by the program provider is kept confidential, that the use or disclosure of such information and records is limited to purposes directly connected with the administration of the HCS-O program, and is otherwise neither directly nor indirectly used or disclosed unless the consent of the individual to whom the information applies or his or her LAR is obtained beforehand.

(r) The program provider shall apply a consistent method in assessing charges against the individual's personal funds that ensures that charges for items or services, including but not limited to room and board, are reasonable and comparable to the costs of similar items and services generally available in the community.

(s) The program provider shall assure the individual or his or her LAR has agreed in writing to all charges assessed by the program provider against the individual's personal funds prior the charges being assessed.

(t) The program provider shall not assess charges against the individual's personal funds for costs for items or services reimbursed through the HCS-O program.

(u) At the written request of an individual or his or her LAR, the program provider:

(1) must manage the individual's personal funds entrusted to the program provider;

(2) must not commingle the individual's personal funds with the program provider's funds; and

(3) must maintain a separate, detailed record of all deposits and expenditures for the individual.

(v) When behavior management techniques involving restriction of individual rights or intrusive techniques are used, the program provider shall ensure that the implementation of such techniques includes:

(1) approval by the individual's IDT;

(2) written consent of the individual or LAR;

(3) written notification to the individual or LAR of the right to discontinue participation at any time;

(4) assessment of the individual's needs and current level/severity of the targeted behavior(s);

(5) use of techniques appropriate to the level/severity of the targeted behavior(s);

(6) a written program developed by a psychologist with input from the individual, LAR, the individual's IDT, and other professional personnel;

(7) collection and monitoring of behavioral data concerning the targeted behavior(s);

(8) allowance for the decrease in the use of intervention based on behavioral data;

(9) allowance for revision of the program when desired behavior(s) are not displayed or techniques are not effective;

(10) consideration of the effects of the techniques in relation to the individual's physical and psychological well-being; and

(11) at least an annual review by the IDT to determine the effectiveness of the program and the need to continue the techniques.

(w) The program provider shall report the death of an individual to the department by the end of the next business day following the death.

§419.675 Corrective Action and Program Provider Sanctions.

(a) If the department determines that the program provider is in compliance with all certification principles, including all principles found out of compliance in the previous review, at the end of the review exit conference, the department certifies the program provider and no action by the program provider is required.

(b) If the department determines that the program provider is out of compliance with ten percent or fewer of the certification principles at the end of the review exit conference, but the program provider is in compliance with all principles found out of compliance in the previous review, the program provider must submit a corrective action plan to the department within 14 calendar days after the program provider receives the department's certification report.

(1) The corrective action plan must specify a date by which corrective action will be completed, and such date must be no later than 90 calendar days after the certification review exit conference.

(2) If the program provider submits a corrective action plan in accordance with this subsection and the plan is approved by the department, the department certifies the program provider. The department evaluates the program provider's required corrective action during the department's first review of the program provider after the corrective action completion date.

(3) If the program provider does not submit a corrective action plan in accordance with this subsection or the plan is not approved by the department, the department initiates termination of the program provider's Waiver Program Provider Agreement.

(c) If the department determines that the program provider is out of compliance with ten percent or fewer of the certification principles at the end of the review exit conference, including any principles found out of compliance in the previous review, the department:

(1) certifies the program provider, if the program provider:

(A) presents evidence before the end of the current certification period that it is in compliance with all principles found out of compliance in the previous review; and

(B) submits a corrective action plan in accordance with subsection (b) of this section addressing any new principles found out of compliance; or

(2) does not certify the program provider and initiates termination of the program provider's Waiver Program Provider Agreement, if the provider does not:

(A) present evidence before the end of the current certification period that it is in compliance with all principles found out of compliance in the previous review; and

(B) submit a corrective action plan in accordance with subsection (b) of this section addressing any new principles found out of compliance.

(d) If the department determines that the program provider is out of compliance with between ten and twenty percent of the certification principles at the end of the review exit conference, including any principles found out of compliance in the previous review, the department does not certify the program provider and applies Level I sanctions against the program provider.

(1) Under Level I sanctions, the program provider must complete corrective action within 30 calendar days after the review exit conference; and the department conducts an on-site follow-up review within 30 to 45 calendar days after the review exit conference.

(2) Based on the results of the follow-up review, the department:

(A) certifies the program provider, if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance; or

(B) denies certification of and implements vendor hold against the program provider if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance.

(3) If the department implements vendor hold against the provider, the department conducts a second on-site follow-up review between 30 and 45 calendar days from the effective date of the vendor hold. Based on the results of the review, the department:

(A) certifies the program provider and removes the vendor hold if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance; or

(B) denies certification of the program provider and initiates termination of the program provider's Waiver Program Provider Agreement if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with the principles found out of compliance.

(e) If the department determines that the program provider is out of compliance, at the end of the review exit conference, with twenty or more percent of the certification principles, including any principles found out of compliance in the previous review, the department does not certify the program provider, implements vendor hold, and applies Level II sanctions against the program provider.

(1) Under Level II sanctions:

(A) the program provider must complete corrective action within 30 calendar days after the review exit conference; and

(B) the department conducts an on-site follow-up review within 30 to 45 calendar days after the required correction date.

(2) Based on the results of the follow-up review, the department:

(A) certifies the program provider and removes the vendor hold, if the department determines that the program provider is in compliance, by the end of the follow-up review exit conference, with all principles found out of compliance; or

(B) denies certification of the program provider and initiates termination of the program provider's Waiver Program Provider Agreement if the department determines that the program provider is not in compliance, by the end of the follow-up review exit conference, with all principles found out of compliance.

(f) Notwithstanding subsections (b)-(e) of this section, if the department determines that a hazard to the health, safety, or welfare of one or more individuals exists and the hazard is not eliminated before the end of the review exit conference, the department denies certification of the program provider, initiates termination of the program provider's Waiver Program Provider Agreement, implements vendor hold against the program provider, and coordinates the provision of alternate services for individuals receiving HCS-O program services from the program provider. A hazard to health, safety or welfare is any condition which could result in life-threatening harm, serious injury, or death of an individual or other person within 48 hours. If hazards are identified by the department during a review and the program provider corrects the hazards before the end of the review exit conference, the correction will be designated in the department's report of the review.

(g) Notwithstanding subsections (b)-(e) of this section, if the department determines that a program provider's failure to comply with one or more of the certification principles is of a serious or pervasive nature, the department may, at its discretion, take any action described in this section against the program provider.

§419.676. Program Provider's Right to Administrative Hearing.

0A program provider may request an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions), if the department takes or proposes to take the following action:

(1) vendor hold;

(2) termination of the provider agreement;

(3) recoupment of payments made to the program provider; or

(4) denial of a program provider's claim for payment, including denial of a LOC reinstatement.

§419.677. Other Provider Responsibilities.

Program providers must comply with requirements of the Omnibus Budget Reconciliation Act of 1990, 42 United States Code §139a(w)(1), regarding advanced directives under state plans for medical assistance.

§419.678. Department Approval of Residences.

(a) Prior to initiating supported living services in a residence in which four individuals or other persons receiving similar services will live, the program provider must request and obtain the department's approval of the residence.

(b) To request approval of a residence in which a maximum of four individuals and other persons receiving similar services will live, the program provider must submit the following documentation to the department for the department's review:

(1) the address of the residence at which the provider intends to provide supported living;

(2) the date on which the provider intends to initiate supported living services in the residence;

(3) the written certification required by §419.674(e) of this title (relating to Certification Principles: Quality Assurance);

(4) written verification from the program provider that the residence to be approved is not the residence of any direct service provider.

(c) The department may approve a residence described in subsection (b) of this section if the department determines that the program provider has demonstrated compliance with §419.674(e) of this title (relating to Certification Principles: Quality Assurance).

(d) Program providers may not initiate supported living services in a residence where four individuals and other persons receiving similar services will live until the department approves the residence.

This 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 September 20, 1999.

TRD-9906098
Charles Cooper
Chair, Texas MHMR Board
Texas Mental Health and Mental Retardation
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 206-4516

♦ ♦ ♦

TITLE 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 9. TITLE INSURANCE

Subchapter A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.11

The Texas Department of Insurance proposes an amendment to §9.11 which concerns the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual) as a result of public hearing. The amendment is necessary to reflect changes to the Basic Manual which the amended section will adopt by reference and which changes resulted from consideration of certain agenda items from the rulemaking phase of the 1998 Texas Title Insurance Biennial Hearing. Adopting new rules and forms and modifying or replacing currently existing rules and forms in the Basic Manual

are necessary to facilitate the administration and regulation of title insurance in this state. The amendments to the Basic Manual will clarify and standardize rules and forms in the regulation of title insurance. The proposed amendments to the Basic Manual are identified by item number below. The items listed below are a republication of those items published for consideration at the 1998 Texas Title Insurance Biennial Hearing, Rulemaking Phase (rulemaking hearing), held on August 10, 1999, for which the department received comments, both in support and in opposition. The items from the rulemaking hearing for which the department received no opposition have been proposed for adoption in a separate rule proposal under amendments to 28 TAC §9.1, which has been published in the August 27, 1999, issue of the *Texas Register* (24 TexReg 6630). Republication is necessary to incorporate these items into the Basic Manual, to give notice of the withdrawal of Item 98-20, and to give notice of the corrective and clarifying changes to Items 98-11, 98-14, 98-16, and 98-18. Agenda Item 98-6 regarding a proposed Owner's Information Sheet for a Homeowner's Policy of Title Insurance, which was the subject of a petition for consideration by Title Underwriters of Texas, Inc. (TUT) pursuant to the Notice of Call for Issues Related to the 1998 Biennial Title Hearing, has been rendered moot by an amended homeowner's endorsement proposal submitted by TUT. Agenda Items 98-5 and 98-7 regarding TUT's amended homeowner's proposals are the subject of a separate Commissioner's Order.

The items which are the subject of this proposal are as follows:

Item 98-11 - Submission by Texas Department of Insurance to adopt new Procedural Rule P-49 to set a standard for title insurance companies to follow in reporting delinquent audit reports of title agents and direct operations licensed to do business in the State of Texas. Parts A and B of this proposal implement Article 9.39 regarding annual audits of title insurance agents and direct operations and have been amended to conform to the passage of Senate Bill 105, 76th Legislature, which amended Article 9.39 to specify new time periods to submit the audit reports to the department. Part C in the original department proposal contained an additional requirement for financial statements to be furnished to the department by each title insurance agent and direct operation with the intent that the department have early warning of financial problems with agents. At the rulemaking hearing, Texas Land Title Association (TLTA), Texas Association of Abstractors and Title Agents (TAATA), and Office of Public Insurance Counsel (OPIC) supported the department's concern about early warning; however, TLTA and TAATA opposed the department's proposal based on statutory and confidentiality grounds and suggested that obtaining financial profiles through the statistical call is better supported by the commissioner's early warning authority. TLTA submitted a revised version of proposed P-49. OPIC pointed out that the financial information is necessary in terms of ratemaking and reconciliation. After considering the comments at the rulemaking hearing, the department agrees that obtaining information through the statistical report to create a profile of agents in trouble is an appropriate means to achieve the stated purpose pursuant to the department's regulatory authority. Accordingly, the department proposes the new procedural rule which contains a revised A and B that track the new statutory language more closely than either the department's original proposal or TLTA's suggested revision, and which deletes the original part C. Prudent exercise of regulatory authority dictates that the department have early warning of financial problems with agents, and the department accepts the support of the commenters at the rulemaking hearing regarding the department's concern for early warning.

Item 98-14 - Submission by Texas Department of Insurance to adopt Form T-63, Texas Escrow Accounting Addendum Special Disbursement Reconciliation. The department has found that lenders are shifting their costs of business on to title agents, who are reluctant to refuse for fear of losing business to competing agents. The result is that lenders are listing items on Housing and Urban Development settlement statements (HUD statements) as "paid outside closing" when, in fact, those items are being run through the title agent's escrow account. This practice contaminates the escrow accounts for audit purposes. This proposal was generated as a result of complaints from title agents regarding the disbursement and reporting of items outside of closing. The department had earlier issued a communiqué to agents advising them that items listed as "paid outside closing" (POC) should not be run through the agents' escrow accounts. This brought objections from the lending industry. The original proposal was a compromise brought to the department by representatives of both the lending and title communities in the form of an additional disbursement disclosure sheet, which has been further amended into a reconciliation form by the current proposal as a result of comments at the rulemaking hearing. The current proposal eliminates the requirement of signatures by borrower and seller, retains the requirement of signature by the settlement agent, and has been re-formatted as a "Special Disbursement Reconciliation." The goal is to provide reasonable safeguards in the closing of transactions and an audit trail for the department's examiners, as well as to accommodate lenders when funds are disbursed through the title company. The proposed form will distinguish between items marked as POC that are disbursed by title companies as a convenience to the lender and items marked as POC that are actually disbursed outside the closing. The proposed form will create a clear audit record of the two different types of disbursements.

At the rulemaking hearing, the original proposal drew support from OPIC as a monitoring tool to ensure that no rebates or discounts or "other thing of value" be provided to lenders for soliciting or referring title business. The other commenters on this issue at the rulemaking hearing supported the concept of auditing these payments but generally opposed the proposed form T-63 as being burdensome to agents, confusing to consumers, allegedly violating Article 9.53, Insurance Code, and improperly modifying the HUD statements. The department notes that Articles 9.39 and 9.48 §14(c), Insurance Code, make it clear that TDI examiners must be able to audit escrow accounts. The Real Estate Settlement Procedures Act of 1974 (RESPA) regulations 24 CFR §3500.9(a)(9) lists as a permissible change to the HUD settlement statements the attachment of an additional page for the purpose of including such things as check disbursements and other disclosures. Additionally, RESPA regulations 24 CFR §3500.13 provides that state provisions giving greater consumer protection will not be construed as being in conflict with federal law. If title agents indeed feel burdened by this additional form, agents are free to tell lenders they will not pass these POC items through state audited escrow accounts; otherwise, if title agents choose to disburse these items as a convenience to lenders and thereby contaminate the escrow account, then the department will be able to audit properly the escrow accounts. The department's amended proposed form will also address TLTA's argument that an additional procedural

rule is necessary to avoid confusion in the industry, since the amended form contains self-explanatory language on its use and no longer contains the requirement of signatures by borrower and seller. This will further ease any alleged burdens on the title agents. The proposed form will also support OPIC's concern that the department monitor and scrutinize the payment of these types of costs for the convenience of lenders.

Item 98-16 - Submission by Texas Department of Insurance to amend Procedural Rule P-20 and various forms as they apply to "subsequent taxes and assessments" in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. This proposal clarifies coverage requirements as authorized by House Bill 1453, 76th Legislature, regarding title insurance coverage for subsequent taxes which arise because of the revocation of a prior exemption granted to a previous owner under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. The department's original proposal, and as revised at the rulemaking hearing, drew opposition from several title agents and underwriters as being too broad in its impact on the exception for rollback taxes and as possibly defeating the clarifying purpose of the new legislation. TLTA submitted amendments to this proposed agenda item by adding language to reflect the passage of House Bill 1453. The TLTA amendments also added the text of revised Form T-13, which was inadvertently omitted from the proposed agenda item and also corrected language in Procedural Rule P-20 to reflect a prior change in the policy forms not yet updated in Procedural Rule P-20. TLTA further noted for the record at the rulemaking hearing that retaining the existing language of the exception is consistent with paragraph A of House Bill 1453 which merely clarified coverage in a rollback situation and that adopting the new language to the existing exception reflects paragraph B of the new legislation in order to make it clear that coverage is provided in those supplemental tax situations. The department agrees and hereby proposes TLTA's amendments but has corrected its reference to the number of the exception in the Mortgagee Policy (Form T-2) by changing the number to "3." The proposed amendments to the various forms and procedural rule will apply to policies of title insurance that are delivered or issued for delivery on or after January 1, 2000. This date affects only the forms and procedural rule pursuant to this item.

Item 98-17 - Submission by Texas Department of Insurance to amend Procedural Rule P-31 setting a standard for title insurance companies to follow in reporting the named individuals and the office location at which home office issued policies may actually be signed. This proposal allows flexibility in the location of an authorized signer of a home office issued title insurance policy to conform to increased industry demands for rapid issuance of policies while preserving the need for original signatures on a policy. TLTA suggested deleting the "maintained by" language which TLTA stated is unclear and not necessary to the rule requiring that the office for countersigning directly issued policies be so "designated" by the title insurance company. TLTA also suggested amending the proposed procedural rule by adding that "This Rule does not prohibit the use of electronic signatures on endorsements to title insurance policies", which TLTA stated clarifies the intent that the rule does not alter the existing practice of using electronic signatures for endorsements to policies. TLTA supplemented its comments at the rulemaking hearing by stating that the TLTA amendments took out "maintained" and replaced it with "designated" because of difficulty in interpretation. TLTA also stated that it would like to have the ability to use electronic signatures on endorsements, such as endorsements where there are no coverage issues. Later in the rulemaking hearing, TLTA stated that its amendments regarding electronic recording were so there would be no conflict with Procedural Rule P-17, which TLTA claimed permits electronic signing of endorsement forms only. TLTA stated that it wants the record clear that it has the authority to do that in P-17. TAATA stated that it opposes any amendments to the procedural rule as possibly leading to a plethora of those offices all over the state, thus allowing an abuse of home office issues to the detriment of rural agents. The department is trying to balance the restraints on home office issue with the current practices of the industry. The result is this proposed item which attempts to effect the need for rapidity in the title insurance marketplace while maintaining safeguards in the execution of policies. The department accordingly proposes to retain the original proposed language. P-31 is for directly issued policies only, not title agents in general. It is not current department practice to allow electronic signatures except in limited extraordinary situations, and P-17 does not state that electronic signatures are allowed.

Item 98-18 - Submission by Texas Department of Insurance to repeal Procedural Rule P-32 that expired by its own provisions on December 31, 1995. The department submitted a corrected proposal at the rulemaking hearing which cured a typographical error in the stated justification. At the rulemaking hearing, TAATA stated the history of the rule and noted that the reporting of the home office issue information was to aid in determining the extent to which home office issues were being used, and whether they were being used in an effort to avoid compensation to the agent in the county where the land is located, who did the title insurance examination or the property title examination and furnished the commitment based upon which the transaction closed. The department agrees that this reporting information was useful in determining the home office issue practices; however, this rule has expired on its own terms, and the department believes that it can obtain this information through other reporting methods such as the statistical call, or through a new rule, should it be necessary.

Item 98-20 - Submission by Texas Department of Insurance to amend Procedural Rule P-22 to permit the person furnishing services to retain their portion of the title premium in lieu of remitting the entire portion of the premium to the company. The original intent of this proposal was to eliminate a step in the split of the premium between title insurance agent and title underwriter by allowing the agent to retain its share of the premium and remit only the underwriter's portion of the premium. The current rule requires the entire premium to be remitted to the underwriter. It was pointed out at the rulemaking hearing by TAATA that there are valid reasons for requiring that the entire premium be remitted to the underwriter for distribution, especially when more than one party is involved with the closing and title examination. The department agrees to retain the procedural rule in its current form and hereby withdraws this item from consideration.

The department has filed a copy of each of the proposed items with the Secretary of State's Texas Register section. Persons desiring copies of the proposed items can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Angela Arizpe at 512/322-4147.

Robert R. Carter, Jr., deputy commissioner for the title insurance division, has determined that, for each year of the first

five years the amendment is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendment. Mr. Carter has also determined that there will be no effect on local employment or the local economy.

Mr. Carter has also determined that for each year of the first five years the proposed amendment is in effect there will be a number of public benefits anticipated as a result of the amendments to the manual rules and changes to the insuring forms. The new Procedural Rule P-49 conforms to the new legislation passed through Senate Bill 105 in the 76th legislature and promotes the more efficient auditing and reporting of audits of title agents, direct operations, and title insurance companies. The new Special Disbursement Reconciliation (Form T-63) will enable the department to reconcile and monitor the practices regarding escrow accounts and will help title agents and lenders to be more cognizant of the use of escrow accounts. Updating the various insuring policy forms and Procedural Rule P-20 to conform to the passage of House Bill 1453, 76th Legislature, will promote the clarification of coverage issues regarding supplemental taxes resulting from loss of exemption or improvements and regarding rollback taxes. Amending Procedural Rule P-31 will allow flexibility in the industry's need for rapid issuance of policies while preserving the department's duty to monitor potential abuses of home office issue practices. This will also allow for more efficient closing of transactions, thus contributing to the ease of buying, selling, and refinancing real estate in Texas. Repealing Procedural Rule P-32 that expired by its own provisions is a housekeeping matter that promotes efficiency in the department. There are no anticipated additional costs to persons required to comply with the following manual rule changes. The updating and adopting of the forms and procedural rules resulting from the new legislation in House Bill 1453, 76th Legislature, serve to clarify coverages that the department and most of the title industry maintained existed, thus improving and facilitating the practices of the title industry while not increasing the costs to the industry. Substituting the updated promulgated forms will impose no additional regulatory costs on companies that decide to participate in the market, and the costs of reproducing such forms should be fully compensated by the existing premium schedule. Furthermore, the department anticipates that the existing premium schedule will fully compensate both large, small, and micro-businesses, and therefore, expects no differential impact among large, small, or micro-businesses that decide to participate in the market. There are some anticipated additional costs to persons required to comply with the addition of the Special Disbursement Reconciliation (Form T-63). To the extent that title agents choose to pay through their escrow accounts some of the lender's costs as a convenience to the lender, then the title agents will have to incur the cost of adding a reconciliation form to their guaranty file to create an audit trail and to prevent undocumented contamination of the escrow accounts. The cost of reproducing the form is estimated to be no more than $.15 per form for the cost of a photocopy. A title agent's time in preparing the form is dependent on the amount of the individual itemized costs which the title agent chooses to pay through the escrow account as a convenience to the lender. The time is estimated to be not in excess of 15 minutes to fill out the form per closing transaction. The total estimated cost is dependent on the volume of business conducted by title agents and direct operations and will be the same cost for all persons and companies, including large, small, and micro-businesses, who engage in the business of title insurance. It is also anticipated that any increases in costs as a result of the proposal will be passed on to consumers and will ultimately be recouped by the title industry. The cost to persons in the title industry who qualify as a small or micro-business under the Government Code §2006.001 will be the same as the cost to the largest business because the cost is not dependent upon the size of the business but rather is the same price for all persons in the title industry. The proposed new reconciliation form may not be waived for persons in the title industry who qualify as a small or micro-business because the use of this form is to preserve the integrity of the escrow accounts which is mandated by the department's statutory audit authority.

Comments on the proposal to be considered by the department must be submitted within 30 days after publication of the proposed Section in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Robert R. Carter, Jr., Deputy Commissioner for the Title Insurance Division, Mail Code 106-2T, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office. It is noted that any comments received during the previous rulemaking hearing will be considered part of the record regarding the proposed amendments.

This amended section is proposed pursuant to the Insurance Code, Articles 9.07, 9.21, §36.001 (former Article1.03A), the 76th Legislature's amendments to Article 9.07A by House Bill 1453 and Article 9.39 by Senate Bill 105, and in accord with the Government Code, §§ 2001.004-2001.038. Article 9.07 authorizes and requires the commissioner to hold a biennial hearing to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules and regulations prescribing underwriting standards and practices, and to promulgate and enforce all other rules and regulations necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. House Bill 1453, 76th Legislature, clarifies coverage requirements in rollback tax situations and regarding title insurance coverage for subsequent taxes which arise because of the revocation of a prior exemption granted to a previous owner under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. Senate Bill 105, 76th Legislature, specifies new time periods regarding audit reports of title insurance agents and direct operations. Insurance Code, §36.001 (former Article 1.03A) authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Government Code, §§2001.004-2001.038 et seq. (Administrative Procedure Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

The following statutes are affected by this proposal: Insurance Code, Articles 9.07, 9.07A, 9.21, and 9.39

§9.11. Amendments to the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas from a *[~~the Annual Consideration of Possible Amendments in~~] Public Hearing [~~on December 10 and 11, 1990~~].*

In addition to material adopted by reference under § 9.1 of this title (relating to Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas) (the manual), the Texas Department [~~State Board~~] of Insurance adopts by reference, as part of the manual, amendments and changes approved as a result of [~~at~~] a public hearing on August 10, 1999 and submitted as Agenda Items 98-11, 98-14, 98-16, 98-17, and 98-18 [~~December 10 and 11, 1990, as Agenda Items 90-4, 90-5, 90-8, 90-9, 90-10, 90-11, 90-16, 90-17, 90-18, 90-19, 90-20, and 90-22~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998. [~~These documents are published by and are available from Hart Forms and Services, 11500 Metric Boulevard, Austin, Texas 78758, and are available from and on file at the Title Insurance Section, Mail Code 012-7, State Board of Insurance, William P. Hobby State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.~~]

This 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 September 20, 1999.

TRD-9906090
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 65. WILDLIFE

Subchapter T. SCIENTIFIC BREEDER'S PERMIT

31 TAC §§65.601, 65.602, 65.605, 65.607-65.610

The Texas Parks and Wildlife Department proposes amendments to §§65.601, 65.602, 65.605, and 65.607 - 65.610, concerning Scientific Deer Breeders. The amendments are necessary to minimize administrative complexities associated with the marking of deer and their transportation for temporary breeding or nursing purposes, as well as to reduce paperwork and provide generally for more efficient administration of the program. The amendment to §65.601, concerning Definitions, provides for an optional marking convention. The amendment to §65.602, concerning Permit Requirement and Permit Privileges, stipulates that a scientific breeder may temporarily relocate deer for nursing or breeding purposes. The amendment to §65.605, concerning Holding Facility Standards and Care of Deer, removes provisions for temporary relocation of fawns for nursing purposes, which are being revamped and installed in another section. The amendment to §65.607, concerning Marking of Deer, would: allow scientific breeders to defer the tattooing of deer until such time as they leave a breeding facility; provide for an optional marking convention; require all deer within a facility to be ear-tagged by March 1 of each year; and mandate, as a consequence of purchase, the replacement of the seller's ear tags with the buyer's ear tags prior to the removal of deer from a facility. The amendment to §65.608, concerning Annual Reports and Records, would require permittees to submit an annual report by November 1 of each year, at which time they would also furnish all purchase permits used during the reporting period. The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, would simplify the current provisions for the acquisition and use of purchase permits by: eliminating the requirement for possession of a return fax from the department prior to transport and replacing it with a more flexible notification and reporting procedure; and allowing purchase permits to be obtained in bulk, to be used as necessary during the span of a scientific breeder permit's validity. The amendment to§ 65.610, concerning Transport of Deer and Transport Permit, would provide for the temporary movement of deer for breeding or nursing purposes by implementing a notification requirement for such activities, and would create an identification requirement for vehicles and trailers used to transport deer.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to regulate persons possessing white-tailed or mule deer for propagation, scientific, and management purposes.

There will be no effect on small businesses. There are additional economic costs to persons required to comply with the rules as proposed, but the department has determined that such costs range from minimal to negligible.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may submitted to Jerry Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4774 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

The amendments affect Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.601. 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 by Parks and Wildlife Code.

(1) Certified Wildlife Biologist - A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

(2) Common Carrier - Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.

(3) Deer - White-tailed deer of the species Odocoileus virginianus or mule deer of the species Odocoileus hemonius.

(4) Designated agent - An individual, identified on an application for a scientific breeder's permit, who is authorized by the permittee to conduct activities on behalf of the permittee.

(5) Facility - One or more enclosures, in the aggregate and including additions, that are the site of scientific breeding operations under a single scientific breeder's permit.

(6) Fawn - Any deer with a spotted coat.

(7) Propagation - The holding of captive deer for reproductive purposes.

(8) Sale - The transfer of possession of deer for consideration and includes a barter and an even exchange.

(9) Scientific - The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting deer.

(10) Serial Number - A permanent number assigned to the scientific breeder by the department.

(11) Unique number - A four-digit alphanumeric identifier issued by the department to a scientific breeder for the purpose of permanently marking a deer such that the animal's history of ownership can be tracked; or, at the permittee's discretion, an identifier consisting of the permittee's serial number and a four-digit number, provided that no such combination is used on more than one deer.

§65.602. Permit Requirement and Permit Privileges.

(a) Except as provided in this subchapter, no [No] person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) A person who possesses a valid scientific breeder's permit may:

(1) possess deer within the permitted facility for the purpose of propagation;

(2) engage in the business of breeding legally possessed deer within the facility for which the permit was issued;

(3) sell deer that are in the legal possession of the permittee;

(4) release deer from a permitted facility into the wild as provided in this subchapter; [and]

(5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility; and

(6) temporarily relocate deer in accordance with the provisions of §65.610(a)(2) and (3) of this title (relating to Transport of Deer and Transport Permit) for breeding or nursing purposes.

§65.605. Holding Facility Standards and Care of Deer.

(a) The entire perimeter fence of a facility shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain deer. An indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the deer in captivity.

(b) A permittee shall notify the department immediately upon discovering the escape of deer from a facility. Such notice shall be made on a form provided by the department and shall be notarized. The permittee shall have ten days from the date of such report to capture only those deer that are marked in accordance with §65.607 of this title (relating to Marking of Deer). All recaptured deer must be returned to the facility from which the deer escaped. If after ten days the permittee is unable to capture escaped deer that have been reported in accordance with this subsection, the department may grant an additional five-day period for capture efforts to continue, contingent upon the permittee proving to the department's satisfaction that reasonable efforts were made to effect the capture during the first ten-day period.

[(c) A scientific breeder may move fawns from a permitted facility to another location for nursing purposes, provided:]

[(1) the nursery is located on the same tract of land as the permitted breeding facility;]

[(2) the scientific breeder requests and receives written authorization from the department to establish a designated location for nursing purposes; and]

[(3) all fawns in such a nursery are marked in accordance with §65.607(a) of this title (relating to Marking of Deer).]

§65.607. Marking of Deer.

(a) Each deer held in captivity by a permittee under this subchapter shall be permanently marked by[:]

[(1) a unique number tattooed in one ear; and]

[(2)] an ear tag that shows the letters "TX" followed by the serial number assigned to the scientific breeder. All fawns within a scientific breeder facility shall be tagged by March 1 of the year immediately following their birth.

(b) No person shall remove or knowingly allow the removal of a deer held in captivity by a permittee under this subchapter unless it has been permanently marked by a department-issued unique number tattooed in one ear, or the permittee's TX number in one ear and a unique four-digit number in the other ear. [Fawns must be permanently marked by the first November 1 following birth.]

(c) No person shall remove a deer from a facility under the provisions of a purchase permit unless the ear tag identifying the seller has been removed from the deer, and, if the purchaser is a scientific breeder, replaced with an ear tag bearing the TX number of the purchaser. [All deer held in a scientific breeder facility prior to the effective date of this section must be marked upon first handling or prior to leaving the facility, whichever occurs first.]

§65.608. Annual Reports and Records.

(a) Each scientific breeder shall file a completed annual report on a form supplied or approved by the department, accompanied by the originals of all invoices for the temporary relocation of deer and all purchase permits used by the permittee during the reporting period, by not later than April 16 of each year.

(b) A permittee shall notify the department in writing by November 1 of each year of the exact number of fawns held by the permittee in each permitted facility, including fawns that have been temporarily relocated for nursing purposes.

(c) [~~(b)~~] The holder of a scientific breeder's permit shall maintain and, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity, including all invoices for the temporary relocation of deer, and buyer's and seller's copies, as applicable, of all purchase permits used by the permittee.

§65.609. Purchase of Deer and Purchase Permit.

(a) Deer may be purchased or obtained for:

(1) holding for propagation purposes if the purchaser possesses a valid scientific breeder's permit; or

(2) liberation for stocking purposes.

(b) Deer may be purchased or obtained only from:

(1) a holder of a valid scientific breeder's permit; or

(2) a lawful out-of-state source.

(c) An individual may possess or obtain deer only after a purchase permit has been issued by the department. A purchase permit is valid for a period of 30 days after it [~~Purchase permits shall be valid for 30 days from the date that the scientific breeder~~] has been:

[~~(1)~~] completed (to include the unique number of each deer being transferred [~~purchased~~]), dated, signed, and faxed [~~the permit~~] to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The purchase permit shall also be signed and dated by the other party to a transaction prior to the transfer of possession of any deer. [~~;~~]

[~~(2) received and possesses on their person a return fax from the department in acknowledgment of the fax required by paragraph (1) of this subsection.~~]

(d) A purchase permit is valid [~~only during the period of validity of a scientific breeder's permit, is effective~~] for only one transaction[~~,~~] and expires after one instance of use.

(e) A one-time, 30-day extension of effectiveness for a purchase permit may be obtained by notifying the department prior to the original expiration date of the purchase permit.

(f) A person may amend a purchase permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(g) [~~(f)~~] The department may issue a purchase permit for liberation for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(h) [~~(g)~~] Deer lawfully purchased or obtained for stocking purposes may be temporarily held in captivity:

(1) to acclimate the deer to habitat conditions at the release site;

(2) when specifically authorized by the department;

(3) for a period to be specified on the purchase permit, not to exceed six months;

(4) are not hunted prior to liberation; and

(5) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility.

§65.610. Transport of Deer and Transport Permit.

(a) The holder of a valid scientific breeder's permit or a designated agent may, without any additional permit, transport legally possessed deer:

(1) to another scientific breeder when a valid purchase permit has been issued for that transaction;

(2) to another scientific breeder on a temporary basis for breeding purposes. The scientific breeder providing the deer shall complete and sign a free, department-supplied invoice prior to transporting any deer, which invoice shall accompany all deer to the receiving facility. The scientific breeder receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held in the receiving facility. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the scientific breeder relinquishing the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. The original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title (relating to Annual Reports and Records). In the event that a deer has not been returned to a facility at the time the annual report is due, a scientific breeder shall submit a photocopy of the original invoice and submit the original invoice with the following year's report;

(3) to another person on a temporary basis for nursing purposes. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a nursery, which invoice shall accompany all deer to the receiving facility. The person receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the person holding the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. The original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title (relating to Annual Reports and Records);

(4) [~~(2)~~] to an individual who does not possess a scientific breeder's permit if a valid purchase permit for release into the wild for stocking purposes has been issued for that transaction; and

(5) [~~(3)~~] to and from an accredited veterinarian for the purpose of obtaining medical attention.

(b) The department may issue a transport permit to an individual who does not possess a scientific breeder's permit if the individual is transporting deer for liberation purposes and the deer were legally purchased or obtained from:

(1) a scientific breeder; or

(2) a lawful out-of-state source.

(c) All deer entering the boundaries of this state shall:

(1) be accompanied by a certificate of health, signed by an accredited veterinarian, which bears the purchaser's name and address, specifies the destination of the deer, and certifies that the deer:

(A) have been inspected by the veterinarian named on the certificate within 10 days prior to the time of transport;

(B) are free of external parasites;

(C) are free of evidence of contagious and communicable diseases; and

(D) have been tested in accordance with any applicable regulations of the Texas Animal Health Commission; and

(2) be accompanied by a permit or document from the government agency authorizing the exportation of the deer from the state or country of origin, if such permit or document was required as a condition for export from the state or country of origin.

(d) Deer may not be transported for the purposes of this subchapter during any open season for deer or during the period beginning 10 days immediately prior to an open season for deer unless the scientific breeder notifies the department by contacting the Law Enforcement Communications Center in Austin no less than 24 hours before actual transport occurs.

(e) Transport permits shall be effective for 30 days from the date that the scientific breeder has[~~:~~]

[~~(1)~~] completed (to include the unique number of each deer being transported), dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The transport permit shall also be signed and dated by the other party to a transaction prior to the transfer of possession of any deer.[~~; and~~]

[~~(2) received and possesses on their person a return fax from the department in acknowledgment of the fax required by paragraph (1) of this subsection.~~]

(f) A transport permit is valid [~~only during the period of validity of a scientific breeder's permit, is effective~~] for only one transaction, and expires after one instance of use.

(g) A person may amend a transport permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(h) [~~(g)~~] A one-time, 30-day extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

(i) No person may possess deer in a trailer or vehicle upon a public roadway unless the trailer or vehicle is plainly marked on the rear surface with the blocked, capital letters "TDB" of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle.

This 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 September 20, 1999.

TRD-9906094
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 389-4775

♦ ♦ ♦

Part 10. TEXAS WATER DEVELOPMENT BOARD

Chapter 353. INTRODUCTORY PROVISIONS

Subchapter A. GENERAL PROVISIONS

31 TAC §353.14

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

The Texas Water Development Board (board) proposes the repeal of 31 TAC §353.14, Memorandum of Understanding Between Texas Water Development Board and Texas Antiquities Committee. The repeal is proposed to reorganize the board's memoranda of understanding into a separate and distinct chapter. New 31 TAC Chapter 354, Memoranda of Understanding, is concurrently proposed which will incorporate the language being repealed in this section as well as other memoranda of understanding to which the board is a party.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five- year period these sections are in effect there will not be fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Todd has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the section will be improved organization of the board's memoranda of understanding. Ms. Todd has determined there will not be economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed repeal will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Assistant General Counsel, Border Project Management Division, Legal Services, 512/475-2051, Texas Water Develop-

ment Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by fax at 512/463-5580.

The repeal is proposed pursuant to Texas Water Code, §6.101, which requires the board to adopt rules necessary to carry out its powers and duties and §6.104 which authorizes the board to enter into and adopt rules relative to memoranda of understanding with other state agencies.

The statutes affected by the proposed repeal are Texas Water Code Chapters 6, 15, and 17.

§353.14. Memorandum of Understanding Between Texas Water Development Board and Texas Antiquities Committee.

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

Filed with the Office of the Secretary of State, on September 15, 1999.

TRD-9906006
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Chapter 354. MEMORANDA OF UNDERSTANDING

31 TAC §§354.1-354.4

The Texas Water Development Board (board) proposes new §§354.1-354.4 concerning memoranda of understanding between the board and other state agencies. The new sections will comprise new 31 TAC Chapter 354, Memoranda of Understanding, in order to consolidate all memoranda of understanding to which the board is party. Prior to this time memoranda of understanding appeared in four different chapters of board rules.

New §354.1 is proposed to replace existing §353.14 of this title (relating to Memorandum of Understanding Between Texas Water Development Board and Texas Antiquities Committee) which is being repealed in order to compile all memoranda of understanding into one new chapter. The new section establishes a memorandum of understanding between the board and the Texas Antiquities Committee and details the terms and responsibility of each agency.

New §354.2 is proposed to replace existing §363.3 of this title (relating to Memorandum of Understanding Between the Texas Water Development Board and the International Boundary & Water Commission) which will be repealed in order to compile all memoranda of understanding into one new chapter. The new section establishes a memorandum of understanding between the board and the International Boundary and Water Commission and details the terms and responsibilities of each agency.

New §354.3 is proposed to replace existing §371.5 of this title (relating to Memorandum of Understanding Between the Texas Water Development Board and the Texas Natural Resource Conservation Commission) which is being repealed in order to compile all memoranda of understanding into one new chapter. The new section establishes a memorandum of understanding between the board and the Texas Natural Resources Conservation Commission and details the terms and responsibilities of each agency.

New §354.4 is proposed to replace existing §363.511 of this title (relating to Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs) which will be repealed in order to move this memorandum of understanding to new Chapter 354. New §354.4 establishes a memorandum of understanding between the board and Texas Department of Housing and Community Affairs and details the responsibility of each agency regarding the coordination of funds out of the Economically Distressed Areas Program, administered by the board, and the Colonia Fund, administered by the Texas Department of Housing and Community Affairs, so as to maximize delivery of the funds and minimize administrative delay in the expenditure of these funds. New §354.4 differs from the old version in that it has been updated to include additional responsibility for both agencies to develop and provide information to the Senate Border Affairs Committee regarding the relative costs of providing water and wastewater services, where those costs have exceeded the existing board benchmark for financial assistance, to the costs of relocating the residents of the area proposed to be served by the board financial assistance.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five year period the new chapter is in effect, there will be no fiscal impacts for state or local government as a result of administering the sections.

Ms. Todd has further determined that for each year of the first five years that the sections are in effect, the public benefit anticipated as a result of administering the new chapter will be improved organization of the board's memoranda of understanding. There is no anticipated effect on small business. There are no anticipated economic costs to individuals.

Comments on the proposed sections will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Assistant General Counsel, Border Project Management Division, Legal Services, 512/475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by fax at 512/463-5580.

The new sections are proposed under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State and §6.104 which authorizes the board to enter into memorandum of understanding with other state agencies.

The statutory provisions affected by the new sections are Texas Water Code, Chapter 6 as well as Texas Water Code §§15.403, 15.605 and 16.342 for new §§354.2, 354.3 and 354.4 respectively.

§354.1. Memorandum of Understanding Between Texas Water Development Board and Texas Antiquities Committee.

(a) Introduction.

(1) Whereas, the Texas Water Development Board (hereinafter TWDB) and the Texas Antiquities Committee (TAC)/Department of Antiquities Protection (DAP) desire to enter into a memorandum of understanding (MOU) under which TWDB is granted permission under the Antiquities Code of Texas for ongoing, long-term surveys by TWDB staff archeologists for all types of archeological

sites which relate to proposed development projects funded by the TWDB; and

(2) Whereas, under the provisions of the Texas Natural Resources Code, the TAC is charged with the responsibility of the protection and preservation of the archeological and historical resources of Texas; and

(3) Whereas, under the provisions of Texas Natural Resources Code, Chapter 191, Subchapter C, §191.051 and §191.053, TAC may contract with or issue permits to other state agencies for the discovery and scientific investigation of archeological deposits; and

(4) Whereas, under the provisions of Texas Water Code, Chapter 6, §6.104, TWDB may enter into a MOU with any other state agency and shall adopt by rule any MOU between TWDB and any other state agency; and

(5) Whereas, under the provisions of this MOU, an Antiquities Permit is to be issued by TAC to TWDB for each calendar year that this agreement is in effect, subject to fulfillment of stipulated conditions;

(6) Now, therefore, the Texas Water Development Board and the Texas Antiquities Committee agree to enter into this memorandum of understanding to provide archeological surveys of all projects to be constructed with financial assistance from the Texas Water Development Board.

(b) Responsibilities. In a systematic manner, TWDB will conduct surveys for all types of archeological sites on lands belonging to or controlled by any county, city or other political subdivision of the State of Texas which may be impacted by proposed development projects that are funded in whole or in part by TWDB. Where appropriate, all surveys must consist of pedestrian surveys and sample subsurface probing (either shovel or mechanical testing, as appropriate) of proposed construction or development areas that may yield evidence of cultural resources (both historic and prehistoric), including areas that may receive direct impact from construction traffic.

(1) TWDB will comply with Texas Administrative Code requirements for a principal investigator as listed in 13 Texas Administrative Code §41.5 of the TAC Rules of Practice and Procedure. Each individual, as principal investigator, must be involved in at least 25% of the field investigation performed under the agreement.

(2) TWDB's staff archeologists will send the Department of Antiquities Protection (DAP) advance written notification of the following activities: proposed reconnaissance, 100% pedestrian surveys and/or sample subsurface probing investigations. The notification letters must include information on the type of project development proposed to receive TWDB financial assistance, the kind of archeological investigation proposed, the principal investigator or co-principal investigators intending to conduct the investigation, and the expected dates of the field work.

(3) TWDB staff archeologists will send DAP a report within 30 days of the completion of each investigation, notifying DAP of the findings of the investigation. The report must contain information on the basic scope of the work, findings, a project map showing any cultural site locations recorded, copies of all state site survey forms, a project development clearance request where appropriate, and any recommendations for further work. The report should conform with the guidelines for report preparation of the Council of Texas Archeologists. In cases where the scope and/or results of a particular investigation warrant a comparatively lengthy report requiring more than 30 days to prepare, TWDB staff archeologists will send a brief interim report notifying DAP of the findings of the investigation and proposed dates for the completion and submittal of the final report to DAP.

(4) DAP is responsible for responding to the report or the interim report, as appropriate, within 30 days of receipt of such report.

(5) For projects involving federal funds, TWDB field investigations will be conducted, where applicable, consistent with the National Historic Preservation Act, §106, the Secretary of the Interior's Guidelines on Archeology and Historic Preservation, the Regulations of the Advisory Council on Historic Preservation (36 Code of Federal Regulations Part 800), and the Texas Antiquities Code.

(6) A draft annual report summarizing the past calendar year's investigations under each yearly permit will be submitted to DAP by April 1 of the following year. Each project investigation report within the annual report will be concise, but informative, and include the same levels of data required under the rule provisions of 13 TAC §41.24.

(7) Once the draft annual report is approved by DAP, TWDB will submit 20 copies of the final annual report to DAP no later than 90 days after TWDB has received DAP's approval of the draft report. The final annual report should be in a form that conforms to 13 TAC §41.24(a), pertaining to Archeological Permit Reports.

(8) Copies of field notes, maps, sketches, and daily logs, as appropriate, will be submitted to DAP along with the annual report. Where duplicates are impractical, originals may be submitted for microfilming. Upon completion of microfilming, originals will be returned to TWDB.

(9) During preservation, analysis, and report preparation or until further notice by DAP, artifacts, field notes, and other data gathered during investigations will be kept temporarily at the TWDB. Upon completion of annual reports, the same artifacts, field notes, and other data will be placed in a permanent curatorial repository at the Texas Archeological Research Laboratory, the University of Texas at Austin, or other DAP-approved repository, at no cost to the TWDB.

(10) Should the staff archeologist positions at the TWDB be eliminated, TWDB remains responsible for contracting with an individual who meets the requirements of Section Number I.1 of this MOU, to serve as principal investigator to complete the year-end report to the DAP.

(11) The TWDB and/or its applicants for financial assistance may find that a particular project is so extensive or under such constraints of time and need that it is more efficient and effective for the archeological or related investigations to be conducted by a qualified archeologist under contract to the applicant. In such instances, the investigations will require a project specific antiquities permit to be obtained by the contracting archeologist.

(12) The following general procedures shall apply for investigation of all projects, including but not limited to the construction of water treatment and storage facilities, wastewater and sludge treatment and disposal facilities, water distribution and wastewater collection facilities, flood control modifications, municipal solid waste facilities, and reservoirs proposed to receive financial assistance from TWDB. Subject to those exceptions outlined below, the complete project will be investigated.

(A) Archival research will be conducted at the Texas Archeological Research Laboratory, the University of Texas at Austin,

and other facilities, as appropriate, to determine what cultural resources have been previously recorded in the vicinity of all proposed project construction areas. If the project can be shown to be in areas which have been extensively disturbed by previous development and/or unlikely to contain intact or significant cultural resources, then, based upon this initial review and information provided by the applicant for financial assistance, TWDB may request the DAP to allow the project to proceed to construction without further investigation.

(B) When field investigations are determined to be necessary by TWDB or stipulated by DAP review, the field methodology shall include pedestrian survey of all project areas unless preliminary inspection determines that a particular project area has been substantially altered or is physiographically situated such that it appears highly unlikely that significant cultural resources occur in the area. Appropriate to the type of project and location, TWDB archeologists may undertake limited subsurface probing in the form of mechanical or limited manual excavations in order to identify and/or evaluate buried cultural remains. When field investigations reveal that no significant cultural resources are located in the proposed project areas and, in the opinion of the principal investigator, no damage to significant cultural resources is anticipated, as reflected in a written report to DAP, the project implementation will be allowed to proceed, subject to DAP concurrence with the recommendation under Section Number I.4 of this MOU. In cases where historic and/or prehistoric cultural resources are found in the vicinity of proposed construction areas, the principal investigator will assess the significance of the resources and make recommendations for avoidance, testing, or mitigation of potentially significant resources, as appropriate, in the reports on the investigations. Decisions will be based upon the need to conserve cultural resources without unduly delaying the progress of project implementation.

(13) TWDB will ensure that it does not release funds for political subdivision construction prior to disposition, or formally agreed to disposition, of archeological and/or historical resources in accordance with DAP-approved reports referenced in paragraphs (3), (4), (5), and (11) of this subsection. Conditions of the TWDB financial assistance will provide, consistent with §41.8(b) of TAC rules, that if an archeological site is discovered during project implementation, work will cease in the area of the discovery, the site will be protected, and the discovery will be reported immediately to the Texas Historical Commission.

(14) Any member or agent of DAP may, with timely notice to TWDB, inspect TWDB investigations in progress subject to the provisions of the MOU and the yearly permit issued to TWDB by DAP.

(15) Said yearly permit is authorization for reconnaissance and 100% pedestrian survey and/or limited subsurface probing of areas of less than 300 acres when one TWDB staff archeologist is to conduct the investigation. When investigations of areas greater than 300 acres are proposed, TWDB shall consult with DAP regarding the need for a project specific permit. The investigation of tracts larger than specified above may require project-specific antiquities permits regardless of whether the TWDB has them performed by staff archeologists or by contract with other qualified archeologists. The above limitations do not apply to proposed pipeline or other linear construction projects wherein the total area to be examined may cumulatively exceed the acreage limitations.

(16) Advanced archeological investigations such as archeological testing or mitigative archeological excavations are not covered under the yearly permits, and any such investigation deemed necessary by DAP will require a project-specific antiquities permit.

(17) All conditions listed in the permit form remain unaltered by these guidelines.

(c) Permits. An antiquities permit is to be issued for each calendar year that this agreement is in effect with the stipulation that the responsibilities as outlined above are to be observed. Failure to comply with the provisions of this MOU could result in cancellation of the yearly permits at the discretion of DAP. The results of the investigations will be evaluated at the end of each permit period. A new permit will be automatically issued to TWDB by DAP by January 15 of each calendar year, assuming all conditions of the previous permit and this MOU have been met.

(d) Term. This memorandum of understanding will remain in full force and effect until canceled by the written notice of either party. The MOU may be amended by mutual written agreement between TWDB and DAP.

§354.2. Memorandum of Understanding Between the Texas Water Development Board and the International Boundary & Water Commission.

(a) The United States of America (hereinafter "United States") and the Republic of Mexico (hereinafter "Mexico") under pertinent provisions of the Treaty for Utilization of the Waters of the Colorado and Tijuana Rivers and the Rio Grande, dated February 3, l944 (TS 994; 59 Stat. 1219) and the implementation of Article 3 of this treaty in International Boundary and Water Commission Minute No. 261, Recommendations for the Solution to the Border Sanitation Problems, dated September 24, 1979 (TIAS 9658) signed International Boundary and Water Commission Minute No. 279, Joint Measures to Improve the Quality of the Waters of the Rio Grande at Laredo, Texas/Nuevo Laredo, Tamaulipas, in Laredo, Texas on August 28, 1989.

(1) A Minute of the International Boundary and Water Commission (hereinafter "IBWC"), approved by the two Governments, by virtue of pertinent provisions of the 1944 Water Treaty is a binding obligation of the governments of the United States and Mexico.

(2) The United States and Mexico under Minute No. 279 agreed to jointly finance the construction of an international wastewater treatment system in Nuevo Laredo, Tamaulipas.

(3) The United States and Mexico under Minute No. 279 agreed that the international treatment system in Nuevo Laredo, Tamaulipas, will be constructed, operated and maintained in a manner that will meet water quality standards stipulated in Minute No. 279, which are identical to the water quality standards adopted by the Environmental Protection Agency (hereinafter "EPA") and the State of Texas (hereinafter "Texas") for this reach of the Rio Grande.

(4) The United States and Mexico under Minute No. 279 are obligated to carry out through the IBWC programs of reviews and inspections of the principal elements of the jointly-financed project in Nuevo Laredo, Tamaulipas, which includes the international treatment plant.

(5) The United States and Mexico under Minute No. 279 are obligated to conclude another international agreement in the form of a Minute of the IBWC for the operation and maintenance of the jointly-financed project in Nuevo Laredo, Tamaulipas, which must include the division of costs, an operation and maintenance manual, and a specific program to ensure that the effluent standards specified in Minute No. 279 are met.

(6) The Government of Mexico in Minute No. 279 is obligated to assure the completion, at its expense, of construction of the jointly-financed project in the event that costs exceed the amount stipulated in Minute No. 279 and that part of the financing provided by the United States will be utilized in Mexico under applicable laws of Mexico and under the administration of the Mexican Section of the IBWC.

(b) Texas and the United States consider it desirable to arrange for a cooperative effort to finance the cost of the international wastewater treatment system in Nuevo Laredo, Tamaulipas so the effluent meets EPA and State approved water quality standards adopted for this reach of the Rio Grande.

(c) Under the practice of the IBWC, personnel of the Texas Water Development Board (hereinafter "board") and of the Texas Water Commission (hereinafter "TWC") may serve as technical advisors to the United States Section of the IBWC (hereinafter "Section").

(d) The 7lst Texas Legislature, General Session, l989, enacted Senate Bill 2 (hereinafter "S.B. 2") which amends Texas Water Code, §15.002, to include in the purpose of the Water Assistance Program the concern by the legislature with the serious health and sanitation problems that face the citizens of Texas from discharges of untreated and treated wastewater into the Rio Grande, and the intent of the Legislature to provide a means of coordinating and financing the development of wastewater treatment projects through cooperative efforts between Texas, the United States, and Mexico to improve the quality of water in the Rio Grande.

(e) S.B. 2 further amends Texas Water Code, §15.001, to include a definition for "federal agency" which allows the Section to apply to the Water Loan Assistance Program.

(f) The board administers the Water Loan Assistance Fund under the provisions of the Water Loan Assistance Program of Texas Water Code, Chapter 15, Subchapter C.

(g) The provisions of Texas Water Code, §15.107, allow the board to make financial assistance available to successful applicants in any manner that it considers economically feasible.

(h) The rules governing applications to the board for funds and subsequent action and release of funds by the board are set out in Rules Relating to Financial Programs, Texas Administrative Code, Title 31, Chapter 363.

(i) S.B. 2 amends Texas Water Code, §15.007, to require that the board must find that any waste treatment facility to be financed will consider cost-effective methods of treatment such as rock reed, root zone, ponding, irrigation or other nonconventional methods that may have been developed by the National Aeronautics and Space Administration or the Tennessee Valley Authority.

(j) S.B. 2 amends Texas Water Code, §15.102, to include that the loan fund may be used to provide financial assistance to federal agencies or to both political subdivisions and federal agencies acting jointly, and that a political subdivision may enter into an agreement with a federal agency to submit a joint application for financial assistance, and that the board must find that the project is designed to produce effluent that will meet United States and Texas approved water quality standards before the board may grant financial assistance under a joint application.

(k) S.B. 2 further amends Texas Water Code, §15.102, to provide that a grant or loan of financial assistance under a joint application by the federal government and a political subdivision may be made only for a project that is covered by an international agreement to which the United States is a party, and a grant or loan made under such a joint application is subject to the provisions, terms, and conditions of the international agreement to which the United States is a party.

(l) S.B. 2 amends Texas Water Code, §15.103, to provide that in an application to the board for financial assistance from the loan fund, the applicant shall include the name of the federal agency and its principal officers, a citation of the law under which the federal agency operates and was created, and a prohibition that the board may not accept an application for a loan or grant of financial assistance from the loan fund unless it is submitted in affidavit form by the chief administrator of the federal agency.

(m) S.B. 2 amends Texas Water Code, §15.104, to include the requirement that if an applicant proposes a wastewater treatment plant that is located outside of the jurisdiction of Texas and is not subject to the permitting authority of the TWC, the board must review the plans and specifications in coordination with the TWC and find that the wastewater treatment plant is capable of producing effluent that will meet United States and Texas approved water quality standards.

(n) S.B. 2 amends Texas Water Code, §15.106, to provide that the board will not require a program of water conservation to be adopted under subsection (b) of §15.106 if the project consists of construction outside the jurisdiction of Texas.

(o) S.B. 2 amends Texas Water Code, §15.114, to provide that after approval of engineering plans, a federal agency shall not make any substantial or material alterations in the plans without authorization of the Executive Administrator of the board.

(p) The board and the Section hereby enter into this Memorandum of Understanding with the intent of clarifying the administrative rules and procedures for the Section application process and to formalize certain standards of conduct by the parties in the joint participation of the construction of a wastewater treatment facility.

(1) Application Rules.

(A) The amendments to Chapter 15, Texas Water Code, as recited herein from S.B. 2 will be binding on the parties and will control over the Rules Relating to Financial Programs, of this chapter, where conflicts exist between such rules and the provisions of the statute.

(B) Portions of this chapter, which clarify requirements and facilitate the application process are described in Exhibit A entitled Application Rules, as shown in subsection (q)(10) of this section.

(C) The applicant shall submit a copy of the international agreement between the United States and Mexico which addresses the division of operating and maintenance costs as discussed in Resolution No. 8 of Minute 279 of August 28, l989. A copy of Minute 279 is attached hereto and incorporated herein by reference as Exhibit B as shown in subsection (q)(10) of this section.

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

(A) Participating party–A governmental or private entity which is providing financial or managerial support of the planning, design, construction, or the operational phases of the project.

(B) Project–All phases of the planning, design, and construction of the wastewater treatment plant and related facilities through completion of construction to operation.

(C) Project costs–Costs that are specifically funded through appropriation by the United States Congress for the Nuevo Laredo Project and which have been approved by the board in the Section's application and which may include: Section's pre-construction consultant costs; Section's administrative costs for inspection; and actual construction costs in the building of the project.

(3) Plans and Specifications. Three sets of the plans and specifications for the project will be provided to the board. The board will be the lead agency in coordinating with TWC any reviews or approvals needed by TWC with regard to plans and specifications.

(4) Funding and Payment.

(A) The board will administer the Texas share of funding of up to 10% of the United States share of the project costs as previously addressed in Minute 279, Exhibit B (as shown in subsection (q)(10) of this section) but the Texas share will not under any condition exceed $2 million.

(B) The Section will be responsible for ensuring that the Texas funds which are paid by the board are used solely in accordance with the terms of the approved application.

(C) The board will reimburse the Section in five installments for the Texas share of project costs incurred, subject to the following conditions.

(i) That no payment shall be made by the board until after the board has adopted the Memorandum of Understanding and approved the application submitted by the Section.

(ii) That no payment shall be made by the board, until in cooperation with the Texas Water Commission, the board has reviewed the plans and specifications and made the finding that the proposed wastewater treatment plant is capable of producing effluent that will meet United States and Texas approved water quality standards.

(iii) That the Section will submit a State of Texas payment voucher containing documentation of incurred costs. The board reserves the right to reduce or refuse payment if a voucher is deemed insufficient.

(iv) That the first payment will consist of 10% of the cost incurred by the Section for the preparation of the facilities plan under the architect-engineer contract dated January 18, 1990, not to exceed $61,000. The second payment will consist of one-quarter of the estimated total Texas share of project costs, minus the first payment amount, and will be paid after the project's construction is 25% complete. The third payment will consist of one-half of the estimated total Texas share of project costs, minus all previous payment amounts, and will be paid after the project's construction is 50% complete. The fourth payment will consist of three-quarters of the estimated total Texas share of project costs, minus all previous payment amounts, and will be paid after the project's construction is 75% complete. The fifth payment will consist of the balance of the Texas share of project costs and will be paid after the project's construction is 100% complete.

(D) The project's construction completion percentage shall be based on the amount of project costs that are incurred, due, and payable in comparison to the total estimated, or completed, project costs. The Section is primarily responsible for determining the completion percentage but the board reserves the right to reduce or refuse payment if the quality of the construction is determined to be inadequate.

(E) In addition to the limitations stated in paragraph (4) of this subsection, the second and subsequent payments are contingent upon:

(i) the United States share of funding for the project being authorized and the funds for federal fiscal years 1990 and 1991 being appropriated;

(ii) the submittal to and approval by the board of copies of any agreements or contracts addressed in the Application Rules, Exhibit A as shown in subsection (q)(10) of this section that were not initially filed with the application; and

(iii) the receipt of documentation, acceptable to the board, that the agreement between the United States and Mexico on the operation and maintenance is in place as addressed by Resolution No. 8, Minute 279, Exhibit B as shown in subsection (q)(10) of this section. The fourth and fifth payment is further contingent upon the United States appropriating sufficient funds for the completion of the project if the federal fiscal year 1990 and 1991 funding was insufficient. The fifth payment is further contingent upon the Section submitting to the board a final accounting of the project and a recapitulation of the actual project costs.

(5) Right of Entry and Inspection. Subject to notice to the parties, the board, through its representatives, will have right of entry and inspection during all phases of the project construction.

(6) Insurance. The international agreement in Minute Number 279 is the contractual obligation by the Governments of the United States and Mexico for the adequate and complete construction of the project in Mexico under terms specified in that agreement, including the obligation of the Government of Mexico to complete construction of all elements of the international project.

(7) Executive and Adoption. This Memorandum of Understanding shall be effective when signed by the designated representatives of the board and the Section and when adopted as a rule by the board. This Memorandum may be modified by mutual, written consent of the parties, and after publication as a rule amendment by the board.

(8) Duration. This Memorandum shall continue in full force and effect for five years after the last units of the project have commenced operations.

(9) Severance Provision. Should any one or more provisions of this agreement be held to be null, void, or for any reason without force or effect, such provision(s) shall be construed as severable from the remainder of this agreement and shall not affect the validity of all other provisions of this agreement which shall remain in full force and effect.

(q) First Amendment to Memorandum of Understanding Between Texas Water Development Board and United States Section, International Boundary & Water Commission.

(1) On August 28, 1989, the United States and Mexico signed International Boundary and Water Commission Minute Number 279, Joint Measures to Improve the Quality of the Waters of the Rio Grande at Laredo, Texas/Nuevo Laredo, Tamaulipas.

(2) Pursuant to provisions of S.B. 2 on July 19, 1990, the board entered into a Memorandum of Understanding with the Section to provide for the joint participation of the board and the Section with Mexico in the construction of a wastewater treatment facility in Nuevo Laredo, Tamaulipas, Mexico for the purpose of improving the water quality of the Rio Grande.

(3) In authorizing the appropriation, S.B. 2 (now Texas Water Code, §15.002(c)) states in relevant part that the legislature finds that serious health and sanitation problems face the citizens of this state from discharges of untreated and treated wastewater into the Rio Grande. It is the intent of the legislature to provide a means of coordinating and financing the development of wastewater treatment projects through cooperative efforts between this state, the United States, and the Republic of Mexico to improve the quality of water being discharged into the Rio Grande.

(4) Pursuant to the terms of the Memorandum of Understanding, the board would provide payments to the Section not to exceed $2 million as a 10% share of the U.S. estimated contribution to the project of $20 million.

(5) In accordance with the payment provisions of the Memorandum of Understanding, the board has made a first payment to the Section of $61,000.

(6) Subsection (p)(4)(E)(iii) of this section specifies that second and subsequent payments by the board are contingent upon an agreement between the U.S. and Mexico on the project's operation and maintenance, as addressed by Resolution Number 8, Minute 279, being in place.

(7) The Section has submitted a request to the board that the condition described in subsection (p)(4)(E)(iii) of this section requiring finalization of the operation and maintenance costs agreement between the U.S. and Mexico be waived for the second and third payments, and that the board immediately process the second and third payments, in the total amount of $939,000.

(8) The Section represents that the U.S. has paid all of its obligation on the project except for the balance of the Texas share that remains, and that payment by the board will allow the construction to proceed and will avoid disrupting the project.

(9) The board finds that it is in the best interests of public health and safety that construction of the project proceed without disruption, and that all other conditions for the second and third payments have been met.

(10) The Texas Water Development Board and the United States Section, International Boundary and Water Commission, agree to amend the condition described in subsection (p)(4)(E)(iii) of this section to read as follows: "the receipt by the board of an agreement between the United States and Mexico for specific operation and maintenance criteria to ensure compliance with the discharge standards in Minute Number 279 including commitments to adopt an operations and maintenance manual and a satisfactory division of costs before the international plant is in operation as addressed by Resolution Number 8, Minute Number 279, Exhibit B, as shown in subsection (q)(10) of this section. This applies to the second and third payments. The fourth and fifth payment is further contingent on receipt by the board of the agreement addressed in Resolution Number 8 of Minute Number 279 and upon the United States appropriating sufficient funds for completion of the project, if the federal funds appropriated and the maximum contribution by Texas of $2 million are not sufficient. The fifth payment is further contingent upon the Section submitting to the board a final accounting of the project and a recapitulation of the actual project costs."

Figure 1: 31 TAC §354.2(q)(10)

Figure 2: 31 TAC §354.2(q)(10)

§354.3. Memorandum of Understanding Between the Texas Water Development Board and the Texas Natural Resource Conservation Commission.

(a) In 1996, the U.S. Congress found that the requirements of the Safe Drinking Water Act, 42 U.S.C. 300 et seq. (SDWA) exceeded the financial and technical capacity of some public water systems and that States needed increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs. To this end, Congress enacted the Safe Drinking Water Act Amendments of 1996 (PL 104-182) (Amendments of 1996) which provides for water protection programs, changes to regulatory programs, small systems technology and funding for States and water systems. The Amendments provide for the establishment of drinking water treatment revolving loan funds (DWSRF) by states in order to receive capitalization grants through the United States Environmental Protection Agency (USEPA) for the purpose of furthering the health protection objectives of the SDWA. To be eligible to receive a grant, a State must establish a DWSRF and comply with the provisions of the Amendments of 1996.

(b) The Texas Water Development Board (board) provides financial assistance for the construction of water facilities and pursuant to the terms of Chapter 15, Section 15.602(1) Texas Water Code, is authorized to establish an additional state revolving fund to provide financial assistance to eligible applicants for public works in accordance with capitalization grant program requirements established by a federal agency.

(c) Texas Natural Resource Conservation Commission (commission) through the "primacy" approval granted the State of Texas in 1978 is responsible for implementing the drinking water regulatory scheme established by the Safe Drinking Water Act and for enforcing the national drinking water standards set by USEPA. The commission is also charged with the administration of Chapter 341, Subchapter C of the Health and Safety Code to ensure safe and adequate sources of drinking water from public water systems.

(d) The commission and board (parties) now intend to enter into a Memorandum of Understanding (MOU) pursuant to the authority, respectively, of Chapter 5, Section 5.104 and Chapter 6, Section 6.104, Texas Water Code, for the purpose of seeking out the respective duties and responsibilities of the Parties and to improve the efficiency and effectiveness of the board and commission operations in administering the provisions of the Amendments of 1996.

(1) The board will manage the financial administration of the DWSRF pursuant to State and Federal laws and will ensure compliance with the USEPA programmatic requirements for the DWSRF program.

(2) The commission will establish assistance priorities for the use of funds from the DWSRF and will provide the board with all information and reports necessary for the board's compliance with the USEPA programmatic requirements of the DWSRF program.

(3) The board will be responsible for the following activities under this MOU:

(A) prepare and adopt rules, and establish and maintain accounts necessary for the financial administration of the DWSRF;

(B) prepare and enter into capitalization grant agreements with USEPA;

(C) annually prepare contracts to be entered into by the board and commission which provide for the transfer of set-aside funds to the commission;

(D) communicate applicable Federal audit requirements to the commission;

(E) prepare and submit to USEPA project priority lists and annual intended use plans consistent with the priority system developed by the commission;

(F) act on applications for assistance, and draw down federal funds and transfer construction funds to assistance recipients;

(G) prepare and submit to USEPA biennial reports on the DWSRF;

(H) participate in annual DWSRF audits and USEPA oversight efforts;

(I) review and approve engineering plans and specifications for DWSRF funded water projects in conformance with the Letter of Agreement between the board and commission dated September 21, 1992;

(J) provide technical assistance to potential applicants seeking access to the DWSRF;

(K) assume responsibility for administering each loan project funded from the DWSRF;

(L) provide the required 20% State matching funds for the DWSRF capitalization grant to the extent that State law allows for the use of both appropriated funds and bond proceeds for such intended purpose; and

(M) serve as the official public contact for the State of Texas with regard to all DWSRF related activities.

(4) The commission will be responsible for the following activities under this MOU:

(A) develop and provide to the board a system for establishing assistance priorities;

(B) provide the one to one matching funds for all §1452(g)(2) set aside activities;

(C) provide to the board planning information as may reasonably be required for the board to prepare and submit intended use plans and biennial reports to the USEPA, including projections for the uses of funds and documentation that match requirements, when applicable, have been met;

(D) develop and submit to USEPA, programmatic elements as required to maximize capitalization of the DWSRF with evidence of the submittal provided to the board;

(E) cooperate with the board in developing any information necessary to complete the annual capitalization grant application, the Annual Report or any audits as required;

(F) establish adequate fund accounting as necessary to administer funds transferred from the DWSRF to the commission; and

(G) establish financial accountability procedures that meet applicable federal accountability requirements;

(e) The board and the commission agree that all rules and guidance related to DWSRF will be developed cooperatively.

(f) This MOU shall continue in full force and effect until canceled or superseded by either party. The party requesting cancellation shall give 90 days advance notice of intent to cancel and shall advise the other party in writing of the reasons for the cancellation.

(g) Should any one or more provisions of this MOU be held to be null, void, or for any reason without force or effect, such provision(s) shall be construed as severable from the remainder of this MOU and shall not affect the validity of all other provisions of the MOU, which shall remain in full force and effect.

(h) This MOU may be amended in writing at any time by the mutual consent of the parties and through the designated officials indicated below.

(i) This MOU shall be effective when signed by the designated representatives of the board and the commission and when adopted as a rule by the board.

§354.4. Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs.

(a) Recitals.

(1) Pursuant to the 1995 Appropriations Act of the Texas Legislature, and continued in the 1997 Appropriations Act of the Texas Legislature, the Texas Water Development Board (TWDB) and the Texas Department of Housing and Community Affairs (TDHCA) were required to develop an Memorandum of Understanding to detail the responsibility of each agency regarding the coordination of funds out of the Economically Distressed Areas Program, administered by the TWDB, and the Colonia Fund, administered by the TDHCA, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. The TWDB and the TDHCA executed an MOU and performed pursuant to the terms of that MOU.

(2) Pursuant to the 1999 General Appropriations Act of the 76th Texas Legislature, the TWDB and the TDHCA are required to continue the coordination commenced under the Memorandum of Understanding. In addition, members of the Border Affairs Committee of the Texas Senate have requested that the TWDB and the TDHCA provide information to that committee comparing the cost of providing water and wastewater service to a community to the costs of relocating the households located in that community.

(b) Parties. This Memorandum of Understanding hereinafter referred to as "Memorandum," is made and entered into between the TDHCA, an agency of the State of Texas, and the TWDB, an agency of the State of Texas.

(c) Purpose. The purpose of this Memorandum is to assure that none of the funds appropriated under Community Development Block Grant Program, Colonia Fund, are expended in a manner that aids the proliferation of colonias or are otherwise used in a manner inconsistent with the intent of the Economically Distressed Areas Program (EDAP) operated by the Texas Water Development Board, so as to maximize delivery of the funds and minimize administrative delay in their expenditure. Additionally, the purpose of this Memorandum is to provide the procedure for compiling, evaluating, and comparing information relating to the cost of providing water or wastewater service as determined by the TWDB with the cost of relocating the residents to an area with adequate water and wastewater service as well as adequate housing.

(d) Period of Performance. This Memorandum shall begin on September 1, 1999 and shall terminate on August 31, 2001. This Memorandum may be extended for additional period of time to ensure compliance with TDHCA Rider Number 4 and TWDB Rider Number 8 to the General Appropriations Act, 76th Legislature for the 2000-2001 Biennium.

(e) Performance.

(1) Each party to this Memorandum shall coordinate with the other in delivering water and sewer service lines, hook-ups, and plumbing improvements to residents of selected colonias in order to

connect those residents' housing units to EDAP-funded water and sewer systems.

(A) TDHCA Responsibilities. The TDHCA shall be responsible for the following functions:

(i) develop an application process for projects submitted by eligible units of local government;

(ii) assist units of general local government in preparing an application to the Colonia Fund;

(iii) determine whether projects meet federal requirements;

(iv) select projects to receive funding in conjunction with the TWDB;

(v) make Colonia Fund grant awards for selected projects on an as-needed basis;

(vi) prepare and execute contracts with units of general local government (Contractor localities);

(vii) provide oversight and guidance to Contractor localities regarding applicable federal and state laws and program regulations (environmental, labor, acquisition of real property, relocation, procurement, financial management, fair housing, equal employment opportunity, etc.);

(viii) provide on-site technical assistance if necessary to ensure that funds are efficiently and effectively used to accomplish the activities for which they were intended;

(ix) review, approve, process, and honor valid reimbursement requests from Contractor localities;

(x) monitor each project prior to contract completion to ensure compliance with applicable federal and state laws and program regulations;

(xi) consult with the TWDB regarding specific projects on an as-needed basis; and

(xii) notify communities on list provided by the TWDB of the availability of funds.

(B) TWDB Responsibilities. The TWDB shall be responsible for the following functions:

(i) provide the TDHCA with descriptions of and schedules for EDAP-funded projects that need Colonia Fund assistance to provide connections and plumbing improvements at least six (6) weeks before such assistance would be required;

(ii) assist eligible units of general local government in preparing an application for assistance through the TDHCA's Colonia Fund;

(iii) elect projects to receive funding in conjunction with the TDHCA; and

(iv) provide assistance with technical project-related concerns brought forward by Contractor localities or the TDHCA during the course of the project.

(2) Each party to this Memorandum shall coordinate in the compilation, evaluation, and comparison of information relating to the cost of providing water or wastewater service as determined by the TWDB with the cost of relocating the residents to an area with adequate water and wastewater service as well as adequate housing as determined by the TDHCA.

(A) TWDB Responsibilities. The TWDB shall be responsible for the following functions:

(i) identify up to five projects which exceed the benchmark cost per household set by the TWDB for providing financial assistance for the construction of water or wastewater systems by no later than April 1, 2000;

(ii) for these projects, prepare an executive summary which identifies for the proposed EDAP area:

(I) average residential lot size,

(II) average number of people per household,

(III) total number of households to be served by the proposed project, and

(IV) the cost per household of providing water and wastewater service; and

(iii) for these projects, promptly provide the TDHCA the executive summary and the facility plan submitted for such project;

(B) TDHCA Responsibilities. The TDHCA shall be responsible for the following functions:

(i) for each of the projects received from the TWDB under this section, prepare a market analysis for such area which will identify:

(I) the cost of developing a single family residential housing for the number of households identified for the EDAP area in the TWDB facility plan, and

(II) the cost of developing multi-family housing to serve the number of households identified for the EDAP area.

(ii) provide a copy of the market analysis for each such EDAP area together with a copy of the executive summary to the TWDB, the colonia coordinator appointed by the governor, and the Senate Border Affairs Committee by no later than September 1, 2000.

(f) Limitations. Eligible applicants shall be those counties eligible under both TDHCA's Colonia Fund and TWDB's EDAP. Non-entitlement cities located within eligible counties are also eligible applicants. Eligible projects shall be located in unincorporated colonias identified by the TWDB and in eligible cities that annexed the colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. Eligibility shall be denied to any project in a county that has not adopted or is not enforcing the Model Subdivision Rules established pursuant to §16.343 of the Texas Water Code.

(g) Reporting Requirements. Each party to this Memorandum shall submit, on or before the fifteenth day of the month following the end of the calendar quarter, to the other party a report of its activities and expenditures during the previous calendar quarter. The first such report shall be due January 15, 2000. No later than September 15, 2000, the TDHCA and the TWDB shall submit a joint report to the Legislative Budget Board that describes and analyzes the effectiveness of projects funded as a result of coordinated Colonia Fund/EDAP efforts.

(h) Termination. This Memorandum shall terminate upon ten days written notice by either party to the other party in this contract.

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

Filed with the Office of the Secretary of State, on September 15, 1999.

TRD-9906007
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Chapter 371. DRINKING WATER STATE REVOLVING FUND

Subchapter A. INTRODUCTORY PROVISIONS

The Texas Water Development Board (board) proposes amendments to §§371.2, 371.19-371.21, 371.23-371.26, 371.38, 371.52, 371.82, and 371.85 and repeal of §371.5 concerning the Drinking Water State Revolving Fund (DWSRF). The repeal of §371.5, relating to a Memorandum of Understanding (MOU) between the board and the Texas Natural Resource Commission is for the purpose of transferring the rule to a new chapter of board rules which will consist solely of MOU's to which the board is a party. The remaining amendments add a definition, add detail to clarify the rating criteria and procedures of the DWSRF program, and address the priority position of applications that seek refinancing of an eligible project.

Section 371.2 relating to Definitions, is proposed for amendment to add a definition for the term "Pre-design commitment" to clarify that applicants may receive a loan commitment prior to completion of the planning and design phases of a project.

Section 371.19, relating to the Rating Process, is proposed for amendment to notice applicants of a new policy with respect to refinancing of debt with DWSRF funds. The figure designations are amended to conform to the new subsections. Section 371.20 would amend procedures for the Intended Use Plan to provide notice to applicants of information that must be submitted by a time certain to qualify an applicant as a disadvantaged community.

Section 371.21, relating to Criteria and Methods for Distribution of Funds for Water System Improvements, is amended to provide applicants for water system improvements additional time to secure a loan commitment after the submittal of an application. The section further shortens the deadline for applications for the disadvantaged community program so that the board may timely reallocate unused funds to additional applicants.

Section 371.23, relating to Criteria and Methods for Distribution of Funds for Source Water Protection, is proposed for amendment to clarify the process for disposition of funds previously reserved that remain uncommitted for source water protection projects. The section is further amended to correct a citation to another subsection of the chapter.

Section 371.24, relating to Disadvantaged Community Program through Loan Subsidies, is proposed for amendment to correct a citation.

Section 371.25, relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities, is proposed for amendment to provide notice to applicants that the deadline for receiving a commitment for financial assistance is being shortened so that the board may timely reallocate unused funds to additional applicants. The section is further amended to delete the reference to two population category lists. The two lists referred to were discontinued in the program and were overlooked during the previous rule amendment. The section is further amended to add the description "disadvantaged communities" where the term appears to be needed for understanding.

Section 371.26, relating to Criteria and Methods for Distribution of Funds from the Community/Noncommunity Water Systems Financial Assistance Account, is proposed for amendment to provide notice to applicants that the deadline for receiving a commitment for financial assistance is being shortened so that the board may timely reallocate unused funds to additional applicants. The section is further amended to delete the reference to two population category lists. The two lists referred to were discontinued in the program and were overlooked during the previous rule amendment. The section is additionally amended to add the term "private and NPNC" to "applicants" where the term appears to be needed for understanding.

Section 371.38, relating to Pre-Design Funding Option, is proposed for amendment to provide notice to applicants that the pre-design funding option refers to a method of receiving a financial assistance commitment prior to completion of the planning and design of a project, as well as a method of closing and releasing funds. Section 371.52, relating to Lending Rates, is amended to provide the board with flexibility to set variable lending rates to accommodate changing financial market conditions without the need for frequent rule amendments.

Section 371.82, relating to Inspection During Construction, is proposed for amendment as a public safety factor in insuring that inspection of a project is done by a qualified inspector in a manner that is consistent with current industry practices. Section 371.85, relating to As Built Plans, is amended to clarify that as built plans should be submitted to the applicant and not to the board.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five- year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Todd has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide more detailed information to potential applicants on the rating criteria and procedures that are required of applicants for funding from DWSRF program. Ms. Todd has additionally determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments and repeal will be accepted for 30 days following publication and may be submitted to Gail L. Allan, Director, Administration and Northern Legal Services, 512/463-7804, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

31 TAC §371.2

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas

Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendment are Texas Water Code, Chapter 15, Subchapter J.

§371.2. Definitions of Terms.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by Chapter 15.

(1)-(47) (No change.)

(48) Pre-design commitment - A commitment by the board prior to completion of planning or design pursuant to §371.38 of this title (relating to Pre-Design Funding Option.

(49) [~~(48)~~] Primary drinking water regulation - A regulation promulgated by EPA which:

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either:

(i) a maximum contaminant level, if, in the judgment of the administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of the Act, §300f; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to:

(i) the minimum quality of water which may be taken into the system; and

(ii) siting for new facilities for public water systems.

(50) [~~(49)~~] Priority list - A list of projects, ranked according to priority order, for which DWSRF assistance may be requested.

(51) [~~(50)~~] Project - The scope of work describing a construction endeavor for which financial assistance is sought.

(52) [~~(51)~~] Project engineer - The engineer or engineering firm retained by the applicant to provide professional engineering services during the planning, design, and/or construction of a project.

(53) [~~(52)~~] Public water system -

(A) In General. The system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes:

(i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(B) Connections. A connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:

(i) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

(ii) the administrator or the commission determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

(iii) the administrator or the commission determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(C) Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water system if the system or the residential or similar users of the system comply with subparagraphs (B)(ii) and (B)(iii) of this paragraph.

(D) Transition Period. A water supplier that would be a public water system only as a result of modifications made shall not be considered a public water system until two years after August 6, 1996. If a water supplier does not serve 15 service connections or 25 people at any time after the conclusion of the two-year period, the water supplier shall not be considered a public water system.

(54) [~~(53)~~] Release - The time at which funds are made available to the loan recipient.

(55) [~~(54)~~] Secondary drinking water regulation - A regulation promulgated by EPA which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the administrator, are requisite to protect the public welfare. Such regulations may vary according to geographic and other circumstances and may apply to any contaminant in drinking water:

(A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use; or

(B) which may otherwise adversely affect the public welfare.

(56) [~~(55)~~] State - State of Texas.

(57) [~~(56)~~] State allotment - The sum allocated to the State of Texas for a federal fiscal year, from funds appropriated by congress pursuant to the Act.

(58) [~~(57)~~] Trust agent - The party appointed by the applicant and approved by the executive administrator to hold the funds which are not eligible for release to the loan recipient.

(59) [~~(58)~~] Water conservation plan - A report outlining the methods and means by which water conservation may be achieved in an area, as further defined in §371.37 of this title (relating to Required Water Conservation Plan).

(60) [~~(59)~~] Water conservation program - A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.

This 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 September 15, 1999.

TRD-9905998
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

31 TAC §371.5

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

The repeal is proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the repeal are Texas Water Code, Chapter 15, Subchapter J.

§371.5. Memorandum of Understanding Between the Texas Water Development Board and the Texas Natural Resource Conservation Commission.

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

Filed with the Office of the Secretary of State, on September 15, 1999.

TRD-9905999
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Subchapter B. PROGRAM REQUIREMENTS

31 TAC §§371.19-371.21, 371.23-371.26

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.19. Rating Process

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

(1) Acute chemical violation - A violation of the maximum contaminant level established for nitrate or nitrite as defined in 30 TAC Chapter 290 (relating to Water Hygiene).

(2) Acute coliform bacteria violation - A violation of the maximum contaminant level for coliform which is defined as an acute risk to health, as specified in 30 TAC Chapter 290 (relating to Water Hygiene).

(3) Carcinogen violation - A violation of the maximum contaminant level established for any carcinogenic contaminant listed in the following table:
Figure: 31 TAC 371.19(a)(3).

(4) Chronic chemical violation - A violation of the maximum contaminant level established for any of the contaminants listed in the following table:
Figure: 31 TAC 371.19(a)(4).

(5) Chronic coliform bacteria violation - A violation of the maximum contaminant level for total coliform as specified in 30 TAC Chapter 290 (relating to Water Hygiene).

(6) Compliance period - A three-year period for assessing compliance as defined in 30 TAC §290.102 (relating to Definitions).

(7) Geologic protection - The presence of one layer of clay 30 feet thick or thicker or the presence of thinner clay layers whose cumulative thickness is 100 feet thick or thicker between the ground surface and the top of a water producing aquifer.

(8) Maximum contaminant level - The maximum allowable level for any bacteriological chemical or radiological contaminant specified in 30 TAC Chapter 290 (relating to Water Hygiene).

(9) Ninetieth percentile copper/lead level - The level of lead or copper in a water system determined by the method specified in 30 TAC Chapter 290 (relating to Water Hygiene).

(10) Principal project - A project or group of projects included in an application which are intended to address specific system conditions which received priority points, the cost of correction of which comprises greater than 50% of the cost of all projects included in an application.

(11) Secondary chemical constituent exceedance–An exceedance of the constituent level established for any secondary chemical constituent listed in the following table:
Figure: 31 TAC §371.19(a)(11)

(12) Treatment technique violation–A violation of any surface water treatment technique as specified in 30 TAC Chapter 290 (Water Hygiene). For the purposes of this rating, these will include all 5.0% exceedances of the 0.5 NTU standard.

(13) Selected vulnerable aquifer–Aquifers identified by the commission at the time of preparation of the annual intended use plan and included by list in the letter soliciting project information as described in §371.20(b)(1) of this title (relating to Intended Use Plan) with criteria including, but not limited to: high transmissivity, rapid recharge (e.g., karst), unconfined aquifers with shallow water tables.

(14) Watershed–The contributing area of water to a surface water body such as a river or reservoir.

(b) Rating of Principal Project. Proposals for inclusion of projects in an intended use plan will be rated based upon the principal project. Additional projects which are integral to the integrity of the system may be included in a proposal and receive funding, so long as their costs comprise 50% or less of the total project costs.

(c) Rating for Refinancing. If refinancing is sought for a completed project, the project will be rated in accordance with subsections (d) through (j) of this section, based upon the conditions which existed prior to the initiation of construction of the project. A completed project can not be combined with a project for which construction has not been completed, but must be rated separately.

(d) [~~(c)~~] Health and Compliance Factors. Health and compliance factors for rating purposes will be calculated as follows.

(1) The microbiological factor will be equal to the sum of: the total number of coliform bacteria violations occurring within the preceding 12 months; the total number of acute coliform bacteria violations occurring within the preceding 12 months; and the total number of treatment technique violations occurring within the preceding 12 months, minus one.

(2) The filtration factor of 12 points will be awarded to any system with one or more sources of water identified as surface water, or groundwater under the direct influence of surface water for which no filtration is provided as identified by records maintained by the TNRCC.

(3) The chronic chemical factor for each contaminant listed in the following table will be equal to the average value of chronic chemical violations occurring within the most recent compliance period for which data exist, divided by the maximum contaminant level listed.
Figure: 31 TAC §371.19(d)(3)
[~~Figure: 31 TAC §371.19(c)(3)~~]

(4) The acute chemical factor will be equal to three times the quotient of the average value of nitrate or nitrite violations occurring within the most recent compliance period for which data exist, divided by the maximum contaminant level for nitrate or nitrite established by 30 TAC Chapter 290 (Water Hygiene).

(5) The carcinogen factor for each contaminant listed in the following table will be equal to twice the quotient of the average value of carcinogen violations ccurring within the most recent compliance period for which data exist, divided by the maximum contaminant level listed.
Figure: 31 TAC §371.19(d)(5)
[~~Figure: 31 TAC §371.19(c)(5)~~]

(6) The lead/copper factor will be equal to the product of two times the greater of: the 90th percentile lead level divided by 0.015, or the 90th percentile copper level divided by 1.3, as established in 30 TAC Chapter 290 (Water Hygiene).

(7) The population factor shall be based on the current population served by the system in accordance with the following table: Population....Factor; Zero to 1000; 101 to 1,0001; 1,001 to 10,0002; 10,001 to 100,0003; Greater than 100,0004; Current population will be based on population data maintained by the commission. The population factor will be used only when the sum of the factors listed in this paragraph and paragraphs (1)-(6) of this subsection is greater than zero. In that event, the population factor will be added to the sum of the factors listed in this paragraph and paragraphs (1)-(6) of this subsection.

(8) The secondary chemical factor for each constituent so designated in the following table will be equal to one-half the quotient of the average of the secondary chemical constituent exceedances occurring during the most recent compliance period for which data exists, divided by the secondary chemical constituent level listed in this section. A maximum of two points may be assigned to this factor.
Figure: 31 TAC §371.19(d)(8)
[~~Figure: 31 TAC §371.19(c)(8)~~]

(9) The total health and compliance factor for each applicant shall be the sum of all individual factors calculated according to this paragraph and paragraphs (1)-(8) of this subsection.

(10) The health and compliance factors for chronic coliform, acute coliform and treatment technique will be calculated based on data maintained by the commission from the most recent consecutive 12 months for which data are maintained by the commission, resulting from monitoring conducted by the commission or from public water system monitoring required by 30 TAC Chapter 290 (Water Hygiene).

(11) The health and compliance factors for chronic chemical, acute chemical, secondary chemical and carcinogen will be calculated based on data maintained by the commission from the current compliance period, resulting from monitoring conducted by the commission or from public water system monitoring required by 30 TAC Chapter 290 (Water Hygiene).

(12) The health and compliance factor for lead/copper will be calculated based on data maintained by the commission from the most recent complete compliance period, as defined in 30 TAC Chapter 290 (Water Hygiene), resulting from monitoring by the commission or from public water system monitoring required by 30 TAC Chapter 290 (Water Hygiene).

(e) [~~(d)~~] Affordability Factor. A project which qualifies as a disadvantaged community as defined in §371.24 of this title (relating to Disadvantaged Community Program through Loan Subsidies) shall have an affordability rating factor of 1.

(f) [~~(e)~~]Consolidation. In the event a project proposed for funding is to benefit two or more water systems, the combined rating factor will be the sum of the combined rating factors for each of the systems if the applicant will be wholly responsible for the ownership, operation and maintenance of the consolidated system; or will be the combined rating factor of the applicant system plus one-half the sum of the combined rating factors of each system to be consolidated if the applicant will be responsible only for supplying wholesale water to the individual system(s) and not be responsible for the ownership, operation and maintenance of the individual system(s). To receive the consolidation points, the applicant must provide documentation of agreement by the system(s) to be consolidated.

(g) [~~(f)~~] Physical Deficiency Rating Criteria. All projects will be evaluated for the existence of physical deficiencies based on information submitted by the applicant. The projects will receive physical deficiency rating scores based on the following criteria.

(1) If the system has experienced documented instances of water distribution outages or water distribution pressures of less than 20 pounds per square inch the project will receive a rating score of 1.

(2) If the system is not providing disinfection the project will receive a rating score of 1.

(3) If the documented water production capability is less than 85% of the minimum required by the commission the project will receive a rating score of 0.25.

(4) If the documented treated water storage capacity is less than 85% of the minimum required by the commission the project will receive a rating score of 0.25.

(5) If the system has experienced documented instances of water distribution pressures between 20 and 35 pounds per square inch the project will receive a rating score of 0.25.

(6) If the water system is experiencing documented water distribution system losses of greater than 25% the project will receive a rating score of 0.25.

(7) If the water system exceeds any secondary constituent listed in the following table and is not designated as a secondary chemical factor, the project shall receive a rating score of 0.25.
Figure: 31 TAC §371.19(g)(7)
[~~Figure: 31 TAC §371.19(f)(7)~~]

(8) The total physical deficiency rating score for a project will be the sum of all of the individual deficiency rating scores for that project.

(h) [~~(g)~~]Combined Rating Factor. The combined rating factor for a project shall be the sum of the affordability factor, the total health and compliance factor and the total physical deficiency rating. Projects which did not receive either a health and compliance factor, a physical deficiency rating or an affordability factor shall have a combined rating factor of zero.

(i) [~~(h)~~] Assignment of Points. Projects will be awarded points only if the proposed projects address the health and compliance, physical deficiency or affordability factors of the applicant system and/or system(s) to be consolidated.

(j) [~~(i)~~] Tie Breaker. In the event of ties in the ratings, priority will be given to the project serving the smaller total population based on information maintained by TNRCC.

(k) Ranking for Refinancing. Completed projects, which involve refinancing, will be listed in the intended use plan as a separate group and will be placed below the group of projects for which construction has not been completed.

(l) [~~(j)~~] Source Water Protection Priority Rating. Eligible entities that seek consideration for source water protection funding will be rated according to the following criteria.

(1) Ground Water System Vulnerability Factor.

(A) Ground water systems without the necessary water well geologic protection will receive 4 points.

(B) Ground water systems with documented Nitrate (N) concentrations of greater than two mg/l will receive 1 point.

(C) Ground water systems obtaining water from selected vulnerable aquifers will receive 1 point.

(D) Ground water systems with confirmed detections of organic chemical contamination identified in the following table will receive 2 points.
Figure: 31 TAC §371.19(l)(1)(D)
[~~Figure: 31 TAC §371.19(j)(1)(D)~~]

(E) No ground water system may receive more than 6 system vulnerability points. Ground water systems that receive no system vulnerability points will not be considered for source water protection funding.

(2) Surface Water System Vulnerability Factor.

(A) Surface water systems with contributing watersheds of 20 square miles or less as determined by the commission will receive 3 points.

(B) Surface water systems with confirmed detections of organic chemical contamination identified in the following table will receive 3 points.
Figure: 31 TAC §371.19(l)(2)(B)
[~~Figure: 31 TAC §371.19(j)(2)(B)~~]

(C) No surface water system may receive more than 6 system vulnerability points. Surface water systems that receive no system vulnerability points will not be considered for source water protection funding.

(3) No combination ground and surface water system may receive more than 6 system vulnerability points.

(4) Ability to Implement Best Management Practices Factor.

(A) Systems that receive system vulnerability points and that possess the ability and authority to implement land use controls including but not limited to zoning or ordinances, will receive 2 points.

(B) Systems that receive system vulnerability points and that possess the ability to implement other non-land use controls such as public education, contingency planning, or conducting toxic/hazardous waste collection events will receive 1 point.

(C) Systems that receive system vulnerability points and that propose to plug abandoned wells within the delineated source water protection area will receive 1 point.

(D) Systems that receive system vulnerability points and that have confirmed siting or well construction problems listed on the most recent commission sanitary survey will receive 1 point for proposals which will correct these problems.

(E) Systems that receive no Ability to Implement Best Management Practices points will not be considered for source water protection funding.

(5) Affordability Factor. A system having a service area in which the per capita income averaged 25% or more below the state average based upon the most recent census data available shall have an affordability rating factor of 1.

(6) The total source water protection rating score will be the sum of points generated from ground and surface water system vulnerability, ability to implement best management practices and affordability factors.

§371.20. Intended Use Plan.

(a) (No change.)

(b) The process for listing projects in the intended use plan will be as follows.

(1) Each year the executive administrator will provide written notice and solicit project information from eligible applicants desiring to have their projects placed on the subsequent year's intended use plan. The notice will include forms to be used to submit rating information and the deadline by which rating information must be submitted in order for projects to be rated and included in the intended use plan. The required information will include:

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

(F) additional information as necessary to establish the priority rating score for source water protection projects, or to

establish whether a potential applicant qualifies as a disadvantaged community.

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

§371.21. Criteria and Methods for Distribution of Funds for Water System Improvements.

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

(e) Applicants must submit complete applications within four months of being invited to submit.

(f) If, after seven [~~six~~] months from the date of invitation to submit applications, all available funds are not committed, the executive administrator will return any applications which have not received a commitment and move all projects for which no applications, incomplete applications or complete applications were submitted to the bottom of the prioritized list, where they will be placed in priority order.

(g)-(i) (No change.)

(j) If, after seven [~~six~~] months from the second date of invitation to submit applications, the remaining funds are not committed the executive administrator will return any applications which have not received a commitment. [~~Except for funds for disadvantaged communities projects, any~~] Any funds remaining that exceed the amount needed to fund complete applications will be made available for the next fiscal year. [~~Funds for disadvantaged communities projects shall remain available for commitment in accordance with §371.25 of this title, (relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities).~~]

(k) If, at any time during either seven [~~six~~] month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the line may be moved downward in priority order to accommodate projects which would utilize the funds that would otherwise not be committed during the particular seven [~~six~~] month period. The executive administrator will notify such additional potential applicants in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four months to submit an application and six months from the date of notification to receive a loan commitment.

(l) (No change.)

§371.23. Criteria and Methods for Distribution of Funds for Source Water Protection.

(a) (No change.)

(b) After the executive administrator determines the amount of funds available for source water protection projects from capitalization grant reserves, state match, repayments or any other source, the available funds will be applied to the list of source water protection projects designated to receive funding in the intended use plan. Projects will be listed in priority ranking order as determined by §371.19(l) [~~§371.19(h)~~] of this title (relating to Rating Process). Projects assigned identical rating scores will be listed in alphabetical order.

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

(h) If funds which have been reserved for source water protection projects are unused after all applicants have been provided an opportunity to submit an application, such funds may be made available for other projects pursuant to §371.21 of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements).

§371.24. Disadvantaged Community Program through Loan Subsidies

(a)-(f) (No change.)

(g) Consolidations.

(1) Financial assistance for consolidations.

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

(C) The amount of principal that will be forgiven for the consolidation will be deducted from the cost of the project before calculating the amount of financial assistance for the remaining cost of the project pursuant to subsection (c) of this section[~~§371.24(c) of this title (relating to Interest Rates and Subsidies)~~].

(2) (No change.)

§371.25. Criteria and Methods for Distribution of Funds for Disadvantaged Communities.

(a) The board will determine annually the amount of capitalization grant funds to be made available for projects for disadvantaged communities and will include this information in the intended use plan, provided however that no more than 30% of any capitalization grant can be so distributed.

(b) After the executive administrator determines the amount of funds available for disadvantaged communities projects from capitalization grant reserves, state match, or any other sources, the available funds will be applied to the list of projects identified as disadvantaged communities projects in the intended use plan. [~~systems that serve fewer than 10,000 persons and the list of systems that serve 10,000 and over persons in accordance with §371.21(a) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). All projects will be listed in priority ranking order as determined by §371.19 of this title (relating to Rating Process).~~] Disadvantaged communities projects assigned identical rating scores will be listed in the order of their adjusted median annual household income (AMAHI), with those communities having the lower AMAHI being listed higher on the priority list than those having higher AMAHIs. In the event that one or more disadvantaged communities have rating scores identical to the rating scores of non-disadvantaged communities, the disadvantaged communities will be listed above the non-disadvantaged communities on the priority list.

(c) After projects have been ranked, a disadvantaged community funding line will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential disadvantaged community applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within four months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the disadvantaged community account after the four month period has expired without affecting the priority status of the application. Applicants for funding from the disadvantaged community account will be allowed three [~~12~~] months after submittal of an application to receive a loan commitment.

(d) Applicants for funding from the disadvantaged community account above the funding line which do not submit applications before the four month deadline will be moved to the bottom of the priority list in priority order.

(e) If after four months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(f) Following the re-ranking of the priority list, a line will again be drawn not to exceed the amount of disadvantaged community funds available, in accordance with the criteria of subsection (b) of this section.

(g) Projects above the funding line shall be eligible for assistance. After the funding line is re- drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the disadvantaged community account of the availability of funds and will invite the submittal of applications. In order to receive funding, disadvantaged communities projects above the funding line must submit applications for assistance, as defined, within four months of the second date of notification of the availability of funds. Applicants for funding from the disadvantaged community account will be allowed three [~~12~~] months after submittal of an application to receive a loan commitment.

(h) If, after four months of the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund completed applications will be made available for the next fiscal year, subject to the limitations of subsection (a) of this section.

(i) If, at any time during either seven [~~six~~] month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding from the disadvantaged community account in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four months to submit an application. Applications for funding from the disadvantaged community account will be allowed three [~~12~~] months after submittal of an application to receive a loan commitment.

(j) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within three [~~12~~] months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list and the application returned to the applicant.

§371.26. Criteria and Methods for Distribution of Funds from Community/Noncommunity Water Systems Financial Assistance Account.

(a) Financial assistance to eligible private applicants and eligible NPNC applicants will only be provided from the community/ noncommunity water system financial assistance account, to the extent funds are available from such account, and any associated federal matching funds.

(b) The board will determine annually the amount of capitalization grant funds to be reserved in the community/noncommunity water systems financial assistance account and will include this information in the intended use plan.

(c) After the executive administrator determines the amount of funds available for community/noncommunity water systems financial assistance account from capitalization grant reserves, state match, or any other sources, the funds available from this account will be applied to the eligible private and NPNC in the intended use plan[~~list of systems that serve fewer than 10,000 persons and the list of systems that serve 10,000 and over persons in accordance with §371.21(a) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). All projects will be listed in priority ranking order as determined by §371.19 of this title (relating to Rating Process)~~]. The projects of eligible private applicants or eligible NPNC applicants assigned identical rating scores will be listed in alphabetical order. In the event that one or more projects of eligible private applicants or eligible NPNC applicants have rating scores identical to the rating scores of applicants that are not disadvantaged communities as defined in this chapter, such private or NPNC applicants will be listed above the non-disadvantaged communities on the priority list. In the event that one or more projects of eligible private applicants or eligible NPNC applicants have rating scores identical to the rating scores of applicants that are disadvantaged communities as defined in this chapter, such private or NPNC applicants will be listed below the disadvantaged communities on the priority list.

(d) After projects have been ranked, a funding line for private and NPNC projects will be drawn on the priority lists according to the amount of available funds in accordance with §371.21(b) of this title (relating to Criteria and Methods for Distribution of Funds for Water System Improvements). After the funding line is drawn, the executive administrator shall notify in writing all potential private and NPNC applicants above the funding line of the availability of funds and will invite the submittal of applications. In order to receive funding, eligible private applicants and eligible NPNC applicants above the funding line must submit applications for assistance, as defined, within four months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of an application for funding from the community/noncommunity water system financial assistance account after the four month period has expired without affecting the priority status of the application. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed three [~~six~~] months after submittal of an application to receive a loan commitment.

(e) Applicants for funding from the community/noncommunity water system financial assistance account above the funding line which do not submit applications before the four month deadline will be moved to the bottom of the priority list in priority order.

(f) If after four months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for community/noncommunity water systems financial assistance account or all available funds are not committed, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list, where they will be placed in priority order.

(g) Following the re-ranking of the priority list, a line will again be drawn not to exceed the amount of funds available, in accordance with the criteria of subsection (c) of this section.

(h) Projects above the funding line shall be eligible for assistance. After the funding line is re- drawn, the executive administrator shall notify, in writing, all potential applicants for funding from the community/noncommunity water system financial assistance account of the availability of funds and will invite the submittal of applications. In order to receive funding, the eligible private applicants or eligible NPNC applicants with projects above the funding line must submit applications for assistance, as defined within four months of the date of notification of the availability of funds. Applicants for funding from the community/noncommunity water system financial assistance account will be allowed three [~~six~~] months after submittal of an application to receive a loan commitment.

(i) If, after four months from the second date of invitation to submit applications, there are insufficient applications to obligate the remaining funds of the funds made available for community/non-community water systems or all available funds are not committed, the executive administrator will return any incomplete applications.

(j) If, at any time during either seven [~~six~~] month period of availability of funds, a potential applicant above the funding line submits written notification that it does not intend to submit an application or if additional funds become available for assistance, the funding line may be moved down the priority list to accommodate the additional projects. The executive administrator will notify such additional potential applicants for funding in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four months to submit an application.

(k) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within three [~~six~~] months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list and the application will be returned to the applicant. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on September 15, 1999. Suzanne Schwartz General Counsel Texas Water Development 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 September 15, 1999.

TRD-9906000
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Subchapter C. APPLICATION FOR ASSISTANCE

31 TAC §371.38

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.38. Pre-Design Funding Option.

(a) This loan application option will provide an applicant that meets all applicable board requirements an alternative to secure a commitment and to close on the commitment [~~loan proceeds~~] for planning, design or building costs associated with a project. Under this option, a loan may be closed [~~and funds released~~] to complete planning and design activities. [~~If all required planning has been completed and approved, design funds may also be released at the time of closing and building funds will be escrowed~~] If planning requirements have not been satisfied, design and building funds will be held or escrowed and released in the sequence described in this section. After planning and environmental review, the board may require the applicant to make changes in order to receive the board's approval and proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient shall use the escrowed funds to redeem bonds purchased by the board in inverse order of maturity. [~~General procedures and requirements for pre-design funding are described in this section.~~]

(b) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, contractual, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(c) Applications for pre-design funding must include the following information:

(1) for loans including building cost, an engineering plan of study which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected flows; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services;

(3) evidence that an approved water conservation plan as required under §371.37 of this title (relating to Required Water Conservation Plan) will be adopted prior to the release of loan funds or the applicant's election to submit the water conservation plan under §371.37 of this title (relating to Required Water Conservation Plan);

(4) all information required in §371.32 of this title (relating to Required Application Information); and

(5) any additional information the executive administrator may request to complete evaluation of the application.

(d) After board commitment and completion of all closing and release prerequisites as specified in §371.71 of this title (relating to Loan Closing) and §371.72 of this title (relating to Release of Funds), funds will be released in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan if still outstanding under §371.37 of this title (relating to Required Water Conservation Plan);

(2) for design costs, after receipt of executed contracts for the design phase and upon approval of an DWSRF feasibility report as specified in §37l.36 of this title (relating to Required DWSRF Engineering Feasibility Report) and compliance with §371.35 of this title (relating to Required Environmental Review and Determinations) and after board approval under subsection (e) of this section; and

(3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.

(e) Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (c)(1) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns to allow the executive administrator to make a recommendation to the board on pre-design funding. Prior to release of funds for design, these projects must have the board's approval based upon an environmental review conducted during planning under the standards of §371.35 of this title (relating to Required Environmental Review and Determination) as applicable.

(f) Prior to the board's approval of release of funds for design, the executive administrator shall summarize the project's environmental review and shall inform the board of any environmentally related special mitigative or precautionary measures recommended for the project. The board may elect to affirm or alter the conditions of the original commitment to the applicant or withdraw the commitment to the applicant.

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

Filed with the Office of the Secretary of State, on September 15, 1999.

TRD-9906001
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Subchapter D. BOARD ACTION ON APPLICATION

31 TAC §371.52

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.52. Lending Rates.

(a) Procedure for setting fixed interest rates.

(1) The development fund manager will set fixed rates for loans on a date that is:

(A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution; and

(B) not more than 45 days before the anticipated closing of the loan from the board.

(2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the development fund manager's approval.

(b) Fixed Rates. The fixed interest rates for DWSRF loans under this chapter are set at rates 120 basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate index for borrowers derived under paragraph (2) of this subsection. Using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale, the fixed rate index rates shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis) or the 90 index scale of the Delphis. For borrowers with either no rating or a rating less than investment grade, the 90 index scale of the Delphis will apply. The fixed rate index rates shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.

(1) Under §371.22(c) of this title (relating to Administrative Cost Recovery) an additional 30 basis points reduction will be used, for total fixed interest rates of 150 basis points below the fixed index rates for such borrowers.

(2) For borrowers filing applications on or after September 21, 1997 for loans with an average bond life in excess of 14 years or, at the discretion of the board for borrowers filing applications on or after September 21, 1997 for loans which have debt schedules less than 20 years and which produce a total fixed lending rate reduction in excess of a "standard loan structure" (defined as a debt service schedule in which the first year of the maturity schedule is interest only followed by 20 years of principal maturing on the basis of level debt service), the following procedures will be used in lieu of the provisions of paragraph (1) of this subsection to determine the fixed lending rate reduction:

(A) The interest rate component of level debt service will be determined by using the 13th year coupon rate of the appropriate index of the Delphis scales that corresponds to the 13th year of principal of the standard loan structure and that is measured from the first business day on the month the loan application will be presented to the board for approval.

(B) Level debt service will be calculated using the 13th year Delphis Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan according to a standard loan structure. For a loan which has been proposed for a term of years equal to a standard loan structure, the dates specified in the loan application shall be used for interest and principal calculation. For a loan which has been proposed for a term of years less than a standard loan structure or longer than a standard loan structure, level debt service will be calculated beginning with the dated date and based upon the principal and interest dates specified in the application, and continuing for the term of a standard loan structure.

(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan had been made according to the total fixed lending rate reduction provided in paragraph

(1) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.

(D) The board will establish a total fixed lending rate reduction for the loan that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.

(c) Variable Rates. The interest rate for DWSRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the DWSRF [~~31.5 basis points~~]. Variable rate loans are required to be converted

to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the development fund manager. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the development fund manager and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (a) and (b) of this section.

(d) Private borrowers. Notwithstanding the provisions of subsections (b) and (c) of this section, the interest rate for loan agreements for those borrowers receiving financial assistance from the community/noncommunity water systems financial assistance account will be the rate derived by subtracting 185 basis points from the prime lending rate. For the purpose of this subsection, prime lending rate is defined to be the base interest rate on corporate loans posted by at least 75% of the nation's 30 largest banks as published in the nationally published Wall Street Journal and which is in effect as of the date the interest rate is set by the development fund manager.

(e) NPNC borrowers. NPNC borrowers that issue tax-exempt obligations and that operate community/non-community water systems will receive interest rates pursuant to subsections (a),

(b) and (c) of this section.

(f) The development fund manager may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

This 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 September 15, 1999.

TRD-9906002
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Subchapter G. BUILDING PHASE

31 TAC §371.82, §371.85

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.82. Inspection During Construction.

After the construction contract is awarded, the applicant shall provide for adequate qualified inspection of the project under the supervision of [~~by~~] a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and in accordance with sound engineering principles and construction practices. The executive administrator is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the applicant any deviations from the approved contract documents. The applicant and the project engineer shall immediately initiate necessary corrective action.

§371.85. As Built Plans.

After a project is completed, the applicant shall submit documentation that the applicant has received from the contractor a complete set of as-built drawings of the project[~~to the executive administrator~~].

This 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 September 15, 1999.

TRD-9906003
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: November 17, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 1. CENTRAL ADMINISTRATION

Subchapter A. PRACTICE AND PROCEDURE

Division 1. PRACTICE AND PROCEDURE

34 TAC §1.33

The Comptroller of Public Accounts proposes an amendment to §1.33, concerning discovery in contested cases. The section is being amended to reflect changes in the discovery rules set forth in the Texas Rules of Civil Procedure.

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 new information regarding tax responsibilities. 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 John Neel, Chief Administrative Law Judge, General Counsel 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 Tax Code, §111.009 and §111.105.

§1.33. Discovery.

(a) Discovery. The Administrative Procedure [~~and Texas Register~~] Act, Subchapter D [~~§14 and §14a, as amended,~~] applies to matters of discovery.

(b) Scope , forms, and limitations of discovery. [~~Except for the exemptions from discovery provided in Texas Rules of Civil Procedure, Rule 166b(3), unless further limited by order of an administrative law judge, the~~] The scope of discovery is as follows: In general, parties may obtain discovery regarding any nonconfidential matter that is not privileged and is relevant to the subject matter in the pending action. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Permissible forms of discovery include requests for disclosure; requests for production and inspection of documents and tangible things; interrogatories to a party; requests for admission; and oral or written depositions. Discovery shall be conducted by the parties pursuant to a timetable agreed to by the parties or pursuant to a discovery control plan ordered by the Administrative Law Judge on motion of a party. Unless otherwise ordered, agreed, or otherwise modified by the provisions of this section, discovery shall be conducted within the time limitations set forth for a Level 2 Discovery Control Plan in Texas Rules of Civil Procedures, §190.3. The discovery methods permitted by this section should be limited by the Administrative Law Judge if he or she determines, on motion or on his or her own initiative and on reasonable notice that:

(1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; or

(2) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the contested case, and the importance of the proposed discovery in resolving the issues.

(c) Protective orders. Texas Rules of Civil Procedure, §192.6 [~~Rule 166b(5)~~], is incorporated herein for the protection of the party from whom discovery is sought under this section.

(d) Written discovery.

(1) Responding to written discovery. A party must respond to written discovery in writing within the time provided by order of the Administrative Law Judge or this section. When responding to written discovery a party must make a complete response, based on all information reasonably available to the responding party or its attorney at the time the response is made. The responding party's answers, objections, and other responses must be preceded by the request to which they apply. Every disclosure, discovery request, notice, response, and objection must be signed by an attorney, if the party is represented by an attorney, and must show the attorney's address, telephone number, and fax number, if any; or by the party, if the party is not represented by an attorney, and must show the party's address, telephone number, and fax number, if any. The signature of an attorney or party on a disclosure constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made. The signature of an attorney or party on a discovery request, notice, response, or objection constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, notice, response, or objection is consistent with the Texas Rules of Civil Procedure and this discovery section and warranted by existing law or rule or a good faith argument for the extension, modification, or reversal of existing law or rule; has a good faith factual basis, is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and is not unreasonable or unduly burdensome or expensive, given the needs of the contested case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the contested case.

(2) Objections to written discovery. On or prior to the date on which a response to a [~~discovery~~] request for written discovery is due, a party may serve written objections to a specific request or portions thereof-either in the response or in a separate document. A party must state specifically the legal or factual basis for the objection and the extent to which the party is refusing to comply with the request. A party may object to written discovery only if a good faith factual and legal basis for the objection exists at the time the objection is made.. Objections served after the date on which the response to a discovery request is due, or that are obscured by numerous unfounded objections are waived unless [~~an extension of time has been obtained by agreement or order of~~] the administrative law judge excuses the waiver for good cause shown [~~for failure to object within such period~~]; however, objections by the comptroller to discovery requests requiring the disclosure of confidential information cannot be waived. A party should not object to a request for discovery on the grounds that it calls for a production of material or information that is privileged but should comply with subsection (e) of this section. A party who objects to production of privileged material or information does not waive the privilege but must comply with subsection (e) of this section when the error is pointed out. [~~Responses only to those discovery requests or portions thereof to which objection is made are deferred until the objections are ruled upon, and for such additional time thereafter as the administrative law judge may direct.~~] A party must comply with as much of the request to which the party has made no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection. If the responding party objects to the requested time or place of production, the responding party must state a reasonable time and place for complying with the request and must comply at that time and place without further request or order. Either party may at any reasonable time request a hearing on objections or claims of privilege asserted under this section. [~~at the earliest possible time.~~]

(e) Asserting a privilege. A party may preserve a privilege from written discovery in accordance with this subparagraph. For purposes of this rule, an assertion that material or information is work product, as that term is defined, protected, and limited in Texas Rules of Civil Procedure, §192.5, is an assertion of privilege.

(1) A party who claims that material or information responsive to written discovery is privileged may withhold the privileged material or information from the response. The party must state–in the response (or in an amended or supplemental response) or in a separate document–that:

(A) information or material responsive to the request has been withheld,

(B) the request to which the information or material relates, and

(C) the privilege or privileges asserted.

(2) After receiving a response indicating that material or information has been withheld from production, the party seeking discovery may serve a written request that the withholding party identify the information and material withheld. Within 15 days of

service of that request, the withholding party must serve a response that:

(A) describes the information or materials withheld that, without revealing the privileged information itself or otherwise waiving the privilege, enables other parties to assess the applicability of the privilege, and

(B) asserts a specific privilege for each item or group of items withheld.

(f) Requests for disclosure. A party may obtain disclosure from another party of the information or material listed herein by serving the other party–at any time after a contested case has been assigned to a hearings attorney but no later than 90 days before the scheduled date of the oral hearing or the date on which the record of a written submission hearing is scheduled to close–the following request: "Pursuant to §1.33(f) of this title (relating to Discovery), you are requested to disclose, within 30 days of service of this request, the information or material described in that section." A party may request disclosure of any or all of the following:

(1) the correct names of the parties to the contested case;

(2) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at hearing);

(3) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

(4) for any testifying expert:

(A) the expert's name, address, and telephone number;

(B) the subject matter on which the expert will testify;

(C) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(D) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(ii) the expert's current resume and bibliography;

(5) any witness statements described in Texas Rules of Civil Procedure, §192.3(h). The responding party must serve a written response on the requesting party within 30 days after service of the request, except that a response to a request under subsection (f)(4) of this section is governed by Texas Rules of Civil Procedure, §195. Copies of documents and other tangible items ordinarily must be served with the response. But if the responsive documents are voluminous, the response must state a reasonable time and place for the production of the documents. The responding party must produce the documents at the time and place stated, unless otherwise agreed by the parties or ordered by the Administrative Law Judge, and must provide the requesting party a reasonable opportunity to inspect them. No objection or assertion of work product is permitted to a request under subsection (f) of this section. A response to a request under subsection (f)(2) of this section that has been changed by an amended or supplemental response is not admissible and may not be used for impeachment.

(g) Discovery regarding testifying expert witnesses. Texas Rules of Civil Procedure, §195 is incorporated herein for discovery regarding testifying expert witnesses.

(h) [~~(e)~~] Interrogatories to parties. Any party may serve upon any other party written interrogatories to inquire about any matter within the scope of discovery except matters covered by subsection (g) of this section. An interrogatory may inquire whether a party makes a specific legal or factual contention and may ask the responding party to state the legal theories and to describe in general the factual bases for the party's claims or defenses, but interrogatories may not be used to require the responding party to marshal all of the available proof or the proof the party intends to offer at hearing. Written interrogatories are to be answered by the party served, or, if the party served is a public or private corporation or partnership or association, by an officer or agent who must furnish such information as is available to the party. Interrogatories may be served at any time after a contested case has been assigned to a hearings attorney. Interrogatories served upon the comptroller may be answered by the comptroller's [~~his~~] designee who shall sign and verify the answers as required by subsection (h)(3) of this section.

(1) Interrogatories and answers to interrogatories. Service of interrogatories and answers to interrogatories must be made on the authorized representative of a party unless service upon the party is ordered by the administrative law judge.

(2) Time to answer. The party upon whom the interrogatories have been served must serve answers on the party submitting the interrogatories within 30 days after the service of the interrogatories, unless the parties agree in writing to a longer or shorter period of time. The administrative law judge, on a showing of good cause, may lengthen or shorten the time for serving answers or objections.

(3) Number of interrogatories. The number of questions including subsections in a set of interrogatories must not require more than 25 [~~30~~] answers. [~~No more than two sets of interrogatories may be served by a party, except by agreement.~~] Interrogatories must be answered separately and fully in writing. A responding party, not an agent or attorney, must sign the answers under oath except that when answers are based on information obtained from other persons, the party may so state, and a party need not sign answers to interrogatories about persons with knowledge of relevant facts, trial witnesses, and legal contentions. Answers to interrogatories must be preceded by the question or interrogatories to which the answer pertains. Copies of the interrogatories, and answers and objections thereto, must be served on all parties or their representatives. The answers must be signed and verified by the person making them.

(i) [~~(f)~~] Subpoenas, depositions, and orders to allow entry. An administrative law judge, acting independently or on motion by any party, may, for good cause:

(1) subpoena any person to appear and testify and to produce certain documents or other tangible items at an oral hearing;

(2) commission the taking of an oral deposition in the witness' county of residence or county where the witness does business and require production of certain documents or other tangible items at the time of deposition; and

(3) order any party to allow entry upon property under the party's control for the purpose of doing any act or making any inspection not protected by privilege and reasonably calculated to lead to the discovery of evidence material to the contested case.

(j) [~~(g)~~] Request for admission.

(1) At any time after a contested case has been assigned to a hearings attorney, a party may serve upon any other party a written request for the admission, for purposes of the pending contested case only, of the truth of any matter within the scope of subsection (b) of this section set forth in the request that relates to statements or opinions of fact or the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Whenever a party is represented by an attorney or representative of record, service of a request for admissions shall be made on his attorney or representative. A true copy of any objection to the request together with a copy of the request shall be filed promptly in the administrative law judge clerk's office by the party making the objection. If no objection is filed to a request, the written answer and the request shall be filed with the assigned administrative law judge by the hearings attorney no later than seven days prior to the date of the oral hearing or by the closing of the record of a written submission hearing.

(2) Each matter of which an admission is requested shall be separately set forth. The matter is admitted without necessity of an order of the administrative law judge, unless within 30 days after service of the request, or within such time as the court may allow, or as otherwise agreed by the parties, [~~unless~~] the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney or representative. If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made a reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for the contested case may not, on that ground alone, object to the request; he may deny the matter or set forth reasons why he cannot admit or deny it.

(3) Any matter admitted under this subsection is conclusively established as to the party making the admission unless the administrative law judge on motion permits the withdrawal or amendment of the admission. The administrative law judge may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment if the administrative law judge finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced, that the withdrawal or amendment is necessary for factual accuracy, and that the presentation of the merits of the contested case will be subserved thereby. Any admission made by a party under this subsection is for the purpose of the pending contested case only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

This 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 September 15, 1999.

TRD-9905996

Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-4062

♦ ♦ ♦

Subchapter D. TEXAS FILM INDUSTRY LOAN GUARANTEE PROGRAM

34 TAC §§1.330-1.332

The Comptroller of Public Accounts proposes new §§1.330-1.332, concerning the administration of the Texas Film Industry Loan Guarantee Program. The new sections are proposed to establish program rules pursuant to the program's enabling statute (Government Code, Chapter 403) enacted by House Bill 1687, 76th Legislature, 1999.

Mike Reissig, Director of Estimates, has determined that the new rules would have no significant fiscal impact on the state or units of local government.

Mr. Reissig also has determined that for each year of the first five years the rules are in effect, the new rules would benefit the public by stimulating production of filmed entertainment in the state. The new rules will have no fiscal impact on small business. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposal may be submitted to Dan A. McNeil, Manager, Texas Film Industry Loan Guarantee Program, P. O. Box 13528, Austin, Texas, 78711-3528.

These new sections are proposed under the Government Code, Chapter 403, Subchapter N, §403.330, which authorizes the comptroller to adopt rules necessary for the implementation of the program.

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

The new rules implement the Government Code, Chapter 403, Subchapter N.

§1.330. General Provisions.

(a) Authority and purpose. Pursuant to the authority granted by the Government Code, Chapter 403, Subchapter N, §403.330, the Texas Comptroller of Public Accounts prescribes rules regarding the administration, implementation, practice and procedure of the Texas Film Industry Loan Guarantee Program. The purpose of this program is to stimulate production of filmed entertainment in the state. The purpose of these provisions is to provide standards of eligibility and application procedures for a loan guarantee under the Texas Film Industry Loan Guarantee Program.

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

(1) Act–Texas Government Code, Chapter 403, Subchapter N.

(2) Applicant–A Texas film producer who applies for a loan guarantee under the program.

(3) Application–A completed application for a loan guarantee under the act, including all documents and information required

by the comptroller to be submitted by the film producer and lender for an eligible Texas film applicant.

(4) Comptroller–Texas Comptroller of Public Accounts.

(5) Distribution agreement–The contract between a Texas film producer and its distributor through which the distributor commits to pay the Texas film producer (or other owner of the eligible Texas film) for the right to distribute the film in one or more geographic areas, and in which the distributor and the Texas film producer (or other owner of the Texas film) make other relevant agreements.

(6) Distributor–Any person engaged in the business of obtaining rights from the film producer to rent, sell or license filmed entertainment to exhibitors, or to arrange for exhibition of filmed entertainment, for compensation.

(7) Eligible Texas film–A Texas film in which:

(A) the budget for the production costs of the film is at least 70% of the budget for the total cost to produce the film; and

(B) the budget for the total cost to produce the film is at least $1 million but not more than $5 million.

(8) Filmed entertainment–A visual and sound production that may be displayed in any media, including a theater or television broadcast, or through technology by means of a consumer owned or operated device.

(9) Indemnity–A contractual promise by a qualified issuer to protect the state and save and hold the state harmless from and against loss, cost and expense incurred by the state under a loan guarantee.

(10) Loan guarantee–A guarantee issued by the comptroller to a Texas lender covering the loss by the Texas lender on a qualified Texas film production loan up to the loan guarantee amount.

(11) Loan guarantee amount–An amount, in United States dollars, not to exceed the lesser of 80% of the total amount of the qualified Texas film production loan or $2.4 million.

(12) Qualified issuer–An insurance company or other person approved by the comptroller under the standards set forth in §1.332 of this title (relating to Filing Requirements and Consideration of the Loan Guarantee Application).

(13) Qualified Texas film production loan–A loan by a Texas lender to a Texas film producer which meets the requirements stated in §1.331 of this title (relating to Purposes, Limitations and Loan Requirements).

(14) Production costs–The total cost of producing filmed entertainment minus the sum of:

(A) the total costs incurred for the producer, director, writer, and screenplay of the production;

(B) the total amount paid to the five highest-paid actors appearing in the production; and

(C) the ordinary and necessary interstate and foreign travel expenses involved in the production.

(15) Program–The Texas Film Industry Loan Guarantee Program administered by the comptroller under Government Code, Chapter 403, Subchapter N, §403.330.

(16) Surety bond (also referred to as a completion bond)–A bond issued in favor of the Texas lender whose qualified Texas film production loan is covered by a loan guarantee, and the person providing the indemnity required under these regulations and the comptroller, as their respective interests may appear, in the amount of not less than the loan guarantee amount conditioned upon the failure of the eligible Texas film to be completed by the date and within the budget certified in the application.

(17) Texas derivation–Goods purchased or leased or services purchased, leased, or employed from a:

(A) resident of this state; or

(B) vendor or supplier who is located and doing business in this state.

(18) Texas film–Filmed entertainment in which at least 80% of the budget for the production costs of the filmed entertainment is dedicated for goods and services of Texas derivation.

(19) Texas film producer is:

(A) an individual resident of this state who produces Texas films; or

(B) a corporation, limited liability company, partnership, or other private entity that:

(i) is organized under the laws of this state; and

(ii) includes as one of its purposes, the production of one or more Texas films.

(20) Texas lender–A state or national bank that is domiciled in or has a branch office in this state.

(c) Standard for filmed entertainment. In establishing rules and in conducting the program, the comptroller shall ensure that artistic excellence and artistic merit are criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the citizens of the state.

(d) Statements and opinions. Statements and opinions expressed orally or in writing by the staff in response to inquiry or otherwise, and not specifically identified and promulgated as rules, shall not be considered regulatory standards of the comptroller.

(e) Examination of records. Pursuant to the Texas Open Records Act, Government Code, Chapter 552, any party may request the examination of records in the possession of the comptroller by submitting a written request to the comptroller's general counsel.

§1.331. Purposes, Limitations, and Loan Requirements.

(a) Authority and purpose. The comptroller shall administer a program to guarantee a certain amount of one or more qualified Texas film production loans as a means to facilitate access to capital for the production of filmed entertainment in this state. The comptroller may approve the issuance of a loan guarantee for a qualified Texas film production loan or loans for the production of more than one Texas film by a single Texas film producer. The comptroller may not issue a loan guarantee for an amount in excess of the loan guarantee amount.

(b) Limitations in Program. The aggregate of all loan guarantees outstanding at any one time shall not exceed $50 million. The liability of the state under any loan guarantee shall not exceed the payments received under the indemnity issued to the state with respect to such loan guarantee.

(c) Eligibility requirements for a qualified Texas film production loan. To qualify for a loan guarantee, the loan to be guaranteed must:

(1) be in an amount not to exceed the lesser of:

(A) 60% of the total cost to produce the eligible Texas film; or

(B) $3 million; and

(2) be made by a Texas lender under a written loan agreement that:

(A) is entered into with a Texas film producer to finance the production of an eligible Texas film;

(B) may be conditioned on the approval of the issuance to the Texas lender of a loan guarantee; and

(C) provides that the qualified Texas film production loan must be secured by:

(i) a security interest in the eligible Texas film to be financed by the qualified Texas film production loan, and the proceeds and receivables derived from the eligible Texas film; and

(ii) a security interest or other pledge, assignment or interest in a distribution agreement covering the film, an irrevocable letter of credit, a presale agreement covering the film, a certificate of deposit, a marketable security, or another instrument that meets all requirements and is acceptable to the comptroller.

(d) Qualified Texas film production loan application process and approval.

(1) An applicant must select a Texas lender interested in making a qualified Texas film production loan under the program and must use the application forms and processes required by that lender. An applicant shall submit to the Texas lender a complete and accurate application, any credit application to the Texas lender, and any other documentation and information as may be required by the Texas lender.

(2) If the Texas lender determines that, subject to the issuance by the state of a loan guarantee, it will make a qualified Texas film production loan to the applicant, then the applicant may submit the application to the comptroller. At or following the submission of the application by the applicant to the comptroller, the lender shall certify in writing to the comptroller that it is willing to make a qualified Texas film production loan to the applicant according to the terms and conditions set forth in the loan agreement, which loan agreement shall be attached to the certificate for identification.

§1.332. Filing Requirements and Consideration of the Loan Guarantee Application.

(a) Application forms. An applicant seeking a loan guarantee from the comptroller must use the forms provided by the comptroller. One copy of the completed application with all supporting documentation and required exhibits and attachments must be submitted to the comptroller.

(b) Initial review by comptroller. The comptroller reviews the application for completeness and notifies the applicant of any additional information required. When all required information has been received, the comptroller determines if the application meets the loan guarantee approval standards set forth in this section.

(c) Comptroller due diligence. On receipt of an application, the comptroller shall verify the information contained in the application. The comptroller may conduct investigations as necessary to make a determination regarding information provided in the application. The comptroller may contract with a private company to verify on behalf of the comptroller the information contained in the application. The comptroller may not approve an application submitted under this section unless it is complete and meets the requirements of this section.

(d) Approval of application. If the loan guarantee application is approved, the comptroller will notify the applicant and the Texas lender in writing setting forth the terms and conditions of the loan guarantee. The comptroller and Texas lender will prepare the written agreements and documents necessary to close the loan guarantee transaction with the Texas lender and the Texas film producer.

(e) Denial of application. If the guarantee application is disapproved, the comptroller will notify the applicant and Texas lender in writing of the reasons for denial.

(f) False information. An applicant commits an offense if the applicant signs an application or submits to the comptroller a document the applicant knows is false in any material respect with the intent of causing the comptroller to issue a loan guarantee under the program. This offense is a felony of the third degree.

(g) Contents of loan guarantee application. An application for a loan guarantee under the program must be submitted by an applicant and must include the following:

(1) the names and addresses of the Texas lender and the Texas film producer of the film that is the subject of the qualified Texas film production loan;

(2) a certification by the Texas film producer that the film is an eligible Texas film;

(3) a certification by the Texas film producer that the producer is current on the payment of all state taxes;

(4) a certification by the Texas lender that:

(A) the Texas lender has reviewed the loan guarantee application;

(B) the budget for the total cost to produce the Texas film as disclosed in the application is the same as the budget for the total cost to produce the film that was disclosed to the Texas lender for purposes of determining whether to make the qualified Texas film production loan; and

(C) the information contained in the application is not contrary to the information submitted to the Texas lender in connection with the qualified Texas film production loan;

(D) the Texas lender is current on the payment of all state taxes;

(5) a copy of the loan agreement between a Texas lender and Texas film producer; and

(6) a copy of a distribution agreement or other instrument described in §1.331 of this title (relating to Purposes, Limitations and Loan Requirements), as appropriate;

(7) a copy of the budget (in the customary format used by the film industry) for the total cost to produce the film including a breakdown by cost category of the projected production costs that are dedicated for goods and services of Texas derivation;

(8) an application fee in the amount of $100;

(9) an indemnity; a certification from the issuer of the indemnity that it is licensed and authorized to do business in the state; and that it is current on the payment of all state taxes; and

(10) contain any other information requested by the comptroller in order to make a sound decision.

(h) Indemnity and insurance requirements.

(1) Indemnity requirement. The obligation of the state under each loan guarantee to be issued under the program must be covered by an indemnity supplied by the applicant prior to the issuance of the loan guarantee to the Texas lender making the qualified Texas film production loan covered by the loan guarantee. The indemnity must be issued to the comptroller, as the primary beneficiary of the indemnity, by an insurance company, surety company, or financial institution that is:

(A) licensed and authorized to do business in this state; and

(B) approved by the comptroller based on the following standards:

(i) holds a current "claims-paying ability rating" issued by either Standard & Poor's or A. M. Best;

(ii) holds a current rating that is at least in the "secure" category;

(iii) is in good standing with the Texas Department of Insurance; and

(iv) meets any other reasonable standard required by the comptroller.

(2) Surety bond for completion of film. An applicant shall file with the comptroller a copy of a surety bond indemnifying, the Texas lender, the person providing the indemnity under paragraph (1) of this subsection and the comptroller against loss resulting from the eligible Texas film not being completed by the date and within the budget certified to the state in the application. The person providing the surety bond must be acceptable to the comptroller based on the standards set forth in paragraph (1)(B) of this subsection.

(i) Criteria for approval of the issuance of a loan guarantee. The comptroller may approve the issuance of a loan guarantee under the program only if:

(1) the qualified Texas film production loan covered by the loan guarantee meets the qualifications under §1.330 of this title (relating to General Provisions);

(2) the comptroller approves the application for the loan guarantee;

(3) the comptroller has received the application fee required by subsection (j)(6) of this section;

(4) the indemnity requirements of subsection (h)(1) of this section, the surety bond requirements of subsection (h)(2) of this section, and any other bond or insurance requirements prescribed under this subchapter or by comptroller rules or required under the loan agreement between the Texas lender and the Texas film producer have been satisfied; and

(5) the comptroller determines that all of the rules and statutes have been followed.

(j) General terms and conditions of loan guarantee.

(1) Permissible use of the loan guarantee. The loan guarantee is used to guarantee a Texas lender against loss up to the amount of the loan guarantee on a qualified Texas film production loan.

(2) Maximum amount of loan guarantee. No loan guarantee issued by the comptroller under the program may exceed the lesser of:

(A) 80% of the total amount of the loan; or

(B) $2.4 million.

(3) Loan guarantee. The loan guarantee issued under the program shall be for the sole benefit of the Texas lender making the qualified Texas film production loan and no other person shall, by way of subrogation, assignment or otherwise, be entitled to enforce the loan guarantee.

(4) Maturity. The maturity of a loan guarantee issued by the comptroller may not exceed three years.

(5) Security. The state shall have a right to be subrogated to all security for a qualified Texas film production loan covered by a loan guarantee issued under the program.

(6) Fees. A nonrefundable application fee in the amount of $100 will be required when the loan guarantee application is filed with the comptroller.

(7) Reporting requirements. The Texas lender shall report in writing to the comptroller as provided in the loan guarantee.

(8) No action may be brought on a loan guarantee issued under the program after the third anniversary of the date of such loan guarantee.

(k) Loan administration and monitoring.

(1) The Texas lender shall service the loan and receive all payments of principal and interest. In the event of default, the Texas lender shall continue to service the loan in accordance with the inter-party agreements including the loan guarantee, the completion bond, the indemnity and any other required insurance policies.

(2) The Texas lender shall monitor actual costs to determine compliance with the Texas derivation and eligible Texas film requirements, all other appropriate rules, and Government Code, Chapter 403, Subchapter N. Any follow-up action and the frequency of monitoring actual costs will be in accordance with the loan guarantee agreement.

(3) The comptroller may conduct on-site monitoring visits to determine program compliance in accordance with the various inter-party agreements, these rules and all appropriate statutes and regulations.

(4) On a form provided by the comptroller, the Texas lender must report quarterly on the following items: list of loans more than 30 days delinquent in making payments; outstanding guarantee amounts based on outstanding loan principal; loan payoffs; and any other information requested by the comptroller in order to make an assessment of compliance with these rules, Government Code, Chapter 403, Subchapter N, other statutes, and inter-party agreements.

(l) Application.

(1) The comptroller shall design a loan guarantee application packet with instructions on how to complete the application.

(2) Applications and other written communications to the comptroller should be addressed to the attention of the Texas Film Industry Loan Guarantee Program Manager, Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas 78774.

This 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 September 17, 1999.

TRD-9906057
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-3699

♦ ♦ ♦

Chapter 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

The Comptroller of Public Accounts proposes amendments to §§7.43, 7.51, 7.53, and 7.83 concerning the administration of the Prepaid Higher Education Tuition Program.

The changes are proposed to conform program rules to changes in the program's enabling statutes (Education Code, Chapter 54) made by Senate Bill 315, 76th Legislature, Regular Session, 1999.

§7.43 is proposed to be amended to allow the Board to assess an administrative fee to cover the cost of transferring contract benefits to the payment of tuition and required fees at a proprietary school.

§7.51 is proposed to be amended to allow contract benefits purchased under the program to be applied to the payment of tuition and required fees at a proprietary school.

§7.53 is proposed to be amended to allow a purchaser of a private college plan to purchase a supplemental contract to prepay the tuition and required fees of the beneficiary for 32 credit hours for one additional year of education.

§7.83 is proposed to be amended to provide that in the case the Texas Prepaid Higher Education Tuition Program is terminated, a prepaid tuition contract remains in effect if the beneficiary has been accepted by or is enrolled in a proprietary school.

James LeBas, chief revenue estimator, has determined that for the first five-year period the amendments 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 amendments are in effect the public benefit anticipated as a result of adopting the amendments will be in authorizing the use of certain prepaid tuition contracts to cover an additional period of attendance at an institution of higher education or attendance at a proprietary school. This amendment is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Aaron Demerson, Director, Texas Tomorrow Fund, P.O. Box 13407, Austin, Texas 78711-3407.

Subchapter E. APPLICATION, ENROLLMENT, PAYMENT, AND FEES

34 TAC §7.43

The amendments are proposed under the Education Code, Chapter 54, Subchapter F, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program. No other code, article, or statute is affected by these amendments.

The amended rules implement the Education Code, §§54.605, 54.619, and 54.6252.

§7.43. Administrative Fees.

(a) The board shall adopt an administrative fee schedule to cover costs of administration of the program.

(b) Fees adopted by the board shall reflect the intent to make the program self-supporting and to maintain the actuarial soundness of the fund. The fees may include the following:

(1) a nonrefundable application fee of $50 collected at the time the application is submitted;

(2) a termination fee of $25 assessed upon the termination of a contract by the purchaser to allow reimbursement of the board's estimated expenses in terminating the contract;

(3) a change of beneficiary fee of $50 assessed in connection with a request to substitute beneficiaries under the plan;

(4) a change in purchaser fee of $20 assessed for assignment of contract rights and obligations to another purchaser;

(5) a benefits transfer fee of $25 deducted from payments when funds are used for out-of-state tuition;

(6) an account maintenance fee of $3.00 on monthly installment accounts and $20 on lump sum accounts for servicing accounts;

(7) a fee of $15 for changes in the mode of payment or payment schedule requested by a purchaser;

(8) a late fee of $10 assessed for payments made past the due date;

(9) an insufficient funds fee of $20 assessed for all payments returned for insufficient funds;

(10) an improper notice fee of $25 assessed for failure to provide timely notice of the intent to use contract benefits;

(11) replacement of coupon books and other contract related documents; [~~and~~]

(12) a fee for application of program benefits to proprietary school tuition and fees in an amount established by the board; and

(13) [~~(12)~~] other administrative fees established by the board.

(c) Where applicable, charges for copies of public records shall be assessed at the rates established by the General Services Commission pursuant to the Government Code, §552.261, and consistent with similar charges assessed for public records by the Office of the Comptroller.

This 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 September 15, 1999.

TRD-9905993
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 31, 1999

For further information, please call: (512) 463-4062

♦ ♦ ♦

Subchapter F. TUITION

34 TAC §7.51, §7.53

The amendment is proposed under the Education Code, Chapter 54, Subchapter F, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program.

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

§7.51. Tuition Paid.

(a) For prepaid tuition contracts issued under the junior college plan, junior/senior college plan, or senior college plan, the tuition and required fees paid pursuant to such prepaid tuition contracts shall be paid in accordance with the rates charged to Texas residents.

(b) For prepaid tuition contracts issued under the private college plan, tuition and required fees paid pursuant to the prepaid tuition contract shall be limited to the estimated average private tuition and required fees as determined by the board on an annual basis.

(c) For prepaid tuition contracts issued under the senior college, junior/senior college, or junior college plan, where tuition and required fee payments are made to Texas higher education institutions not of the plan selected, payments to the institution shall be based on a calculation of the average tuition rate of the plan selected.

(d) Any prepaid tuition contract purchased under this program may be applied to the payment of tuition and required fees at a proprietary school meeting the requirements of the United States Internal Revenue Code, §529(e)(5), as an "eligible education institution," as if the proprietary school were an institution of higher education or private or independent institution of higher education. On the purchaser's request, the board shall apply any existing amount of prepaid tuition contract benefits, as determined by the average rate of tuition and fees under the contract purchased, to the payment of tuition and required fees at such a proprietary school. The board is not responsible for the payment of tuition and required fees at the proprietary school in excess of that amount.

§7.53. Supplemental Contracts.

At any time during the duration of the contract but before the beneficiary graduates from high school, the purchaser of a prepaid tuition contract for a senior college plan for four years or a private college plan may purchase a supplemental contract to prepay the tuition and required fees of the beneficiary for 32 credit hours for one additional year of education, in addition to the undergraduate credit hours included in the primary contract.

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

Filed with the Office of the Secretary of State on September 15, 1999.

TRD-9905994
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-4062

♦ ♦ ♦

Subchapter I. REFUNDS, TERMINATION

34 TAC §7.83

The amendment is proposed under the Education Code, Chapter 54, Subchapter F, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program.

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

§7.83. Termination of Program.

(a) If the program is terminated a prepaid tuition contract remains in effect if the beneficiary has been accepted by or is enrolled in an institution of higher education, [~~or~~] a private or independent institution of higher education, or a proprietary school, or the beneficiary is projected to graduate from high school not later than the third anniversary of the date the program terminated.

(b) For contracts that do not remain in effect pursuant to subsection (a) of this section, the amount of the refund shall be the amount determined by the board at the time the program is terminated.

This 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 September 15, 1999.

TRD-9905995
Martin Cherry
Special Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 463-4062

♦ ♦ ♦

Part 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

Chapter 77. JUDICIAL RETIREMENT

34 TAC §77.7

The Employees Retirement System of Texas proposes amendments to §77.7, concerning Spousal Consent or Acknowledgment Requirements. The amendment is being proposed to make changes to the spousal consent rules.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

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

Comments on the proposed rule amendment may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at pjones@ers.state.tx.us.

The amendment is proposed under Texas Government Code §835.002 and §840.002, which provide that the Board of

Trustees may adopt rules necessary for the administration of the funds of the retirement system.

No other statutes are affected by this amendment.

§77.7. Spousal Consent or Acknowledgment Requirements.

(a) The provisions of this section apply to the Judicial Retirement System of Texas Plan One and the Judicial Retirement System of Texas Plan Two.

(1) The selection by a member of a service retirement annuity other than a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member is not effective unless the member's spouse consents to the selection or it is established to the satisfaction of the system that:

(A) there is no spouse; or

(B) the spouse cannot be located[~~; or~~].

[~~(C) the spouse and the member will have been married for less than one year as of the date the annuity first becomes payable.~~]

(2) The selection by a member of a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member should be acknowledged by the member's spouse unless one of the exceptions in paragraph (1)[~~(A)-(C)~~] of this subsection is established to the satisfaction of the system.

(b) Should the spouse of the member be judicially declared incompetent, the consent or acknowledgment required by this section shall be given by the spouse's legal guardian. The consent or acknowledgment of a spouse who is incapable of giving his or her consent or acknowledgment as required by this section may be given by a legal representative of the spouse only if the executive director or a person designated by the executive director determines:

(1) that the spouse is incapable of giving his or her consent or acknowledgment; and

(2) the person or persons qualify as the legal representative of the spouse.

(c) The consent or acknowledgment required by this section must be in writing on a form prescribed by the Employees Retirement System of Texas and acknowledged before a notary public.

(d) The provisions of this section apply only to service retirement annuities.

This 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 September 16, 1999.

TRD-9906040
Sheila W. Beckett
Executive Director
Employees Retirement System of Texas
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 867-7125

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

Chapter 23. VEHICLE INSPECTION

Subchapter F. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.73

The Texas Department of Public Safety proposes amendments to §23.73, concerning vehicle inspection fees. The amendments are necessary in order to reflect the statutory provisions regarding inspection fees and provide for uniform application of fees statewide as passed by the 76th Legislature, 1999. Senate Bill 2 as passed by the 72nd Legislature, 1991, enacted fee changes for inspection certificates, however §23.73 was never amended to reflect those fee changes.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure state-wide application of the statutory fees. Small and large businesses will receive an additional $2.00 fee increase per vehicle for performing the safety inspection on all new and used vehicles. The anticipated cost to the public will be the cost of the inspection which will range from $5.75 to $25.50 depending on the type of inspection obtained.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4) is affected by this proposal.

§23.73. Inspection Fees.

(a) The maximum inspection fees charged for all vehicles are set by statute or administrative rule. All required inspection items shall be examined with the inspection fees established as follows: safety inspection $12.50[~~8.50~~]; mopeds $5.75; new car initial inspection $21.75[~~15.75~~]; emission only inspection $13.00; [~~vehicles subject to parameter inspection $11.25;~~] vehicles subject to safety and[~~parameter and idle~~] emissions $25.50[~~17.25~~].

(b) (No change.)

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

Filed with the Office of the Secretary of State, on October 15, 1999.

TRD-9905989
Dudley M. Thomas
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 31, 1999

For further information, please call: (512) 424-2135

♦ ♦ ♦

Part 3. TEXAS YOUTH COMMISSION

Chapter 85. ADMISSION AND PLACEMENT

37 TAC §85.3

The Texas Youth Commission (TYC) proposes an amendment to §85.3, concerning Admission Process. The amendment to the section will add the criteria under which a youth committed to TYC must provide a blood sample for the purpose of registration in the Department of Public Safety DNA database in accordance with HB1188, as passed by the 76th legislature.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with DPS DNA registration laws. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0385, concerning Crisis Intervention and Assessment Centers, which provides the Texas Youth Commission with the authority to establish and operate a children's crisis intervention and assessment center at a facility owned or operated by the commission.

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

§ 85.3. Admission Process.

(a) Purpose. The purpose of this rule is to establish the location and protocol whereby youth committed to the Texas Youth Commission are received into the custody of the agency.

(b) Intake activities, including receipt of the youth from the committing county shall be performed by Texas Youth Commission (TYC) diagnostic intake unit, Marlin Orientation and Assessment Unit located at Marlin, Texas.

(c) The Marlin Orientation and Assessment Unit in Marlin, Texas receives youth committed to TYC between 8:00 a.m. and 5:00 p.m. on Monday and Tuesday unless prior arrangements have been made, and between 8:00 a.m. and 8:00 p.m. on Wednesday, Thursday, and Friday. [~~Youth may be received after 5:00 p.m. only if prior arrangements have been made.~~]

(d) Youth are not allowed to have personal possessions while at the assessment unit. Personal items are inventoried and returned to the county transporter. The transporter and youth are asked to sign an inventory/receipt for property items returned to the transporter's care. Items a youth may be allowed to keep are inventoried on the Personal Property and Clothing Inventory form, CCF-510, and a copy is given to the youth.

(e) Parents are notified of youth's admission and TYC's medical consent authority, and advised of procedures for mail and visits.

(f) Orientation to the admissions process and the TYC system is provided and documented as required in (GAP) §91.15 of this title (relating to Youth Orientation).

(g) Routine admission procedures include but are not limited to the following.

(1) Each youth and his possessions are searched.

(2) Youth property, if any, is inventoried.

(3) A body identification form is completed, each youth showers, is screened for pediculosis, and receives treatment if indicated.

(4) Initial health screening is performed for each youth.

(5) Clothing is issued.

(6) Personal hygiene articles are made available as needed.

(7) Each youth may be photographed and fingerprinted. The photograph and fingerprints are filed in the youth's masterfile.

(8) Intake staff assigns each youth an official TYC registration number. (9) Initiation of sex offender registration with the Texas Department of Public Safety (DPS), as required by law.

[~~(9)~~ Each youth classified as a sex offender:]

[~~(A)~~ is registered with the Texas Department of Public Safety DPS); and]

[~~(B)~~ has blood drawn for submission to DPS for DNA analysis.] (10) A youth is required to provide a blood sample for the DPS DNA database if the youth: (A) has a conviction or adjudication for murder, aggravated assault, burglary of a habitation, or any offense for which the youth must register as a sex offender; or

(B) is ordered by the juvenile court to provide a sample.

(h) In addition to assessment and placement activities, counseling, and academic education is provided.

(i) TYC staff transports youth to their initial placements and notifies the families, the parole officer, committing court, prosecuting attorney, chief probation officer and others as needed of the placement location.

This 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 October 14, 1999.

TRD-9905963
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: October 31, 1999
For further information, please call: (512) 424-6244

♦ ♦ ♦

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 16. ECONOMIC REGULATION

Part 1. RAILROAD COMMISSION OF TEXAS

Chapter 3. OIL AND GAS DIVISION

16 TAC §3.56

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the repeal of and new §3.56, which appeared in the March 19, 1999, issue of the *Texas Register* (24 TexReg 1891).

Filed with the Office of the Secretary of State on September 16, 1999.

TRD-9906044
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: September 16, 1999
For further information, please call: (512) 475-1295

♦ ♦ ♦

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 4. OFFICE OF THE SECRETARY OF STATE

Chapter 81. ELECTIONS

Subchapter A. VOTER REGISTRATION

1 TAC §§81.11, 81.12, 81.17, 81.18

The Office of the Secretary of State adopts amendments to §§81.11, 81.12, 81.17, and 81.18, concerning disbursement of funds under the Texas Election Code, Chapter 19. The sections are adopted without changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6155).

The amendments will allow for a more efficient operation of the Chapter 19 funds for county voter registrars and for the Office of the Secretary of State.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Election Code, §31.003 and 19.002(b), which provide the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. In performing such duties the Secretary of State has authority to prepare detailed and comprehensive written directives and instructions based on laws consistent with the Election 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 September 17, 1999.

TRD-9906055
Jeff Eubank
Assistant Secretary of State
Office of the Secretary of State
Effective date: October 7, 1999
Proposal publication date: August 13, 1999
For further information, please call: (512) 463-5650

♦ ♦ ♦

Part 12. ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Chapter 251. REGIONAL PLANS-STANDARDS

1 TAC §251.9

The Advisory Commission on State Emergency Communications adopts the amendment to §251.9, concerning the use and distribution of 9-1-1 funds and other related funds, without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4106).

The section provides for the proper maintenance of maps and records associated with an addressing system for the operation of an E9-1-1 system and the delivery of a caller's location. The amendment changes the strategic planning period from three to two years and proposes to provide consistency with the changes in Commission policy. This section was a part of the agency's rule review of Chapter 251.

There were no comments received regarding the adoption of the amendment.

The amendment is adopted under the authority of the Texas Health and Safety Code, Chapter 771, §§771.051, 771.056 and 771.057, which provides the Advisory Commission on State Emergency Communications the authority to develop and amend a regional plan that meets standards set for the operation of prompt and efficient 9-1-1 services throughout a region. The maintenance of street addresses is essential to E9-1-1 systems utilizing the Automatic Location Identification feature which displays the locations of 9-1-1 callers.

This agency 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 September 15, 1999.

TRD-9906034
James D. Goerke
Executive Director
Advisory Commission on State Emergency Communications
Effective date: October 5, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 305-6933

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

Part 6. TEXAS MOTOR VEHICLE BOARD

Chapter 101. PRACTICE AND PROCEDURE

The Texas Motor Vehicle Board of the Texas Department of Transportation adopts amendments to §§101.2, 101.3, and 101.7 in Subchapter A, general rules relating to agency operations. The Board also adopts amendments to §§ 101.42, 101.43, 101.45, 101.60, and 101.61 in Subchapter C, relating to Adjudicative Proceedings and Hearings. The amendments are adopted without changes to the proposed text as published in the July 23, 1999 issue of the *Texas Register* (24 TexReg 5636) and will not be republished.

The Appropriations Act of 1997, House Bill 1, Article IX, § 167 (Section 167) requires that each state agency review and consider readoption of each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The Board conducted its review of Chapter 101 at its November 12, 1998 meeting. As a result of its review, the Board determined that these sections should be amended and such amendments were adopted at the Board's March 4, 1999 meeting and published in the March 26, 1999 issue of the *Texas Register* (24 TexReg 2301). Further examination of the amended sections revealed some typographical errors and a need for further amendment of some sections. The Board approved the additional amendments at its September 9, 1999 meeting.

The amendments to Chapter 101 provide a clearer understanding of the Board's requirements and conserve the time and resources of the agency and entities appearing before it.

In Subchapter A, the change to §101.2 expands the definition of "governmental agency". The amendment to § 101.3 conforms the section to the requirements of the Public Information Act. Changes to §101.7 add the requirement that complaints alleging violations of the Motor Vehicle Commission Code or the Transportation Code be filed in the same manner as petitions for relief and eliminate the requirement that petitions for relief or complaints be under oath.

Amendments to §§101.42 and 101.43 correct punctuation errors. Since administrative appeals made be filed in district court or the Court of Appeals under the Motor Vehicle Commission Code, the specific reference to district court is removed from §101.45. Changes to §101.60 correct language pertaining to gender. The amendment to §101.61 removes unnecessary restrictive language.

No comments were received regarding the proposals.

Subchapter A. GENERAL RULES

16 TAC §§101.2, 101.3, 101.7

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

Motor Vehicle Commission Code §§ 1.02, 1.03, 3.02, 3.03, 3.05, 3.08, and 7.01 are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 1999.

TRD-9905952
Brett Bray
Division Director
Texas Motor Vehicle Board
Effective date: October 4, 1999
Proposal publication date: July 23, 1999
For further information, please call: (512) 416-4899

♦ ♦ ♦

Subchapter C. ADJUDICATIVE PROCEEDINGS AND HEARINGS

16 TAC §§101.42, 101.43, 101.45, 101.60, 101.61

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

This agency 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 September 14, 1999.

TRD-9905953
Brett Bray
Division Director
Texas Motor Vehicle Board
Effective date: October 4, 1999
Proposal publication date: July 23, 1999
For further information, please call: (512) 416-4899

♦ ♦ ♦

TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 97. PLANNING AND ACCREDITATION

Subchapter A. ACCREDITATION

19 TAC §97.6, §97.7

The Texas Education Agency (TEA) adopts the repeal of §97.6 and §97.7, concerning home-rule school district charters and open-enrollment charter schools, without changes to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5827) and will not be republished. The sections establish procedures for contested cases under the Texas Education Code, Chapter 12.

Texas Education Code, §12.028 and §12.116, authorizes the State Board of Education to adopt by rule procedures for taking adverse action on home-rule school district charters and open-enrollment charter schools. These procedures, previously located in 19 TAC §97.6 and §97.7, were modified and relocated in adopted new 19 TAC §100.101 and §100.201, which are filed in separate submissions.

The TEA is also adopting new 19 TAC Chapter 157, Hearings and Appeals, Subchapter A, General Provisions for Hearings Before the State Board of Education, which is filed in a separate submission. The new rules create general rules for contested cases under the Texas Government Code, Chapter 2001.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Education Code, §§7.102(c)(8) and (9), 12.028, and 12.116, which authorizes the State Board of Education to adopt by rule procedures to be used for placing on probation or revoking a home-rule school district charter and for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school.

This agency 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 September 20, 1999.

TRD-9906066
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: October 10, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 100. CHARTERS

The Texas Education Agency (TEA) adopts new §100.101 and §100.201, concerning charters, without changes to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5828) and will not be republished. The new sections establish definitions, requirements, and procedures relating to open-enrollment charter schools and home-rule school district charters. The new sections specify procedures for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school and placing on probation or revoking a home-rule school district charter.

Texas Education Code, §12.028 and §12.116, authorizes the State Board of Education to adopt by rule procedures for taking adverse action on home-rule school district charters and open-enrollment charter schools. These procedures, previously located in 19 TAC §97.6 and §97.7, were modified and relocated in adopted new 19 TAC §100.101 and §100.201. Some of the modifications reflected in the new rules include: (1) revising timelines for contested cases involving charter schools; (2) deleting references to a hearing on the recommendation of the review team; (3) substituting a hearing on the decision of the State Board of Education to take the proposed action; and (4) making other conforming changes. The adopted repeal of §97.6 and §97.7 is filed in a separate submission.

The TEA is also adopting new 19 TAC Chapter 157, Hearings and Appeals, Subchapter A, General Provisions for Hearings Before the State Board of Education, which is filed in a separate submission. The new rules create general rules for contested cases under the Texas Government Code, Chapter 2001.

No comments were received regarding adoption of the new sections.

Subchapter A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §100.101

The new section is adopted under the Texas Education Code, §7.102(c)(8) and (9), and §12.116, which authorizes the State Board of Education to adopt procedures to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school.

This agency 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 September 20 , 1999.

TRD-9906067
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: October 10, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Subchapter B. HOME-RULE SCHOOL DISTRICT CHARTERS

19 TAC §100.201

The new section is adopted under the Texas Education Code, §7.102(c)(8) and (9), and §12.028, which authorizes the State Board of Education to adopt by rule procedures to be used for placing on probation or revoking a home-rule school district charter.

This agency 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 September 20, 1999.

TRD-9906068
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: October 10, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 105. FOUNDATION SCHOOL PROGRAM

Subchapter B. USE OF STATE FUNDS

19 TAC §105.12

The Texas Education Agency (TEA) adopts new §105.12, concerning administration of the Foundation School Program, without changes to the proposed text as published in the July 23, 1999, issue of the *Texas Register* (24 TexReg 5644) and will not be republished. The new section explains the authorized use of

state aid for acquisitions, renovation, repairs, and maintenance of facilities.

Senate Bill 4, 76th Texas Legislature, 1999, amended the Texas Education Code (TEC), §42.301, relating to the use of the guaranteed yield component for capital outlay and debt service. The bill prohibits use of the guaranteed yield component for capital outlay and debt service. Clarification of the appropriate use of state aid for these purposes is necessary because of the impact of the amendment to TEC, §42.301, upon school districts' capacity to service outstanding and future debt obligations and to purchase, improve, renovate, lease, and incur other costs related to facilities. Adopted new 19 TAC §105.12 specifies the appropriate use of state aid by school districts.

The following comments were received regarding adoption of the new section.

Comment. A representative from First Southwest commented that certain school districts with new bond issues are adversely affected by the new school finance structure created by Senate Bill 4, 76th Texas Legislature, 1999, if the districts issued new bonds during the 1998-1999 school year or later. Other districts that retired old bonds in the 1998-1999 school year could be even more significantly impacted. There is not sufficient funding available to provide equalized access to debt service funds for all districts in these circumstances. An additional rule provision should be added to allow debt service taxes that are not eligible for equalization funding to be considered as the first component of tax effort required to qualify for basic allotment funding.

Agency Response. The agency disagrees with the comment. The rule as proposed addresses only an issue of clarifying legal uses of basic allotment funding provided through the Foundation School Program. Adoption of a rule that provides for an enhanced opportunity to receive state assistance for debt service through the allotments described in TEC, Chapter 42, is beyond the scope of the proposed rule. While the agency agrees that school districts in certain circumstances may be disadvantaged by limits placed in statute relative to the operation of prior law, it is the agency's position that the proposal would go against the statute. The legislature created a structure in which debt service taxes receive equalization treatment through mechanisms in TEC, Chapter 46. Counting debt service taxes for purposes of TEC, Chapter 42, allotments would be in direct conflict with the apparent legislative policy.

Comment. Millsap Independent School District and a representative from First Southwest commented that an additional rule provision should be added to allow districts that retired debt in 1998-1999 and issued new debt in the same year to count the new debt as eligible under the provisions of TEC, Chapter 46, Subchapter B. The proposal would allow some new bond issues from 1998-1999 to earn state funding.

Agency Response. The agency disagrees with the comment. The rule as proposed addresses only an issue of clarifying legal uses of basic allotment funding provided through the Foundation School Program. TEC, §46.033, specifically describes eligible bonds: "Bonds, including bonds issued under TEC, §45.006, are eligible to be paid with state and local funds under this subchapter if: (1) taxes levied to pay the principal of and interest on the bonds were included in the district's audited debt service collections for the 1998-1999 school year; and (2) the district does not receive state assistance under TEC, Chapter 46, Subchapter A, for payment of the principal and interest on the bonds." Adoption of a rule that provides for an enhanced opportunity to receive state assistance for debt service is ineligible by the definition in TEC, Chapter 46, and is beyond the scope of the proposed rule.

The new section is adopted under the Texas Education Code, §42.004, which authorizes the State Board of Education to implement rules to administer the Foundation School Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9906069
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: October 10, 1999
Proposal publication date: July 23, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

Chapter 157. HEARINGS AND APPEALS

Subchapter A. GENERAL PROVISIONS FOR HEARINGS BEFORE THE STATE BOARD OF EDUCATION

19 TAC §§157.1-157.20

The Texas Education Agency (TEA) adopts new §§157.1-157.20, concerning hearings and appeals, without changes to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5832) and will not be republished. The new sections establish definitions, requirements, and procedures relating to hearings before the State Board of Education (SBOE). The new sections create general rules for contested cases under the Texas Government Code, Chapter 2001, conducted by the SBOE or a hearing officer appointed by the SBOE.

Adopted new 19 TAC §§157.1-157.20 provide general rules needed to govern hearings held on matters such as textbooks and charter schools, and may apply to other contested cases held by the SBOE under the Administrative Procedure Act. The new rules provide needed guidance to the administrative law judge in conducting hearings before the SBOE.

The TEA is also adopting new 19 TAC §100.101 and §100.201, which specify procedures for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school and placing on probation or revoking a home-rule school district charter. The new rules are filed in separate submissions. In addition, the TEA is adopting the repeal of 19 TAC §97.6 and §97.7, which is also filed in a separate submission. Language in §97.6 and §97.7 was modified and relocated in new §100.101 and §100.201.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Education Code, §12.028, which authorizes the State Board of Education to adopt by rule procedures to be used for placing on probation or revoking a home-rule school district charter; §12.116, which

authorizes the State Board of Education to adopt procedures to be used for modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school; and §31.151, which authorizes the State Board of Education to adopt rules for hearings regarding penalties imposed under this section; and the Texas Government Code, §2001.004, which authorizes state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

This agency 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 September 20, 1999.

TRD-9906070
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Effective date: October 10, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-9701

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part 2. TEXAS STATE BOARD OF BARBER EXAMINERS

Chapter 51. PRACTICE AND PROCEDURE

Subchapter C. EXAMINATION AND LICENSING

22 TAC §§51.51, 51.52, 51.55, 51.57, 51.58, 51.60-51.64, 51.80, 51.84

The State Board of Barber Examiners adopts amendments to §§51.51; 51.52; 51.55; 51.57; 51.58; 51.60; 51.61-51.64; 51.80; 51.84; concerning Examinations and Licensing, without changes to the text published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3826).

The amendment to §51.51 Payment of Fees is amended to eliminate cash as an acceptable method of payment of fees to be accepted by the board. This will create a better tracking system for the board and for the licensee.

The amendment to §51.52 Name Change adds requirements for notification of name changes to the board. This requires a legal document for both students and licensees for a name change.

The amendment to §51.55 Number of Examination Questions excepts certain individuals who have previously held a certificate of registration or license for at least five years but whose certificate of registration or license have been expired for more than five years from the requirement that applicants for the same type of license be asked an equal number of questions on the examination. This will enable the board to administer a separate exam for the barbers who have previously passed the exam and allowed their license to lapse for more than five years.

The amendment to §51.57 Applying for Examination removes the dollar amount of the examination fee and refers the reader to the fee required by the relevant statute. This allows the board to change the examination fee within statutory limits without going through a rule change process.

The amendment to §51.58 Deadline for Examination Application specifies the deadline for barber schools to submit students' applications for examination to the board. This establishes a clear deadline by which barber schools must submit students' applications for examination.

The amendments to §51.60 Equipment to Bring to Examination changes the title of the rule to Items to Bring to Examination and adds three requirements of all examinees: (1) the model must be of 18 years of age, (2) that they wear a clean and fastened barber smock during their examinations, and (3) that they provide a current, valid photo identification when appearing for examination. This clarifies what the examinee is expected to bring to the examination.

The amendment to § 51.61 Failure to Appear at Examination removes the dollar amount that must be submitted before retaking an examination. This allows the board to change the examination fee within statutory limits without going through a rule change process.

The amendment to §51.62 Notification of Examination Results eliminates the provision that the board will not give the results of an examination or issue a license until it receives a notarized affidavit, signed by the school or college owner or manager, swearing that the student has completed the course; this affidavit is now required as part of the application for examination under §51.57 of this title and, therefore, is no longer required under this section. This change eliminates unnecessary redundancy between the two rules.

The amendment to §51.63 Failure of Examination clarifies and explains to the examinee the requirements of retaking all or a portion of a failed examination.

The amendment to §51.64 Deadline for License Application removes the dollar amount of the examination fee. This allows the board to change the examination fee within statutory limits without going through a rule change process.

The amendment to §51.80 Transfer of Student Hours from Out of State removes the dollar amount of the examination fee. This allows the board to change the examination fee within statutory limits without going through a rule change process.

The amendment to §51.84 Reciprocal Licensing Policy eliminates unnecessary verbiage concerning the board's adoption of a reciprocal licensing policy and eliminates a requirement that there be a mutual reciprocal licensing agreement between the board and another state or country. This requirement is eliminated because it is not required by the statute authorizing a reciprocal licensing policy.

There were no comments received on the proposed amendments.

The amendments are adopted pursuant to TEX. OCC. CODE ANN. §1601.151(d), which vests in the board authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering in keeping with the intent of the Texas

Barber law and to ensure strict compliance with the Texas Barber Law.

This agency 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 September 14, 1999.

TRD-9905957
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Effective date: October 4, 1999
Proposal publication date: May 21, 1999
For further information, please call: (512) 305-8475

♦ ♦ ♦

22 TAC §§51.65-51.79, 51.81, 81.86

The State Board of Barber Examiners adopts the repeal of §§51.65-51.79,51.81, and 51.86 concerning applications, certificates and expiration dates, without changes to the text published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3828).

The justification for this repeal is the elimination of obsolete and unnecessary text.

The repeal of §§51.65-51.79 remove forms from the board's formal rules, thereby allowing greater flexibility for the board to change its forms from time to time without the requirement of a rulemaking proceeding to do so.

The repeal of §51.81 Expiration Dates of Certificates and Proration of Fees eliminates a rule that has become obsolete and is no longer needed for the board to carry out its statutory responsibilities.

The repeal of §51.86 Processing Time for Licenses and Permits; Appeals eliminates certain deadlines from the board's application process, providing greater flexibility to the board in its handling of license and permit applications. The board's repeal of the rules is in accordance with the board's Rules Review Plan adopted pursuant to Article IX, §167 of the Appropriation Act.

There were no comments received on the proposed repealed sections.

The repeals are adopted under TEX OCC. CODE ANN.§1601.151(d), which vests with the board the authority to make and enforce all rules and regulations necessary for the performance of its duties, to establish standards of conduct and ethics for all persons licensed or practicing under the provision of the Texas Barber Law, and to regulate the practice and teaching of barbering keeping with the intent of the Texas Barber Law and to ensure strict compliance with the Texas Barber Law.

This agency 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 September 14, 1999.

TRD-9905958
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Effective date: October 4, 1999
Proposal publication date: May 21, 1999
For further information, please call: (512) 305-8475

♦ ♦ ♦

Part 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Chapter 73. LICENSES AND RENEWALS

22 TAC §73.1, §73.2

The Texas Board of Chiropractic Examiners adopts amendments to §73.1 and §73.2 of Chapter 73 relating to recording of a license and renewal of a license, respectively, without changes to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5836) and will not be republished.

These changes are made in conjunction with the board's review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. In accordance with §167, the board has reviewed this chapter and has determined that it should be readopted, with changes to these sections. The board finds that the reasons for this chapter, with the proposed changes, continue to exist. The adopted review was published in the July 30, 1999 issue of the *Texas Register* (24 TexReg 5890).

The purpose of the amendments is to conform and clarify these rules as to current renewal procedures. Other changes were made for further clarity, grammar and consistency. The amendments include a new subsection (d) for §73.2, that explains the consequences of practicing with an expired license under the Chiropractic Act and board rules. A similar provision was included in a prior version of this section and inadvertently left out in later amendments. It is added to provide notice to licensees of the consequences of practicing with an expired license.

No comments were received on the proposed amendments.

The amendments are adopted under Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Act, and subchapter H of Chapter 201, which the board interprets as establishing the duties of a licensee and the board relating to license renewal.

The following are the statutes, articles, or codes affected by the adopted amendments:

Chapter 73 - Occupations Code, §201.152 and Subchapter H of Chapter 201.

This agency 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 September 20, 1999.

TRD-9906092
Gary K. Cain, Ed. D.
Executive Director
Texas Board of Chiropractic Examiners

Effective date: October 10, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 305-6700

♦ ♦ ♦

Part 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

Chapter 365. LICENSING

22 TAC §365.14

The Texas State Board of Plumbing Examiners adopts an amendment to §365.14, concerning continuing education programs, without changes to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5842) and will not be republished.

The section provides for criteria, procedures, and requirements for annual selection of one continuing education course, textbook, course outline and approval of instructors, as well as instructor license requirements and qualifications.

The Board conducted a public hearing in Austin, Texas on August 24, 1999, to receive oral and written comments from interested persons concerning the rule amendment as proposed. The following interested groups or associations presented comments: Two representatives of the Plumbing Education Council of Texas (PECT), one representative of Texas Engineering Extension Service (TEEX), one representative of a group of approximately 40 plumbers currently working at Motorola, Inc., an electronic manufacturing plant in Austin, Texas, and one individual plumbing contractor. In addition, one representative of PECT submitted written comments prior to the meeting. Two individuals submitted written comments after the public hearing.

The following is a summary of the comments submitted:

One representative of PECT spoke against the rule amendment on the grounds that the Board does not have statutory authority to adopt the rule as proposed nor does it have authority to enter into a contract with any entity for the production and distribution of continuing education materials. A second representative of PECT spoke against the rule amendment citing that it was not consistent with the intent of the original legislation providing for continuing education for licensees of the Board. He stated that private industry should be providing the continuing education materials. The written comments from the representative of PECT also stated the position that the board does not have the legal authority to adopt the rule as proposed.

The representative from TEEX spoke in favor of the rule amendment.

The representative of a group of approximately 40 plumbers currently working at an electronic manufacturing plant in Austin spoke in favor of the rule amendment.

The individual plumbing contractor spoke in favor of the rule amendment.

The written comments received from the two individuals after the public hearing were against the rule amendment on the grounds that it would grant the state a monopoly by taking away the opportunity for small businesses to bid for the course materials. The two individuals' letters similarly stated that state government can better serve the citizens more efficiently through privatization of services such as the continuing education program for plumbers and plumbing inspectors.

The following are the reasons why the agency disagrees with some of the party submissions and proposals:

The Board believes that it has statutory authority to adopt the rule amendment. Section 5(a) of Texas Revised Civil Statutes Annotated Article 6243-101 ("Act") authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 5(d) specifies that the Board may recognize, prepare, or implement continuing education programs for licensees. Section 12B(b) directs that the Board, by rule, adopt criteria for continuing professional education. Section 5(a) is a general grant of authority to make all rules necessary to conduct the business of the Board, including continuing education. Section 5(d) provides that "the Board may . . . prepare . . . continuing education programs for licensees." Since the Board has the authority to prepare these materials itself, it is equally clear that it may do through an interagency contract what it could do itself. The decision to produce materials internally, through a contract, or through a private entity is a policy decision within the authority of the Board to make. While reasonable minds may differ as to the propriety of the decision, there is no question as to the authority of the Board to make the decision.

The Board believes that the rule amendment is consistent with the intent of the original legislation providing for continuing education for licensees of the Board. The rule amendment provides the acceptable criteria for the continuing education program or course as required by the Legislature and set out in Section 12B of the Act.

The Board recognizes that privatization of certain state government services can be a benefit to the citizens. However, the Legislature has, through the Interagency Cooperation Act, encouraged state agencies to contract with each other for needed services. The Board believes that the citizens will benefit from plumbers and inspectors having a quality continuing professional education program accomplished through an interagency contract. As reflected in the comments received in favor of the amendments to the rule, there are a significant number of plumbers who are dissatisfied with the current materials produced by the private sector.

In accordance with Texas Government Code, §2001.030, Thomas P. Washburn requested the Board provide a concise statement of the principal reasons for and against the adoption of the rule. The following statement is offered in response to that request:

Reasons for adopting the rule:

1. The rule provides criteria for continuing professional education as required by the Act.

2. The continuing education materials currently available for plumbers in Texas do not adequately address the needs of the licensed plumbers in the state.

3. The rule will provide a mechanism for the Board to update the continuing education materials and ensure the quality of the materials.

4. The rule guarantees a prompt and orderly distribution of continuing education materials at a reasonable price.

Reasons against adopting the rule:

5. The rule is alleged to exceed the statutory authority of the board.

6. The rule creates a state monopoly for the production of continuing education materials, denying private entities the right to compete in offering these materials.

FACTUAL BASIS: The following is a restatement of the rule's factual basis:

The Board has determined that the materials currently available for continuing education for plumbers in Texas do not adequately address all of the needs of the profession. The proposed amendments will provide for the development, production, and distribution of more suitable materials for continuing education for plumbers. The Board has the authority and, indeed, the responsibility, to provide the best possible materials for continuing education through the resources available to it.

The proposed amendments will allow the Board to comply with Section 12B of the Plumbing License Law ("Act") including §12B(b), which requires the Board to adopt, by rule, the criteria for continuing professional education. The amendments set forth the minimum required criteria and provide for the expanded criteria to be contained in the course, course outline and textbook ("course materials") that will be developed, produced and distributed by the Board by contracting with an appropriate state entity ("course materials supplier") through an interagency contract. The amendments will apply to the 2000-2001 continuing education year (which begins July 1, 2000) and subsequent years. The Board will accept proposals for an interagency contract from appropriate state entities for the development, production and distribution of the course materials containing the expanded criteria upon the effective date of these amendments.

The minimum criteria incorporated within the rule amendments sets forth the minimum number of hours and general subject matter of study that must be provided in the course materials; a provision for the course materials to be offered through correspondence; a requirement for course materials to comply with Section 12B of the Act; the requirements that must be met by the course materials supplier for development, production, distribution, maximum costs of course materials; time requirements for submission of course materials to the Board for approval; and instructor training in the use of course materials.

The minimum criteria further requires that, beginning with any course materials developed for use during the 2001-2002 continuing education year, the course materials supplier will be required to utilize the services of a consulting group approved by the Board to coordinate the development of relevant subject matter for course materials. Due to the time constraints for course materials and instructor training to be completed in time for the 2000-2001 continuing education year, these amendments do not require the use of such a consulting group during development of the 2000-2001 course materials, nor do the amendments prohibit it.

Section 365.14 currently sets out qualifications for course providers and their instructors and states that course providers and their instructors shall be approved by the Board. The proposed amendments do not change the current requirements for course providers or instructors, but simply clarify that "course providers" are separate entities from "course materials suppliers," in that course providers employ instructors that teach the course materials, or acceptable criteria for teaching continuing professional education, supplied by the Board through interagency contract. The amendments also clarify the current practices of course providers and their instructors being approved annually by the Board and each course provider electronically transmitting to the Board certification of the students' completion of continuing education requirements.

The amendment is adopted under and affects Texas Revised Civil Statutes Annotated Article 6243-101 ("Act"), §§5(a), 5(d), 12B(a), 12B(b), 12B(c) and the rule it amends. Section 5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Section 5(d) specifies that the Board may recognize, prepare, or implement continuing education programs for licensees. Section 12B(a) requires a plumbing license holder to complete at least six hours of continuing professional education each license year. Section 12B(b) directs that the Board, by rule, adopt criteria for continuing professional education. Section 12B(c) specifies that in order for persons to receive credit for participation in a continuing professional education program or course, the program or course must have been provided according to criteria adopted by the Board by an individual, business, or association approved by the Board. The amendment is also adopted under Texas Government Code, Chapter 771, The Interagency Cooperation 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 September 15, 1999.

TRD-9906035
Robert L. Maxwell
Chief of Field Services/Investigations
Texas State Board of Plumbing Examiners
Effective date: October 5, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 458-2145

♦ ♦ ♦

TITLE 25. HEALTH SERVICES

Part 5. CENTER FOR RURAL HEALTH INITIATIVES

Chapter 500. EXECUTIVE COMMITTEE FOR THE CENTER FOR RURAL HEALTH INITIATIVES

Subchapter A. POLICIES AND PROCEDURES

The Center for Rural Health Initiatives (center) adopts the repeal of §500.2 and 500.10 and amendments to §500.1 and 500.3-500.9 concerning policies and procedures of the center and its executive committee. Sections 500.3 and 500.7 are adopted with changes to the proposed text as published in the April 16, 1999, Issue of the Texas Register (24 Tex Reg 3019). The repeal of §500.2 and 500.10 and amendments to §500.1, 500.4-500.6, and 500.8 - 500.9 are adopted without changes, and therefore the text will not be republished. The executive committee directs the center's direction to develop rural health initiatives, provide a central information and referral

source, and serve as the primary state resource in coordinating, planning and advocating for continued access to rural health care services in the state of Texas,

The center was established by the Texas Legislature in the Health and Safety Code, Chapter 106. In the subsequent years, state legislation has been passed that clarifies administrative functions of state agencies, such as notice and posting of meetings and recording of meetings. Some of these amendments update legal citations to state laws. Other amendments clarify functions of the executive committee in order to facilitate more effective, efficient and representative operations of the committee.

The amendments to the sections clarify the time at which the election of officers of the center's executive committee shall occur, authorize advisory committee members to designate employees of the agency of the member to serve as liaison officers, authorize the executive committee to establish standing or ad hoc committees as working extensions of the executive committee, allow for meetings of the executive committee to be held at places fixed by the executive committee or its presiding officer, allow for meetings of the executive committee to be held at the written request of three members of the executive committee, eliminate provisions for special meetings because all meetings of the executive committee are public and subject to the posting requirements established by state law, eliminate the reasons under which the executive committee may meet in executive sessions because provisions are already stated in state law, and eliminate the requirement that executive sessions have both a tape recording and a certified agenda of the proceedings.

Further amendments clarify that notices of meetings shall be furnished by the executive director and posted at least seven days prior to the day of the meeting as required by law; clarify that the presiding officer shall approve the agenda prior to its distribution; state that any or all parts of an open meeting may be recorded by any person in attendance but that the presiding officer shall determine the location of any recording equipment and the manner in which the recording is conducted; eliminate the unnecessary notation that legislation prescribes requirements which may be incorporated as administrative procedures; eliminate duplicative language requiring that members of special ad hoc committees be approved by the executive committee, and move a section noting that the executive committee is responsible for approving any actions by the executive director where approval is required by law, requested by executive director or desired by the executive committee. The amendments update legal citations to state laws. In addition, the amendments include other minor language changes for the purpose of clarification and numerous numbering and lettering changes to reflect consistency.

No comments were received on the proposal during the comment period; however, the center is making the following minor changes at the direction of the executive committee.

Change: Concerning §500.3(a), the language was revised to reflect that the governor will appoint the presiding officer of the executive committee pursuant to amendments to the law in the center's sunset bill (Senate Bill 354) passed in 1999.

Change: Concerning §500.3(b), the language was clarified to state that actions must be approved by a majority of all members voting with quorum present, not necessarily by a majority of the total number of members of the executive committee, e.g., five out of nine members.

Change: Concerning §500.7(a), the language was revised to recognize that a meeting may be called by written request of three executive committee members as added to the law by Senate Bill 354.

Change: Concerning §500.7(d), since notices of meetings are posted electronically and not necessarily in the secretary of state's office the language was revised to reflect posting as required by law.

25 TAC §§500.1, 500.3-500.9

The amendments are adopted under the Health and Safety Code, §106.021, which requires the center to adopt rules relating to executive committee meetings and to implement Chapter 106.

§500.3. Organization.

(a) The Executive Committee for the Center for Rural Health Initiatives (executive committee) shall annually elect one member to serve as vice-chairman, and one member to serve as secretary at the first meeting of the executive committee which occurs after September 1 of each year. The governor shall designate the presiding officer (chairman).

(b) The presiding officer shall preside at all meetings and perform all duties prescribed by law or rules of the executive committee. The vice-chairman shall preside in the absence of the chairman and perform all other duties as required.

(c) Any actions taken by the executive committee shall be approved by a majority of all members voting with quorum present.

§500.7. Executive Committee Meetings.

(a) Meetings of the Executive Committee for the Center for Rural Health Initiatives (executive committee). The executive committee shall meet in Austin, or at other places fixed by the executive committee or presiding officer, at least quarterly on dates to be fixed by the executive committee, at the written request of three members of the executive committee or at the call of the presiding officer. Meetings shall include Advisory Committee for the Center for Rural Health Initiatives (advisory committee) members at the will of the executive committee.

(b) Open meeting and executive sessions. Meetings of the executive committee shall be open to the public; however, as provided by the Texas Open Meetings Act, Texas Government Code, Chapter 551, the executive committee may meet in executive sessions.

(c) Executive sessions. Executive sessions of the executive committee shall be meetings with only executive committee members and invited persons present. Executive sessions shall be held only to consider such items as provided by law.

(d) Notice of meetings. A written notice of each meeting of the executive committee shall be furnished by the executive director to the secretary of state at least seven days prior to the day of the meeting to be posted as required by law. In cases of emergency or urgent public necessity, notice shall be given as authorized by the emergency notice provisions of the open meetings law.

(e) Agendas. The executive director shall prepare and submit to each member of the executive committee and the advisory committee prior to each meeting a preliminary copy of the agenda, outlining items to be considered by the executive committee, those required by law, and others as members have requested. Materials supplementing the agenda may be included. The presiding officer

shall approve the agenda prior to its distribution to the secretary of state or committee members.

(f) Quorum. Five members of the executive committee shall constitute a quorum.

(g) Official transaction of business. The executive committee may transact official business only when in session with a quorum present and shall not be bound in any way by any statement or action on the part of any individual member except when a statement or action is in pursuance of specific instructions of the executive committee.

(h) Rules of order. The executive committee shall observe Robert's Rules of Order, Newly Revised, except as otherwise provided by this chapter or a statute.

(i) Minutes. The official minutes of the executive committee shall be kept in the office of the executive director of the Center for Rural Health Initiatives (center) to be available to a person desiring to examine them. Official minutes are those which the recording secretary prepares, the executive committee approves at a meeting, and are affixed with the original signatures of the presiding officer and the secretary of the executive committee. Drafts of the minutes shall be forwarded to each member for review and comments or corrections prior to approval of the executive committee.

(j) Recording meetings. All or any part of an open meeting may be recorded by any person in attendance. The presiding officer will determine the location of any recording equipment and the manner in which the recording is conducted, provided that the determination does not prevent or unreasonably impair camera coverage or tape recording.

This agency 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 September 20, 1999.

TRD-9906094
Robert J. Tessen
Executive Director
Center for Rural Health Initiatives
Effective date: October 10, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 479-8891

♦ ♦ ♦

25 TAC §500.2, §500.10

The repeals are adopted under the Health and Safety Code, §106.021, which requires the center to adopt rules relating to executive committee meetings and to implement Chapter 106.

This agency 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 September 20, 1999.

TRD-9906095
Robert J. Tessen
Executive Director
Center for Rural Health Initiatives
Effective date: October 10, 1999
Proposal publication date: April 16, 1999
For further information, please call: (512) 479-8891

♦ ♦ ♦

TITLE 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 7. CORPORATE AND FINANCIAL REGULATION

Subchapter A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.36

The Texas Department of Insurance adopts the repeal of §7.36 concerning reports that workers' compensation insurers are required to file with the Texas Department of Insurance on or before June 30th of the year following the year audited. The adoption of the repeal of the section is made without changes to the proposed text as published in the August 6, 1999, issue of the *Texas Register* (24 TexReg 6003).

The repeal of this section is necessary to eliminate an unnecessary provision, as TEX. INS. CODE ANN. art. 5.61, as amended by Acts 1999, 76th Leg., ch. 1426, § 19, eff. Sept. 1, 1999, no longer imposes such a mandate upon workers' compensation insurers.

The repeal of the section will eliminate provisions relating to the filing of reports which are unnecessary as a result of the change in the law.

No comments were received regarding the adoption of the repeal of this section.

The repeal is proposed under the Insurance Code, § 36.001 and articles 5.61 and 5.62; and Texas Government Code, §§ 2001.004-2001.038. Section 36.001 authorizes the Commissioner to adopt rules for the conduct and execution of the duties and functions of the Department only as authorized by statute for general and uniform application. Article 5.61 now only governs the maintenance of reserves securing the solvency of workers' compensation insurers. Article 5.62 authorizes the Commissioner to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of Chapter 5 Subchapter D of the Insurance Code. Texas Government Code, §§ 2001.004-2001.038, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

The following are the provisions of the Insurance Code that are affected by this section: Section 36.001, Articles 1.15A, 5.61, and 5.62.

This agency 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 September 15, 1999.

TRD-9905978
Lynda H. Nesenholtz
General Counsel and Chief Clerk

Texas Department of Insurance
Effective date: October 5, 1999
Proposal publication date: August 6, 1999
For further information, please call: (512) 463-6327

♦ ♦ ♦

TITLE 30. ENVIRONMENTAL QUALITY

Part 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Chapter 37. FINANCIAL ASSURANCE

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §37.11, concerning Definitions, §37.261, concerning Corporate Guarantee for Closure, and §37.551, concerning Corporate Guarantee for Liability. The amendments are adopted with changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4174).

EXPLANATION OF ADOPTED RULES

The commission is adopting the definition of substantial business relationship, which will allow corporations to provide financial test guarantees for entities including Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs), and Limited Partnerships (LPs).

In September 1988, the United States Environmental Protection Agency (EPA) modified 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subpart H, to expand the mechanisms available to owners and operators to demonstrate financial responsibility for third-party liability. The modifications included a new option which allowed corporate guarantors to demonstrate financial responsibility for liability using the financial test on behalf of entities with which the guarantor had a "substantial business relationship." In September 1992, EPA modified 40 CFR Parts 264 and 265, Subpart H again and expanded the use of substantial business relationship to financial test guarantees for closure and post-closure care. In 40 CFR 254.141(h), EPA defines the "substantial business relationship" as "the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator." This broad federal definition requires each state to determine under its own laws what constitutes "a business relationship necessary . . . to make a guarantee contract issued incident to that relationship valid and enforceable."

Current federal regulations allow corporations to use the financial test to provide guarantees on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define a "subsidiary" in 40 CFR 261.141(d) as a corporation in which a "parent corporation" directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs or other noncorporate entities as "subsidiaries."

By adopting this rule for substantial business relationship, the commission will allow corporate guarantors to use the financial test to demonstrate financial responsibility for liability, closure, and post-closure on behalf of noncorporate (non-subsidiary) entities such as LLCs, LLPs, and LPs. The definition for substantial business relationship will recognize a substantial business relationship between a guarantor corporation and entities such as LPs, LLPs, and LLCs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide guarantees on behalf of noncorporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a subsidiary. This definition will narrowly define the relationship and preserve the state's ability to enforce the guarantee for financial responsibility. In addition, the rules require the guarantor to provide documentation to the commission which demonstrates that the guarantee contract is valid and enforceable under state law and that a substantial business relationship exists between guarantor corporation and the entity guaranteed.

Definitions of substantial business relationship and entity are added to §37.11. Substantial business relationship means a relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed. The term "entity," for the purposes of Chapter 37, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, LLC, LLP, LP, or similar business organization. A change to the language in the definition of entity has been made from the language as originally proposed, and this change is discussed in the Analysis of Testimony section in this preamble.

Amended §37.261, concerning Corporate Guarantee for Closure, adds a description of the supplemental information that the guarantor must include with the demonstration of financial responsibility for closure and post-closure in order to provide the commission with adequate assurances that a substantial relationship exists and that the guarantee issued incident to that relationship is valid and enforceable. The guarantor will be required to submit certain information such as a description of the "substantial business relationship" and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; an original or certified original copy of the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity. A change to the language in §37.261 has been made from the language as originally proposed, and this change is discussed in the Analysis of Testimony section in this preamble.

Amended §37.551, concerning Corporate Guarantee for Liability, adds a description of the supplemental information that the guarantor must include with the demonstration of financial responsibility for liability in order to provide the commission with adequate assurances that a substantial relationship exists and that the guarantee issued incident to that relationship is valid and enforceable. Again, the guarantor will be required to submit certain information such as a description of the "substantial

business relationship" and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; an original or certified original copy of the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity. A change to the language in §37.551 has been made from the language as originally proposed, and this change is discussed in the Analysis of Testimony section in this preamble.

FINAL REGULATORY IMPACT ASSESSMENT

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code inasmuch as the rules will merely offer an additional option for financial assurance, and they do not meet any of the four applicability requirements listed in §2001.0225(a). The rules will merely offer greater flexibility in instances where corporations guarantee financial responsibility for entities with which the corporation has a substantial business relationship.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no additional costs are caused by the rules.

The rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rules will not reduce the amount of financial assurance required to be demonstrated. The rules are administrative in nature and simply expand the instruments available to corporate guarantors who provide guarantees on behalf of noncorporate entities.

The purpose of these rules is to adopt a Texas definition for "substantial business relationship" which will allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporations to use the financial test for demonstrating financial responsibility on behalf of LLCs, LLPs, and LPs.

This proposal does not exceed a standard set by federal law and is specifically allowed by federal law. The federal regulations allow the corporations to use the financial test as a corporate guarantee for closure, post-closure, and liability coverage, on behalf of third parties with which the corporation has a substantial business relationship. The federal regulations defer to each state to ensure that guarantee contracts issued incident to that relationship are valid and enforceable.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as the substantial business relationship requirements will be equivalent to the federal financial assurance mechanism requirements.

The rules are adopted under specific state law and the general powers of the commission. The specific state law is Texas Health and Safety Code, §361.085.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to adopt the definition of substantial business relationship which would allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of noncorporate entities such as LPs, LLPs, and LLCs. The federal regulations allow guarantor corporations to provide corporate guarantees using the financial test on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define "subsidiaries" as corporations. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs or other noncorporate entities as "subsidiaries." The commission's rules adopt a definition for "substantial business relationship" and allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of noncorporate (non-subsidiary) entities such as LLCs, LLPs, and LPs for liability, closure, and post-closure. The definition will recognize a substantial business relationship between a guarantor corporation and entities such as LLCs, LLPs, and LPs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide financial test guarantees to the state on behalf of noncorporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a corporate subsidiary. This definition narrowly defines the relationship and preserves the state's ability to enforce the guarantee for financial responsibility. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because these rules will not reduce the amount of financial assurance required to be demonstrated.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals found in 31 TAC §501.12 and policies which are found in 31 TAC §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas (CNRAs). CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. In particular, the CMP policy most applicable to these rules is to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq.

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because

the modification to the rules is insignificant in relationship to the CMP, have no impact on the CNRAs, and include no new requirements applicable to agency action subject to the CMP. The commission has also determined that these rules will not have a direct or significant adverse effect on CNRAs identified in the applicable CMP policies and will not result in a substantive effect. Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance for hazardous waste facilities in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, these rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules will have no new impact upon the coastal area.

HEARING AND COMMENTERS

A public hearing was not held on these rules, and the public comment period closed on July 5, 1999. Written comments were received from Dow Chemical Company (Dow), Shell Oil Company (Shell), and Thompson and Knight. All supported the general rule concept, but suggested changes.

ANALYSIS OF TESTIMONY

Regarding proposed §37.11(6), concerning the definition of entity, Dow suggested that the phrase "or similar business organization" be added to the definition. Dow suggested that the definition of entity read: "Entity-For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, limited partnership or similar business organization."

The commission agrees with Dow's comment and has amended the proposed definition to include "or similar business organization" to clarify that "entity" includes, but is not limited to, the business organizations specifically listed in the definition. The phrase "or similar business organization" is added to the definition of entity and will read as follows: "Entity-For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or limited partnership or similar business organization."

Regarding proposed §37.11(15), concerning the definition of "substantial business relationship," Dow suggested that the phrase "is a corporation and" be deleted. Dow believes that the new rule should allow not only the entity guaranteed, but also the guarantor, to be a non-corporate entity. Dow suggested that guarantors should be able to enjoy the benefits of the new business organization forms and the tax advantages that they provide. Dow suggested that the definition of substantial business relationship read: "Substantial business relationship-a relationship where the guarantor owns at least 50% of the entity guaranteed."

The commission disagrees with the commenter. The financial test guarantees used by the executive director have been approved by the Texas attorney general and are copied from the federal guarantees provided in 40 CFR §264.151(h). These guarantees are corporate guarantees which by their language require the guarantor to be a corporation. To maintain consistency with federal requirements, the commission will continue to require that only corporations can be guarantors which use the financial test. Consequently, the commission has not changed the language in the rule as suggested by the commenter.

Regarding proposed §37.11(15), concerning the definition of "substantial business relationship," Shell commented that less than 50% ownership should be sufficient. Fifty percent ownership investment by the guarantor company is unnecessarily restrictive and precludes use of this mechanism by a majority owner with great financial resources. Shell suggested that the "substantial business relationship" should be determined based on the financial strength of the guarantor who has a majority interest in the entity guaranteed. A majority interest is sufficiently similar to the relationship between a parent corporation and a subsidiary to clearly establish a "substantial business relationship" for the purposes of this rule.

The commission disagrees with the commenter. To minimize risk to the state and to allow the commission to process substantial business relationship claims fairly and routinely, the commission believes that the 50% ownership requirement is reasonable. Either direct or higher- tier corporate parents can provide a guarantee on behalf of an entity with which it has the substantial business relationship. The proposed definition tracks the 50% ownership requirement which currently exists in order for a parent corporation to guarantee on behalf of another corporation (i.e., a subsidiary corporation). This requirement provides assurances that the guarantor has a controlling interest in the guaranteed entity, and that it is able to influence the operation and management of the entity. By reducing the ownership interest to less than 50%, as Shell proposes, the relationship between the guarantor and the entity guaranteed becomes more attenuated. The proposed definition narrowly defines the substantial business relationship and preserves the state's ability to enforce the guarantee for financial responsibility. In accordance with 40 CFR §264.141(h), the proposed definition ensures that the substantial business relationship "arise[s] from a pattern of recent or ongoing business transactions, in addition to the guarantee itself." The commission has not changed the language in the rule as suggested by the commenter.

Shell also commented regarding proposed §37.11(15), concerning the definition of "substantial business relationship," that the definition should allow several entities whose interests add up to 50% to demonstrate through one financial test and designate the majority owner as the primary party.

The commission disagrees with the commenter. Federal law allows only a single owner or operator to demonstrate through the financial test. The federal regulations for the financial test, found in 40 CFR §§264.143(f), 264.145(f), and 264.147(f), are clear that only single corporations can use their financial information to demonstrate that they meet the requirements for the financial test. The test requires that either financial ratios measuring financial ability to perform or a bond rating of the corporation demonstrating financial responsibility through the financial test

be used. The financial test requires the corporation to demonstrate the full amount of the cost estimate of financial responsibility for liability, closure, or post-closure, not simply part of it. In addition, 40 CFR §264.143(g) and §264.145(g), concerning Use of Multiple Financial Mechanisms, allows an owner or operator to satisfy the financial assurance requirements by establishing more than one financial mechanism per facility. Mechanisms which can be used in combination are limited to trust funds, payment bonds, letters of credit, and insurance. Thus, the federal regulations prohibit the combination of multiple financial tests from different corporations for a single demonstration of financial assurance. The commission has not changed the language in the rule as suggested by the commenter.

Regarding proposed §37.11(15), concerning the definition of "substantial business relationship," Thompson and Knight suggested that the phrase "either directly or indirectly" be added to clarify commission's intent that higher-tier parent corporations can provide a guarantee on behalf of the owner or operator even though they own an indirect interest in the entity guaranteed. The definition would then read: "Substantial business relationship-A relationship where the guarantor is a corporation and owns, either directly or indirectly, at least a 50% interest in the entity guaranteed."

The staff agrees with Thompson and Knight that the definition of "substantial business relationship" is intended to allow parent or higher-tier parent corporations to provide financial test guarantees. However, the commission has not changed the language in the rule as suggested by the commenter because the commission believes that the definition is clear and that adding "either directly or indirectly" would broaden the substantial business relationship beyond what is intended by the commission. Neither EPA regulations nor the commission's rules on financial assurance define "indirect" or use this term when referring to ownership. Arguably, a corporation may "indirectly" own 50% of an entity without being a parent or without having a controlling interest in the entity that is being guaranteed. The purpose of the proposed definition is to narrowly define substantial relationship and preserve the state's ability to enforce the guarantee for financial responsibility. Consistent with the federal definition, the proposed definition ensures that the substantial business relationship "arise[s] from a pattern of recent or ongoing business transactions, in addition to the guarantee itself." (40 CFR §264.141(h))

Regarding proposed §37.261(d), concerning Corporate Guarantee for Closure, Dow stated that too many constraints and too much documentation is required in the proposed rules. Dow suggested that the language be deleted which requires submittal of "an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity." Dow asserted that in large companies substantial authority is granted to executive officers, like chief financial officers, and many can grant a hazardous waste guarantee for an entity. Dow also suggested the deletion of rule language in §37.261(d), which requires submittal of "the Resolution by the Board of Directors authorizing the formation of the guaranteed entity." Dow contends that this requirement will cause unnecessary and costly paperwork and there will be cases where the corporation does not create, but acquires, the entity.

The commission agrees with Dow in principal. In cases where a corporation has granted general authority to its officers to provide guarantees for the obligations of subsidiaries or other entities, the commission believes it is feasible to accept certified copies of the relevant enabling resolutions or a certified letter from the chief financial officer of the guarantor corporation. In addition, the commission agrees that the proposed rule language does not take into account situations where the corporation acquires rather than creates the entity. The commission requests this type of information because it provides information confirming that the corporation explicitly approves of the formation of the relationship. However, rather than deleting the language as suggested by Dow, the commission has revised the rule by adding the phrases: "or a certified letter from the chief financial officer," and "or acquisition" to §37.261(d). Section 37.261(d) has been revised to read: "If the guarantor has a substantial business relationship with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the substantial business relationship and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity."

In addition, Dow suggested the deletion of rule language in §37.261(d), which requires submittal of "the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity."

The commission disagrees with the commenter. The executive director expects to use the requested information to confirm the existence of the "substantial business relationship," to determine the limitations on the life or period of existence of the entity guaranteed and on the possible duration of its "substantial business relationship" with the guarantor corporation, and most importantly, to use the submitted documents to develop a record which may be used, if needed, in an enforcement case or in a bankruptcy action in which the commission has an interest. The commission has not changed the language in the rule as suggested by the commenter.

Regarding proposed §37.261(d), concerning Corporate Guarantee for Closure, Shell suggested that some of the information required was unnecessary, burdensome to provide, and that the substance of the information requested could be provided through alternative means. Shell questioned the requirements to submit an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity; the organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity. Instead, Shell proposed that the commission accept an affidavit, prepared and certified by a corporate officer, addressing the information. Shell's Board of Directors has authorized its officers to provide guaranties for the obligations of its subsidiaries. Evidence of an officer's authority would be provided by a certified copy of the enabling resolutions. Partnership agreements and other like documents could comprise boxes of information and Shell suggested that a written description of the relationship be allowed in lieu of an organizational chart or partnership agreements. Alternately, Shell proposed that guarantor corporations

be allowed to submit information provided in Securities and Exchange Commission or like agency filings, or a certified public accountant's (CPA) report.

The commission agrees with Shell in principal, but disagrees that the alternatives presented by Shell would supply information that would provide adequate substitutes for the information requested by §37.261(d). In cases where a corporation has granted general authority to its officers to provide guarantees for the obligations of subsidiaries of other entities, the commission believes that it is feasible to accept certified copies of the relevant enabling resolutions or a certified letter from the chief financial officer of the guarantor corporation. The commission requests this type of information because it provides information confirming that the corporation explicitly approves of the formation of the relationship. However, rather than deleting the language as suggested by Shell, the commission has revised the rule by adding the phrases: "or a certified letter from the chief financial officer," and "or acquisition" to §37.261(d). The commission disagrees that a written description of the substantial business relationship should suffice in lieu of an organizational chart. Organizational charts have been submitted by entities making financial assurance demonstrations and the commission has found these charts to be very helpful. The commission has found that while written descriptions are instructive, they can provide complex descriptions which are ambiguous or insufficient. An organizational chart, in combination with a written description, can provide thorough information which will assist the agency in determining whether a substantial business relationship exists. Moreover, the commission believes that submittal of partnership agreements, or other like documents, and organizational charts provide necessary information that is not available through Security and Exchange Commission, or like agency filings, or a CPA's report. The commission expects to use the requested information to confirm the existence of the "substantial business relationship," to determine the limitations on the life or period of existence of the entity guaranteed and on the possible duration of its "substantial business relationship" with the guarantor corporation, and most importantly, to use the submitted documents to develop a record which may be used, if needed, in an enforcement case or in a bankruptcy action in which the commission has an interest. Neither Security and Exchange Commission filings nor a CPA's report provide a sufficient level of detail to allow commission to determine the acceptability of the substantial business relationship. A listed corporation making internal organizational changes which include creating an LLC or LP would not be required to submit the types of information requested in the proposed rule. In addition, a CPA is not required to routinely review the requested documents as part of a CPA's routine financial duties and, therefore, the commission does not want to pass the responsibility of the review onto a CPA. In addition, as stated previously, the commission wants to retain the information in the event it is needed in a future enforcement or bankruptcy proceeding. Consequently, the commission has not changed the language in the rule as suggested by the commenter.

Regarding proposed §37.551(b), concerning Corporate Guarantee for Closure, Dow suggested striking the word, "corporation" to allow not only the entity guaranteed but also the guarantor to be a non-corporate entity.

The commission disagrees with the commenter. The financial test guarantees issued by the commission have been approved by the Texas attorney general and are copied from the federal guarantees provided in 40 CFR §264.151(h). These guarantees are corporate guarantees which by their language require the guarantor to be a corporation. To be consistent with federal requirements, the commission will continue to require that only corporations can be guarantors which use the financial test. Consequently, the commission has not changed the language in the rule as suggested by Dow.

Regarding proposed §37.551(d), concerning Corporate Guarantee for Closure, Dow suggested that the language be deleted which requires submittal of "an original or certified original copy of the Resolution by the Board of Directors authorizing the corporate guarantee on behalf of the entity." Dow asserted that in large companies substantial authority is granted to executive officers, like the chief financial officer, and many can grant a hazardous waste guarantee for an entity. Additionally, regarding proposed §37.551(d), concerning Corporate Guarantee for Closure, Dow suggested the deletion of rule language in §37.551(d), which requires submittal of "the Resolution by the Board of Directors authorizing the formation of the guaranteed entity." Dow contends that this requirement will cause unnecessary and costly paperwork and there will be cases where the corporation does not create, but acquires the entity.

The commission agrees with Dow in principal. In cases where a corporation has granted general authority to its officers to provide guarantees for the obligations of subsidiaries or other entities, the commission believes it is feasible to accept certified copies of the relevant enabling resolutions or a certified letter from the chief financial officer of the guarantor corporation, and the commission agrees that the proposed rule language does not take into account situations where the corporation acquires rather than creates the entity. Information, relating to the creation or acquisition of the entity guaranteed, is requested to obtain written documentation confirming that the corporation explicitly approves of the formation of the relationship. However, rather than delete the language as suggested by Dow, the commission has revised the rule by adding the phrases: "or a certified letter from the chief financial officer," to §37.551(d). Section 37.551(d) has been revised to read: "If the guarantor has a substantial business relationship with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the substantial business relationship and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity." Also, the language in the proposed rule asks for "an original or certified original copy" of the resolution authorizing the guarantee but not of the resolution authorizing the formation of the guaranteed entity. The rule has also been amended to ask for "an original or certified original copy" of each.

Shell commented that the commission has the right to promulgate regulations that are more stringent than federal regulations. However, Shell believes that the proposed rule regarding 50% ownership, a requirement not found in the comparable federal definition, will cause unnecessary confusion in the regulated

community and would in fact exceed a standard set by federal law.

The commission disagrees with the commenter and believes that the proposed definition does not exceed a standard set by federal law and is in fact, specifically allowed by federal law. The federal definition of "substantial business relationship" is "the extent of a business relationship under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator." This broad definition requires each state to determine under its own laws what constitutes "a business relationship necessary . . . to make a guarantee contract issued incident to that relationship valid and enforceable." The commission believes that the proposed definition meets the federal requirements and narrowly defines the relationship to preserve the state's ability to enforce the guarantee and minimize risk to the state. Therefore, no changes have been made to the proposal, in this regard.

Subchapter A. GENERAL FINANCIAL ASSURANCE REQUIREMENTS

30 TAC §37.11

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.11. Definitions.

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

(1) Assets - All existing and all probable future economic benefits obtained or controlled by a particular entity.

(2) Current assets - Cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(3) Current closure cost estimate - The most recent of the estimates prepared for closure and approved by the executive director.

(4) Current liabilities - Obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(5) Current plugging and abandonment cost estimate - The most recent of the estimates prepared in accordance with Chapter 331 of this title (relating to Underground Injection Control).

(6) Entity - For the purposes of this chapter, means a legal organization engaged in lawful business or purpose, such as a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or limited partnership or similar business organization.

(7) Face amount - The total amount the insurer is obligated to pay under an insurance policy.

(8) Financial responsibility - This term shall mean the same as financial assurance.

(9) Independent audit - An audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

(10) Liabilities - Probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(11) Net working capital - Current assets minus current liabilities.

(12) Net worth - Total assets minus total liabilities and equivalent to owner's equity.

(13) Program area - Texas Natural Resource Conservation Commission areas under which the facility is permitted, licensed, or registered to operate, including, but not limited to, Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

(14) Standby trust - An unfunded trust established to meet the requirements of this chapter.

(15) Substantial business relationship - A relationship where the guarantor is a corporation and owns at least 50% of the entity guaranteed.

(16) Tangible net worth - The tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

This agency hereby certifies that the 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 September 17, 1999.

TRD-9906049
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: October 7, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter C. FINANCIAL ASSURANCE MECHANISMS FOR CLOSURE

30 TAC §37.261

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011 and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.261. Corporate Guarantee for Closure.

(a) An owner or operator may satisfy the requirements of financial assurance for closure by obtaining a written guarantee, hereafter referred to as "corporate guarantee," which conforms to the requirements of this section, in addition to the requirements

as specified in subchapters A and B of this chapter (relating to General Financial Assurance Requirements and Financial Assurance Requirements for Closure).

(b) The guarantor shall be the direct or higher-tier parent corporation of the owner or operator or a corporation with a substantial business relationship with the owner or operator. The guarantor must meet the requirements for owners or operators as specified in §37.251 of this title (relating to Financial Test for Closure). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.361 of this title (relating to Corporate Guarantee for Closure). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.251(c) of this title.

(d) If the guarantor has a substantial business relationship with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the substantial business relationship and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; an original or certified original copy of the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to perform closure of the facility covered by the corporate guarantee in accordance with the closure plan or the closure requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in §37.201 of this title (relating to Trust Fund for Closure) in the name of the owner or operator;

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts;

(3) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

This agency hereby certifies that the 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 September 17, 1999.

TRD-9906048

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 7, 1999

Proposal publication date: June 4, 1999

For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter F. FINANCIAL ASSURANCE MECHANISMS FOR LIABILITY

30 TAC §37.551

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011 and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

§37.551. Corporate Guarantee for Liability.

(a) An owner or operator may meet the requirements of financial assurance for liability as specified in subchapter E of this chapter (relating to Financial Assurance Requirements for Liability Coverage) by obtaining a written guarantee for liability coverage, hereinafter referred to as "corporate guarantee," which conforms to the requirements of this section, in addition to the requirements as specified in subchapter A of this chapter (relating to General Financial Assurance Requirements).

(b) The guarantor must be the direct or higher-tier parent corporation of the owner or operator or a corporation with a substantial business relationship with the owner or operator. The guarantor must meet the requirements for owners or operators as specified in §37.541 of this title (relating to Financial Test for Liability). The guarantor must comply with the terms of the corporate guarantee.

(c) The wording of the corporate guarantee must be identical to the wording specified in §37.661 of this title (relating to Corporate Guarantee). The corporate guarantee shall accompany the items sent to the executive director as specified in §37.541(c) of this title.

(d) If the guarantor has a substantial business relationship with the owner or operator, in addition to the requirements specified in this chapter for the financial test and corporate guarantee, the guarantor will submit a description of the substantial business relationship and the value received in consideration of the guarantee; an original or certified original copy of the Resolution by the Board of Directors or a certified letter from the chief financial officer, authorizing the corporate guarantee on behalf of the entity; an original or certified original copy of the Resolution by the Board of Directors authorizing the formation or acquisition of the guaranteed entity; an organizational chart which shows the relationship between the two entities; the partnership agreement or other agreements, articles, or bylaws which set out the formation, structure, and operation of the guaranteed entity.

(e) The terms of the corporate guarantee shall provide that:

(1) if the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden accidental occurrences, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage;

(2) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the

written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide such alternative financial assurance in the name of the owner or operator.

(f) In the case of corporation incorporated in the United States, a guarantee may be used to satisfy the requirements of this section only if the Attorneys General or Insurance Commissioners of:

(1) the state in which the guarantor is incorporated; and

(2) each state in which a facility covered by the guarantee is located have submitted a written statement to the Unites States Environmental Protection Agency that a guarantee executed as described in this section and §37.661 of this title (relating to Corporate Guarantee) is a legally valid and enforceable obligation in that state.

This agency hereby certifies that the 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 September 17, 1999.

TRD-9906047

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 7, 1999

Proposal publication date: June 4, 1999

For further information, please call: (512) 239-1966

♦ ♦ ♦

Chapter 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.112 and §335.152, regarding Industrial Solid Waste and Municipal Hazardous Waste. The amendments are adopted without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4171) and will not be republished.

EXPLANATION OF ADOPTED RULES

The commission is adopting the definition of substantial business relationship. The definition will be placed in 30 TAC Chapter 37, concerning Financial Assurance. The purpose of this rulemaking for Chapter 335 is to adopt the "substantial business relationship" for closure and post-closure and to provide the appropriate references to "substantial business relationship" in Chapter 335. The "substantial business relationship" rule will allow corporations to provide financial test guarantees for entities including Limited Liability Companies (LLCs), Limited Liability Partnerships (LLPs), and Limited Partnerships (LPs).

In September 1988, the United States Environmental Protection Agency (EPA) modified 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subpart H, to expand the mechanisms available to owners and operators to demonstrate financial responsibility for third party liability. The modifications included a new option which allowed corporate guarantors to demonstrate financial responsibility for liability using the financial test on behalf of entities with which the guarantor had a "substantial business relationship." In September 1992, EPA modified 40 CFR Parts 264 and 265, Subpart H, again and expanded the use of substantial business relationship to financial test guarantees for closure and post-closure care. In 40 CFR 254.141(h), EPA defines the substantial business relationship as "the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A 'substantial business relationship' must arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the applicable EPA Regional Administrator." This broad federal definition requires each state to determine under its own laws what constitutes "a business relationship necessary . . . to make a guarantee contract issued incident to that relationship valid and enforceable."

Current federal regulations allow corporations to use the financial test to provide guarantees on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define "subsidiaries" as corporations. The federal regulations, in 40 CFR 264.141(d), define a "parent" corporation as "a corporation which directly owns at least 50% of the voting stock of the corporation which is the facility owner or operator; the latter corporation is deemed a 'subsidiary' of the parent corporation. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs, or other non-corporate entities as 'subsidiaries.'"

The commission's rules in Chapters 37 and 335 will adopt a definition for substantial business relationship and allow corporate guarantors to use the financial test to demonstrate financial responsibility for liability, closure, and post-closure on behalf of non-corporate (non-subsidiary) entities such as LLCs, LLPs, and LPs. The definition will recognize a substantial business relationship between a guarantor corporation and entities such as LPs, LLPs, and LLCs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide guarantees on behalf of non-corporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a subsidiary. This definition will narrowly define the relationship and preserve the state's ability to enforce the guarantee for financial responsibility. In addition, these rules require the guarantor to provide documentation to the commission which demonstrates that the guarantee contract is valid and enforceable under state law and that a substantial business relationship exists between the guarantor corporation and the entity guaranteed.

Amended §335.112, concerning Standards, adds a reference to the definition of substantial business relationship. The definition of substantial business relationship is addressed in a concurrent rulemaking for Chapter 37.

Amended §335.152, concerning Standards, also adds references to the definition of substantial business relationship.

FINAL REGULATORY IMPACT ASSESSMENT

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a"major environmental rule" as defined in the Texas Government Code inasmuch as the rules will merely offer an addi-

tional option for financial assurance, and they do not meet any of the four applicability requirements listed in §2001.0225(a). The rules will merely offer greater flexibility in instances where corporations guarantee financial responsibility for entities with which the corporation has a substantial business relationship.

The economy, a sector of the economy, productivity, competition, or jobs, will not be adversely affected in a material way because no additional costs are caused by the rules.

The rules do not adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state, because the rules will not reduce the amount of financial assurance required to be demonstrated. The rules are administrative in nature and simply expand the instruments available to corporate guarantors who provide guarantees on behalf of non-corporate entities.

The purpose of these rules is to adopt a Texas definition for substantial business relationship which will allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporations to use the financial test for demonstrating financial responsibility on behalf of LLCs, LLPs, and LPs.

This proposal does not exceed a standard set by federal law and is specifically allowed by federal law. The federal regulations allow the corporations to use the financial test as a corporate guarantee for closure, post-closure, and liability coverage, on behalf of third parties with which the corporation has a substantial business relationship. The federal regulations defer to each state to ensure that guarantee contracts issued incident to that relationship are valid and enforceable.

This proposal does not exceed the requirements of a delegation agreement or contract between the state and federal government, as the substantial business relationship requirements will be equivalent to the federal financial assurance mechanism requirements.

The rules are adopted under specific state law and the general powers of the commission. The specific state law is Texas Health and Safety Code, §361.085.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to adopt the definition of substantial business relationship which would allow corporations to provide financial test guarantees for entities including LLCs, LLPs, and LPs. The new definition will allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of non-corporate entities such as LLCs, LLPs, and LPs. The federal regulations allow guarantor corporations to provide corporate guarantees using the financial test on behalf of: (1) their subsidiaries; and (2) entities with which the guarantor has a substantial business relationship. Federal regulations define "subsidiaries" as corporations. For the purpose of providing corporate guarantees using the financial test, guarantors cannot treat LLCs, LLPs, LPs, or other non- corporate entities as "subsidiaries." The commission's rules adopt a definition for substantial business relationship and allow corporate guarantors to use the financial test to demonstrate financial responsibility on behalf of non-corporate (non-subsidiary) entities such as LLCs, LLPs, and LPs for liability, closure, and post-closure. The definition will recognize a substantial business relationship between a guarantor corporation and entities such as LLCs, LLPs, and LPs in which the guarantor corporation has at least a 50% ownership interest. Such a definition for substantial business relationship will provide an additional option to corporations which choose to provide financial test guarantees to the state on behalf of non-corporate entities in which the corporation has an ownership interest, similar to a corporate parent's interest in a corporate subsidiary. This definition narrowly defines the relationship and preserves the state's ability to enforce the guarantee for financial responsibility. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because these rules will not reduce the amount of financial assurance required to be demonstrated.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals found in 31 TAC §501.12 and policies which are found in 31 TAC 501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas (CNRAs). CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. In particular, the CMP policy most applicable to these rules is to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq.

The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule changes are consistent with the applicable CMP goals and policies because the modification to the rules is insignificant in relationship to the CMP, have no impact on the CNRAs, and include no new requirements applicable to agency action subject to the CMP. The commission has also determined that these rules will not have a direct or significant adverse effect on CNRAs identified in the applicable CMP policies and will not result in a substantive effect. Because these rules will not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities, promulgation and enforcement these rules will have no new effect on the CNRAs. The rules will continue having their original effect, which is to require demonstrations of financial assurance for hazardous waste facilities in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules will continue to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, these rules do not violate any applicable provisions of the CMP's

stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP goals and policies, and the rules will have no new impact upon the coastal area.

HEARING AND COMMENTERS

A public hearing was not held on these rules, and the public comment period closed on July 5, 1999. Only Dow Chemical Company (Dow) provided written comments. Dow supported the general rule concept but suggested changes.

ANALYSIS OF TESTIMONY

Regarding proposed §335.112(a)(7) concerning Standards, Dow suggested that the concept of corporation be deleted from the rule. This proposed change would allow not only the entity guaranteed, also the guarantor, to be a non-corporate entity.

Similarly, Dow suggested that the concept of corporation be deleted from proposed §335.152(a)(6)(B) and (C), concerning Standards. This proposed change would allow not only the entity guaranteed, also the guarantor, to be a non-corporate entity.

The commission disagrees with the commenter. The financial test guarantees used by the commission have been approved by the Texas attorney general and are copied from the federal guarantees provided in 40 CFR §264.151(h). These guarantees are corporate guarantees which by their language require the guarantor to be a corporation. To be consistent with federal requirements, the commission will continue to require that only corporations can be guarantors which use the financial test. Consequently, the commission has not changed the language in the rule as suggested by the commenter.

Subchapter E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §335.112

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

This agency 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 September 17, 1999.

TRD-9906046
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: October 7, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 239-1966

♦ ♦ ♦

Subchapter F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES

30 TAC §335.152

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §361.011, and §361.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

This agency 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 September 17, 1999.

TRD-9906045
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: October 7, 1999
Proposal publication date: June 4, 1999
For further information, please call: (512) 239-1966

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 10. TEXAS WATER DEVELOPMENT BOARD

Chapter 355. RESEARCH AND PLANNING FUND

Subchapter C. REGIONAL WATER PLANNING GRANTS

31 TAC §355.93, §355.100

The Texas Water Development Board (board) adopts amendments to 31 TAC §355.93 and §355.100 concerning the Research and Planning Fund, without change to the proposed text as published in the July 30, 1999 issue of the *Texas Register* (24 TexReg 5852) and will not be republished.

The amendments to §355.93 delete paragraph (b)(4). This paragraph was included to initially focus all regional water planning funds on completion of plans that encompassed entire regional water planning areas, rather than smaller geographic locations. Because the board has committed funds for initial regional water plan development for all regional water planning areas, the paragraph is no longer needed. Amendments to §355.100 require regional water planning groups to make all work products available to the Texas Department of Agriculture in addition to agencies already listed, to reflect statutory changes made by Senate Bill 1310, 76th Texas Legislature, Regular Session.

One comment was received from TXU Business Services on behalf of TXU Electric & Gas, TXU SESCO & Gas, and TXU Mining in support of the proposed amendments to the regional planning guidelines.

The amendments are adopted under the authority of the Texas Water Code, §6.101, and §15.403, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code, including Chapter 15, and other laws of the State, and Texas Water Code §15.4061, which directs the board to adopt rules establishing criteria for eligibility for regional water planning money.

This agency 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 September 15, 1999.

TRD-9906028
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 5, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Chapter 357. REGIONAL WATER PLANNING GUIDELINES

31 TAC §§357.2, 357.4, 357.5, 357.7

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§357.2, 357.4, 357.5, and 357.7, concerning Regional Water Planning Guidelines, without changes to the proposed text as published in the July 30, 1999 issue of the *Texas Register* (24 TexReg 5853) and corrected in the September 3, 1999 issue of the *Texas Register* (24 TexReg 7070) and will not be republished. The amendments are proposed to reflect changes made by Senate Bills (SB) 272, 657, 658, and 1310, 76th Texas Legislature.

SB 657 eliminates requirements that regional water planning must include water management strategies to be used when flows are at 50% and 75% of normal. Consistent with such legislative change, amendments are proposed to: §357.2 to eliminate the definitions of "Flows at 50% of normal" and "Flows at 75% of normal"; and §357.5(e) and §357.7(a)(3) and (5) to delete references to planning for such flow conditions. As a result, the regional water planning groups will be required to prepare their regional water plans only for drought of record conditions. This will reduce the number of water supply strategies that need to be developed while still achieving the end result of planning for sufficient supplies for the drought of record.

SB 657 also adds a requirement that regional water plans identify: each source of water supply in the regional water planning area; factors specific to each source of water supply to be considered in determining whether to initiate a drought response; and actions to be taken as part of the response. Section 357.5(e) imposes such additional requirements on development of the regional water plans by regional water planning groups. These changes will provide for a focus on drought response by each source of water, thereby allowing for a quicker response during drought conditions.

SB 272 and SB 1310 make changes to the appointment of additional members of regional water planning groups by the initial coordinating body named by the board. The bill makes it clear that the initial coordinating body is not required to add additional members to serve on the regional water planning group unless necessary to ensure adequate representation of interests comprising the region. The bill also clarifies that the regional water planning groups are required to maintain adequate representation of all interests comprising the region. Amendments to §357.4(c), (d), and (e) reflect these changes. It allows regional water planning groups to tailor their membership to the needs of their region while still making clear the need to assure appropriate interests are included in the group.

SB 658 extends the date by which each regional water planning group must submit its regional water plan to the board from September 1, 2000 to January 5, 2001. Section 357.5(b) is amended to reflect such deadline change.

Amendment to §357.4(h)(3) deletes an unnecessary semicolon and is not intended to produce any substantive change.

One comment was received from TXU Business Services on behalf of TXU Electric & Gas, TXU SESCO & Gas, and TXU Mining in support of the proposed amendments to the regional planning guidelines.

The amendments are adopted under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, and under the authority of Texas Water Code, §16.053, which requires the board to develop rules and guidelines to govern procedures to be followed in carrying out the responsibilities in Texas Water Code, §16.053, which responsibilities include designation of representatives for regional water planning areas and procedures for adoption of regional water plans by regional water planning groups.

This agency 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 September 15, 1999.

TRD-9906029
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 5, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Chapter 358. STATE WATER PLANNING GUIDELINES

31 TAC §358.3

The Texas Water Development Board adopts amendments to 358.3 concerning State Water Planning Guidelines without change to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5856) and will not be republished.

The changes are proposed to extend the deadlines for the state water plan completion from September 1, 2001 to January 5, 2002, consistent with statutory changes made by Senate Bill 658, 76th Texas Legislature, Regular Session (1999).

One comment was received from TXU Business Services on behalf of TXU Electric & Gas, TXU SESCO & Gas, and TXU Mining in support of the proposed amendments to the regional planning guidelines.

The amendment is adopted under the authority granted in Texas Water Code 6.101, which directs the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and other laws of Texas, and also pursuant to Texas Water Code, 16.051, which requires the board to adopt by rule guidance principles for the state water plan.

This agency 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 September 15, 1999.

TRD-9906033
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 5, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

Chapter 363. FINANCIAL ASSISTANCE PROGRAMS

Subchapter F. STORAGE ACQUISITION AND STATE PARTICIPATION

31 TAC §363.613

The Texas Water Development Board (board) adopts new 31 TAC §363.613 concerning administrative cost recovery for state participation without change to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5857) and will not be republished.

The new section implements the collection of fees for the board's State Participation Program and sets out the procedure under which the board will assess administrative cost recovery fees from political subdivisions that participate in the State Participation Program. The new section is proposed in order to comply with Senate Bill 1862, Acts of the 76th Legislature, 1999, which authorized the board to set a fee to recover the board's administrative costs in participating in a project under this program. The rules require payment of a fee of 0.5% of the total cost of the board's participation in a project and provide that one- third of the fee is due at closing and the balance of the fee may be paid in annual installments with the consent of the Development Fund Manager.

No comments were received on the proposed new section.

The new section is adopted pursuant to Texas Water Code §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency 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 September 15, 1999.

TRD-9906032
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: October 5, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 463-7981

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

Part 9. 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 adopts amendments to §§190.1 - 190.7, concerning application dates and allocation of private activity bonds, with changes to the proposed text as published in the July 9, 1999, issue of the *Texas Register*(24 TexReg 5149). Each section has had stylistic changes, primarily regarding legal citations and minor technical changes to standardize language throughout the document. §190.3 has changed language to require applicants for residential rental issues to provide an earnest money contract to be in effect until at least December 1, with extension provisions, rather than March 1 as proposed. The change would accomplish the goal of ensuring site control of the subject property and be less expensive for the developers who will not receive a reservation after the lottery.

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, Government Code, effective September 1, 1999.

Comments were received from the Texas Department of Housing and Community Affairs suggesting the shorter contract period for site control with optional extension. The agency agreed with the suggestion, as the same goal of site control would be achieved with earnest money cost savings for the applicants while they await a lottery allocation. The Office of the Governor suggested stylistic and legal citation changes. The agency agreed that the changed language would result in correct and standardized language.

The amendments are adopted with changes 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 adopted amendments.

§190.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Administrative Procedure Act, Government Code, Chapter 2001, Texas Civil Statutes, Article 5190.9a, as amended, and Chapter 1372, 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) Objective. The objective of the sections in this chapter is to establish the most equitable and efficient means of allocating the state ceiling on private activity bonds in accordance with the Act. The intent of the board is to formulate policies and guidelines that would provide standards of eligibility and procedures for applications submitted to reserve a portion of the state ceiling for private activity bonds.

(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, Government Code,

(2) Amount - With respect to bonds, reservation certificate, or a portion of the state ceiling, is a sum measured in terms of United States dollars.

(3) Application fee - The $500 nonrefundable application fee submitted to the board simultaneously with an application for reservation or an application for carryforward.

(4) Application for carryforward - The application for a carryforward required to be filed by an issuer with all attachments and amendments to reserve a portion of the state ceiling for carryforward purposes.

(5) Application for reservation - The application for reservation required to be filed by an issuer with all attachments to reserve a portion of the state ceiling.

(6) Authorized representative - A representative authorized by the issuer to execute certain correspondence under §190.5(i) and (j) of this title (relating to Consideration of Qualified Applications by the Board).

(7) Available - Any amount of the state ceiling set aside for reservations by an issuer upon compliance with the terms of the Act and this chapter.

(8) Board - The Bond Review Board created under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7).

(9) Bond authorization requirements - Those requirements that are to be filed by the issuer no later than 35 days after the issuer's reservation date.

(10) Bonds - Includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution and which are subject to the limitations of the Code, §146.

(11) Borrower - Any person or persons whose private business use, within the meaning of the code, would cause any bonds to constitute private activity bonds within the meaning of the code. If there is more than one such person with respect to any issue of bonds, then the term shall mean and include each and every such person known at the time that the issuer files an application for reservation or an application for carryforward, except that any one of such persons may execute any such application, letter, or other writing which the Act and this chapter requires to be executed by the borrower.

(12) Business day - A day on which the board is open for business. The term shall not include any Saturday, Sunday or holiday officially observed by the state. The board's normal business hours are 8 a.m. to 5 p.m. each business day.

(13) Carryforward - The amount of the state ceiling that has not been reserved before December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation.

(14) Certificate of allocation - The notice given by the board to an issuer confirming the issuance of bonds receiving a portion of the state ceiling pursuant to the Act and the Code.

(15) Certificate of delivery - The notice given to the board by the issuer stating the closing date of the bonds and the amount of bonds issued and delivered at closing.

(16) Certificate of reservation - The notice given by the board to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(17) Certification regarding fees - The notice given to the board by legal counsel stating that a check for a required fee was sent by overnight delivery as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions) in a timely manner.

(18) Close or closing - The issuance and delivery of bonds by an issuer in exchange for the required payment therefore, or in the case of mortgage credit certificates, the date when an issuer elects not to issue qualified mortgage bonds and establishes a mortgage credit certificate program under the code. The term does not include a delivery of bonds if the expenditure of the proceeds of the bonds is conditioned on obtaining credit enhancement in support of the bonds.

(19) Closing date - The date on which the bonds have been issued and delivered in exchange for the required payment therefore.

(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), Government Code, 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, whichever is greater.

(22) Code - The Internal Revenue Code of 1986, as the same from time to time may be amended.

(23) Election - An election by an issuer of qualified mortgage bonds to convert its bond authority to mortgage credit certificates under applicable sections of the code.

(24) Executive director - The executive director of the board.

(25) Finance team members - Members associated with the specific bond issue and project or mortgage credit certificate program which may include the issuer, user, bond counsel, placement agent, or underwriter, trustee, or any other members.

(26) Governing body - The board, council, commission, commissioners' court, or legislative body of the government governmental unit.

(27) Government unit - A city, county or other political subdivision which may create and utilize a corporation, to act for and on its behalf.

(28) Housing finance corporation - A corporation created under the Texas Housing Finance Corporations Act, Local Government Code, Chapter 394.

(29) Issued - Bonds that have actually been delivered and paid for in full. The date of issuance shall be the date on which the bonds have been delivered and paid for in full.

(30) Issuer - Any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever and any non-profit corporation acting for or on behalf of any of the foregoing.

(31) Joint housing finance corporation - A housing finance corporation acting on behalf of more than one local government unit as provided in the Texas Housing Finance Corporations Act, Local Government Code, Chapter 394, §394.012.

(32) Local government unit - Any city or county.

(33) Local population - The population in the local government unit or units on whose behalf a housing finance corporation is created as determined by the most recent federal census estimate. If two local government units which overlap have each created housing finance corporations that have the power to issue bonds to provide financing for home mortgages, prior to the submission of either the application for reservation or the application for carryforward by either housing finance corporation, there shall be excluded from the population of the larger local government unit that portion of the population of any smaller local government unit having a population as determined by the most recent federal census estimate of 20,000 or more which is within the larger local government unit, unless the smaller local government unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local government unit. A resolution assigning authority to issue qualified mortgage bonds must have been adopted within the twelve months preceding the date of submission of the application to the board.

(34) Locally voted issue - An issue of bonds which has been authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.

(35) Mortgage credit certificate - A certificate of the nature described in the Code, §25.

(36) Prepayments - Reduction of the principal amount of a loan that was originated from bond proceeds resulting in a corresponding reduction of the principal amount of the bond proceeds.

(37) Private activity bond - A private activity bond within the meaning given that term under the code.

(38) Program year - A calendar year.

(39) Project - Any eligible facility, as described in the application for reservation or carryforward, proposed to be financed, in whole or in part, by an issue of bonds. With respect to qualified mortgage bonds or qualified student loan bonds, the board shall consider the project or purpose to be the provision of financial assistance to qualifying mortgagors or students within all or any portion of the jurisdiction of the issuer. For purposes of this definition, jurisdiction of the issuer is determined on the date the application for reservation is delivered to the board.

(40) Qualified application - A completed application for reservation or an application for carryforward.

(41) Qualified bond - A qualified bond within the meaning given that term under the Code.

(42) Qualified mortgage bond - A qualified mortgage bond within the meaning given that term under the Code, including mortgage credit certificates.

(43) Qualified residential rental project issue - An issue of bonds for a qualified residential rental project, as that term is defined under the Code, § 142(d).

(44) Qualified small issue bond - A qualified small issue bond within the meaning given that term under the Code.

(45) Qualified student loan bond - A qualified student loan bond within the meaning given that term under the Code, §144(b).

(46) Related person - Related person within the meaning given that term under the Code.

(47) Reservation - A reservation of a portion of the state ceiling for a specific bond issue.

(48) Reservation date - The earliest date on which a qualified application for reservation is accepted for filing with the board pursuant to the Act and a portion of the state ceiling is or becomes available to the issuer.

(49) Rules - Any statement of general applicability that implements, interprets, or prescribes law or policy, or describes the board's procedures and practice.

(50) Significant expenditures - Expenditures greater than the lesser of $1 million or 10% of the reasonably anticipated cost of the project.

(51) Staff - The staff of the board.

(52) State - The State of Texas.

(53) State ceiling - The amount of the authority in the state to issue tax exempt private activity bonds during the calendar year, as determined under the Code.

(54) State-voted issue - An issue of bonds which has been authorized pursuant to a statewide referendum approved by the voters of the state.

(55) Tax-exempt enterprise zone facility bonds - An issue of bonds for an enterprise zone facility, as that term is defined under the Code, §1394.

(56) Unexpended proceeds - Proceeds remaining from a prior issue of bonds, including, in the case of qualified mortgage bonds, any unused portion of mortgage credit certificates.

(d) Amendment and suspension of sections. These sections may be amended by the board at any time in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(e) Statements and opinions. Statements and opinions expressed orally or in writing by the staff in response to inquiry or otherwise, and not specifically identified and promulgated as sec-

tions, shall not be considered regulatory standards of the board and shall not be considered binding upon the executive director in consideration with specific determinations undertaken by the board or the executive director thereafter.

(f) Examination of records. Any party requesting the examination of records pursuant to Chapter 552, Government Code, as amended, shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.

§190.2. Allocation and Reservation System.

(a) The state's ceiling shall be determined for each calendar year by the executive director based upon the most recent census estimate of the resident population of the state published by the Bureau of the Census prior to the beginning of such calendar year. The amount of the state ceiling shall be published in the Texas Register in the first January issue of each year.

(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, §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 Subsections (b)(2), (b)(3), and (b)(6) of §2, 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 10 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, §2(b)(1), shall further be determined as provided in §1372.032, Government Code.

(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, §2(b)(5), shall further be determined as provided in §1372.033, Government Code. 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) 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, Government Code, 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, Government Code and Article 5190.9a §3(h).

(h) 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) 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) An issuer may refuse to accept a reservation for any amount if the reservation is granted after September 23 of the program year.

(k) 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) 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) Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

§190.3. Filing Requirements for Applications for Reservation.

(a) Form. Applications must be filed on forms prescribed by the board and must contain all information and documentation required under the Act and this chapter, as applicable.

(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) the application fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a copy of the inducement resolution or other similar official action taken by the issuer with respect to the bonds and the project which are the subject of the application, certified by an officer of the issuer; or a copy of the certified resolution of the issuer authorizing the filing of the application for reservation;

(4) a copy of the issuer's articles of incorporation as certified by the secretary of state of Texas and by-laws, including amendments thereto and restatements thereof, or alternatively, a certification that there have been no amendments to the articles of incorporation or by-laws since the last submission of these items to the board;

(5) a copy of the issuer's certificate of continued existence from the secretary of state 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) 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) 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) 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 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) 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) of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(11) 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) a qualified mortgage bond issuer that submits an application for reservation as described in §1372.032, Government Code, shall provide a statement certifying to the most recent closing of qualified mortgage bonds determined as provided in §190.2(c)(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) For a qualified residential rental project issue, an issuer 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 December 1 of the year preceding the applicable program year. The earnest money contract must stipulate and provide for the borrower's option to extend the contract expiration date as necessary, subject only to the seller's receipt of additional earnest money, 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) Bond authorization requirements. Not later than 35 calendar days after an issue's reservation date, the issuer shall submit to the board :

(1) one-third of the closing fee;

(2) the certificate regarding fees, on the form prescribed by the board;

(3) a certificate signed by the issuer that certifies the principal amount of the bonds to be issued or the portion of the state ceiling that will be converted to mortgage credit certificates;

(4) a list of finance team members with their addresses and telephone numbers;

(5) if applicable, an amended agreement pursuant to subsection (b)(8) of this section;

(6) a bond authorization requirements checklist, on the form prescribed by the board.

(d) Closing fee. The remaining two-thirds of the fee must be paid simultaneously with closing on the bonds. The issuer should submit the fee to the board not later than the fifth business day after the day on which the bonds are closed.

(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) a certificate regarding fees, on the form prescribed by the board;

(2) a closing documents checklist, on the form prescribed by the board;

(3) a certificate of delivery on the form prescribed by the board;

(4) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue;

(5) 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;

(6) the document evidencing compliance with §1372.040, Government Code;

(7) 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

(8) an official statement.

(9) For mortgage credit certificates the issuer shall file item (1) of subsection (e) and the following:

(A) a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates;

(B) issuer's mortgage credit certificate election; and

(C) program plan.

(10) For a residential rental project described in §§190.2(d)(1) or (d)(2), 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) Additional information. The board may require additional information at any time before granting a certificate of reservation or certificate of allocation.

(g) Application restrictions.

(1) In order to submit an application for reservation prior to October 21 of the year immediately preceding the program year an issuer or borrower must have been in existence on October 1 of that year.

(2) Project substitutions will not be allowed after the application for reservation has been delivered to the board.

(3) No issuer may submit an application for reservation for the same or substantially the same project or projects as are contained in the application of another issuer.

(4) For any one project, no issuer, prior to September 1 of the program year, may exceed the following maximum application limits:

(A) $25,000,000 for issuers described by Article 5190.9a, §2(b)(1) other than the Texas Department of Housing and Community Affairs;

(B) $50 million for issuers described by Article 5190.9a, §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);

(D) the lesser of $15 million or 15 percent of the amount set aside for this purpose for issuers described by Article 5190.9a, § 2(b)(4);

(E) $25 million for issuers described by Article 5190.9a, §2(b)(6); and

(F) $35 million for issuers described by Article 5190.9a, §2(b)(5).

(5) The board may not accept applications for more than one project located at, or related to, a business operation at a particular site for any one program year.

§190.4. Filing Requirements for Applications for Carryforward.

(a) Form. Applications must be filed on forms prescribed by the board and must contain all information and documentation required under the Act and this chapter, as applicable.

(b) Filing. The issuer shall submit one original and two copies of the application for carryforward. Each application must be accompanied by the following:

(c) Fee. The fee required by Article 5190.9a, §12 must be paid not later than the fifth business day following the date of receipt of the certificate of carryforward designation.

(d) Additional Information. The board may require additional information at any time before granting a certificate of carryforward.

(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) 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) All fees required by the Act and the rules must be submitted under separate cover by overnight delivery or messenger to the lockbox address as described in §190.8(c) of this title (relating to Notices, Filings, and Submissions). Each check must be accompanied by a fee verification form as prescribed by the board. The Comptroller of Public Accounts shall note the receipt of the check on the fee verification form and forward the form to the board. All checks must be received by the Comptroller of Public Accounts within 24 hours of the receipt of corresponding documents by the board. If the fee is not received in a timely manner, the corresponding filing will not be considered to be a complete filing.

(b) All other submissions required by the Act must be delivered in person to the board at its offices during normal business hours or sent by overnight delivery, certified or registered mail, postage prepaid, addressed to the board. The board shall note on the face of the documents the date and time that they are received and provide the issuer with a receipt describing the document received and the date and time of receipt. The board will review the application to determine if it is complete. The board shall return any application not in substantial compliance with the Act and these sections.

(c) The board shall stamp or otherwise designate the date and time on which it receives each qualified application. The application shall not be considered complete, and shall not be stamped and accepted for filing, unless and until each of the items required under this section has been received by the board.

(d) The board shall give its certificate of reservation approving the reservation requested by the issuer within five business days after the board receives the qualified application, to the extent that amounts in the state ceiling remain available for certificates of reservation.

(e) If at any time the amount of the state ceiling or portion of the state ceiling reserved for qualified mortgage bonds, state voted issues, qualified small issue bonds, qualified residential rental project issues, qualified student loan bonds, or all other bond issues has been exhausted, applications which would otherwise qualify for a reservation shall be received and dated and receive reservations as provided in subsection (f) of this section.

(f) If at any time none of the state's ceiling remains available for certificates of reservation in a specific category, but additional amounts become available in such specific category before June 1 of the program year because of cancellations or any other reason, those amounts shall be aggregated and reservations shall be granted from that category on June 1 of the program year to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. If any portion of state ceiling becomes available after June 1 of the program year and before August 25 of the program year in any specific category those amounts shall be aggregated and reservations shall be granted from that category on August 25 of the program year to qualified applications in an order determined by lot number with respect to those applications having such numbers, and otherwise by date and time of receipt by the board. The board may grant a reservation at any time on or after January 2 if the amount of state ceiling available in any category exceeds the amount of state ceiling applied for in that category by the next applicant.

(g) 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, Government Code, the category of priority will be determined in accordance with §1372.032(a), Government Code and the order determined by §1372.032 (c), Government Code.

(h) 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) 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) 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) shall expire at the close of business on the 120th calendar day after the date on which the reservation is given.

(b) Prior to the expiration date of the reservation, the issuer may give notice to the board that the reservation will not be used, and the amount will be added to the appropriate state ceiling.

§190.7. Cancellation, Withdrawal and Penalty Provisions.

(a) If the issuer does not timely submit the bond authorization requirements described in §190.3(c) of this title (relating to Filing Requirements for Applications for Reservation), the issuer's reservation is cancelled and during the 90-calendar-day period beginning on the reservation date of the cancelled reservation:

(1) the issuer may not submit an application for a reservation for the same project; and

(2) the issuer is eligible for a carryforward designation for the project only as provided by the Act.

(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), and the 210-day period for an application within the category described by Article 5190.9a, §2(b)(1):

(1) the issuer or any other issuer may not submit an application for a reservation for the same project; and

(2) the issuer is eligible for a carryforward designation for the project only as provided by the Act.

(c) If an issuer withdraws an application for reservation prior to the expiration date, there is no penalty for such withdrawal.

(d) A certificate of allocation will not be issued until all required closing documents and the remaining two-thirds of the closing fee have been received by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 16, 1999.

TRD-9906037
Albert L. Bacarisse
Executive Director
Texas Bond Review Board
Effective date: October 6, 1999
Proposal publication date: July 9, 1999
For further information, please call: (512) 463-1741

♦ ♦ ♦

REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 75, Curriculum, subchapter AA, Commissioner's Rules Concerning Driver Education, pursuant to the Texas Government Code, §2001.039.

House Bill 1224, 76th Texas Legislature, 1999, requires that alcohol awareness information be included in the curriculum of any driver education course. Senate Bill 777, 76th Texas Legislature, 1999, requires that information relating to litter prevention be included in the driver education course curriculum. Further, criteria for curriculum standards, program operation, and teachers need to be revised accordingly. To implement the legislative mandates, the TEA is reorganizing rules relating to driver education by proposing the repeal of 19 TAC Chapter 75, subchapter AA, and new 19 TAC Chapter 75, subchapter AA. The proposed repeal and new rules may be found in the Proposed Rules section in this issue.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to *rules@tmail.tea.state.tx.us*.

TRD-9906064
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 20, 1999

♦ ♦ ♦

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 176, Driver Training Schools, subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools, and subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Texas Driving Safety Schools and Course Providers, pursuant to the Texas Government Code, §2001.039.

Senate Bill 777, 76th Texas Legislature, 1999, amended the Texas Driver and Traffic Safety Education Act and transferred all rulemaking authority for the regulation of driver training programs from the State Board of Education to the commissioner of education. Legislative changes have also mandated inclusion of litter prevention and alcohol awareness information in driver education and driving safety courses. To implement the legislative mandates, the TEA is reorganizing rules relating to driver training programs by proposing the repeal of 19 TAC Chapter 176, subchapters AA and BB, and new 19 TAC Chapter 176, subchapters AA and BB. The proposed repeal and new rules may be found in the Proposed Rules section in this issue.

Comments or questions regarding this rule review may be submitted to Criss Cloudt, Policy Planning and Research, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701, or electronically to *rules@tmail.tea.state.tx.us*.

TRD-9906065
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 20, 1999

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas (ERS) has reviewed Chapter 77, concerning Judicial Retirement, in accordance with the Appropriations Act, Article IX, §167, passed by the 75th Texas Legislature (1999), and now found in Article IX, §9-10.13, passed by the 76th Texas Legislature. The ERS proposes that §77.7 of this Chapter will be amended as a result of this review. The ERS also proposes that §§77.1, 77.3, 77.9, 77.11, 77.13, 77.15, 77.17, and 77.19 of this Chapter be readopted, as the agency's reason for adopting these sections in this Chapter continues to exist. Please refer to the Proposed Rule Section to review the amendment to §77.7.

Comments on the proposed readoption of Chapter 77 may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207 or e-mail Ms. Jones at *pjones@ers.state.tx.us*.

TRD-9906039
Sheila W. Beckett
Executive Director

Employees Retirement System of Texas
Filed: September 16, 1999

♦ ♦ ♦

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy proposed to review Chapter 291 (§291.35), concerning Triplicate Prescription Requirements, pursuant to the Appropriations Act, §167. In conjunction with this review, the agency is proposing the repeal of §291.35 and concurrent proposal of new §291.35. Both actions are published elsewhere in this issue of the *Texas Register.*

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Compliance, Texas State Board of Pharmacy, 333 Guadalupe Street, Austin, Texas 78701.

TRD-9906059
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board Pharmacy
Filed: September 17, 1999

♦ ♦ ♦

The Texas State Board of Pharmacy proposed to review Chapter 295, concerning pharmacists, pursuant to the Appropriations Act, §167. In conjunction with this review, the agency is proposing amendments to Chapter 295 published elsewhere in this issue of the *Texas Register.*

Comments on the proposal may be submitted to Steve Morse, R.Ph., Director of Compliance, Texas State Board of Pharmacy, 333 Guadalupe Street, Austin, Texas, 78701.

TRD-9906058
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: September 17, 1999

♦ ♦ ♦

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas proposes to readopt the provisions of Chapter 11, subchapter B (relating to special exceptions to the rules of practice and procedure-uranium mining), subchapter C (relating to substantive rules-uranium mining), and Chapter 12 (relating to coal mining regulations) of this title.

The agency's reason for adopting these rules continues to exist.

Comments on the proposal may be submitted to Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, Railroad Commission of Texas, P. O. Box 12967, Austin, TX 78711-2967. Comments will be accepted for 30 days after publication of this notice in the *Texas Register*.

Issued in Austin, Texas, on August 24, 1999.

TRD-9906052
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Filed: September 17, 1999

♦ ♦ ♦

Adopted Rule Reviews

Texas State Board of Barber Examiners

Title 22, Part 2

The State Board of Barber Examiners files this notice of adoption of the review of §§51.51-51.86, concerning Examination and Licensing, pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature (1999). The proposal of this review was published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3869).

As part of this adoption process, the board is adopting amendments to §51.51 of this title (relating to Payment of Fees), §51.52 of this title (relating to Name Change), §51.55 of this title (relating to Examination Questions), §51.57 of this title (relating to Applying for Examination), §51.58 of this title (relating to Deadline for Examination Application), §51.60 of this title (relating to Items to Bring to Examination), §51.61 of this title (relating to Failure to Appear at examination, §51.62 of this title (relating to Notification of Examination Results), §51.63 of this title (relating to Failure of Examination), §51.80 of this title (relating to Transfer of Student Hours from Out of State), §51.84 of this title (relating to Reciprocal Licensing Policy). The adoption of the amendments may be found in the Adopted Rules section of the Texas Register. The board did not receive comments regarding whether the reasons for adopting the rules continue to exist or any substantive comments concerning the proposed amendments. The board has determined that the reasons for adopting these rules, as amended, continue to exist.

The board is also adopting the repeal of §51.65 of this title (relating to Student Barber's Application for Examination), § 51.66 of this title (relating to Student teacher's Application for Examination), §51.67 of this title (relating to Former Licensee's Application for Examination), §51.68 of this title (relating to Out-of-State Application for Examination), §51.69 of this title (relating to Physician's (Health) Certificate Form) §51.70 of this title (relating to Registered Barber Certificate), §51.71 of this title (relating to Teacher's Certificate), §51.72 of this title (relating to Barber's Technician Certificate), §51.74 of this title (relating to Journeyman Barber permit), §51.75 of this title (relating to Booth Rental Permit), § 51.76 of this title (relating to Certificate of Licensed Barber College), §51.77 of this title (relating to Application for Temporary Barber Shop Permit), §51.78 of this title (relating to Barber Shop Floor Plan), §51.79 of this title (relating to Barber Shop Permit), §51.81 of this title (relating to Expiration Dates of Certificates and Proration of Fees), and §51.86 of this title (relating to Processing time for Licenses and Permits; Appeals). The adoption of the repeals may be found in the Adopted Rules section of the *Texas Register*. The board did not receive comments regarding whether the reasons for adopting the rules continue to exist or any substantive comments concerning the proposed repeals.

The board is readopting §51.54 of this title (relating to Foreign Language Examinations), §51.83 of this title (relating to Licensing of Felons), and §51.85 of this title (relating to Reciprocal/Endorsement Licensing of barbers). The agency's reasons for adopting these rules continue to exist in order to discharge the agency's statutory examination and licensing responsibilities.

Adopted Amendments:

§51.51. Payment of Fees.

§51.52. Name Change.

§51.55. Number of Examination Questions.

§51.57. Applying for Examination Application.

§51.58. Deadline for Examination Application.

§51.60. Items to Bring to Examination.

§51.61. Equipment to Bring to Examination.

§51.62. Notification of Examination Results.

§51.63. Failure of Examination.

§51.64. Deadline for License Application.

§51.80. Transfer of Student Hours from Out of State.

§51.84. Reciprocal Licensing Policy.

Adopted Repeals:

§51.65. Student Barber's Application for Examination

§51.66. Student Teacher's Application for Examination

§51.67. Former Licensee's Application for Examination

§51.68. Out-Of-State Application for Examination

§51.69. Physician'S (Health) Certificate Form

§51.70. Registered Barber Certificate

§51.71. Teacher's Certificate

§51.72. Barber's Technician Certificate

§51.73. Manicurist's Certificate

§51.74. Journeyman Barber Permit

§51.75. Assistant Barber Certificate.

§51.76. Certificate of Licensed Barber College.

§51.77. Application for Temporary Barber Shop Permit.

§51.78. Barber Shop Floor Plan.

§51.79. Barber Shop Permit.

§51.81. Expiration Dates of Certificates and Proration of Fees.

§51.86. Processing Time for Licenses and Permits; Appeals.

Rules to be Readopted:

§51.54. Foreign Language Examinations.

§51.83. Licensing of Felons.

§51.85. Reciprocal/Endorsement Licensing of Barbers.

TRD-9905956
Will K. Brown
Executive Director
Texas State Board of Barber Examiners
Filed: September 14, 1999

♦ ♦ ♦

Department of Information Resources Information

Title 1, Part 10

The Department of Information Resources readopts, with one change, the provisions of 1 TAC §201.16 concerning Minimum Standards for Meetings Held by Videoconference Call. The readoption is pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. The notice of intention to review §201.16 was published in the May 21, 1999, issue of the *Texas Register* (24 TexReg 3870).

The Department has determined that the reason for the initial adoption of this rule continues to exist. Accordingly, the Department has determined that the provisions of §201.16(f), concerning the automatic expiration of this rule on August 31, 1999 without further action of the board, should be deleted. This determination constitutes the requisite action of the board to prevent automatic expiration. An amendment to this rule which would strike the provisions of §201.16(f) is being filed simultaneously for publication in the Proposed Rules section of the *Texas Register*.

No comments were received concerning readoption of this section.

TRD-9906026
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Filed: September 15, 1999

♦ ♦ ♦

Board of Nurse Examiners

Title 22, Part 11

The Board of Nurse Examiners adopts the review of Chapter 223, Fees in accordance with the Appropriations Act, §167, published in the August 20, 1999 issue of the *Texas Register* (24 TexReg 6527). The Board of Nurse Examiners finds that the reason for adopting Chapter 223 continues to exist.

No comments were received.

TRD-9906084
Kathy Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Filed: September 20, 1999

♦ ♦ ♦

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearing

The Texas Department of Agriculture (the department) will hold a public hearing to take public comment on proposed new §§17.300-17.309, of the department's promotional marketing regulations, concerning the GO TEXAN Partner Program.

The proposal will be published in the September 24, 1999, issue of the *Texas Register*. The hearing will be held on Thursday, October 14, 1999, beginning at 1:00 P.M. at the department's offices located at 1700 North Congress, Room 911, Austin, Texas 78711.

For more information, please contact Delane Caesar, Assistant Commissioner for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-7420.

TRD-9906117
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: September 21, 1999

♦ ♦ ♦

Texas Commission on Alcohol and Drug Abuse

Corrections of Errors

The Texas Commission on Alcohol and Drug Abuse adopted amendments to 40 TAC §§144.411-144.416, 144.441-144.447, 144.451-144.455, 144.457-144.460, 144.462. The rules appeared in the August 27, 1999, issue of the *Texas Register* (24 TexReg 6812).

Due to agency error:

On page 6812, in the preamble §§144.442-144.446, the statement that these specific sections are being adopted without changes was omitted.

The Texas Commission on Alcohol and Drug Abuse adopted new 40 TAC §144.456. The rule appeared in the August 27, 1999, issue of the *Texas Register* (24 TexReg 6816).

In §144.456, there was a typographical error. Section 144.456(d) should read:

"Core council services may include assessment for treatment as described in §144.448 of this title (relating to Assessment for Treatment). Core council service programs conducting assessments for treatment shall maintain written agreements with referral sources/ treatment providers to identify assessment roles in order to minimize duplicate efforts in conducting treatment assessments."

♦ ♦ ♦

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective October 1, 1999

COMPTROLLER OF PUBLIC ACCOUNTS

LOCAL SALES TAX RATE CHANGES EFFECTIVE OCTOBER 1, 1999

The city name of Pointblank has been corrected as listed below. The change is effective immediately.

City Name	Local Code	New Rate	Total Rate
Point Blank (San Jacinto Co)	2204031	.010000	.077500

The 1% local sales and use tax will become effective October 1, 1999 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Bulverde (Comal Co)	2046042	.010000	.077500
Lavon (Collin Co)	2043269	.010000	.072500
Oak Point (Denton Co)	2061328	.010000	.072500
Point Blank (San Jacinto Co)	2204031	.010000	.077500
Scottsville (Harrison Co)	2102043	.010000	.072500
Shavano Park (Bexar Co)	2015209	.010000	.082500
Sullivan City (Hidalgo Co)	2108216	.010000	.072500

The additional 1/2% sales and use tax for property tax relief will be reduced to 1/4% and an additional 1/4% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 1999 in the city listed below. There will be no change in the local rate or total rate.

City Name	Local Code	Local Rate	Total Rate
Lampasas (Lampasas Co)	2141019	.015000	.082500

The additional 1/2% sales and use tax for property tax relief will be reduced to 1/4% and an additional 1/4% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will become effective October 1, 1999 in the city listed below. There will be no change in the local rate or total rate.

City Name	Local Code	Local Rate	Total Rate
Pecos (Reeves Co)	2195014	.015000	.082500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4A** will become effective October 1, 1999 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Roanoke (Denton Co)	2061131	.020000	.082500
Waller (Waller Co)	2237032	.015000	.077500
Waller (Harris Co)	2237032	.015000	.077500

An additional 1/2% city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 1999 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Anna (Collin Co)	2043134	.015000	.077500
Balmorhea (Reeves Co)	2195032	.015000	.082500
Big Lake (Reagan Co)	2192017	.015000	.077500
Gustine (Comanche Co)	2047032	.015000	.082500
Lexington (Lee Co)	2144025	.015000	.082500
Manvel (Brazoria Co)	2020186	.015000	.082500
San Saba (San Saba Co)	2206011	.015000	.082500
Troup (Cherokee Co)	2212031	.015000	.082500
Troup (Smith Co)	2212031	.015000	.082500

An additional 1% city sales and use tax for improving and promoting economic and industrial development that includes an additional 1/2% as permitted under Article 5190.6, Section **4A** plus an additional 1/2% as permitted under Article 5190.6, Section **4B** will become effective October 1, 1999 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
Cedar Park (Williamson Co)	2246095	.020000	.082500
Cedar Park (Travis Co)	2246095	.020000	.082500
Groveton (Trinity Co)	2228015	.020000	.082500
Miami (Roberts Co)	2197012	.020000	.082500
Prairie View (Waller Co)	2237041	.020000	.082500

An additional 1/2% sales and use tax for property tax relief will become effective October 1, 1999 in the cities listed below.

City Name	Local Code	New Rate	Total Rate
China (Jefferson Co)	2123119	.015000	.082500
Cut and Shoot (Montgomery Co)	2170086	.015000	.077500
Honey Grove (Fannin Co)	2074029	.015000	.082500
Lindsay (Cooke Co)	2049030	.015000	.082500
Post Oak Bend (Kaufman Co)	2129104	.015000	.077500

An additional 1% city sales and use tax that includes a 1/2% sales and use tax for property tax relief and an additional 1/2% sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section **4B** will become effective October 1, 1999 in the city listed below.

City Name	Local Code	New Rate	Total Rate
Domino (Cass Co)	2034055	.020000	.082500
Stinnett (Hutchinson Co)	2117046	.020000	.082500
Yoakum (Dewitt Co)	2143035	.020000	.082500
Yoakum (Lavaca Co)	2143035	.020000	.082500

A 1/2% county sales and use tax will become effective October 1, 1999 in the county listed below.

County Name	Local Code	New Rate	Total Rate
Wilbarger	4244006	.005000	**See Note 1**

A 1/2% special purpose district sales and use tax will become effective October 1, 1999 in the special purpose districts listed below.

SPD Name	Local Code	New Rate	Total Rate
Benbrook Library District	5220610	.005000	**See Note 2**
Cherokee County Devel Dist No 1	5037506	.005000	**See Note 3**
Denton County Devel Dist No 2	5061514	.005000	**See Note 4**
Denton County Devel Dist No 4	5061523	.005000	**See Note 5**
Hood County Devel Dist No 1	5111505	.005000	**See Note 6**
Shavano Park Crime Control District	5015511	.005000	**See Note 7**

Note 1: The city of Vernon is currently collecting a 1 1/2% city sales tax. The total rate in the city of Vernon will be .082500. The total rate in the unincorporated areas of Wilbarger County will be .067500.

Note 2: The boundaries of the Benbrook Library District are the same boundaries as the city of Benbrook. The total rate in the city of Benbrook will be .082500.

Note 3: The Cherokee County Development District No. 1 is in Cherokee County, which has a county sales and use tax, but the district does not include all of Cherokee County. The district is located in the northwest corner of Cherokee County. The unincorporated area known as Eagle's Bluff is located within the Cherokee County Development District No. 1. The unincorporated area of Cherokee County in ZIP code 75757 is partially within the Cherokee County Development District No. 1. Contact the district representative at 512/477-7161 for additional boundary information.

Note 4: The Denton County Development District No. 2 is located in the southeast portion of Denton County. The Denton County Development District No. 2 is located within the unincorporated area of Denton County known as Castle Hills. The unincorporated areas of Denton County in ZIP codes 75008 and 75056 are partially within the Denton County Development District No. 2. Contact the district representative at 512/477-7161 for additional boundary information.

Note 5: The Denton County Development District No. 4 is located in the southern portion of Denton County. The unincorporated area known as Razor Ranch is located within the Denton County Development District No. 4. The unincorporated area of Denton County in ZIP code 76226 is partially within the Denton County Development District No. 4. Contact the district representative at 512/477-7161 for additional boundary information

Note 6: The Hood County Development District No. 1 is located in Hood County, which has a county sales and use tax, but the district does not include all of Hood County. The Hood County Development District No. 1 is located within the unincorporated area of Hood County known as Acton. The unincorporated area of Hood County in ZIP code 76049 is partially within the Hood County Development District No. 1. Contact the district representative at 817/326-5085 for additional boundary information.

Note 7: The boundaries of the Shavano Park Crime Control District are the same boundaries as the city of Shavano Park. The total rate in the city of Shavano Park will be .082500.

Filed: September 22, 1999

TRD-9906141
Martin Cherry
Special Counsel
Comptroller of Public Accounts

♦ ♦ ♦

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, and Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4895).

The consultant will assist the Comptroller with marketing agent services in connection with the prepaid higher education tuition program.

The contract is awarded to Fellers & Company, 823 Congress Avenue, Suite 800, Austin, Texas 78701-2429. The total dollar value of the contract is not to exceed $1,250,000.00. The contract was executed September 16, 1999, and extends through August 31, 2000. Fellers & Company will keep the Texas Tomorrow Fund Program Manager regularly apprised of its progress and activities through regular oral and written reports until all deliverables are deemed completed, revisions adequately addressed and the Comptroller has given final approval.

TRD-9906149
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: September 22, 1999

♦ ♦ ♦

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code and General Appropriations Act, H.B. 1, Article 1, Rider 19, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) for a comprehensive performance review of the Texas Department of Transportation (TxDOT). The services sought under this RFP should culminate in a final report that is due to the Texas Legislature by January 15, 2001 and required by Rider 19. Services under contract are expected to begin on or about December 10, 1999.

Contact: Parties interested in submitting a proposal should contact Pamela Ponder, Senior Legal Counsel, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (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, October 1, 1999, between 9 a.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also plans to place the RFP on the Texas Marketplace after Friday, October 1, 1999, 9 a.m. (CZT). The Comptroller also expects to conduct a voluntary pre-proposal meeting, preliminary schedule for this meeting is Thursday, October 14, 1999 from 9 a.m. until Noon (CZT). All written inquiries and voluntary Letters of Intent to propose must be received at the above-referenced address prior to 4 p.m. (CZT) on Thursday, October 21, 1999. The letters must be addressed to Pamela Ponder, Senior Legal Counsel, and must contain all the information as required in the RFP and signed by an official of that entity. All responses to questions and other information pertaining to this procurement will only be sent to potential respondents who have submitted timely Letters of Intent. Prospective respondents are encouraged to fax the Letters of Intent and questions to (512) 475-0973 to ensure timely receipt. Prospective respondents that have faxed a Letter of Intent by the deadline are not required to submit an original Letter of Intent.

Closing Date: Proposals must be received in Senior Legal Counsel's Office at the address specified above no later than 2 p.m. (CZT), on Tuesday, November 9, 1999. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - October 1, 1999, 9 a.m. CZT; Voluntary Pre-Proposal Meeting - October 14, 1999, 9 a.m. until Noon CZT; Voluntary Letters of Intent and Questions Due - October 21, 1999, 4 p.m. CZT; Proposals Due - November 9, 1999, 2 p.m. CZT; Contract Execution - December 3, 1999, or as soon thereafter as practical; Commencement of Project Activities - December 10, 1999. The Comptroller reserves the right to change these dates.

TRD-9906147
Pamela Ponder
Legal Counsel
Comptroller of Public Accounts
Filed: September 22, 1999

♦ ♦ ♦

Strategic Investment Areas for Calendar Year 2000

As authorized by Senate Bill 441, 76th Legislature, 1999, the Comptroller of Public Accounts has determined that the following counties are strategic investment areas for calendar year 2000, for the purposes of job creation credits, investment credits, and the research credit bonus available under the Texas Franchise Tax Act, Tax Code, Chapter 171.

Anderson	Andrews	Angelina	Aransas	Bailey
Baylor	Bee	Bowie	Brazoria	Brooks
Brown	Calhoun	Cameron	Camp	Cass
Cochran	Coleman	Cottle	Crane	Crockett
Crosby	Culberson	Dawson	Deaf Smith	Dimmit
Donley	Duval	Eastland	Ector	Edwards
El Paso	Floyd	Freestone	Frio	Gaines
Galveston	Garza	Gregg	Grimes	Hale
Hall	Hardeman	Hardin	Harrison	Hidalgo
Hockley	Hopkins	Howard	Hutchinson	Jasper
Jefferson	Jim Hogg	Jim Wells	King	Kinney
Kleberg	Knox	Lamar	Lamb	La Salle
Leon	Liberty	Limestone	McCulloch	Marion
Martin	Matagorda	Maverick	Mitchell	Morris
Navarro	Newton	Nolan	Nueces	Orange
Palo Pinto	Panola	Pecos	Polk	Potter
Presidio	Reagan	Red River	Reeves	Robertson
Rusk	Sabine	San Augustine	San Patricio	Scurry
Shackelford	Shelby	Smith	Somervell	Starr
Stonewall	Terrell	Terry	Titus	Trinity
Tyler	Upshur	Upton	Uvalde	Val Verde
Ward	Webb	Wharton	Willacy	Winkler
Wood	Yoakum	Young	Zapata	Zavala

The following sub-county zones are also designated strategic investment areas:

Area Name	County
Dallas Urban Enterprise Community	Dallas
Houston Urban Supplemental Enterprise Community	Harris
San Antonio Urban Enterprise Community	Bexar
Waco Urban Enterprise Community	McLennan

The following counties are designated as limited purpose strategic investment areas, for purposes of job creation credits and investment credits that may be claimed by corporations engaged in agricultural processing:

Archer	Armstrong	Atascosa	Austin	Bandera
Blanco	Borden	Bosque	Brewster	Briscoe
Burleson	Burnet	Caldwell	Callahan	Carson
Castro	Chambers	Cherokee	Childress	Clay
Coke	Collingsworth	Colorado	Comanche	Concho
Cooke	Dallam	Delta	DeWitt	Dickens
Erath	Falls	Fannin	Fayette	Fisher
Foard	Franklin	Gillespie	Glasscock	Goliad
Gonzales	Gray	Hamilton	Hansford	Hartley
Haskell	Hemphill	Hill	Hood	Houston
Hudspeth	Irion	Jack	Jackson	Jeff Davis
Jones	Karnes	Kendall	Kenedy	Kent
Kerr	Kimball	Lampasas	Lavaca	Lee
Lipscomb	Live Oak	Llano	Loving	Lynn
McMullen	Madison	Mason	Medina	Menard
Milam	Mills	Montague	Moore	Motley
Ochiltree	Oldham	Parmer	Rains	Real
Refugio	Roberts	Rockwall	Runnels	San Jacinto
San Saba	Schleicher	Sherman	Stephens	Sterling
Sutton	Swisher	Throckmorton	Van Zandt	Waller
Washington	Wheeler	Wilbarger	Wilson	Wise

A map identifying strategic investment areas may be obtained by contacting the Comptroller of Public Accounts at 1-800-252-1381.

TRD-9906146
Martin Cherry
Chief of General Law
Comptroller of Public Accounts
Filed: September 22, 1999

♦ ♦ ♦

Texas Department of Criminal Justice

Notice To Bidders

The Texas Department of Criminal Justice invites bids for Total Roof Replacement at one major roof area, with a square footage of approximately 55,040 square feet at the Michael Unit in Tennessee Colony, Texas. Total roof replacement includes, removal of existing roof systems including insulation, base flashing, metal flashing and present roof membrane. The installation of the new insulation, SBS Modified roof system membrane with specified surfacing, base flashing, metal flashing and counter flashing as specified in the Contract Documents prepared by: Amtech Roofing Consultants, Inc.

The successful bidder will be required to meet the following requirements and submit evidence within five days after receiving notice of intent to award from the Owner:

Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

Contractor must be certified by the roofing materials manufacturer, as an approved No Dollar Limit (NDL) applicator for a minimum of three years prior to Bid Date, and qualified to provide specified warranty on selected systems and flashings.

Contractor must be certified by the Fume recovery system manufacturer as trained or approved to properly operate and maintain the selected equipment.

Contractor must be bondable and insurable at the levels required.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid Documents can be purchased from the Architect/Engineer at a cost of $50 (FIFTY DOLLARS, non-refundable) per set, inclusive of mailing/delivery costs, or they may be viewed at various plan rooms. Payment checks for documents should be made payable to the Architect/Engineer:

AMTECH ROOFING CONSULTANTS, INC.

ATTN: BOB ALFORD

3300 SO. GESSNER, SUITE 245

HOUSTON, TEXAS 77063

Phone: (713) 266-4829

Fax: (713) 266-4977

A Pre-Bid conference will be held at 10 am on 07 October 1999 at the Michael Unit in Tennessee Colony, Texas, followed by a site-visit. ATTENDANCE IS MANDATORY. A second NON-MANDATORY site-visit will be 20 October 1999 at 9 am.

Bids will be publicly opened and read at 2 pm on 28 October 1999, in the Blue Conference Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (formally Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (Hubs) in at least 57.2% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9906093
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 20, 1999

♦ ♦ ♦

Deep East Texas Council of Governments

Request for Proposal for Professional Marketing Services

The Deep East Texas Council of Governments (DETCOG) is seeking proposals from qualified vendors for professional marketing services to communicate the region's progressiveness and professionalism to potential site location consultants. Responsibilities will include:

a. Develop a one-page letter that identifies the region's key strengths for industry and clearly identifies the purpose of the DETCOG and the region's location.

b. Develop a Fact Sheet on the DETCOG economic development effort.

c. Create a regional profile (8.5x11, four sided, two color).

d. Design brochures for the administrative office, metalworking, food processing, plastics, and wood products industries.

e. Develop an information packet including folder and inserts that cover the key site location criteria.

f. Buy and develop signage for a 10'x10' or 10'x15' trade show booth.

g. Create a newsletter design.

Contractor Requirements

The proposal should include a proposed staffing of the project, a summary of experience of staff members that will perform most of the work, and overall qualifications of the staff in projects of this nature. It should also include a summary of direct and related project experience and an estimate schedule and itemized fee for accomplishing each of the responsibilities listed above (items a-g).

Note: A comprehensive study (assessment) has been made on the DETCOG region. This information contained in this study will be made available to eligible applicants for developing the requested marketing materials.

Proposals should be submitted to:

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

274 E. Lamar Street

Jasper, Texas 75951

(409) 384-5704

(409) 384-5390

wdiggles@detcog.org (e-mail)

Proposals should be received by 5:00 p.m. on Friday, October 29, 1999.

TRD-9906106
Walter G. Diggles
Executive Director
Deep East Texas Council of Governments
Filed: September 21, 1999

♦ ♦ ♦

Deep East Texas Workforce Development Board, Inc.

Request for Proposals

The Deep East Texas Workforce Development Board is seeking proposals from qualified organizations to provide training services for in-school and out-of-school youth ages 14 through 21 under Title I of the Workforce Investment Act. Proposals may be submitted for projects to be operated during the school year (or until June 30) and/or summer.

The Deep East Texas Local Workforce Development Board plans, oversees and evaluates employment and training services to Angelina, Jasper, Newton, Nacogdoches, Houston, Trinity, Shelby, Polk, San Augustine, San Jacinto, Sabine and Tyler Counties.

Programs funded through this RFP must attain at least one of the following outcomes for youth age's 14-18 years:

attainment of basic skills, and as appropriate, work readiness or occupational skills

attainment of Secondary Diploma or equivalent (GED certificate)

placement and retention (six month) in post-secondary education, advanced training, qualified apprenticeships, military service or employment.

Programs funded through this RFP must attain at least one of the following outcomes for youth age's 19-21 years:

entry into unsubsidized employment

retention in unsubsidized employment six months after entry into employment

earnings received in unsubsidized employment six months after entry into the employment.

Proposers may include other outcomes appropriate to their program.

RFP release date: 8:00 a.m., Tuesday, September 21, 1999

Deadline for submission of proposals: 12:00 Noon CDT, Friday, October 29, 1999

Biddder's Conference: 10:00 a.m., October 5, 1999 in Room 102 of Lufkin City Hall, 300 E. Shepherd, Lufkin, Texas. Technical assistance will be limited to information at the Bidder's Conference.

Requests for copies of the RFP can be made to:

Chris Gaston, Staff Services Officer

Deep East Texas Local Workforce Development Board, Inc.

1318 S. John Redditt Drive

Lufkin, Texas 75904

(409) 639-8898

FAX: (409) 633-7491

Email: chris.gaston@twc.state.tx.us

TRD-9906119
Harry Green
Executive Director
Deep East Texas Workforce Development Board, Inc.
Filed: September 21, 1999

♦ ♦ ♦

Texas Education Agency

Invitation for Review and Comment on Proposed State Board of Education Rules for Student Assessment

The Texas Education Agency (TEA) invites review and comment about proposed State Board of Education (SBOE) rules for Student Assessment.

Senate Bill 103, 76th Texas Legislature, 1999, necessitates changes to 19 TAC §101.3, Testing Accommodations and Exemptions, pertaining to the participation of limited English proficient (LEP) students in the statewide assessment program. Texas Education Code (TEC), §39.022 and §39.023(l) authorizes the SBOE to adopt rules for student assessment.

The proposed amendment to 19 TAC §101.3 reflects changes enacted by Senate Bill 103, clarifies language in current rules, and provides guidance for the implementation of reading proficiency tests in English (RPTE), which will be administered to LEP students beginning in the spring of 2000. The reading proficiency tests along with the Texas Assessment of Academic Skills (TAAS) in English and Spanish will provide a comprehensive system for assessing LEP students.

The proposed amendment was presented to the SBOE at its September meeting for second reading and final adoption. However, the SBOE deferred second reading and final adoption until the November meeting to allow for additional input from educators and other concerned citizens. The SBOE also directed staff to revise the proposed amendment and to provide two options for proposed amendments related to the assessment of recent unschooled immigrants.

Interested individuals are encouraged to submit comments regarding the proposed amendment to 19 TAC §101.3 and the two options for amendments related to the assessment of recent unschooled immigrants. To obtain further information on the proposed amendment to 19 TAC §101.3 and the review and comment process, please write or call the Texas Education Agency, Student Assessment Division, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9536. This information is also available on the Internet at the Student Assessment web site located at *http://www.tea.state.tx.us/student.assessment/sboe.htm*.

Comments by interested individuals are requested by October 6, 1999, so that the agency can consider them in drafting the proposed amendment to 19 TAC §101.3 to be presented to the SBOE at its November meeting. However, comments may be provided as late as November 4, 1999, for SBOE consideration.

TRD-9906143
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 22, 1999

♦ ♦ ♦

Request for Applications concerning the Ninth Grade Success Initiative, 1999-2000, 2000-2001

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) number 701-99-026 from school districts or shared services arrangements of school districts to increase the graduation rates of the public school students in Texas by reducing the disproportionately large percentage of students who are retained in the ninth grade and reducing the similarly large percentage of students who drop out of school at the ninth grade. The fiscal agent of a shared services arrangement must be a school district.

Description. The objective of the project is to fund programs specifically designed for students in Grade 9 who are at risk of not earning sufficient credit to advance to Grade 10 and who fail to meet minimum skills established by the commissioner, or who have not earned sufficient credit to advance to Grade 10 and who fail to meet minimum skills levels established by the commissioner. The program must emphasize basic skills in areas of the required curriculum and must offer students the opportunity to increase credits required for high school graduation under state or school district policy. The program may be provided by the school district itself or an entity contracting with a school district to provide the program. A school district may, with the consent of a student's parent or guardian, assign a student to the program, which may not exceed 210 instructional days.

The criteria by which grants are awarded include the quality of the proposed program and the school district's demonstrated need for the program. An approved program must include criteria that permit measurement of student progress, and the district must evaluate the progress of students in the program and submit the results of the evaluation at times specified in the RFA. The commissioner has

established in the RFA minimum levels of student enrollment and standards of student progress required for continued funding for a program in a subsequent school year and may eliminate funding for a program in a subsequent school year if the program fails to achieve sufficient levels of student progress. The amount of the grant awarded must also take into account funds distributed to the school district under Texas Education Code, Chapter 42, Foundation School Program.

Dates of Project. The Ninth Grade Success Initiative will be implemented during the 1999-2000, 2000-2001 school years. Applicants should plan for a starting date of no earlier than January 3, 2000, and an ending date of no later than August 31, 2001.

Project Amount. Funding will be provided for approximately 200 projects. Each project will be eligible to apply for an amount based on a predetermined range, with the range taking into consideration the number of students identified by criteria to be served by the program. The range is as follows: (1) an application from a district or a shared services arrangement of districts with total district enrollments exceeding 50,000 students is eligible to apply for a grant in the range of $500,000 to $6,000,000 for each of the two years of the project; (2) for enrollments between 5,000 and 49,999 students, the range is $150,000 to $360,000 for each project year; (3) for enrollments between 100 and 4,999 students, the range is $80,000 to $100,000 for each project year; and (4) for enrollments of fewer than 100 students, the eligible amount is not to exceed $50,000 for each project year. For districts with a total enrollment of fewer than 100 students, the program may be addressed through an arrangement of shared services among districts. A school district may submit only one application but may include similar or different programs for multiple campuses within the district. Continued project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA number 701-99-026 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing *dcc@tmail.tea.state.tx.us*. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code.

Further Information. For clarifying information about the RFA, contact Geraldine Kidwell, Division of Curriculum and Professional Development, Texas Education Agency, (512) 463-9581.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. Central Time, November 19, 1999, to be considered for funding.

TRD-9906142
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 22, 1999

♦ ♦ ♦

General Services Commission

Correction of Error

The General Services Commission proposed new 1 TAC §122.3. The rule appeared in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6403).

Due to agency error:

Section 122.3(e)(2)(H) was published as "(H) Sunshine or Bridge rooms in protective services offices;" instead of "(H) Rainbow or Bridge rooms in protective services offices;

♦ ♦ ♦

Golden Crescent Workforce Development Board

Request for Bids

The Golden Crescent Workforce Development Board, grant recipient of employment and training grants in the Golden Crescent Workforce Development Area, is issuing a Request for Proposal (RFP) for the operation of its Child Care Training Program.

A copy of that RFP can be obtained between October 1-5 by calling Sandy Heiermann at (361) 576-5872. A bidders' conference will be held on October 5.

Deadline. The deadline for submission of a proposal is October 15, 1999.

TRD-9906130
Laura G. Sanders
Executive Director
Golden Crescent Workforce Development Board
Filed: September 21, 1999

♦ ♦ ♦

Grimes County

Request for Comments and Proposals

Section 32.0246 of the Texas Human Resources Code permits a County Commissioners' Court of rural county (defined as a county with a population of 100,000 or less) with no more than two nursing homes to request that the Texas Department of Human Services ("TDHS") contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Grimes County Commissioners' Court is considering requesting that the TDHS contract for more Medicaid nursing facility beds in Grimes County. The Commissioners' Court is soliciting comments from all interested parties on the appropriateness of such a request. Further, the Commissioners' Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid nursing facility beds.

Comments and proposals should be submitted to Ira E. Haying, Grimes County Judge at P.O. Box 160, Anderson, Texas, 77831 before 5:00 p.m., CST, on Friday, October 8, 1999.

TRD-9906056
David Pasket
Grimes County Clerk
Grimes County
Filed: September 17, 1999

♦ ♦ ♦

Texas Department of Health

Correction of Error

The Texas Department of Health issued a notice for fees charged by general and special hospitals for providing patient health care information that was published in the September 3, 1999, issue of the *Texas Register* (24 TexReg 7037), TRD 9905279.

Due to agency error, a charge for each page was published in (1)(A)(i) as "$1.09 for the 11th through the 6th page of the provided copies" and should have been published as "$1.09 for the 11th through the 60th page of the provided copies".

♦ ♦ ♦

Notice of Request for Proposals for After-School Nutrition and Activity Programs

The Texas Department of Health (department), Bureau of Clinical and Nutrition Services, Public Health Nutrition Program invites proposals from nonprofit organizations that have an existing after-school program. The funded organizations will teach "five-a-day" nutrition and physical activity lessons, provided by the department, for a minimum of 12 weeks. After-school staff will complete records of lessons taught and evaluation forms. A minimum participation of 30 children, ages 6 to 12, is required.

Approximately $20,000 is available to fund an estimated ten projects. Each contract will not exceed $2000. Awards will be made on the merits of the application and the availability of funds.

Applications must be submitted to Claire Heiser, Bureau of Clinical and Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, no later than 5:00 p.m., Central Daylight Saving Time, October 29, 1999. The term of the contract is January 1, 2000 - August 31, 2000.

For more information, please contact Claire Heiser, Bureau of Clinical and Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas, Telephone (512) 458-7785.

TRD-9906118
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 21, 1999

♦ ♦ ♦

Notice of Request for Proposals for Language Services Grant

INTRODUCTION

The Texas Department of Health (department) Refugee Health Screening Program (RHSP) requests proposals to develop pools of trained social service and health care interpreters for languages spoken by officially arriving refugees. These funds are provided by the Office of Refugee Resettlement and are to be used to pay for social service and health care interpreter and provider training and to fund the management of the pool and its subcontracted interpreters. Social service interpretation will include assisting refugees to access citizenship and family reunification services and assisting with work authorization requests, as well as more conventional social service activities (for example, Medicaid hearings, food stamp applications). Agencies not authorized to provide adjustment of status services, work authorization services, affidavits of support and naturalization, may use funds to subcontract with Board of Immigration Accreditation (BIA) authorized agencies. Existing programs already providing interpreter pool services may wish to consider adding to the services they offer. Preference will be given to proposals targeting areas of greatest need, including: (1) geographic areas of large refugee populations or collaborations between/among areas of close geographic proximity with refugee populations; and, (2) areas linguistically isolated. Project proposals will be reviewed and awarded on a competitive basis.

PURPOSE

The purpose of this program is to assist local communities to increase the accessibility of interpreter resources for RHSP eligible individuals and to increase the quality of interpreter-assisted encounters in social service and health care settings. Based on a compelling need to improve access and quality of language services to refugees, the RHSP encourages local communities (both refugees and service providers) to develop practical programs which will facilitate communication between refugees and their social service and health care service providers. This includes strengthening linguistic capabilities and enhancing cultural competency of health care and social service professionals providing services to refugees. As the number of limited or non-English-speaking patients in Texas grows, health care and social service professionals are increasingly challenged to meet the physical and emotional health needs of a changing ethnic population, and to do so in a culturally-competent manner in an ever-increasing number of languages. Thus in order to provide effective services and treatment, social service and health care providers must have ready access to trained medical interpreters who are culturally sensitive and linguistically accurate, and must understand how to work effectively with these interpreters. An organized, collaborative effort to make interpreter resources available is necessary to ensure this access. Availability of accurate and sensitive interpretation will enhance social service and health care services available to refugees and immigrants, and thus will improve the overall health status of Texas communities at large.

ELIGIBLE APPLICANTS

Eligible applicants include the official public health agencies of state, regional, and local health departments and non-profit agencies/organizations. Current and/or new applicants may apply. Individuals are not eligible to apply. Applicants must have experience and/or expertise in working with the target population(s) to be served.

AVAILABLE FUNDS

It is expected that the contract will begin on or about December 1, 1999, and will be made for a ten-month budget period. Approximately $330,000 is expected to be available to fund three to four projects with a ten-month budget. The specific dollar amount to be awarded to each applicant will depend upon the merit and scope of the proposed project. Continued funding in future years will be based upon the availability of funds and documented progress of the project during the prior budget period. Funding may vary and is subject to change for each budget period.

DEADLINE

The original and three copies of the application must be received by Elaine Quinn, Refugee Health Screening Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m. on November 5, 1999, Central Standard Time. No facsimiles or email applications will be accepted.

REVIEW AND AWARD CRITERIA

Each application will be screened by minimum eligibility criteria, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will not be reviewed. Applications which arrive after the deadline for submission will not be reviewed. Eligible, complete applications will be reviewed by a panel of reviewers and scored according to the quality of the application and the priority of the targeted population. The department reserves the right to make funding decisions based on the need to provide language services across geographic areas and to allocate resources based on an analysis of current resources already available in a particular community in order to avoid duplication of services.

FOR INFORMATION

For a copy of the Request for Proposals (RFP), and other information, contact Elaine Quinn, Refugee Health Screening Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, Telephone (512) 458-7494. No copies of the RFP will be released prior to October 1, 1999.

TRD-9906107
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 21, 1999

♦ ♦ ♦

Notice of Uranium By-Product Material License Amendment on Intercontinental Energy Corporation

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L02538 issued to Intercontinental Energy Corporation, doing business as IEC Corporation in Texas, (mailing address: Intercontinental Energy Corporation, doing business as IEC Corporation in Texas, 216 16th Street, Suite 810, Denver, Colorado, 80202). Amendment number 37: (1) replaces W. R. Underdown with Wallace Mays as radiation safety officer; (2) removes the 50 acre Pawnee Production Area from the license; (3) changes the mailing address of IEC; and (4) deletes or modifies references and conditions relating to certain expired authorizations.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC) Chapter 289, that the licensee has met the standards appropriate to this amendment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment to the license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A person affected is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated. Should no request for a public hearing be timely filed, the license will remain in effect.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting 8407 Wall Street, Austin, Texas.

TRD-9906051
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 1999

♦ ♦ ♦

Notice of Uranium By-Product Material License Amendment on USX, Texas Uranium Operations

The Texas Department of Health (department) gives notice that it has amended uranium by-product material license L02449 issued to USX, Texas Uranium Operations (mailing address: USX, Texas Uranium Operations, Drawer V, George West, Texas 78022). Amendment number five: (1) removes the 6.5 acre Sparkman Production Area from the license; (2) removes the 80 acre Boots/Brown Production Area from the license; (3) deletes the requirement for livestock fencing around former irrigation areas; and (4) deletes or modifies references and conditions relating to certain expired authorizations.

The department's Bureau of Radiation Control, Division of Licensing, Registration and Standards has determined, pursuant to 25 Texas Administrative Code (TAC) Chapter 289, that the licensee has met the standards appropriate to this amendment.

This notice affords the opportunity for a public hearing upon written request by a person affected by the amendment to the license. A written hearing request must be received, from a person affected, within 30 days from the date of publication of this notice in the *Texas Register*. A person affected is defined as a person who is a resident of the county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is to be represented by an attorney, the name and address of the attorney also must be stated.

Should no request for a public hearing be timely filed, the license will remain in effect.

Copies of all relevant material are available for public inspection and copying at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment of this specific radioactive material license may be obtained by contacting Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, by calling (512) 834-6688, or by visiting 8407 Wall Street, Austin, Texas.

TRD-9906050
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: September 17, 1999

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs adopted amendments to 10 TAC §§80.3-80.55. The rules appeared in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6476).

Due to Texas Register error:

The publication states the adopted rules will become effective on October 2, 1999. The rules become effective 60 days after the date of publication, which is October 19, 1999.

♦ ♦ ♦

Notice of Administrative Hearing (MHD1997003062D)

Manufactured Housing Division

Tuesday, October 5, 1999, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. John L. McCombs to hear alleged violations of Sections 4(d)(f) and 7(d) of the Act and Sections 80.51 and 80.125(e) of the Rules by installing a manufactured home without obtaining, maintaining or possessing a valid installer's license and by not properly installing the manufactured home. SOAH 332-99-1682. Department MHD1997003062D.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-9906159
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 22, 1999

♦ ♦ ♦

Notice of Public Hearing for the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Woodglen Village Apartments) Series 1999

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the Department) at Acres Homes Library, 8501 West Montgomery Road, Houston, Texas 77088 at 5:00 p.m. on October 25, 1999, with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $11,110,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the Bonds), by the Texas Department of Housing and Community Affairs (the Issuer). The proceeds of the Bonds will be loaned to Woodglen Village, LTD. (or a related person or affiliate thereof) (the Borrower), to finance a portion of the acquisition, construction and equipping of a multifamily housing project (the Project) described as follows: 250 unit multifamily residential rental development to be constructed on approximately 30.229 acres of land located at the corner of West Mount Houston and West Montgomery Road in the 11000 Block of West Mount Houston, Houston, Harris County, Texas. The Project will be owned and operated by Woodglen Village, LTD. The Project will be managed by Wilmic Ventures, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

http://www.tdhca.state.tx.us/hf.htm

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez at (512) 475-3757 at least five days before the meeting so that appropriate arrangements can be made.

TRD-9906150
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 22, 1999

♦ ♦ ♦

Second Request for Proposal for Master Servicer and/or Subservicer

I. SUMMARY.

Texas Department of Housing and Community Affairs (TDHCA) has issued a second Request for Proposal (RFP) for Master Servicer and/or Subservicer due to an error in the previously published notice. TDHCA anticipates the need for Master Servicer and/or Subservicer relating to its Single Family Mortgage Revenue Bond Programs. The Master Servicer and/or Subservicer must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

Proposals must be received at the TDHCA no later than, 4:00p.m., on October 7, 1999. For a copy of the RFP contact Tim Almquist at 512-475-3356.

TRD-9906127
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 21, 1999

♦ ♦ ♦

Texas Department of Human Services

Public Notice–Availability of Intended Use Report

The Texas Department of Human Services (TDHS) has published a report outlining the intended use of federal block grant funds during fiscal year 2000 for Title XX social services programs administered by the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Protective and Regulatory Services, the Texas Workforce Commission, the Texas Department of Mental Health and Mental Retardation, Texas Education Agency, the Texas Interagency Council on Early Childhood Intervention. The report describes department services funded through this federal source and includes a distribution-of-funds section which provides financial information on the allocation of funds to all social services. On July 30, the proposed Intended Use Report was made available to the public for review and comment. No comments were received. TDHS received and responded to requests for copies of the report.

To obtain free copies of the report, send written requests to Chris Traylor, Govern- ment Relations Division, Mail Code W-623, Texas Department of Human Services, P.O. Box 149030, Austin, Texas, 78714-9030.

TRD-9906115
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: September 21, 1999

♦ ♦ ♦

Public Notice–Open Solicitation #1 for Sherman County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC§19.2324, the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Sherman County, County #211,** where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous period of **February 1999 through July 1999**. The county occupancy rates for each month of that period were: **92.9%, 94.9%, 95.1%, 94.7%, 95.5%, 93.9%**. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must demonstrate a history of quality of care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation, and Decertification Requirements). Potential contractors must submit a written reply (as described in 40 TAC §19.2324) to TDHS, to Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code E-342, Post Office Box 149030, Austin, Texas, 78714-9030. The written reply must be received by TDHS before the close of business November 1, 1999, the published ending date of the open solicitation period. DHS allocates certified beds equally among qualified NFOs until the occupancy rate is reduced to less than 90%. When there are insufficient available beds after the primary selection to reduce occupancy rates to less than 90%, TDHS will place a public notice in the Texas Register announcing an additional open solicitation period for potential contractors wishing to construct a nursing facility or an addition to an existing nursing facility.

TRD-9906116
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: September 21, 1999

♦ ♦ ♦

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to the State of Texas by COMMERCIAL CASUALTY INSURANCE COMPANY OF GEORGIA, a foreign fire and casualty company. The home office is in Norcross, Georgia.

Application to change the name of MUTUAL ASSURANCE, INC. to THE MEDICAL ASSURANCE CO., INC., a foreign fire and casualty company. The home office is in Birmingham, Alabama.

Application to change the name of VENCOR INSURANCE COMPANY to GREAT LAKES LIFE & HEALTH INSURANCE COMPANY, a foreign life company. The home office is in Indianapolis, Indiana.

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-9906151
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 22, 1999

♦ ♦ ♦

Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2421, on October 13, 1999, at 1:30 p.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider an appointment to the Building Code Advisory Committee on Specifications and Maintenance.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A, which provides that the Commissioner after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including but not limited to, maximum rates competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointment.

Article 21.49, §6C of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building specifications and maintenance in the Plan of Operation of the Texas Windstorm Insurance (TWIA). Article 21.49, §6C provides for the membership of Committee, including three public members who reside in designated catastrophe areas, three building industry members who reside in designated catastro-

phe areas and three members representing the insurance industry who write insurance in the designated catastrophe areas.

Any questions concerning this matter should be addressed to Alexis Dick, Deputy Commissioner, Inspections Group, (512) 463-6674, MC 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-9906157
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 22, 1999

♦ ♦ ♦

Third Party Administrators Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of MIM Health Plans, Inc., 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-9906152
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 22, 1999

♦ ♦ ♦

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 Glacier Insurance Enterprises, Inc., a foreign third party administrator. The home office is Fresno, California.

Application for incorporation in Texas of GIA Administrators, Inc., (using the assumed name of Glacier Insurance Administrators, Inc.), a domestic third party administrator. The home office is Austin, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9906153
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 22, 1999

♦ ♦ ♦

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 USA Services Group, Inc., a foreign third party administrator. The home office is Fort Lauderdale, Florida.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9906031
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 15, 1999

♦ ♦ ♦

Texas Lottery Commission

Public Rulemaking Comment Hearings

Public hearings to receive public comments regarding proposed amendments to 16 TAC §401.305, concerning "Lotto Texas" on-line game will be held at the following locations:

(1) Dallas, Texas, Wednesday, October 20, 1999, 3:00 p.m., Holiday Inn/Market Center, 1955 Market Center Boulevard.

(2) El Paso, Texas, Thursday, October 21, 1999, 10:00 a.m. Marriott, 1600 Airway Boulevard.

(3) Abilene, Texas, Tuesday, October 26, 1999, 11:00 a.m., Clarion Hotel and Conference Center, 5403 South 1st Street.

(4) Houston, Texas, Wednesday, October 27, 1999, 10:00 a.m., Radisson Hotel and Conference Center, 9100 Gulf Freeway.

(5) San Antonio, Texas, Thursday, October 28, 1999, 10:00 a.m., Marriott River Walk, 711 East Riverwalk.

These public hearings are in addition to a public hearing already set in Austin, Texas, September 27, 1999, 10:00 a.m., at Texas Lottery Commission headquarters building auditorium, 611 East 6th Street, Austin, Texas.

Persons requiring any accommodation for a disability at any of the hearings should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-9906131
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 21, 1999

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Corrections of Errors

The Texas Natural Resource Conservation Commission submitted a correction of error which appeared in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6572).

Due to agency error:

On page 6572, the first sentence of the first paragraph of the correction of error should be deleted and replaced with the following: "The Texas Natural Resource Conservation Commission proposed new 30 TAC §§39.403, 39.605, 39.705, 50.133, 50.139, 55.101, 55.154, 55.156, 55.201, 55.205, 55.211, 55.251, 55.253, 55.255, and 55.256; and amendments to 30 TAC §50.2."

♦ ♦ ♦

The Texas Natural Resource Conservation Commission proposed amendments to 30 TAC §335.324. The rule appeared in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7178).

Due to agency error:

On page 7178, preamble, under Submittal of Comments, comments must be received by October 11, 1999, instead of September 13, 1999.

♦ ♦ ♦

Notice of Availability and Request for Comments

AGENCIES: Texas Natural Resource Conservation Commission (TNRCC), Texas Parks andWildlife Department (TPWD), Texas General Land Office (GLO), United States Department of the Interior (DOI) and National Oceanic and Atmospheric Administration (NOAA) (hereafter, Trustees).

ACTION: Notice of availability of a draft Damage Assessment and Restoration Plan and Environmental Assessment for recreational fishing service losses associated with the Alcoa Point Comfort/Lavaca Bay Federal Superfund Site (Lavaca Bay Site or Site), and of a 30-day period for public comment on the draft plan beginning October 1, 1999.

SUMMARY: Notice is hereby given that a document entitled, "Draft Damage Assessment and Restoration Plan and Environmental Assessment for the Alcoa Point Comfort/Lavaca Bay National Priorities List (NPL) Site Recreational Fishing Service Losses" (Draft DARP/EA) is available for public review and comment. This document has been prepared by the state and federal natural resource trustee agencies listed previously to address recreational fishing services affected by releases of hazardous substances from the Lavaca Bay Site. This Draft DARP/EA presents the Trustees' assessment of the recreational fishing service losses attributable to these releases, and their proposed compensation plan to restore recreational fishing services. The Trustees will consider comments received during the public comment period before finalizing the DARP/EA.

The opportunity for public review and comment on the proposed DARP/EA announced in this notice is required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 USC §9622(i) and parallels the provisions included in 43 Code of Federal Regulations (CFR) §11.32(c) of the federal Natural Resource Damage Assessment regulations.

To receive a copy of the proposed Damage Assessment and Restoration Plan, interested members of the public are invited to contact Richard Seiler of the Texas Natural Resource Conservation Commission, Remediation Division MC 142, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523.

DATES: Comments must be submitted in writing on or before *November 1, 1999* to Richard Seiler of the Texas Natural Resource Conservation Commission at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments prior to finalizing the proposed DARP/EA.

SUPPLEMENTARY INFORMATION: The Lavaca Bay Site is located in Point Comfort, Calhoun County, Texas and encompasses releases of hazardous substances from Alcoa's Point Comfort Operations facility. Between 1948 and the present, Alcoa has constructed and operated several types of manufacturing processes at this facility, including aluminum smelting, carbon paste and briquette manufacturing, gas processing, chlor-alkali processing, and alumina refining. Past operations at the facility have resulted in the release of hazardous substances into the environment, including the discharge of mercury-containing wastewater into Lavaca Bay from 1966 to 1970 and releases of mercury into the bay through a groundwater pathway. In April 1988, the Texas Department of Health (TDH) issued a "closure order" prohibiting the taking of finfish and crabs for consumption from a specific area of Lavaca Bay near the facility due to elevated mercury concentrations found in these species.

The Lavaca Bay Site was added to the NPL, pursuant to CERCLA §105 on March 25, 1994 (59 Federal Register 8794; February 23, 1994). The Site was listed primarily due to the presence of mercury in several species of fish and crab in Lavaca Bay, the fishing closure imposed by TDH, and the presence of mercury and other hazardous substances in bay sediments adjacent to the facility. Alcoa, the State of Texas, and the United States Environmental Protection Agency (EPA) signed an Administrative Order on Consent under CERCLA in March 1994 for performance of a remedial investigation and feasibility study (RI/FS) for the Site.

The Trustees are designated natural resource trustees under CERCLA §107(f), §311 of the Federal Water Pollution and Control Act (FWPCA) (33 USC §1321), and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR §§300.600-300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore public resources and services injured or lost as a result of discharges or releases of hazardous substances.

Parallel with performance of the RI/FS, the Trustees have assessed natural resource injuries and recreational fishing service losses attributable to hazardous substances released from the Site. The assessment for this Site has been aided and supported by Alcoa's cooperation pursuant to a Memorandum of Agreement (MOA) between Alcoa and the Trustees, which was effective January 14, 1997. The Draft DARP/EA released today was developed under the cooperative assessment framework outlined in the MOA and addresses the lost access to or use of fishery resources due to the closure. These losses began in 1988 and will continue until the closure order is lifted, which is expected to occur after remedial activities at the Site are implemented. The Draft DARP/EA identifies the assessment procedures used to define the recreational fishing service losses and scale restoration actions, and identifies the restoration actions preferred for use to restore recreational fishing services as a basis for compensating for assessed losses.

The Draft DARP/EA released today does not address any other natural resource injuries or service losses that may be attributable to the Site. Other resource injuries or losses are being considered by the Trustees in the assessment process but will be addressed in one or more subsequent Draft DARP/EA(s).

TRD-9906145
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 22, 1999

♦ ♦ ♦

Notice of District Application for Standby Fees

TOM GREEN COUNTY FRESH WATER SUPPLY DISTRICT NO. 3 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for authority to adopt and impose an annual operation and maintenance standby fee of $120 per year per tract for calendar years 2000, 2001 and 2002 on unimproved property within the District. The application was filed pursuant to Chapter 49 of the

Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC.

The TNRCC may grant a contested case hearing on these applications if a written hearing request is filed within 30 days after the newspaper publication of this notice. The Executive Director may approve the applications unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning hearing process, contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-9906125

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 21, 1999

♦ ♦ ♦

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 31, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 31, 1999**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Blue Bell Development Corporation; DOCKET NUMBER: 1999-0574-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1012163; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a) and the THSC, §341.033(d), by failing to take required monthly bacteriological samples; PENALTY: $1,750; ENFORCEMENT COORDINATOR: William Stowe, (512) 239-6793; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: Floyd Harrison dba Euless Auto Sales; DOCKET NUMBER: 1999-0723-AIR-E; IDENTIFIER: Air Account Number TA-2840-W; LOCATION: Euless, Tarrant County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale a vehicle with missing emission control equipment; PENALTY: $750; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Fisca Oil Company, Inc.; DOCKET NUMBER: 1999-0442-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Identification Number 38590; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: retail service station; RULE VIOLATED: 30 TAC §334.72 and §334.74, by failing to report a suspected release from an underground storage tank (UST); and 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding USTs; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Lori Haynie, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4)COMPANY: Mohammed Sharif dba Glad Mart; DOCKET NUMBER: 1999-0451-PST-E; IDENTIFIER: PST Identification Number 0039372; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sale of gasoline ; RULE VIOLATED: 30 TAC §115.241 and the Act, §382.085(b), by failing to install a Stage II vapor recovery system (VRS) prior to dispensing gasoline; 30 TAC §334.7, by failing to update registration; and 30 TAC §334.93(a) and (b), by failing to demonstate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Lajitas Utility Company, Inc. dba Lajitas on the Rio Grande; DOCKET NUMBER: 1998-0893-PWS-E; IDENTIFIER: PWS Number 0220018; LOCATION: Lajitas, Brewster County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(1)(A), (j), (l), (p)(2), (t), and (w), by failing to maintain a free chlorine residual of 0.2 milligrams per liter, complete customer service inspection certifications, flush all dead end mains monthly, inspect the pressure tank at least annually, maintain all storage facilities, distribution lines, related appurtenances in a watertight condition, and post a legible sign at each production, treatment, and storage facility; 30 TAC §290.44(d) and (h), and §290.46(u), by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system and to ensure that no water connection from any public drinking water supply is made to any establishment; 30 TAC §290.45(c)(2)(A), (B), (C), (E), and (F), by failing to provide a raw water pump capacity of 0.6 gallons per minute (gpm) per connection with the largest pump out of service, provide a treatment capacity of 0.6 gpm per connection under normal rated flow design, provide a transfer pump capacity of 0.6 gpm per connection,

provide two or more service pumps with a total rated capacity of 0.6 gpm per connection, and provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.113, by failing to produce water that meets the commission's minimum standards for chloride, sulfate, and total dissolved solids concentrations; 30 TAC §290.43(c)(2) and (3), (d)(3), and (e), by failing to ensure that the roof hatches on the ground storage tanks remain locked except during inspections and maintenance, protect the ground storage vent openings with 16-mesh or finer corrosion-resistant screening, modify the overflow pipe flap valve assembly on the ground storage tanks, equip all air compressor injection lines for pressure tanks with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank, provide each ground storage tank with a ladder, and protect the pressure and ground storage tanks with an intruder-resistant fence; 30 TAC §290.41(e)(2), by failing to establish a restricted zone of 200 feet radius from the raw water intake works and prohibit all recreational activities and trespassing in this area; 30 TAC §290.42(d)(5), (d)(10)(C)(v) and (vii), (d)(2)(A), (d)(13), and (l), by failing to provide flow measuring devices, equip filters with sampling taps so that effluent water turbidity of each filter can be individually monitored, properly operate loss of head gauges to ensure proper operation of units at all times, provide a vacuum pump breaker on each hose bibb within the plant, provide the surface water treatment plant with sampling taps for raw, settled, filtered water, and clearwell discharge, and ensure all chemicals and any additional or replacement process media used in treatment of water supplied by public water systems conform to American National Standards Institute/National Sanitation Foundation Standard 60 for direct additives and Standard 61 for indirect additives; 30 TAC §290.118, by failing to provide settled water which meets the turbidity limits established by the commission's drinking water standards; 30 TAC §290.119, by failing to calibrate continuous monitors used to collect compliance data; and 30 TAC §290.39(g), by failing to provide written notification to the executive director for changes or additions to existing systems; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(6)COMPANY: Marvin Lenz; DOCKET NUMBER: 1998-0800-PST-E; IDENTIFIER: PST Identification Number 92166; LOCATION: Bartlett, Bell County, Texas; TYPE OF FACILITY: underground storage tank; RULE VIOLATED: 30 TAC §334.7(a)(1), by failing to register USTs in existence; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Gayle Zapalac, (512) 239- 1136; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7)COMPANY: City of Linden; DOCKET NUMBER: 1999-0256-MWD-E; IDENTIFIER: Permit Number 10429-002; LOCATION: Linden, Cass County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10429-002 and the Code, §26.121, by failing to achieve compliance with permit limits and failing to comply with the permitted interim effluent limits; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Eric Reese, (512) 239-2611; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8)COMPANY: Mobil Oil Corporation dba Mobil #633; DOCKET NUMBER: 1999-0528-PST- E; IDENTIFIER: PST Identification Number 0048498; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A) and (B), and the Act, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition by not providing a Stage I dry break cover and not replacing the crimped vapor hoses; 30 TAC §115.244(3) and the Act, §382.085(b), by failing to conduct a monthly inspection of the Stage I dry breaks; 30 TAC §115.246(4) and (5), and the Act, §382.085(b), by failing to provide proof of attendance and completion of the Stage II training for each employee and by failing to maintain a record of the results of the annual Stage II testing; 30 TAC §334.21, by failing to pay the required UST fees; 30 TAC §334.128(a), by failing to pay the required above ground storage tank fees; and 30 TAC §335.323, by failing to pay the required hazardous waste generation fees; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Julie McMasters, (512) 239-5839; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(9)COMPANY: Sam Ro dba OK Texaco; DOCKET NUMBER: 1999-0638-PST-E; IDENTIFIER: PST Identification Number 0039635; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246 and the Act, §382.085(b), by failing to maintain a copy of the applicable California Air Resource Board executive order and a record of the results of testing conducted at the station; 30 TAC §115.245(2) and the Act, §382.085(b), by failing to successfully perform annual pressure decay testing; 30 TAC §115.244(3) and the Act, §382.085(b), by failing to conduct monthly inspections of the required Stage II vapor recovery equipment; and 30 TAC §115.248(1) and the Act, §382.085(b), by failing to train a Stage II station representative prior to the station's operation of the Stage II equipment; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Rebecca Cervantes, (915) 778-9634; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(10)COMPANY: Pilot Corporation; DOCKET NUMBER: 1999-0633-PST-E; IDENTIFIER: PST Identification Number 64834; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.245(2) and the Act, §382.085(b), by failing to perform an annual pressure decay test for a Stage II VRS; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1101 East Arlington Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(11)COMPANY: Quest Separation Technologies, Inc.; DOCKET NUMBER: 1999-0085-IWD-E; IDENTIFIER: Permit Number 03686; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: polyethylene wax refining and tolling; RULE VIOLATED: Permit Number 03686 and the Code, §26.121, by failing to comply with the chemical oxygen demand daily maximum permit limit of 200.0 milligrams per liter (mgl), pH limit of 9.0 standard units, oil and grease daily maximum of 15.0 mgl, total suspended solids daily average concentration and daily maximum limits of 30.0 and 100.0 mgl, and daily average and maximum flow limits of 0.0115, 0.0198, and 0.0225 millgrams per day; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12)COMPANY: Rubio Vasquez dba Vasquez Enterprises; DOCKET NUMBER: 1999-0479- AIR-E; IDENTIFIER: Air Account Number DB-4981-R; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: auto paint and body shop; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.085(b) and §382.0518(a), by constructing and operating an outdoor spray paint operation without first obtaining a permit or meeting the requirements for a permit exemption; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Larry King, (512) 239-1405; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9906109
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: September 21, 1999

♦ ♦ ♦

Notice of Public Hearings

The Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct three hearings to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. This requirement assists the commission in its shared responsibility with local governments, such as cities and underground water conservation districts, to protect the water quality of the aquifer.

This year's annual hearings on the Edwards Aquifer Water Quality Protection Program and the commission's existing rules addressing regulated development over the designated contributing, recharge, and transition zones of the Edwards Aquifer, pursuant to 30 TAC Chapter 213, will be held at the following locations and times: San Antonio on Tuesday, October 19, 1999, beginning at 7:00 p.m. at the City of San Antonio Municipal Council Chambers, 103 Main Plaza, San Antonio; Austin on Thursday, October 21, 1999, beginning at 7:00 p.m. at the TNRCC Park 35 Office Complex on North IH 35, Building E, Room 201S; and Wimberley on Friday, October 22, 1999, beginning at 7:00 p.m. at the Bowen Intermediate School Auditorium, 14501 Ranch Road 12 North, Wimberley.

These hearings will be conducted for receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearings; however, a TNRCC staff member will be available to discuss the program 30 minutes prior to the hearings.

Persons with disabilities who have special communication or other accommodations needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Written comments should mention the Edwards Aquifer Water Quality Protection program and may be submitted to Lisa Martin, TNRCC Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Written comments must be received by 5:00 p.m., November 8, 1999. For further information or questions concerning these hearings, please contact Pat Hooper, Field Operations Division, (512) 239-0436.

TRD-9906144
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 22, 1999

♦ ♦ ♦

Notice of Water Quality Applications

The following notices were issued during the period of September 15, 1999 through September 21, 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,Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

ACME BRICK COMPANY has applied for a renewal of TNRCC Permit No. 03882, which authorizes the discharge of mine pit water commingled with stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates the San Felipe Plant, a clay mine. The plant site is located at 562 Peters - San Felipe Road, 2.75 miles north of the intersection of Interstate 10 and State Highway 36, and 1.9 miles east of State Highway 36 near the intersection of Jurica Road and Peters-San Felipe Road, 3.25 miles northeast of the City of Sealy, Austin County, Texas.

AKER GULF MARINE has applied for a renewal of TNRCC Permit No. 03012, which authorizes the discharge of sanitary wastewater at a daily average flow not to exceed 4,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0102890 issued on March, 17, 1989 and TNRCC Permit No. 03012, issued on July 15, 1994. The applicant operates a facility which fabricates offshore structures for the oil and gas industry. The plant site is located on the east side of Live Oak Peninsula, on Farm-to-Market Road 1069, approximately 1/2 mile south of the intersection of Farm-to-Market Roads 1069 and 2725, five miles southwest of the City of Aransas Pass, San Patricio County, Texas.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 12070-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 63,000 gallons per day. The plant site is located on school property at 14910 Aldine Westfield Road in the City of Houston in Harris County, Texas.

ALVARADO INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14101-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The plant site is located approximately 4,600 feet southwest of the intersection of Farm-to-Market Road 2738 and Farm-to-Market Road 917 in Johnson County, Texas.

CITY OF BERTRAM has applied for a renewal of Permit No. 11669-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 87,000 gallons per day via irrigation of 38.1 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located west of the City of Bertram on the south side of State Highway 29, approximately 1.7 miles west of the intersection of State Highway 29 and Farm-to-Market Road 1174 North in Burnet County, Texas.

BROOKSHIRE MUNICIPAL WATER DISTRICT has applied for a renewal of TNRCC Permit No. 10001-001, 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 immediately south of the intersection of Highway 10 and approximately 500 feet west of Brookshire Creek in Waller County, Texas.

CSA LIMITED, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit No. 11661-001 to authorize the addition of Outfall 002 for the discharge of treated utility wastewaters, mop water, water from water baths, reverse osmosis reject water, washwater from floor sumps, boiler blowdown, and stormwater at a daily average flow not to exceed 8,000 gallons per day. The current permit authorizes the

discharge of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day via Outfall 001, which will remain the same. The applicant operates a facility which packages various liquid products for retail distribution. The plant site is located on the east side of State Highway 249, approximately 1.7 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960, Harris County, Texas.

DALLAS COUNTY UTILITY AND RECLAMATION DISTRICT has applied for a renewal of TNRCC Permit No. 13678-001, which authorizes the discharge of water treatment plant wastewater at a daily average flow not to exceed 7,600 gallons per day. The plant site is located 2,785 feet north northeast of the intersection of State Highway 114 and Valley View Lane, 300 feet west northwest of the dead end of Parkridge Boulevard in Dallas County, Texas.

ELLINGER SEWER AND WATER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit No. 10945-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 46,000 gallons per day. The plant site is located approximately 1,400 feet northeast of State Highway 71 and 1,900 feet northwest of Farm-to- Market Road 2503 in Fayette County, Texas.

CITY OF GOODLOW has applied for a renewal of TNRCC Permit No. 12616-001, 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 two miles south of the intersection of State Highway 31 and State Highway 309 on the west side of State Highway 309 in Navarro County, Texas.

THE GROCE COMPANY, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 02569, which authorizes the discharge of treated wastewater from grease traps at a daily average flow not to exceed 150,000 gallons per day via Outfall 001. The applicant operates a plant which treats grease trap and septic tank cleaning wastes. The plant site is located immediately west of the intersection of Lockwood Drive and Harvey Wilson Drive, 0.2 miles north of Buffalo Bayou in the City of Houston, Harris County, Texas.

CITY OF HAPPY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit No. 10183-001 to change from disposal of treated effluent via evaporation to the discharge of treated effluent into waters of the state. The current permit authorizes the disposal of treated effluent not to exceed a daily average flow of 77,000 gallons per day via evaporation in a playa lake. The treated effluent is routed into Happy Draw and thence into the playa lake. The proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10183-001 would authorize the discharge of treated effluent into Happy Draw and thence into the playa lake with no change in the permitted flow. The plant site is located approximately $\frac{1}{2}$ mile south of Farm-to-Market Road 1975 and $\frac{1}{2}$ mile east of Interstate Highway 27, east of the City of Happy in Swisher County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 167 has applied for a renewal of TNRCC Permit No. 12834-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 294,000 gallons per day. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for Bear Creek (within Addicks Reservoir) for incorporation into 30 TAC §§307.2(d)(4). The variance would authorize a three year period in which the Commission will consider a recommended site-specific standard for Bear Creek (in Addicks Reservoir) and determine whether to adopt the standard or require the existing water quality standard to remain in effect. The plant site is located approximately 1.25 miles north of the intersection of Barker-Cypress Road and Clay Road and approximately 1 mile southwest of the intersection of Gummert Road and Barker- Cypress Road in Harris County, Texas.

MICHAEL H. HENSARLING has applied for a renewal of Permit No. 11920-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 13,000 gallons per day via irrigation of 7 acres of pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 1 mile due west of the intersection of Farm-to-Market Road 2154 and McCullough Road, approximately six miles south-southeast of Kyle Field in Brazos County, Texas.

HOOKS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit No. 13634-001, which 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 on the east side of Farm-to-Market Road 560, approximately three miles north of Interstate Highway 30 in Bowie County, Texas.

HOPE CENTER YOUTH & FAMILY SERVICES has applied for a renewal of TNRCC Permit No. 11943-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,100 gallons per day. The plant site is located approximately 2,000 feet southeast of Kickapoo Creek, approximately 5,800 feet downstream of the confluence of Kickapoo Creek and Steam Mill Creek and 9 miles southeast of the City of Groveton in Trinity County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit No. 10495-078, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 8,000,000 gallons per day. The plant site is located south of and adjacent to Rankin Road and approximately 3,000 feet east of Aldine- Westfield and Rankin Road intersection in the City of Houston in Harris County, Texas.

CITY OF HUXLEY has applied for a renewal of TNRCC Permit No. 13932-001, which authorizes the discharge of water treatment plant wastewater at a daily average flow not to exceed 5,000 gallons per day. The plant site is located on an unnamed County Road between Farm-to-Market Road 2694 and Toledo Bend Reservoir in the City of Huxley in Shelby County, Texas.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY has applied for a renewal of TNRCC Permit No. 02289, which authorizes the discharge of stormwater and process wastewater at a daily average dry weather flow not to exceed 4,000 gallons per day, via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0079774 issued on September 14, 1979 and TNRCC Permit No. 02289, issued on January 31, 1997. The applicant operates the KCS Transportation Yard Mechanical Facility which provides light maintenance, fueling, and general servicing of diesel electric locomotives used for railroad transportation. The plant site is located at 548 West 5th Street, bounded on the north by West Proctor Street, on the west by the Martin Luther King Bridge (Highway 82), and the east by the Jefferson County Hurricane Levee, in the City of Port Arthur, Jefferson County, Texas.

CITY OF KATY has applied for a major amendment to TNRCC Permit No. 10706-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 2,625,000 gallons per day to an annual average flow not to exceed 3,450,000 gallons per day. The current permit authorizes the discharge of treated domestic wastewater at a daily average average flow not to exceed 2,625,000 gallons per day. The plant site is located at 25839 Interstate Highway 10 on the east bank of Cane Island Branch of Buffalo Bayou, approximately 1,000 feet south of Interstate Highway 10 in the City of Katy in Fort Bend County, Texas.

LOGAN A. BOGGS AND WILLIAM G. STEELE, JR. has applied for a renewal of Permit No. 11241-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 800 feet south of Transmountain Road (State Highway Loop 375), 1,800 feet east of U.S. Highway 80, 1/4 mile east of the City of Canutillo and 3 $\frac{1}{2}$ mile north of the City limits of El Paso in El Paso County, Texas.

LONE STAR INDUSTRIES has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 03905, which authorizes the discharge of utility wastewater on an intermittent and flow variable basis via Outfall 001, and stormwater on an intermittent and flow variable basis via Outfall 002, and the irrigation of native grass at a rate not to exceed 4.25 acre-feet/acre/year. The applicant operates the Maryneal Cement Plant. The plant site is located one mile northwest of the intersection of Farm to Market Road 608 and Farm to Market Road 1170, approximately 0.7 miles northwest of the City of Maryneal, Nolan County, Texas.

CITY OF MISSION has applied for a renewal of TNRCC Permit No. 10484-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 4,600,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,600,000 gallons per day. The plant site is located south of the City of Mission, approximately 1,000 feet southwest of the intersection of Farm-to-Market Road 1016 and U.S. Highway 83 in Hidalgo County, Texas

NEWPARK SHIPBUILDING - BRADY ISLAND, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0070955 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 02034. The draft permit authorizes the discharge of process wastewater at a daily average flow not to exceed 100,000 gallons per day via Outfall 001, storm water runoff on an intermittent and flow variable basis via Outfall 002, and process wastewater and storm water runoff on an intermittent and flow variable basis via Outfalls 003, 004, and 005. The applicant operates a facility which performs construction, repair, cleaning and gas-freeing services on ships, barges, tank trucks and other compatible wastes from off-site sources. The plant site is located on Brady Island between the Houston Ship Channel and Old Buffalo Bayou in the City of Houston in Harris County, Texas.

LOC D. NGUYEN has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 13884-001, 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 250 feet northwest of the intersection of Sugarland-Howell Road and Laterna Lane and approximately 3,000 feet east of Route 6 in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 9 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14030-001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The plant site is located at 11023 Regency Green Drive, approximately 1/4 mile west of Jones Road and 1/3 miles south of Grant Road in Harris County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 15 has applied for a major amendment to TNRCC Permit No. 11939-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 546,000 gallons per day to an annual average flow not to exceed 2,500,000 gallons per day. The proposed amendment also requests to add two interim phases to allow an annual average flow not to exceed 920,000 gallons per day and 1,560,000 gallons per day. The plant site is located one mile west of the intersection of Gregson Road and State Highway 249, 4.5 miles south of the City of Tomball, and approximately 25 miles northwest of downtown Houston in Harris County, Texas.

OXID, L.P. has applied for a renewal of TNRCC Permit No. 03243 which authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001. The applicant operates a chemical storage and transfer facility. The plant site is located at 101 Concrete Street in the City of Houston, Harris County, Texas.

NIRANJAN S. PATEL has applied for a renewal of TNRCC Permit No. 11403-001, 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 250 feet north of Farm-to-Market Road 343 and 800 feet east of U.S. Highway 59, in Nacogdoches County, Texas.

POWERAM OIL COMPANY, INC. has applied for a renewal of Permit No. 13990-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2000 gallons per day via evaporation. The wastewater treatment facilities and disposal site are located on the east side of Interstate Highway 35 approximately 3 miles north of Elm Mott in McLennan County, Texas.

CITY OF RANGER has applied for a renewal of TNRCC Permit No. 11557-003, 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 on the northeast corner of Garrett Street and Lackland Avenue in the City of Ranger, approximately 2,500 feet north-northwest of the intersection of U.S. Highway 80 and Farm-to-Market Road 571 in Eastland County, Texas.

REMINGTON MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TNRCC Permit No. 13328-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,100,000 gallons per day. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for South Mayde Creek (in Addicks Reservoir) for incorporation into 30 TAC §307.10, Appendix D. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,100,000 gallons per day. The renewed permit also authorizes a variance to the Texas Surface Water Quality Standards under 30 TAC 307.2(d)(4). The variance would authorize a three-year period in which the Commission will consider a recommended site-specific standard for South Mayde Creek (in Addicks Reservoir) and determine whether to adopt the standard or require a no discharge of pollutants into waters in the State to be in effect. Issuance of

the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13328-001 will replace the existing TNRCC Permit No. 13328-001. The plant site is located approximately 2.3 miles due south of the intersection of U.S. Highway 290 and Barker Cypress Road in Harris County, Texas.

RESTAURANT SERVICE, L.L.C. has applied for a renewal of TNRCC Permit No. 13983- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. The plant site is located at 16150 U.S. Highway 290 in the City of Jersey Village in Harris County, Texas.

ROCHE VITAMINS, INC. has applied for a renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0064912 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 02216. The draft permit authorizes the discharge of process wastewater, utility wastewater, water treatment waste, domestic wastewater and stormwater runoff at a daily average flow not to exceed 190,000 gallons per day via Outfall 001. The applicant operates a facility that manufactures beta-carotene. The plant site is located immediately south of Oyster Creek and north of Farm-to-Market Road 332 near the City of Freeport, Brazoria County, Texas.

SAN MIGUEL ELECTRIC COOPERATIVE, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 02601, which authorizes the discharge of coal pile runoff on an intermittent and flow variable basis via Outfall 001. The applicant operates a lignite-fired steam electric power plant. The plant site is located on Farm to Market Road 3387 approximately 6 miles east of State Highway 16, near the City of Christine, Atascosa County, Texas.

SHERMAN WIRE COMPANY has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13762-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The plant site is located approximately 0.5 miles north of State Highway 56 on the east side of Gibbons Road, approximately 6 miles west of Sherman in Grayson County, Texas.

SILVERLEAF RESORTS, INC. has applied for renewal of an existing wastewater permit. The applicant has an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0103004 and an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 13417-001. 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 0.5 mile north northwest of the intersection of League Line Road and White Oak Drive on Lake Conroe in Montgomery County, Texas.

EDWARD N. SMITH, JR. has applied for renewal of an existing National Pollutant Discharge Elimination System (NPDES) Permit No. TX0066389 and has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 11315-001. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 9,000 gallons per day. The plant site is located adjacent to, and on the east side of State Highway 62, approximately one mile north of the intersection of State Highways 62 and 87 in Orange County, Texas.

SOUTHWEST MILAM WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14110-001, to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 31,000 gallons per day. The plant site is located on the south side of Farm-to- Market Road 908 approximately 1,500 feet east of the intersection of Farm-to-Market Road 908 and Milam County Road 316 in Milam County, Texas.

SOUTHWESTERN ELECTRIC POWER COMPANY has applied for a major amendment to TNRCC Permit No. 01811 to authorize an extension of the variance period for total aluminum at Outfall 101. The current permit authorizes the discharge from the cooling pond via Outfall 001; combined wastewater at a daily average flow not to exceed 20,000,000 gallons per day via Outfall 101; and condenser cooling water and previously monitored effluents (PME) at a daily average flow not to exceed 1,425,000,000 gallons per day via Outfall 301. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0063215 issued on September 24, 1993, and TNRCC Permit No. 01811 issued on May 28, 1997. The applicant operates the Welsh Power Plant. The plant site is located approximately two miles northwest of the Town of Cason, Texas and approximately one and one-half (1-1/2) miles north of State Highway 11, Titus County, Texas.

TARRANT COUNTY has applied for a renewal of Permit No. 11494-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,500 gallons per day via irrigation of 12 acres of pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located approximately 1/4 mile northwest of the intersection of Eagle Mountain Circle Road and Ten Mile-Azle Road in Tarrant County, Texas.

TEXAS MUNICIPAL POWER AGENCY has applied to the Texas Natural Resource Conservation Commission for a renewal of TNRCC Permit No. 02460, which authorizes the discharge of stormwater from sedimentation ponds in active mining areas on an intermittent and flow variable basis via Outfalls 001, 008, 009, 010, 011, and 012; stormwater from sedimentation ponds in reclamation areas on an intermittent and flow variable basis via Outfalls 101, 102, 103, 104, 105, 108, 109, 110, 111, and 112; and the discharge of groundwater (from active mining areas) on an intermittent and flow variable basis via Outfalls 013 and 014. The applicant operates Gibbons Creek Lignite Mine. The plant site is located along both sides of State Highway 30, approximately 0.75 miles west of the intersection of State Highway 30 and Farm-to-Market Road 244, near the City of Carlos, Grimes County, Texas.

TEXAS PARKS AND WILDLIFE has applied for a renewal of TNRCC Permit No. 12234-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 16,000 gallons per day. The plant site is located approximately 3 miles east of the Farm- to-Market 762 and 1.3 miles north of Farm-to-Market 1462 and approximately 2,700 feet south of the Park Interpretive Building in Brazos State Park in Fort Bend County, Texas.

U.S. ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. 12091-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located northeast of the Lake Georgetown Dam, approximately 0.5 miles south of Ranch-to-Market Road 2338 off Cedar Breaks Road and southeast of the Lake Georgetown Project Office in Williamson County, Texas.

U. S. ARMY CORPS OF ENGINEERS has applied for a renewal of Permit No. 12253-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,400 gallons per day via irrigation of 0.53 acre of irrigation field. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located in the Yegua Creek Park which is on the southeastern side of Somerville lake and is eat of Road F in the Park and approximately 650 feet due south of Park Roads F and J in Washington County, Texas.

WALKER WATER WORKS, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14039-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 56,000 gallons per day. The plant site is located approximately 1,300 feet south of County Road 424 and approximately 3,600 feet west of Mustang Road in Brazoria County, Texas.

CITY OF WALNUT SPRINGS has applied for a renewal of Permit No. 13436-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day via irrigation of approximately 60 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities site is located approximately 1,500 feet due east of the crossing of State Highway 144 over Steeple Creek in the City of Walnut Springs in Bosque County, Texas. The irrigation site is located one mile west-southwest of the intersection of Farm-to-Market Road 927 (Texas Street) and State Highway 144.

WASTE CONTROL SPECIALISTS L.L.C. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 04038, to authorize the discharge of landfill leachate and storm water runoff at a daily average flow not to exceed 20,000 gallons per day via Outfall 001 and storm water runoff on an intermittent and flow variable basis via Outfall 002. The applicant operates a hazardous waste treatment, storage, and disposal facility that additionally stores and processes low-level radioactive waste. The plant site is located at 9998 State Highway 176, approximately one mile north of the intersection of State Highway 176 with the Texas and New Mexico state line, Andrews County, Texas.

CITY OF WEIMAR has applied for a renewal of TNRCC Permit No. 10311-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located approximately 2500 feet east of Farm-to- Market Road 155 between U.S. Highway 90 and Interstate Highway 10 in Colorado County, Texas.

CITY OF WOLFFORTH has applied for a renewal of Permit No. 10321-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 410,000 gallons per day via irrigation of 60 acres of Pecan trees and 540 acres of perennial pasture that surround the plant site. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 2,600 feet southwest of the intersection of Farm-to-Market Roads 179 and 1585, approximately 3 miles east of the intersection of U.S. Highway 82 and Farm-to-Market Road 1585 in Lubbock County, Texas.

TRD-9906126
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 21, 1999

♦ ♦ ♦

Texas Parks and Wildlife Department

Correction of Error

The Texas Parks and Wildlife Department adopted amendments to 31 TAC §65.309 and §65.310. The rules appeared in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7273).

Due to agency error, on page 7274, §65.310(a)(2)(D) should read as follows:

"(D) on or over unbaited areas, including:

(i) standing crops or flooded standing crops; and

(ii) flooded harvested cropland."

♦ ♦ ♦

Notice of Closed Area

The Executive Director of the Texas Parks and Wildlife Department finds that to insure the safety and health of those concerned and to avoid interference in the 1999 Texas Wildlife Expo event at the Texas Parks and Wildlife Headquarters Complex, Travis County, a "Closed Area" status is necessary for all public access to the Headquarters Complex.

This order shall be effective during the following time periods: 9:00 AM, October 1, 1999 to 11:30 PM, October 1, 1999; 7:00 AM, October 2, 1999 to 11:30 PM, October 2, 1999; 7:00 AM, October 3, 1999 to 11:30 PM, October 3, 1999; and 7:00 AM, October 4, 1999 to 6:00 PM, October 4, 1999.

The "Closed Area" shall be entered only by authorized department employees and Expo participants. Neither this order nor any written permission to enter the area shall authorize any individual to enter the area to conduct any unlawful activity or commit any unlawful act.

This order will be posted, in full, at conspicuous places and locations on the perimeter of the "Closed Area" and further, this posting shall be maintained throughout the effective period of this order. A map defining the prohibited area will also be displayed.

Any person violating any terms or conditions of this order shall be subject upon conviction to the same penalties as prescribed by statute for violations of regulations promulgated by the Texas Parks and Wildlife Commission. The order is enforceable by any duly authorized peace officer.

This order is issued in compliance with Parks and Wildlife Code, §13.101.

Approved by: Andrew Sansom, Executive Director

TRD-9906113
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Filed: September 21, 1999

♦ ♦ ♦

Public Utility Commission of Texas

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 September 13,

1999, pursuant to P.U.C. Substantive Rule §26.275 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Choctaw Communications, Inc. doing business as Smoke Signal Communications (Choctaw) for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §26.275. Project Number 21393.

The Application: The intraLATA plan filed by Choctaw 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. Choctaw shall implement intraLATA equal access within thirty days of approval of its dialing parity plan. Choctaw holds Service Provider Certificate of Operating Authority (SPCOA) Number 60052.

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 October 8, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference project number 21393.

TRD-9906030
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 1999

♦ ♦ ♦

Notice of Applications for Approval of Surcharge for Cost Recovery of Implementation of IntraLATA Equal Access Pursuant to Public Utility Commission Substantive Rule §26.275(e)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of twenty-three applications on September 15, 1999, for approval of surcharge for recovery of costs for the implementation of intraLATA equal access pursuant to P.U.C. Substantive Rule §26.275(e). Effective April 20, 1999, P.U.C. Substantive Rule §23.103(f) is renumbered as P.U.C. Substantive Rule §26.275(e).

Project Titles and Numbers: Application of CenturyTel of San Marcos, Inc., CenturyTel of Port Aransas, Inc., and CenturyTel of Lake Dallas, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20448; Application of Sugar Land Telephone Company and Texas Alltel, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20449; Application of Blossom Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20490; Application of XIT Rural Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20491; Application of West Texas Rural Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20492; Application Wes-Tex Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20494; Application of South Plains Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20495.

Application of Santa Rosa Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20496; Application of Tatum Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20497; Application of North Texas Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20498; and Application of Mid-Plains Rural Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20499; Application of Livingston Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20500; Application of Alenco Communications, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20501; Application of Brazos Telecommunications, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20502; Application of Brazos Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20503; Application of Cap Rock Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20504.

Application of Electra Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20506; Application of Peoples Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20507; Application of Riviera Telephone Company, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20508; Application of Comanche County Telephone Company, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20509; Application of Lipan Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20510; Application of Cumby Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20511; and Application of Eastex Telephone Cooperative Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20535; (Applicants).

The Applications: Applicants request approval of a surcharge for recovery of their recoverable costs for implementation of intraLATA equal access (ILEA) pursuant to P.U.C. Substantive Rule §26.275(e). On March 22, 1999, Applicants were granted an extension of the filing requirements of P.U.C. Substantive Rule §26.275(e), and an extension of the filing deadline from February 15, 1999 to September 15, 1999. As instructed, Applicants are filing their cost documentation in support of a surcharge in the same proceedings in which they were granted an extension for the filing of cost recovery data.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by October 8, 1999. Requests for further information should be mailed to the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120 or (888) 782- 8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is October 8, 1999, and all correspondence should reference the appropriate project number.

TRD-9906134
Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 1999

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission), on September 17, 1999, for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Project Title and Number: Application of Cumby Telephone Cooperative, Inc. (COA Number 50017) for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Project Number 21416.

The Application: Under 47 U.S.C. §214(e), a common carrier designated as an ETC in accordance with that subsection shall be eligible to receive federal universal service support under 47 U.S.C. §254. Cumby Telephone Cooperative, Inc. (Cumby) seeks designation for GTE's Southwest Inc.'s Lone Oak and Miller Grove exchanges. Cumby holds Certificate of Operating Authority Number 50017.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by October 8, 1999. Requests for further information should be mailed to the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735- 2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is October 8, 1999, and all correspondence should refer to Project Number 21416.

TRD-9906132
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 1999

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Provider Pursuant to Public Utility Commission Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 17, 1999, for designation as an eligible telecommunications provider pursuant to P.U.C. Substantive Rule §26.417.

Project Title and Number: Application of Cumby Telephone Cooperative, Inc. (COA Number 50017) for Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Project Number 21417.

The Application: Cumby Telephone Cooperative, Inc. (Cumby) filed an application for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417. Cumby is requesting ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund (TUSF) under the Texas High Cost Universal Service Plan (THCUSP). Cumby seeks ETP designation for GTE's Southwest Inc.'s Lone Oak and Miller Grove exchanges under Certificate of Operating Authority Number 50017.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by October 8, 1999. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is October 8, 1999, and all correspondence should refer to Project Number 21417.

TRD-9906133
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 1999

♦ ♦ ♦

Notice of Public Hearing and Workshop; Project Number 20935; Implementation of HB 1777

On September 10, 1999 the Public Utility Commission of Texas (commission) published in the *Texas Register* (24 TexReg 7114) proposed §26.463, relating to Calculation and Reporting of a Municipality's Base Amount. The proposed new rule implements the provisions of House Bill 1777, 76th Legislature, Regular Session (1999) (HB 1777), which authorizes the commission to determine a uniform method for calculating municipal franchise compensation paid by certificated telecommunications providers (CTPs). The proposed new rule is part of a series of rules that will be adopted by the commission to implement HB 1777. Project Number 20935 has been assigned to this proceeding.

The commission will hold a public hearing on the proposed rule on October 5, 1999 at 9:30 a.m. in the Commissioners' Hearing Room at the offices of the Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701. On the same day, the commission will also hold a workshop on the form, computer programs and instructions that will be used by municipalities to report base amount information *(Forms for Calculating rights-of-way compensation* and *Program for calculating rights-of-way compensation*). Copies of the form, computer program and instructions may be obtained directly from the commission's Central Records, by sending an email to hb1777@puc.state.tx.us, or by downloading this information from the HB 1777 web site at http://www.puc.state.tx.us/telecomm/projects/20935/20935.cfm. Interested parties may submit written comments on the form, program, and instructions on or before October 5, 1999, the day of the workshop. The commission is specifically interested in learning whether the forms are clear and easy to use, and whether any additional instructions are needed to accommodate special circumstances.

If you have any questions regarding the proposed hearing or workshop please contact Elango Rajagopal at (512) 936-7392 or Diane Parker at (512) 936-7204. It is not necessary to pre- register for the public hearing or the workshop. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906135
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 1999

♦ ♦ ♦

Notice of Request for Proposals for Live Internet Broadcasts of Open Meetings held by the Public Utility Commission of Texas

On September 22, 1999, the Public Utility Commission of Texas (commission) issued a Request for Proposals for Live Internet Broadcasts of Open Meetings Held by the Commission pursuant to Texas Government Code §551.128.

Copies of the proposal are available on the Electronic Business Daily site managed by the Texas Department of Economic Development: www.marketplace.state.tx.us; or the commission's website www.puc.state.tx.us; or, upon request by calling Irene Powell at (512) 936-7146. Proposals are due by 5:00 p.m. Monday, November 15, 1999, filed under seal in Project Number 21320 in the Central Records division of the commission at 1701 North Congress Avenue, Austin, Texas 78701-1494. Proposals not received by 5:00 p.m. on the closing date will not be considered.

For further information regarding this request for proposals, contact Susan K. Durso, General Counsel, Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906136
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 1999

♦ ♦ ♦

Public Notice of Workshop of Lifeline Telephone Service Automatic Enrollment and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding amendments to Substantive Rule §26.412 for automatic enrollment for Lifeline Telephone Service, on November 10, 1999, at 9:30 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 21329, *Amendments to Substantive Rule §26.412 Regarding Automatic Enrollment for Lifeline Telephone Service*, has been established for this proceeding. Project Number 21329 will amend Substantive Rule §26.412, *Lifeline Service and Link Up Service Programs*, to establish procedures for the automatic enrollment of individuals who qualify for Lifeline Telephone Service pursuant to Senate Bill 86, 76th Legislature, Regular Session (1999), §17.004(f), *Customer Protection Standards*, and the Public Utility Regulatory Act (PURA) §55.015, *Lifeline Services*, requirements. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. Please discuss privacy considerations applicable to agencies administering benefits for the following programs: Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Public Housing Assistance and Low-Income Energy Assistance Program (LIHEAP).

2. Please provide recommendations for addressing any privacy considerations discussed in item one. Be as specific as possible.

3. The Texas Department of Human Services (TDHS) has an established database and procedures for automatic enrollment of consumers qualifying for Tel-Assistance (Substantive Rule §26.413, *Tel-Assistance Service*). What are the pros and cons of enlarging this program to encompass individuals who qualify for Lifeline through other TDHS administered benefits, and individuals qualifying under other state agencies' benefits (as listed in item one)? Please discuss the anticipated effect upon your agency or company if TDHS' Tel-Assistance automatic enrollment program is expanded for this purpose, and alternatives to the expansion of the TDHS Tel-Assistance procedures, if any.

4. For individuals qualifying for Lifeline through benefit programs not administered by TDHS, are there established databases or procedures for your program participants that may be utilized for the purpose of Lifeline automatic enrollment? If not, please provide a proposal for accomplishment of Lifeline automatic enrollment using the data obtained by your agency. Please discuss the pros and cons of merging your client data with that collected by TDHS.

5. What are the estimated costs of expansion of existing databases and procedures, or creation of new databases and procedures, for Lifeline automatic enrollment?

6. What are your proposals for recovery of the costs discussed in item five? Please consider PURA §56.021, which establishes the parameters for the commission's reimbursement of expenses related to Lifeline Service implementation.

7. What additional concerns or expenses will be incurred to make Lifeline automatic enrollment eligibility data available to competitive local exchange carriers (CLECs) providing Lifeline Service?

8. For companies currently providing Lifeline Service to telephone subscribers, provide your most recent count of the total access lines receiving Lifeline Service.

9. For state agencies administering the qualifying benefits listed in item one, what is your estimate of the current number of individuals in each program? Is there overlap between and among these programs? If overlap exists, please provide your estimate of the percentage of overlap between and among programs.

10. Please provide draft language for the amendment of Substantive Rule §26.412.

11. What information will be required by the local exchange carrier to process the qualifying subscriber's Lifeline Service?

12 Please discuss any additional concerns or specific language proposals for the amendment of Substantive Rule §26.412 that you believe should be addressed at the workshop.

The commission requests workshop participants come prepared to discuss these questions. Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 21329. The commission requests comments be limited to ten pages.

Questions concerning the workshop or this notice should be referred to Janis Ervin, Senior Utilities Analyst, Telecommunications Industry Analysis Division, (512)-936-7372. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906091
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 1999

♦ ♦ ♦

Public Notice of Workshop Regarding Building Access Pursuant to PURA §§54.259, 54.260, 54.261

The staff of the Public Utility Commission of Texas (commission) will hold a workshop to discuss the rulemaking regarding building access pursuant to Public Utility Regulatory Act (PURA) §§54.259, 54.260, and 54.261 on Tuesday, October 26, 1999, at 9:00 a.m. in the Commissioners' Hearing Room, located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 21400, Rulemaking Regarding Building Access pursuant to PURA §§54.259, 54.260, and 54.261, has been established for this proceeding.

At the September 9, 1999 open meeting the commission directed staff to conduct a workshop with competitive local exchange companies (CLECs), other telephone companies, building owners, and other interested parties to discuss draft rules regarding building access written by CLECs.

Staff will make the above referenced draft rules and a workshop agenda available in Central Records and on the commission web site, under Project Number 21400, no later than October 19, 1999. The draft rules will assist in structuring the workshop discussion.

Questions concerning the workshop or this notice should be referred to Melanie Malone, Office of Policy Development, (512) 936-7247. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906128
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 1999

♦ ♦ ♦

Railroad Commission of Texas

Announcement

The Railroad Commission of Texas requests the qualifications for professional services from engineering firms with expertise in environmental assessments and remedial design. Selection of the engineering firms will be in accordance with the Professional Services Procurement Act (Sections 2254.001 et seq. of Texas Government Code). The Commission shall have the sole authority to enter into any contracts.

Interested parties may receive a copy of a Request For Qualifications (RFQ) that describes the format and scope of services by (1) contacting John James Tintera, Assistant Director of Site Remediation and Special Response, in writing, by mail, e- mail, or facsimile (mail: Railroad Commission of Texas, Oil and Gas Division, 1701 North Congress, P.O. Box 12967, Austin, Texas, 78711; e-mail: john.tintera@rrc.state.tx.us; fax: 512-463-7328); or (2) on the Railroad Commission web page (www.rrc.state.tx.us, under "New & Notable"). All requests for the RFQ must be received by the Commission at the above address by 5:00 p.m., October 15, 1999.

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

TRD-9906137
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: September 22, 1999

♦ ♦ ♦

Research and Oversight Council on Workers' Compensation

Request for Information

A. Background and Purpose

The Research and Oversight Council on Workers' Compensation (ROC), an agency of the State of Texas, issues this Request for Information (RFI) to gather information that may assist the ROC in preparing specifications for comprehensive studies that will examine the cost and quality of health care delivered to injured workers in Texas.

Through House Bill 3697, the 76th Texas Legislature mandated the Texas Workers' Compensation Insurance Fund (Fund)-a major writer of workers' compensation insurance in Texas-to enter into a joint venture with the ROC to conduct examinations of:

1. The quality and cost-effectiveness of the current workers' compensation health care delivery system in Texas, as compared to:

a. Workers' compensation health care delivery systems in other states; and

b. Other health care delivery systems in Texas; and

2. Medical provider treatment patterns and insurance carrier utilization review practices in the Texas workers' compensation system.

The ROC anticipates issuing a Request for Proposal (RFP) for these research projects in November, 1999, and selecting a vendor(s) and awarding a contract(s) in January, 2000. Final completion of the contract(s) and submission of all deliverables to the ROC will be on or before October 15, 2000. ROC staff will provide information and oversight during the contract period.

HB 3697 also mandates an examination of methods to improve worker safety and facilitate return to productive employment following an injury, but this study will be the subject of a separate RFI.

B. Information Desired

The ROC and the Fund are seeking innovative ideas for structuring a research study(ies) to examine the cost and quality of medical care in the Texas workers' compensation system. Respondents are expected to provide input that will help the ROC and the Fund meet the timeframes set forth in Section A in a manner designed to accurately and objectively evaluate the Texas workers' compensation medical benefit delivery system.

The goal of this study(ies) is to:

a. Establish whether differences exist between Texas workers' compensation medical costs and workers' compensation medical costs in other states for similar types of injuries;

b. Establish whether differences exist between Texas workers' compensation medical costs and medical costs in other types of health care delivery systems in Texas for similar types of injuries;

c. Determine what factors affect these medical-cost differences, including the proportion of medical costs attributable to administrative requirements and other non-treatment expenses;

d. Analyze whether increased medical costs for workers' compensation cases are offset by lower income benefit costs, earlier return to work rates, higher patient satisfaction, or other measures of quality of care;

e. Identify the types of medical cost-containment, medical management, and medical dispute resolution mechanisms used in other states

and other health care delivery systems, and whether potential savings and other system improvements could be obtained if one or more of these mechanisms were applied to workers' compensation cases in Texas;

f. Create a method to systematically identify workers' compensation health care provider treatment practices and insurance carrier utilization review practices that differ from statistical norms in Texas; and

g. Develop a process for determining whether the differences in the treatment and review practices identified in (f) result from either inappropriate treatment patterns/review practices or whether the differences are medically justified.

h. Identify mechanisms used in other state workers' compensation systems and other health care delivery systems to regulate health care providers and insurance carrier utilization review agents, and examine the effectiveness of those mechanisms in controlling medical costs and ensuring the delivery of quality medical care. This should include an analysis of whether any of these mechanisms could be applied in Texas to effectively regulate treatment patterns/review practices identified as inappropriate under the process developed in (g).

Respondents are expected to provide information that can be used to develop a Request for Proposal (RFP) on one or more of these study goals (labeled (a)-(h) above). Respondents should describe in 20 pages or less how these study goals could be effectively and efficiently structured. The narrative of the response should include a separate description for each study goal (a maximum of two pages per study goal) that includes the following items:

1. A brief literature review and/or discussion of innovative medical cost and quality-focused studies completed in other states, countries, or systems that should be analyzed.

2. A description of the proposed methodology(ies) including the types of information gathering techniques that may be used (i.e., analysis of administrative data, surveys, focus groups, etc.). For study goals (a), (c), and (d), please include a discussion regarding the criteria that would be used to select the states and the types of injuries that would be included in the analysis along with methods that might be used to hold injury severity constant across state workers' compensation systems.

3. A description of the type, source, and estimated cost of data required for the analysis, including whether the data are currently available to the respondent or must be developed and/or acquired by the respondent. Please include any discussion of data caveats, limitations, or confidentiality provisions that are relevant. The ROC currently has access to Texas workers' compensation medical billing and payment data collected by insurance carriers and reported to the Texas Workers' Compensation Commission (TWCC) (i.e., HCFA 1500, UB 92 forms). The ROC does not have readily available access to medical cost data from other state workers' compensation systems or other health care delivery systems.

4. A description of the types of services and/or assistance the Respondent may require from the ROC in order to complete the study goal.

5. A discussion of any other relevant research or policy considerations that should be taken into account when developing the study goal.

6. A discussion of estimated timeframes needed to complete one or more study goal and whether Respondent could pursue one or more study goal simultaneously.

C. Format

Ten typed copies of the response are requested on 8 1/2 by 11 inch paper with all pages sequentially numbered and either stapled or bound together. A copy of the response should also be provided in an electronic format either on a 3 1/2 inch computer disk or as an e-mail attachment (using Microsoft Word 97 or WordPerfect version 8.0 or lower) to amylee@roc.state.tx.us.

Responses should include the items listed below and be organized in the following order:

I. Table of Contents;

II. Full name and address of Respondent, phone and fax numbers, e-mail address, contact name;

III. A description of the Respondent's qualifications for performing this type of research, including the Respondent's prior experience conducting studies with goals similar to those listed in Section B and expertise in the proposed area of study;

IV. Copies of relevant products and/or reports developed by the Respondent in the topic areas listed in Section B;

V. Narrative describing in 20 pages or less how one or more of the study goals listed in Section B [labeled (a)-(h)] could be structured. The narrative of the response should include a separate description for each study goal (a maximum of two pages per study goal).

D. Information Resources; Deadline; Delivery Location; Agency Contact

For background information on the ROC, see our website: http://www.roc.capnet.state.tx.us

For background information on the Fund, see the Fund's website: http://www.txfund.com

For copies of House Bill 3697, see the Texas Legislature's website: http://www.capitol.state.tx.us

For copies of the Texas Department of Insurance (TDI) Utilization Review Agent (URA) Rules, see the Texas Secretary of State's website located at http://www.state.tx.us. At this website, select "Functions of the Agency," and then select "Texas Administrative Code." At the Texas Administrative Code site, select "Texas Administrative Code Viewer." The URA rules are located at Title 28, Chapter 19, Rules 2001-2021.

For general information on the Texas workers' compensation system, see TWCC's website: http://www.twcc.state.tx.us

Responses should be received by the ROC no later than 5:00 p.m., Central Zone Time, on October 22, 1999. Responses should be marked "Response to Request for Information, HB 3697 Medical Studies" and addressed to:

Amy E. Lee

Policy Research Coordinator

Research and Oversight Council on Workers' Compensation

105 West Riverside Drive, Suite 100

Austin, Texas 78704

Phone: (512) 469-7811

Facsimile: (512) 469-7481

E-mail: amylee@roc.state.tx.us

E. Disclaimer; No Contract Results From This RFI; Oral Presentations

This RFI is issued solely for the purpose of obtaining information that may assist the ROC and the Fund in preparing specifications for a future RFP. This RFI is not a request for offers, purchase, solicitation, commitment to conduct a procurement, or an offer of a contract or potential contract.

Responses are voluntary. Responding to this RFI is not a condition for eligibility to respond to any subsequent RFP that may arise from the RFI. Responses to this RFI will not have any bearing, positive or negative, on the evaluation and vendor selection of any proposals that may result from this RFI.

After review of responses to the RFI, the ROC may, at its sole discretion, request oral presentations from respondents. Oral presentations, if any, have the same purpose as this RFI and will not result in a contract or potential contract.

F. No Compensation or Cost Recovery

All costs or expenses associated with the preparation or presentation of responses to this RFI are the responsibility of the Respondent and no payments or reimbursements for such costs will be made by the ROC or the Fund.

G. Ownership of Responses and Open Records

Responses to this RFI will be the property of the ROC. The ROC, in its sole discretion, may consider or disregard any information submitted in response to this RFI. Responses will not be returned to Respondent.

Responses to this RFI will be public information and available to any requester under the Texas Public Information Act; as a result, respondents should not include any information that Respondent believes to be confidential or proprietary.

TRD-9906148
Amy E. Lee
Policy Research Coordinator
Research and Oversight Council on Workers' Compensation
Filed: September 22, 1999

♦ ♦ ♦

Structural Pest Control board

Correction of Error

The Structural Pest Control Board adopted repeal to 22 TAC §591.22. The rule appeared in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6300).

Due to Texas Register error:

On page 4528, first paragraph, first sentence, should read "The repeal is ..."

♦ ♦ ♦

Texas Department of Transportation

Corrections of Errors

The Texas Department of Transportation proposed amendments to 43 TAC §18.87 and §18.96. The rules appeared in the September 10, 1999, issue of the *Texas Register* (24 TexReg 7203).

Due to Texas Register error, §18.87(b)(3) was published as new language. The paragraph should read as follows:

"(3) It shall be a defense to an action initiated by the department for violation of this section that the facility has attempted, in writing, but been unable to obtain information from the governmental entity where the vehicle is regisered."

♦ ♦ ♦

Corrections of Notices

A Request for Qualification to engage aviation professional services pursuant to Chapter 2254, Subchapter A, of the Government Code was published in the September 17, 1999, issue of the *Texas Register* (24 TexReg 7974). The following information is being published in order to correct an error that was contained in that notice.

The Airport Sponsor for the Fort Stockton-Pecos County Airport is Pecos County.

If you have any questions, please contact Karon Weidemann, Director, Grant Management at the Aviation Division, Texas Department of Transportation, (512) 416-4520 or 1-800-68-PILOT.

TRD-9906154
Joanne Wright
Associate General Counsel
Texas Department of Transportation
Filed: September 22, 1999

♦ ♦ ♦

A Request for Proposal to engage aviation professional services pursuant to Chapter 2254, Subchapter A, of the Government Code was published in the September 17, 1999, issue of the *Texas Register* (24 TexReg 7973). The following information is being published in order to correct an error that was contained in that notice.

The request for proposal submission for the Environmental Assessment for the Ochiltree-Perryton County Airport is canceled.

If you have any questions, please contact Karon Weidemann, Director, Grant Management at the Aviation Division, Texas Department of Transportation, (512) 416-4520 or 1-800-68-PILOT.

TRD-9906155
Joanne Wright
Associate General Counsel
Texas Department of Transportation
Filed: September 22, 1999

♦ ♦ ♦

Texas Water Development Board

Request for Proposals for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (board) requests the submission of water research proposals leading to the possible award of contracts for Fiscal Year 2000. Guidelines for water research proposals, which include an application form and more detailed research topic information, will be supplied by the board.

Description of Research Objectives. All water research applications must address one of the topics on the water research topic priority list. Proposals are requested for the following five priority research topics: 1) Evaluation of Water and Wastewater Facility Needs for Economically Disadvantaged Communities–assess needs of communities that do not have adequate water and wastewater services and who are economically disadvantaged but not in an Economically Distressed Areas Program (EDAP) "affected county," identify the estimated construction costs for these areas, and evaluate the legal and institutional impediments of providing basic water and wastewater

services to these areas; 2) Assessment of Weather Modification as a Water Management Strategy–evaluate the quantity, reliability, and cost of weather modification as a water supply for both agricultural and municipal purposes, utilizing generally accepted statistical and hydrological methodologies; 3) Assess Desirability and Impediments to the "Design-Build-Operate" Model in Texas and Make Suggested Improvements–identify the benefits, disadvantages, and statutory impediments to this model; 4) The Evaluation of Surface Water/Groundwater Interaction in Texas–compile and evaluate existing and relevant hydrologic research of surface water/groundwater interactions in nine major aquifers in Texas, report any quantitative estimates; and develop specific conceptual models to describe surface water/groundwater interactions for the Carrizo-Wilcox and Gulf Coast aquifers in Texas, with recommendations on how these conceptual models could best be represented during the Groundwater Availability Modeling effort for the two aquifers; and 5) Groundwater Recharge in Texas–compile a database describing previous research efforts to quantify recharge to each of the nine major aquifers in Texas using physical, chemical, isotopic, or modeling efforts; and make recommendations for each major aquifer of specific methodologies that may be used during the Groundwater Availability Modeling effort to better define recharge rates.

Description of Funding Consideration. Up to $500,000 has been initially authorized for water research assistance from the board's Research and Planning Fund for this research. Following the receipt and evaluation of all applications, the board may adjust the amount of funding initially authorized for water research. Up to 100% funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state agencies and universities. In the event that acceptable proposals are not submitted, the board retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete water research application form, including the required attachments, must be filed with the board prior to 5:00 PM, December 1, 1999. Proposals must be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Room 448 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas, 78711-3231. Applications will be evaluated according to 31 Texas Administrative Code §355.5 and the proposal rating form included in the board's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by others. All potential applicants must contact the board to obtain these guidelines. Requests for information, the board's rules covering the Research and Planning Fund, detailed evalu ation citeria, more detailed research topic information, and the guidelines may be directed to Ms. Phyllis Thomas at the preceding address, by calling (512) 463-3154, by e-mail to phyllis@twdb.state.tx.us, or by going to the board's web site at www.twdb.state.tx.us under the heading, "What's New".

TRD-9906114
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 21, 1999

♦ ♦ ♦

Texas Workforce Commission

Correction of Error

The Texas Workforce Commission adopted new 40 TAC §§841.43, 841.44, and 841.46. The rules appeared in the August 27, 1999, issue of the *Texas Register* (24 TexReg 6851).

Due to Texas Register error, the effective date is shown as August 11, 1999, but should be August 31, 1999.

♦ ♦ ♦

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Texas Register
Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

❑ **Chapter 285** $25 ❑ update service $25/year *(On-Site Wastewater Treatment)*
❑ **Chapter 290** $25 ❑ update service $25/year *(Water Hygiene)*
❑ **Chapter 330** $50 ❑ update service $25/year *(Municipal Solid Waste)*
❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
❑ **Chapter 335** $30 ❑ update service $25/year *(Industrial Solid Waste/Municipal Hazardous Waste)*

Update service should be in ❑ printed format ❑ 3 1/2" diskette ❑ 5 1/4" diskette

Texas Workers Compensation Commission, Title 28

❑ Update service $25/year

Texas Register Phone Numbers	**(800) 226-7199**
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials, State	(512) 463-6334
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

❒ **Change of Address**
(Please fill out information below)

❒ **Paper Subscription**
❒ One Year $150 ❒ Six Months $100 ❒ First Class Mail $250

❒ **Back Issue ($10 per copy)**

_____ Quantity

Volume _____, Issue #_____.
(Prepayment required for back issues)

NAME _____

ORGANIZATION_____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____
(Number for change of address only)

❒ **Bill Me** ❒ **Payment Enclosed**

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.
Visit our home on the internet at http://www.sos.state.tx.us.

_____
_____
Periodical Postage

PAID

Austin, Texas
and additonal entry offices
_____
_____