
TEXAS REGISTER

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5th Grade

Levi Fry Intermediate

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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.

Opinions

Opinion Number JC-0111. The Honorable Michael J. Guarino, Criminal District Attorney, Galveston County Courthouse, 722 Moody, Suite 300, Galveston, Texas 77550, Re: Whether a certificate of deposit may be offered as a prize at a raffle conducted under the Charitable Raffle Enabling Act (RQ-0026).

Summary. A certificate of deposit may not be offered as a prize at a raffle conducted under the Charitable Raffle Enabling Act, chapter 2002 of the Texas Occupations Code.

Opinion Number JC-0112. The Honorable Michael Wenk, Hays County Criminal District Attorney, 110 East Martin Luther King Boulevard, San Marcos, Texas 78666, Re: Whether article 5.045, Code of Criminal Procedure, applies when a police officer escorts a victim of family violence back to scene of assault, and related questions (RQ-0053).

Summary. Article 5.045 of the Code of Criminal Procedure protects, and was expressly intended to protect, law enforcement officers who accompany victims of domestic violence to their residences for the purpose of collecting personal property after those victims have vacated the premises from civil liability for acts or omissions that arise in connection with such assistance, as well as from civil or criminal liability for any wrongful appropriation of personal property by the victim. Neither a request for assistance to the victim of the sort governed by article 5.045 nor the provision of such assistance to the victim is likely to violate a protective order. An escort of a perpetrator of family violence to the residence shared with the victim, whether or not it violates the terms of a protective order, is not the provision of standby assistance contemplated by article 5.045 of the Code of Criminal Procedure.

Opinion Number JC-0113. The Honorable Barry B. Telford, Chair, Committee on Calendars, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, Re: Whether article III, section 52

of the Texas Constitution precludes a school district from participating in "Texas Safe Sports Week" (RQ-0056).

Summary. Article III, section 52 of the Texas Constitution does not preclude a school district from expending school district funds or other resources on "Texas Safe Sports Week" activities if the school district board of trustees (i) determines that any expenditure in connection with the program serves a necessary school district purpose and (ii) places sufficient controls on such expenditures to ensure that the school district purpose is carried out.

TRD-9906203
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: September 24, 1999



Opinion Number JC-0114. Mr. Jay Kimbrough, Executive Director, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711, Re: Whether a municipality that offers alarm monitoring services for a fee is subject to the licensing requirements of chapter 1702 of the Texas Occupations Code (RQ 0004).

Summary. A city police department is not subject to licensing under chapter 1702 of the Texas Occupations Code. This exemption does not depend on whether the department is engaged in governmental or proprietary activities.

Opinion Number JC-0115. The Honorable Jose R. Rodriguez, County Attorney, El Paso County, County Courthouse, 500 East San Antonio, Room 203, El Paso, Texas 79901, Re: Whether a school district may award back pay to employees who were indicted, suspended, and subsequently acquitted (RQ-0035).

Summary. The El Paso Independent School District appears to have had a policy permitting the award of back pay to an employee who is suspended or terminated from employment and subsequently reinstated. As a result, the District may grant such back pay without contravening article III, sections 52 and 53 of the Texas Constitution. The District is not, however, required to award back pay, and may decline to do so for any valid reason. Section 45.105 of the Texas Education Code permits the District to award back pay.

Opinion Number JC-0116. Ms. Alice L. Chapman, Uvalde County Auditor, Courthouse Plaza #4, 100 North Getty Street, Uvalde, Texas 78801, Re: Whether a commissioners court must vote unanimously to close a public road that is not a through street (RQ-0059).

Summary. The closing of a public road, whether a cul-de-sac or a through street, requires a unanimous vote of the commissioners court. Attorney General Opinion H-166 (1973) is overruled.

Opinion Number JC-0117. Ms. Katherine A. Thomas, M.N., R.N., Executive Director, Board of Nurse Examiners for the State of Texas, P.O. Box 430, Austin, Texas 78767-0430, Re: Whether the Board of Nurse Examiners may regulate the selection and administration of anesthesia and the care of an anesthetized patient by a certified registered nurse anesthetist, and related question (RQ-1143).

Summary. The Board of Nurse Examiners may regulate the selection and administration of anesthesia and the maintenance of anesthetized patients by certified registered nurse anesthetists where anesthesia-related tasks have been delegated by a physician under

section 157.058 of the Occupations Code. Section 157.058 does not require that a physician directly supervise the CRNA's selection and administration of the anesthesia. Rather, the extent of physician involvement is left to the physician's professional judgment in light of other federal and state laws, facility policies, medical staff bylaws, and ethical standards.

Opinion Number JC-0118. The Honorable Rene O. Oliveira, Chair, House Committee on Ways & Means, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, Re: Whether it is permissible to use sales and use taxes levied under section 4B of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. art. 5190.6 (Vernon 1987 & Supp. 1999), for other than project costs (RQ-1047).

Summary. Sales and use taxes levied under section 4B of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. art. 5190.6 (Vernon 1987 & Supp. 1999), may only be used for project costs; they may not be used for "promotional" costs unrelated to projects.

TRD-9906363
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: September 29, 1999

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EMERGENCY RULES

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

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

TITLE 13. CULTURAL RESOURCES

Part 3. TEXAS COMMISSION ON THE ARTS

Chapter 35. TEXAS ARTS PLAN

13 TAC §35.1

(Editor's note: The text of the following repealed section adopted on an emergency basis will not be published. The section may be examined in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on the Arts adopts on an emergency basis the repeal of §35.1, concerning the Texas Arts Plan which is adopted by reference. This section currently outlines the activities of the Commission. This section is being repealed in order that the Texas Commission on the Arts can adopt by reference new manuals regarding A Guide to Operations and A Guide to Programs and Services. This section is being proposed for repeal elsewhere in this issue of the *Texas Register*.

The emergency action enables the Texas Commission on the Arts to get the word out to the arts field about the Commission's programs in a timely manner in anticipation of upcoming annual grants deadline.

The repeal is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.1. *Texas Arts Plan.*

Filed with the Office of the Secretary of State, on, September 27, 1999.

TRD-9906296

John Paul Batiste

Executive Director

Texas Commission on the Arts

Effective date: September 27, 1999

Expiration date: January 25, 2000

For further information, please call: (512) 463-5535



Chapter 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1

The Texas Commission on the Arts adopts on an emergency basis new §35.1, concerning A Guide to Operations which is adopted by reference. This section is replacing the repealed Texas Arts Plan. This section is being proposed new elsewhere in this issue of the *Texas Register*.

The emergency action enables the Texas Commission on the Arts to get the word out to the arts field about the Commission's programs in a timely manner in anticipation of upcoming annual grants deadline.

The new section is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.1. *A Guide to Operations.*

The commission adopts by reference A Guide to Operations effective September 1999. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

Filed with the Office of the Secretary of State, on, September 27, 1999.

TRD-9906298

John Paul Batiste

Executive Director

Texas Commission on the Arts

Effective date: September 27, 1999

Expiration date: January 25, 2000

For further information, please call: (512) 463-5535



13 TAC §35.2

The Texas Commission on the Arts adopts on an emergency basis new §35.2, concerning A Guide to Programs and Services which is adopted by reference. This section is replacing the repealed Texas Arts Plan. This section is being proposed new elsewhere in this issue of the *Texas Register*.

The emergency action enables the Texas Commission on the Arts to get the word out to the arts field about the Commission's programs in a timely manner in anticipation of upcoming annual grants deadline.

The new section is adopted on an emergency basis under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

§35.2. A Guide to Programs and Services.

The commission adopts by reference A Guide to Programs and Services effective September 1999. This document is published by and available from the Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711.

Filed with the Office of the Secretary of State, on, September 27, 1999.

TRD-9906300

John Paul Batiste
Executive Director
Texas Commission on the Arts
Effective date: September 27, 1999
Expiration date: January 25, 2000
For further information, please call: (512) 463-5535



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 4. OFFICE OF THE SECRETARY OF STATE

Chapter 81. ELECTIONS

Subchapter F. POLITICAL PARTIES

1 TAC §§81.101-81.136

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

The Office of the Secretary of State proposes the repeal of §§81.101-81.136 concerning elections. The repeal allows for new funding rules to be proposed for the 2000 Primary Elections. These rules deal with expenses relating to the proper conduct of the primary elections by party officials and the procedure for requesting reimbursement by the parties for such expenses.

Jeffrey Eubank, Assistant Secretary of State, 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. Eubank has determined also 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 the proper conduct of the 2000 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and the county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Penn, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The repeals are proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of the Secre-

tary 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, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by this proposed repeal.

§81.101. *Bank Account for Primary Fund Deposits and Expenditure.*

§81.102. *Signature On Checks; Authorization of Primary Fund Expenditures.*

§81.103. *Payee of Checks Restricted.*

§81.104. *Deposit of Currency.*

§81.105. *Documentation of Expenses/Record Keeping.*

§81.106. *Transfer of Records to New County Chair.*

§81.107. *Political Party Costs Are Not Payable with Primary Funds and Definition of Primary Funds.*

§81.108. *Returning Surplus Funds.*

§81.109. *Employee Fidelity Bond May Be Purchased With Primary Funds.*

§81.110. *Interest on Loan To Open Primary Fund Account Is Not Payable.*

§81.111. *List of Candidates and Filing Fees.*

§81.112. *County Chair's Compensation.*

§81.113. *Application of Rules.*

§81.114. *Misuse of State Funds.*

§81.115. *Competitive Quotations for Services or Products Are Required.*

§81.116. *Conflicts of Interest Detailed.*

§81.117. *Contracts for Services Must Be With Contractors Regularly in the Contracted Business.*

- §81.118. *Estimating Voter Turnout.*
- §81.119. *Number of Election Workers per Physical Polling Location.*
- §81.120. *Flex Scheduling of Precinct Workers.*
- §81.121. *Compensation for Election Day Workers.*
- §81.122. *Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges.*
- §81.123. *Number of Paper or Electronic Voting System Ballots per Voting Precinct.*
- §81.124. *Number of Voting Machines, Devices and/or Precinct Ballot Counters per Voting Precinct.*
- §81.125. *Training Reimbursement To Attend the 1996 County Chair Election Law Seminar and Other Personal Expenses.*
- §81.126. *Legal Expenses.*
- §81.127. *Office Supplies and Equipment.*
- §81.128. *Telephone and Postage Charges.*
- §81.129. *Office Rent.*
- §81.130. *Administrative Personnel Limited.*
- §81.131. *Personnel Payroll Taxes and Benefits.*
- §81.132. *Contracting With The County Election Officer (County Clerk, Elections Administrator, or Tax Assessor-Collector).*
- §81.133. *Payment for Use of County Owned Equipment.*
- §81.134. *The Cost of Conducting Early Voting Is To Be Paid By The County.*
- §81.135. *Payment From Primary Funds To The Voter Registrar for Preprinted Combination Form of Registered Voters Limited.*
- §81.136. *No Charge for Use of A Public Building As Polling Place; Political Convention.*

This 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 27, 1999.

TRD-9906310

Jeffrey Eubank

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-5763



Subchapter F. PRIMARY ELECTIONS

1 TAC §§81.101-81.135

The Office of the Secretary of State proposes new §§81.101-81.135 concerning primary elections. The new sections concern the financing of the 2000 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of the primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses.

Jeffrey Eubank, Assistant Secretary of State, 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. Eubank has determined also that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2000 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Penn, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The new sections are proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of 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, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 173, Subchapter A, §173.006 is affected by this proposed amendment.

§81.101. Application of Rules.

(a) This subchapter applies to the use and management of all primary funds.

(b) Approval by the Secretary of State of a Primary Finance Cost Estimate does not relieve the chair, or any employee of the primary fund, of their responsibility to comply with administrative rules issued by the Secretary of State, or with any statute governing the use of primary funds.

§81.102. Primary Funds Defined.

(a) Pursuant to §173.031 of the Texas Election Code, primary funds consist of:

- (1) all filing fees;
- (2) contributions to the fund;
- (3) state appropriations; and
- (4) the income earned by the fund.

(b) Any refund of money expended from a primary fund is considered part of the primary fund.

§81.103. Bank Account for Primary-Fund Deposits and Expenditures.

(a) The county chair shall establish and maintain a bank account for the sole purpose of depositing and expending primary funds. (Any interest earned in such an account becomes part of the primary fund.)

(b) The county chair, or any employee of the primary fund, shall not commingle primary funds with any other fund or account.

(c) Each check issued from a primary-funds account must include the following statement on its face: "VOID AFTER 60 DAYS."

(d) The county chair shall complete bank reconciliations on a monthly basis. Bank reconciliations are considered part of the primary-fund records.

§81.104. Signature on Checks; Authorization of Primary-Fund Expenditures.

(a) Except as provided by this section, the county chair, or an authorized agent of the county chair, shall sign all checks drafted on the primary-fund account.

(b) The county chair must authorize all primary-fund expenditures.

(c) The county chair must sign all of the following drawn on a primary-fund account:

- (1) checks issued for an amount of \$1,000 or greater;
- (2) payroll checks to administrative personnel; and
- (3) checks to sole-source vendors.

(d) The county chair or an authorized agent shall not sign a check drawn on a primary-fund account with a rubber stamp or other facsimile of the signature.

§81.105. Payee of Checks from Primary-Fund Account Restricted.

(a) Except as provided by this section, an individual, who is authorized to draft primary-fund checks, shall make checks payable to an entity or a person. An individual, who is authorized to draft primary-fund checks, may draft a check payable to "cash" or "bearer" only to establish a petty-cash fund.

(b) An individual authorized to draft primary-fund checks shall not make checks payable to the county party as contributions or to election judges for reimbursement for payments to election clerks.

§81.106. Deposits.

The county chair, or an authorized agent of the county chair, shall:

- (1) deposit all filing fees, contributions, and miscellaneous receipts into the primary fund; and
- (2) maintain an itemized list detailing the source of all funds deposited into the primary fund including, but not limited to, all candidate filings.

§81.107. Primary-Fund Records.

(a) The county chair shall preserve all records relating to primary-election expenses until the later of:

- (1) June 30th of the year following the primary elections;
- or
- (2) the conclusion of any relevant litigation or official investigation.

(b) On request of the Secretary of State, the county chair shall promptly transmit copies of all bills, invoices, contracts, petty-cash receipts, or any other related materials documenting primary-fund expenditures.

(c) Unless otherwise provided by the Secretary of State, not later than July 1 of the year in which the primary elections occur, the county chair shall:

- (1) file a completed primary-fund-account reconciliation; and
- (2) return all unexpended and uncommitted primary funds.

§81.108. Transfer of Records to New County Chair.

(a) The county chair shall transfer in an orderly manner to his or her successor or the appropriate county committee all primary-election records required by law to be maintained.

(b) If a vacancy occurs in the office of county chair, the county executive committee shall appoint an individual to serve as the custodian of primary-election records until a new county chair is appointed or elected.

§81.109. Political-Party Costs not Payable with Primary Funds.

(a) Pursuant to §173.001 of the Texas Election Code, only expenses necessary for and directly related to the conduct of primary elections are payable from primary funds.

(b) Political expenses and expenses for any activity forbidden by statute or rule are not primary costs subject to primary fund reimbursement. Examples of non-payable expenses include, but are not limited to, the following:

- (1) expenses incurred in connection with a convention of a political party;
- (2) any food or drink items;
- (3) stationery not related to the conduct of the primary election; or
- (4) costs associated with voter-registration drives or get-out-the-vote campaigns.

§81.110. Fidelity Bond Purchase.

(a) An individual with responsibilities that include the receipt or expenditure of primary funds may purchase a fidelity bond with money from the primary fund.

(b) An individual purchasing a bond under this section shall base the amount of the bond on the anticipated total amount of primary funds that the individual will collect and disburse from December 1 before the primary elections to the last day of the month in which the final primary election occurs. The amount used for the purpose of determining the amount of the bond shall not exceed \$50,000, unless a higher amount is approved by the Secretary of State.

§81.111. Interest on Start Up Loan to Open Primary Fund is not Reimbursable.

(a) A party chair may not use primary funds, which are subsequently approved by the Secretary of State, to pay interest on loans used to defray operating expenses incurred prior to the receipt of such funds.

(b) A party chair may receive an initial distribution of primary funds from the Secretary of State by filing a 2000 General Primary Election Cost Estimate on or before November 3, 1999.

§81.112. List of Candidates and Filing Fees.

Not later than January 13, 2000, the county chair shall file with the Secretary of State a complete list of candidates, including the name of the candidate, the office sought, and the amount of the filing fee paid (or a notation that the candidate filed a petition in lieu of a filing fee).

§81.113. Misuse of State Funds.

The Secretary of State shall refer any misuse or misappropriation of primary funds to the appropriate prosecuting authority for the enforcement of all civil and/or criminal penalties.

§81.114. Conflicts of Interest.

(a) No disbursements may be made from the primary fund to the county chair personally, or to an entity or business in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest, except for payments for:

- (1) election day workers;

- (2) incidental administrative costs; or
- (3) the county chair's compensation.

(b) For the purposes of this section, "family" is defined as individuals related within the third degree of consanguinity (blood) or the second degree of affinity (marriage).

Figure: 1 TAC §81.114(b)

§81.115. Requirement for Competitive Bids for Services or Products.

(a) This section does not apply to expenditures of \$2,000 or less.

(b) Unless prior approval from the Secretary of State is obtained, the county chair must purchase all services and products, including election kits and assembly kits, using competitive bids from no less than three sources.

(c) The county chair must document or otherwise provide an explanation regarding the lack of available bids from vendors. This documentation or explanation must be submitted with the 2000 General Primary Election Cost Estimate.

(d) If the county chair contracts with the county election official who has a term contract for election supplies or services, then competitive bids are not required for term-contract supplies or services if the county entered the term contract pursuant to regular county purchasing rules.

§81.116. Contracting for Services.

(a) Contractors submitting bids pursuant to §81.115 must provide:

- (1) no fewer than three references (including the references' names and telephone numbers); and
- (2) verifiable proof of at least 18-months experience in providing the service, which is the subject of the bid, to other customers in the contractor's normal course of business.

(b) The county chair must submit all contracts for services for amounts of \$2,000 or more to the Secretary of State for approval.

(c) The county chair shall not make payment on any contract subject to subsection (b) of this section prior to receiving written approval of the contract by the Secretary of State.

(d) The county chair shall contract for services at a rate or for a fee that is reasonable for the services rendered. The rate or fee shall be in accordance with the prevailing rate or fee structure used in the area for the same or similar services.

(e) The county chair and the contractor shall sign the contract.

(f) The county chair is responsible for obtaining the Employer Identification Number from each contracting entity and for issuing IRS Form 1099, if required.

§81.117. Estimating Voter Turnout.

(a) The county chair shall use the formula set out in this subsection, with necessary modifications as determined by the chair, to determine the estimated voter turnout for the 2000 primary elections. This general formula must be adjusted if the local political situation indicates a higher voter turnout than that derived by the formula.

Figure: 1 TAC §81.117(a)

(b) After estimating the voter turnout for each precinct, the county chair shall use the guidelines set forth in §§81.118, 81.125, and 81.126 (relating to the Number of Election Workers per Polling Place, Number of Paper or Electronic Voting System Ballots per Voting Precinct, and Number of Voting Machines, Punch-Card Voting

Devices, or Precinct Ballot Counters per Voting Precinct) to determine the necessary personnel, supplies, and equipment for each precinct (i.e. ballots, election judges and clerks, voting devices, or machines).

(c) After estimating the need for personnel, supplies, and equipment for each precinct, the county chair shall combine all precinct data to determine the total countywide estimate.

(d) The county chair may use the estimate calculated under subsection (c) of this section to determine the cost of the election.

§81.118. Number of Election Workers per Polling Place.

(a) The county chair shall use the formula set out in this subsection to determine the number of election workers allowable for each polling place.

Figure: 1 TAC §81.118(a)

(b) Each polling place must have, at the minimum, a presiding judge, an alternate judge (clerk), and a clerk.

§81.119. Flex Scheduling of Precinct Workers.

(a) The county chair may hire more than two clerks if the formula provided under §81.118 indicates that more than two clerks are necessary.

(b) If the formula in §81.118 indicates that additional election workers are necessary, the presiding judge may hire individuals to work in shifts. The county chair may assign clerks to work in shifts that end before the examination or counting of the ballots begins.

§81.120. County Chair's Compensation.

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections.

(b) The Secretary of State shall not authorize payment under this section until the county party's 2000 Final Primary Election Cost report has been approved. The Secretary of State shall notify the county chair of this approval by letter.

(c) After all other expenses have been paid, the county chair shall be paid with a check drawn on the county's primary-fund account.

(d) The Secretary of State may deny compensation to county chairs who file delinquent final-cost reports.

§81.121. Compensation for Election-Day Workers.

(a) Except as provided by subsection (b) of this section, the hourly rate payable to polling-place judges, clerks, early-voting-ballot board members, or persons working at the central counting station for the 2000 general-primary and primary-runoff elections may not exceed \$5.15.

(b) The county chair may pay technical support personnel at the central counting station (appointed under Texas Election Code §§127.002, 127.003, or 127.004) an amount greater than \$5.15 per hour.

(c) Except as provided by this section, a judge or clerk may be paid only for the actual time spent on election duties performed in the polling place or central counting station.

(d) The county chair may allow one election worker from each polling place up to one hour before election day to annotate the precinct list of registered voters.

(e) The county chair is authorized to pay members of the early-voting-ballot board in the following manner:

- (1) Members working 10 hours or less may be paid an amount up to 10 full hours, regardless of the actual number of hours worked; or

(2) Members working more than 10 hours will be paid for the actual amount of time worked.

(f) Except as provided by §81.122, the county chair may not pay an election-day worker for travel time, delivery of supplies, or attendance at the precinct convention.

§81.122. Compensation for Delivering Election Records and Supplies and Attending Election Schools for Judges.

(a) The county chair may not authorize hourly reimbursement to an election worker for attending election training.

(b) Training materials may be ordered free of charge from the Secretary of State.

(c) The county chair may not be reimbursed for materials published and provided by the Secretary of State.

(d) Compensation for the election judge or clerk who delivers and picks up the election records, equipment, and unused supplies may not exceed \$15 per polling-place location.

(e) The election judge or the judge's designee may receive a delivery fee not to exceed \$25, if, in addition to carrying out delivery duties, that person has attended a training program as provided by §32.113 of the Texas Election Code. (The election school referenced in this subsection must be more than one hour in length, and the county chair shall maintain a signed roster of all individuals who attended.)

§81.123. Personnel Payroll Taxes and Benefits.

(a) The county chair shall follow all applicable federal and state laws with respect to payroll taxes. (The County Chairs Bookkeeping Guide provides a table that sets out payroll taxes as they apply to election day workers.)

(b) The county chair may not use primary funds to pay penalties or interest resulting from a failure to file required tax returns or from failure to pay the employer's portion of employment taxes.

(c) The county chair shall maintain copies of all federal and state payroll tax returns and forms, and keep such copies with the county primary records. (The county chair shall also transmit copies of these records to the Secretary of State at the Secretary's request.)

(d) The county chair may not pay for group medical, dental, life insurance, or retirement benefits with primary funds.

§81.124. Administrative Personnel Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections. (Please note that for the 1998 Primary and Runoff Elections, 356 of the 508 county chairs reported \$0 in administrative personnel costs.)

(c) Pursuant to §81.114 of this title (relating to Conflicts of Interest), no member of the county chair's family may be paid an administrative salary from primary funds.

(d) The county chair shall obtain prior written approval from the Secretary of State before administrative personnel are hired under this section. (The Secretary of State encourages the use of part-time administrative personnel.)

(e) If administrative personnel are required for the conduct of the primary election, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than December 1, 1999, and ending no later than the last day of the month in which the last primary election is held.

(f) The county chair shall submit to the Secretary of State a list of all necessary personnel to be paid from the primary fund. This list must indicate the name and title of the employee, job duties, hours to be worked, period of employment, monthly or hourly rate of pay, and the estimated or actual gross pay for the period. (The county chair must also attach this information to each primary cost estimate and to the 2000 Final Primary Election Cost Report.)

(g) The county chair shall use the formula set out in this subsection to calculate the maximum total gross salaries that may be paid to administrative personnel. Salaries must be reasonable for the hours worked and services rendered and must reflect the salaries paid for similar work or services in the same area. In no circumstance may an employee who is paid from the primary fund be compensated more than \$2,500 for any one-month's work. If an individual is paid from the primary fund and that individual is also leasing space, furniture, or equipment to the party for the primary-election, then the lease amounts must be added to that person's salary to determine whether the allowable administrative-salary limit has been reached. Figure: 1 TAC §81.124(g)

(h) If the county chair contracts with third parties or the county-elections officer for election services, the overall administrative personnel costs must be reduced to reflect the actual amount of work performed by the primary fund staff. (Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.)

(i) The Secretary of State may disallow full payment for administrative personnel if it is determined that the contracting county-elections officer substantially performed the conduct of the election.

§81.125. Number of Paper or Electronic-Voting-System Ballots per Voting Precinct.

(a) The county chair shall determine the minimum number of ballots to be furnished to each polling place based on the estimated voter turnout formula established pursuant to §81.117. The county chair shall not distribute to a polling place fewer ballots than the amount indicated by the formula provided by §81.117.

(b) If the chair determines that more ballots than the minimum are necessary, he or she may order a maximum number of ballots up to an amount that is equal to the number of registered voters in the precinct.

(c) In no event should a polling-place ballot supply be limited so as to impede the voting process or jeopardize voting rights.

§81.126. Number of Voting Machines, Punch-Card Voting Devices, or Precinct Ballot Counters per Voting Precinct.

(a) The county chair shall use the table set out in this subsection to determine the number of voting machines, precinct ballot counters, and punch-card voting devices allowable for each precinct. Figure: 1 TAC §81.126(a)

(b) In counties where voting machines are used, the county chair should make a special assessment of whether the number of voting machines calculated according to the formula in §81.126(a) is adequate. Based on this determination, the chair should adjust the cost estimate and procurement of voting machines.

(c) If a county chair determines that the number of voting machines, precinct ballot counters or punch-card voting devices authorized under the formula is inadequate, he or she must obtain permission from the Secretary of State to obtain additional machines, counters, or devices.

§81.127. Training Reimbursement to Attend County Chairs Election Law Seminar.

(a) Except as provided by this section, the Secretary of State shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair's designee to attend the Secretary of State's Election Law Seminar for County Chairs. (The Secretary of State shall provide travel reimbursement forms at the seminar.)

(b) The Secretary of State shall reimburse the county chair or the county chair's designee for:

- (1) mileage (if driving personal vehicle);
- (2) airfare (coach only);
- (3) airport transfers;
- (4) airport parking;
- (5) lodging; and

(6) any other reasonable expenses related to an individual's attendance at the Election Law Seminar for County Chairs.

(c) The Secretary of State shall use the Official State Mileage Guide to determine distances traveled to attend the Election Law Seminar for County Chairs. The Secretary of State shall reimburse mileage claims based on \$.28 per mile.

(d) The Secretary of State shall reimburse actual lodging expenses in an amount not to exceed \$70 per day, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the Secretary of State shall not make reimbursements for gratuities or tips.

(f) The county chair or the chair's designee must submit actual receipts to the Secretary of State in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The Secretary of State shall make all travel reimbursement warrants payable to the county chair.

§81.128. Office Equipment and Supplies.

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning December 1, 1999, and ending not later than the last day of the month in which the last primary election is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair's family has a financial interest. (See definition of "family" at §81.114(b)).

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients.

(e) The purchase of office supplies necessary for the administration of the primary election is payable from the primary fund. (This includes the purchase of two paperback copies of the Texas Election Code.)

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election. (Examples of incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over \$500.

(h) The county chair may not pay notary public expenses from the primary fund.

§81.129. Telephone and Postage Charges.

(a) The Secretary of State shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than December 1, 1999 and ending no later than the last day of the month in which the last primary election is held.

(b) In counties with fewer than 150 primary election day polling places, the county party may be reimbursed for the lease of no more than two telephone lines.

(c) In counties with 150 or more primary election day polling places, the county party may be reimbursed for the lease of no more than four telephone lines.

§81.130. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections. (Please note that for the 1998 Primary and Runoff Elections, 411 of the 508 county chairs reported \$0 in office rental costs.)

(b) The Secretary of State shall reimburse necessary office-space-rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than December 1, 1999, and ending not later than the last day of the month in which the last primary election is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly-rented commercial building.

(d) Office rent shall not exceed the fair market rate for office space currently-rented in the same area.

(e) Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

(f) The county party may not rent or lease office space in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest. (See definition of "family" at §81.114(b)).

(g) The county chair shall transmit a copy of the lease agreement to the Secretary of State, along with a copy of the 2000 Primary Election Cost Estimate.

(h) The county chair shall transmit to the Secretary of State, with the next primary election cost estimate or report, any change in a lease agreement. The county chair shall also provide an explanation regarding any change in the lease.

§81.131. Payment for Use of County-Owned Equipment.

(a) Section 123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates are \$16 per lever-voting machine, \$5 per punch-card voting device, and \$5 for each unit of tabulating equipment.)

(b) In addition to subsection (a) of this section, the county primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county shall be reimbursed for actual expenses if the county's computer system is used as the central-counting-station

ballot accumulator. (The county shall calculate the cost to be reimbursed by using the same cost-accounting techniques used by the county in charging county departments for use of its data-processing services. If the county does not have such a formula, then the reimbursement shall be calculated based on \$1 per 100 ballots tabulated.)

(d) The county chair shall submit all calculations for amounts charged for the use of county-owned equipment to the Secretary of State for review with the 2000 Final Cost Report.

(e) The county chair shall not use primary funds to pay expenses related to the use of noncounty-owned equipment, including ballot boxes and voting booths, without written permission from the Secretary of State.

§81.132. Contracting with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor-Collector).

(a) The Model Election Services Contract (the "Model Contract") prescribed by the Secretary of State is adopted by reference. Copies of the Model Contract may be obtained from the Secretary of State.

(b) The county chair shall use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The county chair shall submit to the Secretary of State for approval any change to the Model Contract or any alternate contract that the chair desires to use. A contract submitted under this subsection may not be executed prior to the chair receiving written approval of the contract from the Secretary of State.

(d) Prior to the time that the chair submits final payment, the county elections officer must submit an accounting of the actual costs incurred in the performance of the election-services contract.

(e) Prior to the final payment of 25% of primary funds, the county chair shall provide to the Secretary of State, along with the Final Cost Report, a detailed billing of all actual costs incurred in the performance of the election-services contract.

(f) The Secretary of State may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election-services contract, or these administrative rules.

(g) A contract may not allow for reimbursement for training of election workers or providing materials published by the Secretary of State.

(h) Salaries of personnel regularly-employed by the county may not be paid from or reimbursed to the county from the primary fund.

(i) A county-elections officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

(j) Costs associated with an election-services contract are not counted toward the administrative salary limits established under §81.124 (Administrative Personnel Limited) of this title.

§81.133. Cost of Early Voting to Be Paid by the County.

(a) Pursuant to §173.003 of the Texas Election Code, the only expense to be paid from primary funds for early voting is ballot costs.

(b) The county shall pay for voting-by-mail kits and their postage, early-voting workers, and all other costs incurred that are related to early voting.

(c) The county chair shall not include expenses related to early voting in a primary-election-services joint resolution or a primary cost report. (Note: Expenses related to the early-voting-ballot board are payable from the primary fund.)

§81.134. No Charge for Use of a Public Building as Polling Place; Political Conventions.

(a) Pursuant to §43.033 of the Texas Election Code, no charge may be made for the use of a public building as a polling place if that building is normally open for business on election day.

(b) A central counting station is subject to subsection (a) of this section.

(c) Primary funds may not be used to pay any charge for the use of a building for a state or county political convention.

§81.135. Legal Expenses.

(a) The county chair shall contact the Secretary of State's Elections Division for legal advice concerning routine election law questions. (Attorneys with the Elections Division may be reached toll-free by calling 1-800-252-VOTE(8683). There is no charge for this service.)

(b) The Secretary of State shall not provide primary-fund reimbursement for legal expenses resulting from the negligent or wrongful acts of the county chair, a member of the county executive committee, the county executive committee, or a staff member performing a statutory duty.

(c) The Secretary of State shall only pay legal expenses related to litigation concerning the conduct of the primary election.

(d) The county chair shall contact the Secretary of State before entering into a contract for legal services in order to obtain a determination from the Secretary as to whether the legal services are payable from the primary fund.

(e) The Secretary of State shall not reimburse legal expenses if the county chair fails to notify the Secretary of State of litigation within three business days following the receipt of service of process.

(f) Not later than 14 days after the county chair retains an attorney, the county chair shall provide to the Secretary of State written information concerning the background of the case and an estimate of the cost to defend the case.

(g) The county chair shall provide to the Secretary of State copies of all invoices related to legal expenses. The Secretary of State shall review all invoices for legal expenses and make a determination as to their reasonableness based on the novelty and complexity of the legal issues involved. The Secretary of State shall base payment of legal expenses upon the pay scale currently reflected in the State Bar of Texas Attorney Compensation and Billing Survey.

(h) The county chair shall file a final invoice for legal expenses no later than July 1, 2000, unless the chair has requested and received a written authorization from the Secretary of State to extend the deadline.

(i) All legal billings submitted to the Secretary of State for reimbursement are subject to the Public Information Act (Chapter 552, Texas Government Code).

This 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 27, 1999.

TRD-9906311

Jeffrey Eubank

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-5763



Subchapter G. JOINT PRIMARY

1 TAC §§81.145-81.157

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

The Office of the Secretary of State proposes the repeal of §§81.145-81.157 concerning elections. The repeal allows for new funding rules to be proposed for the 2000 Joint Primary Elections. These rules deal with expenses relating to the proper conduct of the joint primary elections by party officials and the procedure for requesting reimbursement by the parties for such expenses.

Jeffrey Eubank, Assistant Secretary of State, 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. Eubank has determined also 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 the proper conduct of the 2000 joint primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and the county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Penn, Program Administrator for Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The repealing of these rules is proposed under the Texas Election Code, §31.003 and §173.006, which provides the Office of 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, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 172, Subchapter E, §172.026, and Chapter 173, Subchapter A, §173.011, are affected by this proposed repeal.

§81.145. *Recommended Deadlines To Comply With Statutory Requirements for the Conduct of Joint Primaries.*

§81.146. *Applicability of Other Rules.*

§81.147. *County Clerk or Elections Administrator To Conduct Joint Primary.*

§81.148. *Appointment of Joint Primary Election Co-judges, Alternate Co-judges, Clerks, Early Voting Ballot Board Members and Central Counting Station Teams.*

§81.149. *Number of Election Workers per Joint Polling Location.*

§81.150. *Qualifications of Co-Judges and Alternate Co-Judges.*

§81.151. *Authority of Co-Judges for Joint Primary Polling Locations, Joint Primary Central Counting Station, and Joint Primary Early Voting Ballot Board.*

§81.152. *Estimating Voter Turnout for Joint Primaries.*

§81.153. *Delivery of Election Records and Supplies.*

§81.154. *Ballots for Joint Primary Elections.*

§81.155. *Returning Surplus Funds.*

§81.156. *Liability of County Clerk or Elections Administrator.*

§81.157. *Joint Primary Contract with the County Election Officer (County Clerk, County Elections Administrator, or Tax Assessor Collector).*

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

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Jeffrey Eubank

Assistant Secretary of State

Office of the Secretary of State

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For further information, please call: (512) 463-5763



Subchapter G. JOINT PRIMARY ELECTIONS

1 TAC §§81.145-81.157

The Office of the Secretary of State proposes new §§81.145-81.157 concerning joint primary elections. These sections concern the conducting and financing of the 2000 joint primary elections with state funds, including a timeline for entering a joint primary election agreement between county party officials and the county clerk or elections administrator, the applicability of the regular primary finance rules, and the duties of party officials, the county clerk or election administrator, and election workers in a joint primary election.

Jeffrey Eubank, Assistant Secretary of State, has determined that for the first five-year period the sections are in effect there will be an indeterminate fiscal savings for state or local government as a result of enforcing or administering the sections.

Mr. Eubank has determined also that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the joint conduct of the 2000 primary elections by party officials for those counties entering a joint primary agreement, with the aid of state money appropriated for that purpose. There will be no effect on small businesses. There will be no anticipated economic cost to the state and county chairs of the Democratic and Republican parties.

Comments on the proposal may be submitted to the Office of the Secretary of State, Cathie E. Penn, Program Administrator for

Elections Funds Management, P.O. Box 12060, Austin, Texas, 78711.

The new sections are proposed under the Texas Election Code, §31.003, §172.126, and §173.011, which provides the Office of 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, and, in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code that reduce the cost of the primary elections or facilitate the holding of joint primary elections within the amount appropriated by the legislature for that purpose.

The Texas Election Code, Chapter 172, Subchapter E, §172.126, and Chapter 173, Subchapter A, §173.011, are affected by these proposed new sections.

§81.145. Recommended Deadlines to Comply with Statutory Requirements for the Conduct of Joint Primaries.

(a) November 17, 1999: Recommended date by which county chairs who wish to conduct a joint primary should meet with the county clerk/elections administrator to determine whether to enter into a joint resolution to conduct the primary, and to determine the estimated number of election judges and clerks, members of the early-voting-ballot-board, and central counting station personnel to be appointed from the parties. Additionally, the parties and the county clerk/elections administrator should determine which voting system(s), ballot formats, and precinct consolidation or combination plans (if applicable) will be used. (It is permissible to create separate consolidation or combination plans for each party, provided that every consolidated or combined precinct has a co-judge representing each party.)

(b) December 1, 1999: Recommended date by which the commissioners court should vote on approval of joint resolution. The joint resolution must include the required number of joint-precinct-polling places and the number of co-judges and clerks for each joint-precinct location. The commissioners court resolution approving the joint primary must also be signed by the county clerk or elections administrator, and the county chair of both parties entering into the agreement.

(c) December 13, 1999 (2nd Monday in December): Statutory date for each party chair to deliver lists of names of election judges and clerks, early-voting-ballot-board members, and central counting station personnel (if applicable) to the county clerk/elections administrator.

(d) January 31, 2000: Deadline to file final cost estimate and joint resolution. Recommended date to make modifications to the joint resolution regarding the number of joint polling places and the number of polling-place personnel. Any modifications must be signed by the county clerk / elections administrator and both party chairs.

§81.146. Applicability of Other Rules.

Except for areas of conflict, the general-primary-finance rules of Subchapter F of this chapter apply to the conduct of joint primaries.

§81.147. County Clerk/Elections Administrator to Conduct Joint Primary.

(a) Pursuant to §172.126(a) of the Texas Election Code, the county clerk/elections administrator shall supervise the overall conduct of joint primary elections.

(b) The county clerk/elections administrator is responsible for:

(1) appointing election judges and clerks;

(2) determining the ballot format and type of voting system for each precinct; and

(3) procuring election equipment and supplies.

§81.148. Appointment of Various Election Officials.

(a) Upon receipt of the lists of names of election judges and clerk from each county chair (list must be submitted by December 13, 1999), the county clerk/elections administrator shall select co-judges, co-alternate judges, and appoint clerks (if applicable) for each precinct. (These selections are made in accordance with §32.002(c) of the Texas Election Code and §81.152 of this title (relating to Estimating Voter Turnout for Joint Primary.))

(b) The county clerk/elections administrator shall determine the total number of election workers required and select from the party chairs' list the individuals to be appointed as co-judges, members of the early-voting-ballot board, and central counting station personnel. The county clerk/elections administrator shall ensure party balance in these selections.

(c) If the total number of individuals serving on the early-voting-ballot board or at the central counting station is an odd number, the county clerk/elections administrator shall appoint an additional member from the party whose candidate for governor received the highest number of votes in the county in the most recent gubernatorial general election.

§81.149. Number of Election Workers per Joint Polling Place.

(a) The county clerk/election administrator shall use the table set out in this subsection, to determine the number of election workers allowable for each joint polling place.
Figure: 1 TAC §81.149(a)

(b) Each polling place shall have no less than one co-judge from each party and one clerk from each party.

(c) If the total number of workers is an odd number, the county clerk/elections administrator shall appoint an additional worker from the list of the party whose candidate for governor received the highest number of votes in the precinct in the most recent gubernatorial general election. (If precincts have been consolidated or combined for the joint primary, then the highest number of votes is determined by adding together the votes from the consolidated or combined precincts.)

§81.150. Qualifications of Co-judges and Alternates Co-judges.

(a) The presiding co-judge and alternate co-judge must be a qualified voter of a precinct that is included in the consolidated or combined precincts in which they are serving.

(b) If a co-judge or alternate co-judge are not available to serve in an individual precinct, then the county clerk/elections administrator must consolidate or combine that precinct with a precinct that does have a qualified co-judge and alternate co-judge.

§81.151. Authority of Co-Judge for Joint-Primary-Polling Places, Joint-Primary Central Counting Station, and Joint-Primary-Early-Voting-Ballot Board.

(a) A co-judge may only challenge the eligibility of voters from the judge's own party. (This applies to challenges at the polling place or early-voting-ballot board.)

(b) A co-judge may only determine a voter's intent on an irregularly-marked ballot cast by a voter from the co-judge's own

party. (This limitation applies to individuals serving in a co-judge capacity at the polling place, early-voting-ballot board, or central counting station.)

§81.152. Estimating Voter Turnout for Joint Primaries.

(a) Each county chair shall estimate voter turnout for each precinct using the formula set out in this subsection. Figure: 1 TAC §81.152(a)

(b) The county clerk/elections administrator shall combine the turnout estimates provided by each party chair for each joint-primary precinct.

(c) The county clerk/elections administrator shall enter this information in Section B of the Joint Primary Resolution.

§81.153. Delivery of Election Records and Supplies.

(a) In joint precincts using an electronic voting system in which only one ballot box is used, the co-judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the election supplies. (Note: A county clerk/elections administrator may use separate ballot boxes for each party when using electronic voting systems.)

(b) The co-judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the other co-judge or a clerk to deliver the ballot box.

(c) In a jurisdiction using paper ballots, each co-judge shall deliver their party's ballot box and election returns.

§81.154. Ballots for Joint Primary Elections.

The county clerk/elections administrator shall prepare ballots in a joint primary so that each party's ballots are easily distinguishable. The county clerk or elections administrator may use different colors of paper in order to achieve this distinction. (Note: Yellow paper may not be used. Only sample ballots may be printed on yellow paper.)

§81.155. Returning Surplus Funds.

(a) Immediately following final payment of necessary expenses for conducting the joint primary elections (but no later than July 1 of the last primary election), the county chair shall remit any surplus in the primary fund account to the county clerk/elections administrator. (The county chair shall remit the surplus regardless of whether state funds were requested by the chair.)

(b) The county clerk/elections administrator may use surplus funds received under this section to pay any remaining expenses related to the joint primary.

(c) After making final payment under subsection (b) of this section, the county clerk/elections administrator shall immediately remit any remaining funds to the Secretary of State. (In no event shall the county clerk/elections administrator remit these funds after August 1 following the final primary election for that county.)

§81.156. Liability of County Clerk or Elections Administrator.

The county clerk/elections administrator is not liable, in his or her official or individual capacity, for debts related to the conduct of a joint primary incurred by the county executive committee or county chairs resulting from an insufficient legislative appropriation.

§81.157. Joint-Primary Contract with the County-Elections Officer (County Clerk, County Elections Administrator, or County Tax Assessor Collector.)

(a) Before the county chair may make final payment, the county-elections officer must submit to the Secretary of State an

accounting of actual costs incurred in conducting the joint-primary election.

(b) Before the Secretary of State may reimburse the final 25% of primary funds requested, the county elections officer must submit to the Secretary of State a detailed billing of all actual costs with the Final Cost Report.

(c) The Secretary of State may only reimburse actual costs incurred by the county and payable pursuant to provisions of the Texas Election Code, a joint primary contract, or an administrative rule.

(d) If the joint elections agreement requires the county-elections officer to directly pay the costs associated with the joint election, then the county chair shall remit the total amount of state funds forwarded to the county chair pursuant to section B of the Final Cost Estimate to the county clerk no later than the fifth day after receipt of the funds.

(e) The cost estimate may not provide for reimbursement for training of election workers or for materials provided by the Secretary of State.

(f) The county may not reimburse from primary-election funds, regular pay for personnel normally employed by the county.

(g) The joint resolution for the 2000 primary elections may not provide for any salary or compensation for the county-elections officer for the performance of any statutory duty or service. (Note: Joint Primary Election Agreements do not count against the administrative salary limits set out under §81.124 of this title.)

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

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TRD-9906313

Jeffrey Eubank

Assistant Secretary of State

Office of the Secretary of State

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For further information, please call: (512) 463-5763



TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 2. LICENSING

Subchapter A. GENERAL PROVISIONS

4 TAC §2.3, §2.4

The Texas Department of Agriculture (the department), proposes the new §2.3 and §2.4, concerning the department's licensing programs. The new sections are proposed to clarify the applicant's or licensee's responsibilities and requirements for obtaining a license with the department. New §2.3 provides that all required fees must be paid in order to obtain a valid license from the department, and that licenses are void if obtained based upon a check that is later returned unpaid. New §2.4 provides that licensees have ten days to notify the depart-

ment of any change of address, and that it is the licensee's responsibility to maintain a valid, current address on file with the department.

Raette Hearne, assistant commissioner for administrative services, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Hearne also has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the clarification of the department's licensing requirements, notice to the public of those requirements, and greater compliance by applicants and licensees with the requirements for paying of licensing and renewal fees to the department. There will be no new effect on small or large businesses. There is no new anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Raette Hearne, Assistant Commissioner for Administrative Services, 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 proposed amendments in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

The Texas Agriculture Code, Chapters 12-14, 18, 19, 52, 61, 62, 71, 76, 96, 101, 103, and 134 are affected by the proposal.

§2.3. Payment of Required License Fees.

(a) All required fees must be paid in order to obtain a valid license, including a renewal license, from the department.

(b) Any license issued by the department is void and of no effect if based upon a check that is later returned for insufficient funds, closed account, or other reason, regardless of whether the department notifies the applicant of the insufficiency of payment or the invalidity of the license.

(c) It is the applicant's responsibility to ensure that all licensing fees are paid in valid U.S. funds.

§2.4. Notification of Change of Address.

(a) All licensees are required to notify the department within ten days of any change of address.

(b) It is the licensee's responsibility to maintain a valid, current address with the department.

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

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

TRD-9906158

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075

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Part 2. TEXAS ANIMAL HEALTH
COMMISSION

Chapter 35. BRUCELLOSIS

Subchapter A. ERADICATION OF BRUCEL-
LOSIS IN CATTLE

4 TAC §35.2

The Texas Animal Health Commission (TAHC) proposes an amendment to Chapter 35, Subchapter A, concerning the Eradication of Brucellosis in Cattle. This proposal amends §35.2 which provides for the general requirements for the eradication of brucellosis.

The requirement to restrict bulls under 18 months of age in infected quarantined herds will also bring commission regulations into conformity with the UM&R and will reduce the risk of allowing an infected animal from moving out of a quarantined herd.

Suzy Whittenton, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. The agency currently administers the program and the proposed changes will not create any additional costs to the agency.

Mrs. Whittenton 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 clear and concise regulations by conforming to current federal requirements.

In accordance with Government Code, §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. This proposed rule is an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

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

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing.

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

§35.2. *General Requirements.*

(a)-(k) (No change.)

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

(1) (No change.)

(2) All cattle in the herd except [~~bulls less than 18 months of age,~~] steers[;] and spayed heifers are included in the quarantine or hold order. Any movement of quarantined cattle shall conform to subsections (h) and (i) of this section concerning identification and movement of reactor, exposed, or suspect cattle. Release of the quarantine will be as described in paragraph (7) of this subsection.

(3)-(7) (No change.)

(m)-(v) (No change.)

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

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Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0714



Chapter 55. SWINE

4 TAC §55.3

The Texas Animal Health Commission (TAHC) proposes the repeal and replacement of §55.3, concerning Feeding of Garbage to Swine. New §55.3 will contain requirements for facilities which feed garbage to swine.

House Bill (HB) 1244 was passed by the 76th Texas Legislative Session and contains requirements related to Feeding Garbage. This legislation amends the Texas Agriculture Code Chapter 165, §165.026(b). The legislation provides greater specificity as to what the registration should address for requirements as well as to provide the commission authority to assess a fee for the registration. The legislation requires the commission to adopt rules regarding the registration of persons who feed garbage to swine and to provide requirements related to disease tests, inspections and bookkeeping. The purpose of the rule is to insure that this type of facility has the adequate mechanisms in place to prevent the introduction and spread of swine diseases.

The commission is proposing to repeal the current regulations in order to more clearly indicate the applicable requirements through the rules being proposed. The proposed rules will provide for a number of requirements which are for the purpose of insuring that these facilities have the necessary mechanisms in place to prevent the introduction and spread of diseases in swine. A summary of those requirements are: 1.) prohibiting feeding of feral swine at registered garbage feeding locations; 2.) ability of TAHC to require a brucellosis and pseudorabies negative test prior to issuance of a permit; 3.) annual surveys to be conducted by a commission representative to determine disease risk on each registered location; and 4.) sanitation requirements for water.

HB 1244 provides that the commission may assess a registration fee; however, the commission has determined that in order

to insure compliance and in order to not put undue hardship on these facilities, that a fee will not be assessed. The rule as proposed would not be effective until 60 days after adoption by the commission in order to allow all facilities to become compliant with the requirements.

Suzy Whittenton, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the proposed repeal and new section are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed repeal and new section. The agency currently administers the program without assessing a fee and as such there will not be any additional costs to the agency to administer.

Mrs. Whittenton also has determined that for each year of the first five years the proposed repeal and new section are in effect, the public benefit anticipated as a result of enforcing the proposed repeal and new section will be clear and concise regulations.

In accordance with Government Code, §2001.022, this agency has determined that the proposed repeal and new section will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

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

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

The repeal is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the commission to promulgate rules in accordance with the Texas Agriculture Code. HB 1244, from the 76th Texas Legislative Session, provides in §4 that the commission has the authority to promulgate rules to register facilities that feed garbage to swine. This authority is codified in Chapter 165, §165.026(b). Also, §165.022, entitled "Method Of Disease Eradication" provides that the commission shall adopt rules which are to further the purpose of eradicating swine disease.

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

§55.3. *Feeding of Garbage.*

This 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 27, 1999.

TRD-9906286

Gene Snelson

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 719-0714



The new section is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the commission to promulgate rules in accordance with the Texas Agriculture Code. HB 1244, from the 76th Texas Legislative Session, provides in §4 that the commission has the authority to promulgate rules to register facilities that feed garbage to swine. This authority is codified in Chapter 165, §165.026(b). Also, §165.022, entitled "Method Of Disease Eradication" provides that the commission shall adopt rules which are to further the purpose of eradicating swine disease.

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

§55.3. Feeding of Garbage.

(a) In addition to the definitions set out in the Texas Agriculture Code, Chapter 165 and Chapter 35, Subchapter B of this title (relating to Eradication of Brucellosis in Swine) and Chapter 55 of this title (relating to Swine), the following words and terms, when used in this subsection, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Garbage - includes all of the refuse matter, animal or vegetable, and all putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods containing animal carcasses or parts thereof, and all waste material by-products of a restaurant, kitchen, cookery, or slaughter house, and every refuse accumulation of animal or vegetable matter, liquid or otherwise.

(2) Person-Includes any individual, partnership, association, corporation, company, joint stock association, governmental subdivision, public or private organization of any character, body politic or any organized group of persons, whether incorporated or not; including any trustee, receiver, assignee, or similar representative thereof.

(b) General Provisions.

(1) Each location where garbage is fed to swine shall be registered with the Commission.

(2) Registered locations shall be issued a permit.

(3) Feral swine shall not be fed on the premises of a registered location.

(4) Prior to registration/re-registration approval, a brucellosis and pseudorabies negative test may be required on all breeding swine based on the outcome of a disease risk analysis of the herd. Tests for other diseases may be conducted on the samples collected for registration approval or renewal.

(5) An annual disease risk analysis shall be conducted by a state or federal inspector on each registered location.

(c) Garbage feeding permit.

(1) Permits are valid for:

(A) a two year period from the date of issuance.

(B) the approved cooking facility and the person issued the permit. Changes to the cooking facility may require acquisition of a new permit.

(2) Present permit holders will be allowed 60 days from the effective date of these rules to comply with these rules and regulations for the feeding of garbage.

(3) Application. Application for a new permit shall be submitted on a form prescribed by the Commission providing at least the following information:

(A) Name, address and telephone number of applicant

(B) Physical location of the garbage feeding facility

(C) Type of garbage to be fed and source(s) of garbage received

(D) A schedule for cooking garbage reflecting days and times of day that the cooker will be in operation. Any change in the schedule must be provided in writing to the Texas Animal Health Commission representative in charge of the local area.

(4) Renewal.

(A) A disease risk analysis shall be conducted on each registered location 30 - 60 days prior to expiration of the permit.

(B) If a properly completed application for the renewal of a permit is not made between 30 - 60 days prior to its expiration, the permit will terminate at the end of its stated term.

(C) An extension of the permit expiration date may be provided pending completion of the disease risk analysis and any required testing resulting from the analysis.

(d) Inspection authority.

(1) For the purpose of inspection, examination, or sampling, Commission representatives are entitled to enter at reasonable hours any building or place owned, controlled, or operated by a permitted person if from probable cause it appears that the building or place is in the business of feeding garbage to swine.

(2) A commission representative shall perform inspections of applicants for registration at a time when normal feeding, record keeping and cooking activities can be observed.

(e) Facilities.

(1) Cooking Equipment Requirements

(A) The cooker must be sheltered by a roof adequate for protection in inclement weather. (This requirement does not apply to a steam cooker.)

(B) Cooking on a kitchen or restaurant stove is prohibited.

(C) The cooker shall be separated from any feeding area by a hog tight fence. The cooker shall be located in an area not accessible to swine, other livestock or poultry.

(D) Vats or containers shall be large enough to ensure that contents will not boil over during heat treatment.

(E) Cookers must have a hinged lid and the lid shall be made of solid material to prevent leakage and shall be constructed so that water of condensation returns to the garbage rather than escape.

(2) Feeding Facilities

(A) Garbage shall not be fed on the ground.

(B) If feeding platforms are used, there must be watertight platform space of at least three square feet for each hog to be fed.

(C) If troughs are used, at least one linear foot must be supplied for each hog to be fed.

(f) Cooking Requirements

(1) A constant and uniform heat source is required. An adequate fuel supply must be available and apparent at all times.

(2) Garbage shall be cooked within 24 hours from time of arrival at cooking area.

(3) All cooking operations shall be conducted in a clean and sanitary manner.

(4) All garbage, regardless of previous processing, shall be heated throughout to the boiling point and boiled for at least 30 minutes before the garbage is fed. This procedure may be varied only upon express, written permission from the executive director.

(g) Records. The permit holder shall maintain a daily log reflecting the amount of garbage collected, the sources of such garbage, the date and time of day it was cooked and the length of time cooked at boiling. A copy of the log shall be provided to a commission representative upon request.

(h) Sanitation

(1) Water.

(A) There shall be a sufficient supply of water for cleaning.

(B) There shall be a sufficient supply of clean water available for swine to drink at all times.

(C) Shelters and feeding areas shall be constructed to provide for satisfactory drainage.

(2) Rodent and Pest Control.

(A) Effective fly and rodent control measures shall be used.

(B) Containers used to transport or store garbage shall be closed and sufficiently sealed to prevent access by rodents or insects. These containers shall be kept clean and free from accumulations of grease or foreign matter.

(3) In order to prevent the drainage of fluids from the cooking area into hog pens, adequate drainage shall be installed and maintained.

(4) Excess garbage shall be removed from the premises, and is not to remain on the premises over 36 hours. Unused, excess, or spoiled garbage shall be buried or burned and shall under no circumstances be poured or dumped in the feeding or cooking area.

(5) Containers, equipment (including clothing), and personnel used in the handling of raw garbage should not come in contact with the swine or swine feeding area. At no time shall food wastes, rubbish, boxes, crates, or salvage material be allowed to accumulate in the cooking area.

(6) Raw garbage must not be transported through the swine feeding or holding areas in order to reach the cooker.

(7) Dead animals shall be removed from the registered location premises promptly and disposed of in accordance with local ordinances.

(i) Violations and Penalties. In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to falsify an application.

(2) Any violation of these rules is subject to administrative, civil or criminal penalties. In addition, the agency may annul or deny renewal of a permit, and/or assess administrative penalties against any person for a violation of these rules.

(j) Expiration Provision. Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code Annotated, §§2001.021-2001.038 (Vernon 1996) or specific reactivation by the commission, all of the sections in this chapter shall expire on August 31, 2005.

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

Filed with the Office of the Secretary of State, on September 27, 1999.

TRD-9906287

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 719-0714



Chapter 60. SCRAPIE

4 TAC §60.3

The Texas Animal Health Commission (TAHC) proposes a new section to Chapter 60, concerning Scrapie. This proposal will create a new §60.3 which provides for the procedures for indemnity of animals with a high risk of having Scrapie.

House Bill (HB) 1244 was passed by the 76th Texas Legislative Session and provides the commission authority related to compensation to livestock owners for diseased or exposed livestock. This legislation amends the Texas Agriculture Code Chapter 161 by adding §165.058. The commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the disease and to dispose of the exposed or diseased livestock. Scrapie is a fatal, degenerative disease affecting the central nervous system of sheep, goats, and mouflon. It is one of a group of diseases known as Transmissible Spongiform Encephalopathies (TSE). The causative agent is unknown. Other TSE diseases are Mad Cow disease and Creutzfeldt-Jakob disease of humans. All the TSE diseases are 100% fatal. Scrapie was first seen more than 250 years ago in Great Britain. It is world wide with the exception of Australia and New Zealand. Since 1947 we have diagnosed about 850 flocks with Scrapie in the U.S.

The commission has experienced some difficulty in locating and disposing of high risk animals to slaughter. In order to effectively control this disease in Texas, the commission deems compensation as necessary. The number of high risk animals has been very small to date. The commission believes by indemnifying producers for these animals we will improve disposal of these high risk animals which will enhance Scrapie control and promote eradication of the disease.

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

administers an indemnity fund and the proposed indemnification for Scrapie is not expected to exceed funds budgeted for the biennium.

Mrs. Whittenton 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 clear and concise regulations. The commission has experienced some difficulty in locating and disposing to slaughter, high risk animals. The number of high risk animals has been very small to date and the commission believes by indemnifying producers for these animals we will improve detection and disposal of these high risk animals and help insure that Texas does not have an outbreak of a disease which could have a negative impact on the livestock industry in Texas.

In accordance with Government Code, §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. The proposed rule is an activity related to indemnity for diseased cattle and does not affect private real property and, therefore, is not a takings as provided by the Private Real Property Preservation Act in Government Code, Chapter 2007.

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

The new section is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. HB 1244, from the 76th Texas Legislative Session, provides in §1 that the commission has the authority to pay indemnity to the owner of livestock exposed to or infected with a disease and the authority to promulgate rules to implement that authority. This authority is found in the Texas Agricultural Code Chapter 161, §161.058.

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

§60.3. Indemnity Payments To Owners of High Risk Animals.

The Commission, through its Executive Director, and subject to the availability of funds may authorize payment to the owner of \$100 per head for animals determined by State or Federal regulatory veterinarians to be high risk as defined in §60.1 of this title (relating to Definitions). All provisions of the law and the regulations of the Commission must be complied with, and a completed epidemiological investigation and flock plan must be on file which includes all animals and flocks owned by the producer prior to 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 27, 1999.

TRD-9906288

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 719-0714

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TITLE 13. CULTURAL RESOURCES

Part 3. TEXAS COMMISSION ON THE ARTS

Chapter 35. TEXAS ARTS PLAN

13 TAC §35.1

(Editor's note: The Texas Commission on the Arts proposes for permanent adoption the repealed section it adopts on an emergency basis in this issue. The text of the repealed section is in the Emergency Rules section of this issue.)

The Texas Commission on the Arts proposes to adopt by reference the repeal of §35.1, concerning the Texas Arts Plan, which outlines the activities of the Commission. This section is being repealed in order that the Texas Commission on the Arts can adopt by reference new manuals regarding A Guide to Operations and A Guide to Programs and Services.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Mr. Snell also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the replacement of the Texas Arts Plan with A Guide to Operations and A Guide to Programs and Services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Deputy Director, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The repeal is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

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

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906297

John Paul Batiste

Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-5535

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Chapter 35. A GUIDE TO OPERATIONS, PROGRAMS AND SERVICES

13 TAC §35.1

(Editor's note: The Texas Commission on the Arts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on the Arts proposes to adopt by reference new §35.1, concerning A Guide to Operations. The section is being proposed to replace the repealed Texas Arts Plan.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, 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 the section.

Mr. Snell 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 the enforcement of a new manual regarding A Guide to Operations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Deputy Director, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

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

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906299

John Paul Batiste
Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-5535



13 TAC §35.2

(Editor's note: The Texas Commission on the Arts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Commission on the Arts proposes to adopt by reference new §35.2, concerning A Guide to Programs and Services. The section is being proposed to replace the repealed Texas Arts Plan.

Fred Snell, Director of Finance and Administration, Texas Commission on the Arts, 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 the section.

Mr. Snell 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 the enforcement of a new manual regarding a guide to programs and services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ricardo Hernandez, Deputy Director, Texas Commission on the Arts, P.O. Box 13406, Austin, Texas 78711-3406. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the Government Code, §444.009, which provides the Texas Commission on the Arts with the authority to make rules and regulations for its government and that of its officers and committees.

No other statute, code, or article is affected by this proposal.

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

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906301

John Paul Batiste
Executive Director

Texas Commission on the Arts

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-5535



TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter R. PROVISIONS RELATING TO MUNICIPAL REGULATION AND RIGHTS-OF-WAY MANAGEMENT

16 TAC §26.465

The Public Utility Commission of Texas (commission) proposes new §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers (CTPs). The proposed new rule implements certain provisions of House Bill 1777, Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as Local Government Code §§283.001 *et seq.*) (HB 1777), which authorizes the commission to determine a uniform method for calculating municipal franchise compensation paid by 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.

D. Diane Parker, Senior Attorney, Office of Policy Development and Elango Rajagopal, Senior Policy Analyst, Office of Regulatory Affairs, have determined that for each year of the first five-year period the proposed section is in effect, there are no fiscal implications to local governments as a result of enforcing or administering the section. Ms. Parker and Mr. Rajagopal do not anticipate any fiscal implications to the state government.

Ms. Parker and Mr. Rajagopal have 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 a uniform method of compensating municipalities for the use of the public rights-of-way by CTPs. This uniformity will promote competition for local telephone service in Texas by ensuring that CTPs do not obtain a competitive advantage or suffer a disadvantage in their ability to obtain use of a public right-of-way within a municipality. There is no anticipated effect on small businesses or micro-businesses as a result of enforcing this section.

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

In proposing this rule, the commission's objective is to establish a method for compensating municipalities for the use of a public right-of-way by CTPs that: (1) is administratively simple for municipalities and telecommunications providers; (2) is nondiscriminatory; (3) is competitively neutral; (4) is consistent with the burdens on municipalities created by the incursion of CTPs into a public right-of-way; (5) provides fair and reasonable compensation for the use of a public right-of-way; and (6) is consistent with state and federal law.

The commission seeks any comments on the proposed rule that interested parties believe are appropriate. Parties should organize their comments in a manner consistent with the organization of the proposed rule. In particular, the commission invites comments regarding the following issues:

1. In considering the lines that should be included under the access line count, is the access line counting methodology in this rule consistent with the access line counting methodology used in the commission's USF dockets (Docket Numbers 18515 and 18516) and/or the Rate Reclassification Project (Docket Number 18509)? If not, should it be?
2. The inclusion of lines that a CTP, either an incumbent local exchange carrier (ILEC) or a competitive local exchange carrier (CLEC) provides to itself, in the access line count;
3. Whether connections (transmission facilities) to wireless providers which are used solely for the purpose of providing wireless telecommunication services have to be counted as access lines and, if not, whether an exemption creates implications for Internet service providers and other providers of voice or data transmission whose access lines are counted; and
4. The costs associated with, and benefits that will be gained by, implementation of the proposed section.

Comments on the proposed new rule (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 20 days after publication. All comments should refer to Project Number 20935. The commission staff will

conduct a public hearing on this rulemaking under Government Code §2001.029 in the Commissioners' Hearing Room, Room 7-100, at the commission offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, November 5, 1999, at 9:30 a.m. until 3:00 p.m.

Forms and instructions for reporting access line count information can be obtained after October 20, 1999 at the commission's Central Records, by sending an email to hb1777@puc.state.tx.us, or by downloading the information from the HB 1777 web site at <http://www.puc.state.tx.us/telecomm/projects/20935/20935.cfm>. The commission staff will hold a separate workshop to discuss forms and instructions for reporting access line count information in the Commissioners' Hearing Room, Room 7-100, at the commission offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas 78701, on Friday, November 5, 1999, at 3:00 p.m. until 5:00 p.m. Interested persons may submit written comments on the form and instructions on or before October 29, 1999. The commission is specifically interested in learning whether the forms are clear and easy to use, and whether additional instructions are needed to accommodate special circumstances.

This section 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. This proposed rule is also authorized by House Bill 1777, Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499, 3503 (Vernon) (to be codified as Local Government Code §283.055), which provides that not later than March 1, 2000, the commission shall establish rates per access line by category for the use of a public right-of-way by certificated telecommunications providers in each municipality, and the statewide average of those rates. The rates shall be applied to the total number of access lines by category in the municipality.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and by House Bill 1777, 76th Legislature, Regular Session (1999) §283.055.

§26.465. Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers.

(a) Purpose. This section establishes a uniform method for counting access lines within a municipality by category as provided by §26.461 of this title (relating to Access Line Categories), sets forth relevant reporting requirements, and sets forth certain reseller obligations under the Local Government Code, Chapter 283.

(b) Application. This section applies to all certificated telecommunications providers (CTPs) in the State of Texas.

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

(1) Transmission media—The physical wires within a public-right-of-way that may consist of, but are not limited to, copper, coaxial, or optical fibers or other media, extended to the end-use customer's premises within the municipality, that allow the delivery of local exchange telephone services within a municipality, and that are provided by means of owned facilities, unbundled network elements or leased facilities or resale.

(2) Transmission path—A physical or virtual path within the transmission media used to provide a certain level of service. A transmission path may consist of, but is not limited to, one or more wires, either as a pair of copper wires, coaxial, optical fiber, or a combination of any of these.

(A) Each individual service, including a service offered as part of a bundled group of services, shall constitute a single transmission path. Features of services, such as call waiting and caller-ID, shall not constitute a separate transmission path.

(B) Where a service or technology is channelized, each channel shall constitute a single transmission path.

(3) Wireless provider—A provider of wireless telecommunication services.

(d) Methodology for counting access lines. A CTP's access line count shall be the sum of all lines counted pursuant to paragraphs (1), (2), and (3) of this subsection, and shall be consistent with subsections (e), (f) and (g) of this section.

(1) Switched transmission paths.

(A) The CTP shall determine the total number of switched transmission paths, and shall take into account the number of services provided and the number of channels used where a service or technology is channelized.

(B) The bandwidth of each transmission path shall determine the access line category, as established in §26.461 of this title.

(C) A switched service shall be counted consistently in the same manner regardless of the type of transmission media used to provide that service.

(D) If the transmission path crosses more than one municipality, the line shall be counted in, and attributed to, the municipality where the end use customer is located.

(E) Where xDSL service is provided along with basic local exchange service or ISDN service, the CTP shall not count the basic local exchange service or the ISDN service as a separate transmission path and the bandwidth of the xDSL service shall determine the access line category for that service, as established in §26.461 of this title.

(2) Nonswitched telecommunications services or private lines.

(A) Each circuit used to provide nonswitched telecommunications services or private lines shall be considered to have two termination points, one on each end.

(B) The CTP shall count nonswitched telecommunications services or private lines by totaling the number of terminating points within a municipality, and dividing the sum by two. If the division results in a fraction, the number shall be rounded up to the nearest whole number.

(C) The bandwidth between the two terminating points of the circuit shall determine the access line category for that service, as established in §26.461 of this title.

(D) A nonswitched telecommunications service shall be counted consistently in the same manner regardless of the type of transmission media used to provide that service.

(E) A terminating point shall be counted in, and attributed to, the municipality where that point is located.

(3) Central office based PBX-type services. The CTP shall count one access line for every ten stations served. If the division results in a fraction of 0.5 or greater, the number shall be rounded up to the nearest whole number.

(e) Lines to be counted. A CTP shall count the following access lines:

(1) all lines provided as a retail service to customers;

(2) all lines provided as a retail service to other CTPs and resellers for their own end-use;

(3) all lines provided as a retail service to wireless telecommunication providers and interexchange carriers (IXCs) for their own end use;

(4) all lines a CTP provides to itself for its own use, including a CTP's official and employee concession lines;

(5) all lines provided as a retail service to a CTP's wireless and IXC affiliates for their own end use, and all lines provided as a retail service to any other affiliate for their own end use;

(6) dark fiber, to the extent it is provided as a service or is resold; and

(7) any other lines meeting the definition of access line as set forth in §26.461 of this title.

(f) Lines not to be counted. A CTP shall not count the following lines:

(1) all lines that do not terminate at a customer's premises;

(2) lines used by a CTP, wireless provider, or IXC for interoffice transport, or transmission facilities used to connect such providers' telecommunications equipment for the purpose of providing telecommunications services;

(3) lines used by a CTP's wireless and IXC affiliates for interoffice transport, or transmission facilities used to connect such affiliates' telecommunications equipment for the purpose of providing telecommunications services;

(4) lines used by any other affiliate of a CTP for interoffice transport; and

(5) any other lines that do not meet the definition of access line as set forth in §26.461 of this title.

(g) Reporting procedures and requirements.

(1) Who shall file. The record keeping, reporting and filing requirements listed in this section shall apply to all CTPs in the State of Texas.

(2) Reporting requirements. Unless otherwise specified, periodic reporting shall be consistent with this subsection and subsection (d) of this section.

(A) Initial reporting.

(i) No later than January 3, 2000, a CTP shall file its access line count using the commission-approved *Form for Counting Access Line* or *Program for Counting Access Lines* with the commission. The CTP shall report the access line count as of December 1, 1999, except as provided in clause (iii) of this subparagraph.

(ii) A CTP shall not include in its initial report any access lines that are resold, leased, or otherwise provided to another CTP.

(iii) Where a municipality has provided adequate notice to the CTP, by November 15, 1999, that it is electing to use the statewide average rate method described in Local Government Code §283.053(c)(1) and §283.053(d)(1), the CTP shall report the access line count as of December 31, 1998. The adequate notice shall be consistent with subsection (k) of this section.

(B) Subsequent reporting.

(i) Each CTP shall file with the commission a quarterly report beginning the second quarter of the year 2000, showing the number of access lines, including access lines by category, that the provider has within each municipality at the end of each month of the quarter. The report shall be filed no later than 30 days after the end of the quarter using the commission-approved Form for Quarterly Reporting of Access Lines.

(ii) Except as provided in clause (iii) of this subparagraph, on request of the commission, and to the extent available, the report filed under clause (i) of this subparagraph shall identify, as part of the CTP's monthly access line count, the access lines that are provided by means of resold services or unbundled facilities to another CTP who is not an end use customer, and the identity of the CTPs obtaining the resold services or unbundled facilities to provide services to customers.

(iii) A provider may not include in its monthly count of access lines any access lines that are resold, leased, or otherwise provided to another CTP if the provider receives adequate proof that the provider leasing or purchasing the access lines will include the access lines in its own monthly count. Adequate proof shall consist of a notarized statement of notice prepared consistent with subsection (k) of this section.

(iv) The CTP shall respond to any request for additional information from the commission within 30 days from receipt of the request.

(v) Reports required under this subsection may be used by the commission only to verify the number of access lines that serve customer premises within a municipality.

(vi) On request, and subject to the confidentiality protections of subsection (j) of this section, each CTP shall provide each affected municipality with a copy of the report required by this subsection.

(h) Exemption. Any CTP that does not terminate a franchise agreement or obligation under an existing ordinance shall be exempted from subsequent reporting pursuant to subsection (g)(2)(B) of this section unless and until the franchise agreement is terminated or expires on its own terms. Any CTP that fails to provide notice to the commission and the affected municipality by December 1, 1999 that it elects to terminate its franchise agreement or obligation under an existing ordinance, shall be deemed to continue under the terms of the existing ordinance. Upon expiration or termination of the existing franchise agreement or ordinance by its own terms, a CTP is subject to the terms of this section.

(i) Maintenance and location of records. A CTP shall maintain all records, books, accounts, or memoranda relating to access lines deployed in a municipality in a manner which allows for easy identification and review by the commission and, as appropriate, by the relevant municipality. The books and records for each access line count shall be maintained for a period of no less than three years.

(j) Proprietary or confidential information

(1) Information filed pursuant to this section is presumed to be public information. A CTP shall have the burden of establishing that information filed pursuant to this section is proprietary or confidential. The commission shall notify a CTP claiming the information is confidential of any request for such information.

(2) The CTP shall file with the commission the information required by this section regardless of whether this information is confidential. For information that the CTP alleges is confidential and/or proprietary under law, the CTP shall file a complete list of the information that the CTP alleges is confidential. For each document or portion thereof claimed to be confidential, the CTP shall cite the specific provision(s) of Texas Government Code, Chapter 552, that the CTP relies to assert that the information is exempt from public disclosure. The commission shall treat as confidential the specific information identified by the CTP as confidential until such time as a determination is made by the commission, the Attorney General, or a court of competent jurisdiction that the information is not entitled to confidential treatment.

(3) The commission may determine, upon its own motion and before a request is received, upon notice and opportunity for hearing by the party claiming confidentiality, that information claimed to be confidential is not entitled to exemption from the Texas Open Records Act.

(4) If the CTP does not claim confidential treatment for a document or portions thereof, then the information will be treated as public information. A claim of confidentiality by a CTP does not bind the commission to find that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue.

(k) Report attestation. All filings with the commission pursuant to this section shall be in accordance with §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to Be Filed With the Commission). The filings shall be attested to by an officer or authorized representative of the CTP under whose direction the report is prepared or other official in responsible charge of the entity in accordance with §26.71(d) of this title (relating to General Procedures, Requirements and Penalties). The filings shall include a certified statement from an authorized officer or duly authorized representative of the provider stating that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry.

(l) Reporting of access lines that have been provided by means of resold services or unbundled facilities to another CTP. This subsection applies only to a CTP reporting access lines under subsection (g) of this section, that are provided by means of resold services or unbundled facilities to another CTP who is not an end use customer. Nothing in this subsection shall prevent a CTP reporting another CTP's access line count from charging an appropriate, tariffed administrative fee for such service.

(m) Commission review of the definition of access line.

(1) Not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification of the adoption of the definition of "access line" provided by §26.461 of this title. The commission may not begin a review authorized by this subsection before March 1, 2002.

(2) As part of the proceeding described by paragraph (1) of this subsection, and as necessary after that proceeding, the commission by rule may modify the definition of "access line" as necessary to ensure competitive neutrality and nondiscriminatory

application and to maintain consistent levels of compensation, as annually increased by growth in access lines within the municipalities.

(3) After September 1, 2002, the commission, on its own motion, shall make the determination required by this subsection at least once every three years.

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

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

TRD-9906188

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 936-7308



TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 109. BUDGETING, ACCOUNTING, AND AUDITING

Subchapter C. ADOPTIONS BY REFERENCE

19 TAC §109.41

The Texas Education Agency (TEA) proposes an amendment to §109.41, concerning the "Financial Accountability System Resource Guide." The section adopts by reference the "Financial Accountability System Resource Guide" as the TEA's official rule. The "Resource Guide" describes rules for financial accounting such as financial reporting; budgeting; purchasing; auditing; site-based decision making; data collection and reporting; and management. Public school districts use the "Resource Guide" to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code (TEC) and other state statutes relating to public school finance. The "Resource Guide" is available at www.tea.state.tx.us/school.finance/ on the TEA website.

The proposed amendment to §109.41 changes the date from "September 1999" to "December 1999" to reflect the effective date of the proposed amendments to the "Resource Guide." Under §109.41(b), the commissioner of education shall amend the "Resource Guide," adopting it by reference, as needed. The proposed amendments to the "Resource Guide" include changes to auditing and financial accounting and reporting guidelines. The amendments are necessary to implement an update to auditing standards, dated April 1999 but not released until June 1999, by the Office of Management and Budget (OMB) related to OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. The amendments also implement proposed new financial reporting standards established by the Governmental Accounting Standards Board; changes to fund codes for state and federally funded projects that will be effective September 2000; changes to guidelines for competitive procurement of construction services in accordance with changes to TEC, Chapter 44, Subchapter B, dur-

ing the 76th Texas Legislative Session; and other minor amendments to the "Resource Guide."

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 or local government as a result of enforcing or administering the section.

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 improving financial accountability for educational programs in the Texas school system and keeping financial management practices current with changes in state law and federal rules and regulations. 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 amendment is proposed under the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008, which authorize the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The proposed amendment implements the Texas Education Code, §§7.055, 44.001, 44.007, and 44.008.

§109.41. *Financial Accountability System Resource Guide.*

(a) The rules for financial accounting are described in the official Texas Education Agency publication, Financial Accountability System Resource Guide, as amended December 1999 [~~September 1999~~], which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) The commissioner of education shall amend the Financial Accountability System Resource Guide and this section adopting it by reference, as needed. The commissioner shall inform the State Board of Education of the intent to amend the Resource Guide and of the effect of proposed amendments before submitting them to the Office of the Secretary of State as proposed rule changes.

This 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 27, 1999.

TRD-9906295

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Earliest possible date of adoption: November 7, 1999

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

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TITLE 22. EXAMINING BOARDS

Part 14. TEXAS OPTOMETRY BOARD

Chapter 280. THERAPEUTIC OPTOMETRY

22 TAC §280.1

The Texas Optometry Board proposes the adoption of amendment to §280.1 to implement H.B. 1051, 76th Legislature, which redefined the classes of medications that therapeutic optometrists may administer and prescribe, by removing restrictions that were deleted by H.B. 1051.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule. The rule imposes no duties on small and micro businesses, thus, there will be no economic effect on small businesses.

Lois Ewald also has determined that for each of the first five years the amended rule is in effect, the public benefit anticipated is that qualified therapeutic optometrists will be able to administer and prescribe additional appropriate medications. It has also been determined that there will be no economic cost of compliance to those affected by the rule over the first five years.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is November 10, 1999.

The amendment is proposed under the Texas Optometry Act, Texas Civil Statutes, Article 4552, § 2.14 and §1.03.

The Texas Optometry Board interprets § 2.14 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets § 1.03 as authorizing the interpretation of the therapeutic optometry requirements.

Texas Civil Statutes, Article 4552-1.03 is affected by this rule.

§280.1. Application for Certification.

(a) To be certified to administer and prescribe ophthalmic devices, over-the counter oral medications, and topical ocular pharmaceutical agents, other than [~~antiviral agents and~~] antiglaucoma agents, for the purpose of diagnosing and treating visual defects, abnormal conditions and diseases of the human eye and adnexa, and to be able to remove superficial foreign matter and eyelashes from the external eye or adnexa, a licensed optometrist must submit a completed application on forms provided by the Texas Optometry Board (board). After September 1, 1992, all applicants for initial licensure in Texas must be licensed as a therapeutic optometrist in order to practice optometry in Texas.

(b)-(g) (No change.)

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

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

TRD-9906193

Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: November 7, 1999
For further information, please call: (512) 305-8502

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Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Chapter 511. CERTIFICATION AS A CPA

Subchapter B. CERTIFICATION BY EXAMINATION

22 TAC §511.21

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.21 concerning Examination Application. This amendment is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The amendment to §511.21 will rewrite subsection (a), relocate and re-word former subsection (c) to new subsection (b), delete former subsection (b), relocate former §511.22 to new subsection (c), establish application deadlines, state that applications must be accompanied by payment for all fees, state some reasons for the rejection of an application, require the applicant to designate an examination site, and require re-examinees to continue to demonstrate that they are qualified to take the examination.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because a fee schedule to recover costs already exists.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because a fee schedule to recover costs already exists and local governments are not affected.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because a fee schedule to recover costs already exists.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule that clearly state what examination applications require to be complete.

The probable economic cost to persons required to comply with the amendment will be zero because all of these requirements already exist.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board request comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on

Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because there is no additional cost since all of these requirements are already in place.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.21. Examination Application.

(a) All applications to take the Uniform CPA Examination [for certification by examination] shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws. [Each applicant must also submit official transcripts showing compliance with the applicable education requirements.]

(b) Applicants shall submit their social security number on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act. [Each applicant shall submit with the initial application, and as instructed thereafter, two references from certified public accountants with a current license and one personal reference who can attest to the applicant's moral character. The applicant may use his/her current employer in lieu of the personal reference.]

(c) Applicants must sign a statement on the application that states that if the applicant's examination papers are lost, the limit of liability for which the board may be held responsible will be the amount of the exam fee. [Each applicant shall submit his social security number on the forms prescribed by the board. Such information shall be considered confidential and can only be disclosed under the provisions of §511.105 of this title (relating to Confidentiality) and the Act, §25.]

(d) Applications for the November examination shall be received in the Board office by September 15 and all applications for the May exam shall be received by March 15.

(e) Each applicant for the Uniform CPA Examination must pay a fee for each subject on the examination for which the applicant is eligible. The actual fee set by the board is identified in §521.2 of this title (relating to Examination Fees). Application forms not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a

misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(f) Applicants shall designate on the application the location at which they prefer to take the examination. The board will assign applicants to an examination site, and after such assignment, the applicant may not thereafter change examination sites without written authorization from the board.

(g) Each reexamination applicant must continue to show that the applicant remains qualified in all respects to take the examination.

This 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 27, 1999.

TRD-9906216

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848

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22 TAC §511.22

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

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.22 concerning Liability.

The proposed repeal of §511.22 will transfer this rule to §511.21 William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the rule is merely being relocated.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero because the rule is merely being relocated.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero because the rule is merely being relocated.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be that the language of this rule will be in a more logical location.

The probable economic cost to persons required to comply with the repeal will be zero because the rule is merely being relocated.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

The Board request comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than 12:00 P.M. on

Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the rule is merely being relocated.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The repeal is proposed under the Public Accountancy Act, Texas Civil Statutes, Article 41a-1, 6(a) (Vernon Supp. 1998), which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.22. Liability.

This 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 27, 1999.

TRD-9906217

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



The Texas State Board of Public Accountancy (Board) proposes new §511.22 concerning Initial Filing of the Application of Intent. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §511.22 will allow applicants to request that the Board evaluate their application to determine what, if anything, is needed to complete their application and will allow the Board to comply with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because the rule is not designed to reduce costs to the state and local governments are not affected.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the new

rule will be zero because the rule is not designed to reduce costs to the state and local governments are not affected.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero because the rule is not designed to reduce costs to the state and local governments are not affected.

Mr. Treacy has determined that for the first five-year period the rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that applicants will be able to have their applications evaluated by the Board and the Board will be in compliance with a federal statute.

The probable economic cost to persons required to comply with the new rule will be zero as to the evaluations because the rule does not require compliance; it offers a service. As to the federal statute, the Board estimates the one-time cost to be \$10.00.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board request comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the evaluation is on optional service and the federal statute requires two certified documents at an estimated cost of \$5.00 per document, which is not an adverse effect.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.22. Initial Filing of the Application of Intent.

(a) The initial filing of the application of intent shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws. The application of intent may be submitted at any time and will be used to determine compliance and eligibility for the applicant to take the Uniform CPA Examination. The application of intent will remain active until:

(1) the applicant writes the Uniform CPA Examination within two years from the date of submission of the application; or

(2) the second anniversary of the submission of the application has lapsed.

(b) Applicants shall submit their social security number on the application form. Such information shall be considered confidential and can only be disclosed under the provisions of the Act.

(c) Each applicant who submits an application of intent to determine eligibility for the Uniform CPA Examination must pay a nonrefundable filing fee set by the board in §521.11 of this title (relating to Filing Fees). Applications of intent not accompanied by the proper fee or required documents shall not be considered complete. The withholding of information, a misrepresentation, or any untrue statement on the application or supplemental documents will be cause for rejection of the application.

(d) Each applicant must provide official educational documents to be used in determining compliance with the applicable education requirements of the Act.

(e) Each applicant must be informed that a background investigation will be completed to determine the moral character of the applicant.

(f) Each applicant will be notified when all requirements have been met to apply to take the Uniform CPA Examination, and with the notification, an examination application will be mailed to the applicant.

(g) In compliance with the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the board must verify proof of legal status in the United States. The applicant shall provide evidence of legal status by submitting a certified copy of a document from either paragraphs (1) or (2) of this subsection.

(1) United States birth certificate; or

(2) An acceptable document from list A or list B, and an acceptable document from list C.

(A) List A:

(i) US Passport (unexpired or expired);

(ii) Certificate of US Citizenship (INS Form N-560 or N-561);

(iii) Certificate of Naturalization (INS Form N-550 or N-570);

(iv) Unexpired foreign passport, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization;

(v) Alien Registration Receipt Card With photograph (INS Form I-151 or I-551);

(vi) Unexpired Temporary Resident Card (INS Form I-688);

(vii) Unexpired Employment Authorization Card (INS Form I-688A);

(viii) Unexpired Reentry Permit (INS Form I-327);

(ix) Unexpired Refugee Travel Document (INS Form I-571); or

(x) Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B).

(B) List B:

(i) Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address;

(ii) ID card issued by federal, state or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address;

(iii) School ID with a photograph;

(iv) Voter's registration card;

(v) U.S. Military card or draft record;

(vi) Military dependent's ID card;

(vii) U.S. Coast Guard Merchant Mariner card;

(viii) Native American tribal document; or

(ix) Driver's license issued by a Canadian government authority

(C) List C:

(i) U.S. social security card issued by the Social Security Administration (other than a card stating it is not valid for employment);

(ii) Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350);

(iii) Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;

(iv) Native American tribal document; or

(v) U.S. Citizen ID Card (INS Form I-197);

(vi) ID Card for use of Resident Citizen in the United States (INS Form I-179); or

(vii) Unexpired employment authorization document issued by the INS (other than those listed under List A.)

This 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 27, 1999.

TRD-9906218

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



Subchapter D. CPA EXAMINATION

22 TAC §511.76

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.76 concerning Refund Policy. This

amendment is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The amendment to §511.76 will allow the Board to grant a full refund of the examination fee if the applicant withdraws in writing by a certain date and grant a 50% refund if the application is in complete and the applicant does not take the examination.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the rule addresses fees and refunds, that are already occurring.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule addresses fees and refunds, that are already occurring, and the rule does not apply to local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the rule addresses fees and refunds that are already occurring.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the Board will continue to offer full and partial refunds under certain conditions.

The probable economic cost to persons required to comply with the amendment will be zero because the rule addresses fees and refunds that are already occurring.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board request comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule addresses examination fees and refunds that are already occurring.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which

authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.76. *Examination Refund Policy.*

(a) The board will grant a full refund of the examination fee if the applicant withdraws from the examination and ~~notifies~~ the board receives notification in writing prior to the deadline for applying for the examination (March 15 or September 15) ~~[February 28/29 or August 31]~~.

(b) The board will grant a refund of one-half of the total examination fee paid if: the applicant submits an incomplete application for the examination and does not remedy the deficiency, and as a result is not permitted to take the examination; the applicant withdraws after the filing deadline because of extreme hardship.

(1) ~~[(d)]~~ Extreme hardship ~~[for refund purposes]~~ shall be defined as a serious illness of the candidate or member of the immediate family or death of an immediate family member. Any other extreme hardship situation will be reviewed on a case-by-case basis by the board.

(2) ~~[(e)]~~ All requests for refunds based on extreme hardships must be in writing and provide documentation of the extreme hardship requiring withdrawal from the examination. The requests for refunds for the May examination must be received by the board on or before the 15th of November following the examination. The request for refund for the November examination must be received by the board on or before the 15th of May following the examination.

~~[(b)] The board will grant a full refund of the examination fee to any applicant who fails to meet the minimum requirements to take the examination, and the board will grant a refund of one-half of the total fee paid per part by the applicant who submits an incomplete application for the examination and does not remedy the deficiency, and as a result is not permitted to take the examination.]~~

~~[(c)] [(f)] No examination fee will be transferred to a subsequent examination.~~

~~[(e)] The board will grant a refund of one-half of the total fee paid per part by the applicant who withdraws after the filing deadline because of extreme hardship.]~~

~~[(g)] The filing fee paid for an initial examination application is nonrefundable.]~~

~~[(h)] Fees received from an applicant for a reciprocal equivalency examination are nonrefundable.]~~

This 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 27, 1999.

TRD-9906219

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848

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Chapter 521. FEE SCHEDULE

22 TAC §521.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.3 concerning Fee for Certification by Reciprocity.

The proposed amendment to §521.3 will allow the Board to clarify the purpose of its fee for certification for reciprocity.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule clarifies the purpose of the fee.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule clarifies the purpose of the fee.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule clarifies the purpose of the fee.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the rule is clarified as to the purpose of the reciprocity fee. The probable economic cost to persons required to comply with the amendment will be zero because the rule clarifies the purpose of the fee.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 15, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule clarifies the purpose of the fee. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, § 2006.002(c).

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.3. Fee for Certification by Reciprocity.

(a) The fee for processing the issuance of a certificate as a certified public accountant by reciprocity is \$100 [~~to a person under the provisions for reciprocity shall be \$100.~~]

(b) If the application is not approved, the processing fee paid will not be refunded.

This 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 27, 1999.

TRD-9906252

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



22 TAC §521.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.4 concerning Fee Schedule.

The proposed amendment to §521.4 will allow the Board to refund part of the processing and application fee to foreign accountants seeking certification.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the applications are already being evaluated and the rule applies to refunds.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be for the Board to refund part of the processing and application fee to foreign accountants seeking certification.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be \$100-\$200 gain based on one or two applications being denied per year, and partial refunds instead of full refunds being granted.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the application fee for foreign accountants is fairly applied and refunded when necessary. The probable economic cost to persons required to comply with the amendment will be \$100 for the Board to refund part of the processing and application fee to foreign accountants seeking certification.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 10, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III,

Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the refund applies to foreign accountants. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.4. Registration Fee for Foreign Accountants.

(a) The processing fee for the registration of a certified public accountant of another state or territory or the holder of a certificate, license, or degree issued by a foreign country shall be \$250.

(b) If the application is not approved, \$150 of the processing fee will be refunded 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 27, 1999.

TRD-9906253

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



22 TAC §521.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.5 concerning Temporary Permit Fee.

The proposed amendment to §521.5 will allow the rule on the issuance of a temporary permit to be clarified.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule only clarifies the purpose of an existing fee.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the

amendment will be zero because the rule only clarifies the purpose of an existing fee.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule only clarifies the purpose of an existing fee.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the rule is clarified as to the purpose of the temporary permit fee. The probable economic cost to persons required to comply with the amendment will be zero because the rule only clarifies the purpose of an existing fee.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 10, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule only clarifies the purpose of an existing fee. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.5. Temporary Permit Fee.

The fee for the issuance of a temporary permit [~~to practice public accountancy in this state incident to the regular practice outside of this state~~] shall be \$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 27, 1999.

TRD-9906258

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §521.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.7 concerning Fee for Transfer of Credits. This amendment is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The amendment to §521.7 will make the processing fee for transfer of credits to this state non-refundable, and increase the processing fee for credits transferred from this state from \$25.00 to \$40.00.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the rule makes one fee non-refundable and the other fee is increased.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule makes one fee non-refundable and the other fee is increased and the rule does not apply to local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be an increase in approximately \$1,900.00 for subsection (a) and \$29,520.00 for subsection (b).

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the Board will not refund one fee and will increase the other fee which should help the Board recover its expenses.

The probable economic cost to persons required to comply with the amendment will be \$100.00 in one instance and \$40.00 in the other instance.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board request comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the cost to process out-of-state credits is only \$100.00 and the cost to transfer credits to out-of-state is only \$40.00. In light of the benefit gained and the low costs, the costs in either instance does not have an adverse economic effect.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the

statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act, and Article 8930, Texas Revised Civil Statute, requiring the agency to be fiscally sound.

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

§521.7. Fee for Transfer of Credits.

(a) The processing fee for the transfer of credits earned in another licensing jurisdiction to this board shall be \$100. This is a non-refundable fee.

(b) The processing fee for credits earned in this state and transferred to another licensing jurisdiction shall be \$40. [~~\$25.~~]

This 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 27, 1999.

TRD-9906220

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §521.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.8 concerning Retired or Disabled Status.

The proposed amendment to §521.8 will allow the Board to more clearly state to retired licensees the purpose of their license fee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the amendment only clarifies the Rule's language.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment only clarifies the Rule's language.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the amendment only clarifies the Rule's language.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result

of adoption of the proposed rule will be that the rule is clarified as to the purpose of the license fee. The probable economic cost to persons required to comply with the amendment will be zero because the amendment only clarifies the Rule's language.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 10, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment only clarifies the Rule's language. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.8. *Retired or Disabled Status.*

The ~~annual~~ license fee~~], including the annual fee and any temporary fees established by statute,]~~ for an individual in retired or disabled status shall be \$10.

This 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 27, 1999.

TRD-9906259

William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §521.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.9 concerning Certification Fee. This amendment is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The amendment to §521.9 will increase the certification fee from \$30.00 to \$50.00.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the rule increases a fee.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule increases a fee and local governments are not affected by this rule.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be a \$21,306.00 projected increase based on costs associated with the processing and awarding of CPA certificates during the 1998 fiscal year.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the increased fees will help the Board meet the costs of its operations.

The probable economic cost to persons required to comply with the amendment will be an incremental cost of \$20.00.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board request comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule/amendment will not have an adverse economic effect on small businesses because the incremental cost is only \$20.00 and the total cost is only \$50.00 for the issuance of the certificate and this amount is too small to be considered adverse.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.9. *Certification Fee.*

The fee for the initial issuance of a CPA certificate pursuant to the Act shall be \$50 [~~\$30~~].

This 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 27, 1999.

TRD-9906221

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



22 TAC §521.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §521.10 concerning Out-of-State Proctoring Fee. This amendment is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The amendment to §521.10 will increase the fee from \$30.00 per subject to \$60.00 for one subject, \$90.00 for two subjects and \$180.00 for four subjects.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the rule increases fees.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule increases fees and local governments are not affected.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be an increase of \$2760.00 per fiscal year.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the increased fees will help the Board meet the costs of its operations.

The probable economic cost to persons required to comply with the amendment will be an additional \$30.00 or \$60.00 depending on the number of subjects to be proctored.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board request comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the incremental increase is \$30.00 or \$60.00 depending on the number of subjects to be proctored. The incremental amounts in valued do not rise to the level of adverse economic effect.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.10. *Out-of-State Proctoring Fee.*

The fee for proctoring the examination for a candidate applying to another licensing jurisdiction shall be apportioned as follows: [~~\$30 per subject.~~]

- (1) eligible for one subject - \$60;
- (2) eligible for two subjects - \$90; and
- (3) eligible for four subjects - \$180.

This 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 27, 1999.

TRD-9906222

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



22 TAC §521.11

The Texas State Board of Public Accountancy (Board) proposes new §521.11 concerning Fee for a Replacement Certificate.

The proposed new §521.11 will allow the Board to recoup its costs in issuing its licensees replacement certificates, thereby allowing it to meet its fiscal obligations under Article 8930, Texas Revised Civil Statute.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering

the new rule will be zero because replacement certificates are being processed and issued without charge.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero because replacement certificates are being processed and issued without charge.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new rule will be \$3000 to \$3600 based on 200-240 replacement certificates being issued per year, at a additional \$15 per certificate.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the Board will be fiscally sound as a result of recouping its costs for providing replacement certificates pursuant to its mandate under Article 8930, Texas Revised Civil Statute. The probable economic cost to persons required to comply with the new rule will be in the amount of \$15 above what was being charged for those who need a replacement certificate.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 15, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the cost for a replacement certificate applies to the individual CPA whose certificate is lost or damaged. The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.11. Fee for a Replacement Certificate.

The fee for the replacement of a certificate shall be \$30.

This 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 27, 1999.

TRD-9906260

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



22 TAC §521.12

The Texas State Board of Public Accountancy (Board) proposes new §521.12 concerning Filing Fee. This proposal is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The proposed new §521.12 will set a \$50.00 filing fee for an Intent to take the Uniform CPA Examination.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero because this rule addresses fees.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the proposed new rule will be zero because this rule addresses fees and local governments are not affected.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new proposed rule will be zero because this rule addresses fees and local governments are not affected and because this fee is merely being transferred from another rule.

Mr. Treacy has determined that for the first five-year period the rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be that the fee for filing an Intent to take the Uniform CPA Examination is clearly stated in its own rule.

The probable economic cost to persons required to comply with the proposed new rule will be \$50.00/zero because the fee is just being transferred from another rule.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

The Board request comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the fee is just being transferred from an existing rule.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small business; if the rule is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§521.12. Filing Fee.

The filing fee for the initial filing of the application of Intent to take the Uniform CPA Examination shall be \$50. This is a non-refundable fee.

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

Filed with the Office of the Secretary of State, on September 27, 1999.

TRD-9906223

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



Chapter 523. CONTINUING PROFESSIONAL EDUCATION

The Texas State Board of Public Accountancy (Board) proposes the repeal of §§523.1-523.7, 523.21-523.32, 523.41, 523.42, 523.61-523.65, 523.71-523.74 concerning Continuing Professional Education. The repeals are the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The proposed repeals will remove all of the Board's continuing professional education rules which are all being re-written, re-numbered and re-organized.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeals will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be zero because the repeal of these CPE rules is accompanied by the adoption of an entire new set of improved CPE rules, which will not create any additional cost or expense to the state.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be zero because the repeal of these rules on CPE is accompanied by the adoption of an entire new set of improved CPE rules, which does not create a reduction in costs to the state and local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be zero because the repeal of these CPE rules is accompanied by the adoption of an entire new set of improved CPE rules, which does not create an estimated loss or increase in revenue to the state.

Mr. Treacy has determined that for the first five-year period the repeals are in effect the public benefits expected as a result of adoption of the proposed repeals will be continuing professional education rules that are better organized, better written and easier to comprehend.

The probable economic cost to persons required to comply with the repeals will be zero because the repeal of these CPE rules is accompanied by the adoption of an entire new set of improved CPE rules, which does not create any economic cost to persons.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeals will not affect a local economy.

The Board requests comments on the substance and effect of the proposed repeals from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed repeals will not have an adverse economic effect on small businesses because the repeal of these CPE rules is accompanied by the adoption of an entire new set of improved CPE rules, which does not create expense to any person or small business.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeals will have an adverse economic effect on small business; if the repeal is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the repeal is to be adopted; and if the repeal is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the repeal under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

Subchapter A. CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

22 TAC §§523.1-523.7

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

The repeals are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.411.

No other article, statute or code is affected by these proposed repeals.

- §523.1. *Formal Continuing Professional Education Purpose and Definition.*
- §523.2. *Standards for CPE Program Development.*
- §523.3. *Program Objectives.*
- §523.4. *Education and Experience Prerequisites.*
- §523.5. *Program Developers.*
- §523.6. *Program Content.*
- §523.7. *Program 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.

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TRD-9906224
 William Treacy
 Executive Director
 Texas State Board of Public Accountancy
 Earliest possible date of adoption: November 7, 1999
 For further information, please call: (512) 305-7848



Subchapter B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

22 TAC §§523.21-523.32

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

The repeals are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

- §523.21. *Program Presentation Standards.*
- §523.22. *Instructors.*
- §523.23. *Program Sponsors.*
- §523.24. *Learning Environment.*
- §523.25. *Evaluation.*
- §523.26. *Program Measurement.*
- §523.27. *Credits for Instructors and Discussion Leaders.*
- §523.28. *Credits for Published Articles and Books.*
- §523.29. *Minimum Hours Required as a Participant.*
- §523.30. *Limitation for Nontechnical Courses.*
- §523.31. *Alternative Sources of Continuing Professional Education.*
- §523.32. *Ethics 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.

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 William Treacy
 Executive Director
 Texas State Board of Public Accountancy
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 For further information, please call: (512) 305-7848



Subchapter C. CONTINUING PROFESSIONAL EDUCATION REPORTING

22 TAC §523.41, §523.42

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

The repeals are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.41. *Standards for CPE Reporting.*

§523.42. *Sponsor's Record.*

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

Filed with the Office of the Secretary of State, on September 27, 1999.

TRD-9906226
 William Treacy
 Executive Director
 Texas State Board of Public Accountancy
 Earliest possible date of adoption: November 7, 1999
 For further information, please call: (512) 305-7848



Subchapter D. MANDATORY CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAM

22 TAC §§523.61-523.65

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

The repeals are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.61. *Establishment of Mandatory CPE Program.*

§523.62. *Mandatory CPE Reporting.*

§523.63. *Mandatory CPE Attendance.*

§523.64. *Disciplinary Actions Relating to CPE.*

§523.65. *Denial of a License.*

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

Filed with the Office of the Secretary of State, on September 27, 1999.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Subchapter E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §§523.71-523.74

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

The repeals are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.71. *Application as a Sponsor.*

§523.72. *Renewal Application.*

§523.73. *Obligations of the Sponsor.*

§523.74. *National Registry of CPE Sponsors.*

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

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Chapter 523. CONTINUING PROFESSIONAL EDUCATION

The Texas State Board of Public Accountancy (Board) proposes new §§523.1-523.7, 523.21-523.32, 523.41, 523.42, 523.61-523.65, 523.71-523.74 concerning Continuing Professional Education. These proposed new rules are the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The proposed new rules will re-create or continue the Board's continuing professional education (CPE) program and rules.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rules will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the rules will be zero because the CPE rules are only being re-worded, re-numbered and re-located, which does not create any additional cost or expense to the state.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules will be zero because the CPE rules are only being re-worded, re-numbered and re-located, which does not create any reductions in costs to the state and to local governments.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the rules will be zero because the CPE rules are only being re-worded, re-numbered and re-located, which does not cause a loss or increase in revenue to the state.

Mr. Treacy has determined that for the first five-year period the new rules are in effect the public benefits expected as a result of adoption of the proposed new rules will be continuing professional education rules that are better organized, better written and easier to comprehend.

The probable economic cost to persons required to comply with the new rules will be zero because the CPE rules are only being re-worded, re-numbered and re-located, which does not create any additional cost or expense to any person.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed rules will not affect a local economy.

The Board requests comments on the substance and effect of the proposed rules from any interested person. Comments must be received at the Board no later than 12:00 P.M. on Friday, October 15, 1999. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rules will not have an adverse economic effect on small businesses because the CPE rules are only being re-worded, re-numbered and re-located, which does not create any additional cost or expense to any person or small business.

The Board specifically invites comments from the public on the issues of whether or not the proposed rules will have an adverse economic effect on small business; if the rules is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rules are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rules under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

Subchapter A. CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

22 TAC §§523.1-523.7

The new rules are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the Board to promulgate rules on continuing professional education.

No other article, statute or code is affected by these proposed new rules.

§523.1. Continuing Professional Education Purpose and Definition.

(a) The purpose of continuing professional education is to help insure that licensees are able to serve the public in a competent manner.

(b) The following terms when used in this section, shall have the meanings, given below, unless the context clearly indicates otherwise:

(1) A "program" is designed to permit a participant to use a given body of knowledge at specified level of skill.

(2) A "formal group program" is a program that complies with the standards in the board's Rules.

(3) A "self-study program" is a program designed to permit a participant to learn a given subject without major interaction with an instructor.

(4) A "formal self-study program" is one for which the sponsor:

(A) requires and evaluates evidence (such as a workbook or examination paper) the participant has completed the course satisfactorily;

(B) provides a certificate based upon evidence of satisfactory completion; and

(C) complies with the standards in the board's Rules.

(5) A "computer-based interactive format program" is one designed to simulate a classroom learning process by employing structured software or technology-based systems that provide significant ongoing interactive feedback for the participant regarding the learning process. This type of program clearly defines lesson objectives and manages the participant through the learning process by:

(A) requiring frequent response to questions that test for understanding of the material presented;

(B) providing evaluative feedback to incorrectly-answered questions; and

(C) providing reinforcement feedback to correctly-answered questions.

(c) Sponsors are responsible for ensuring that their programs:

(1) use appropriate delivery methodology;

(2) deliver what participants may reasonable expect based on the program description; and

(3) comply with all the standards in the Board's Rules

§523.2. Standards for Continuing Professional Education Program Development.

(a) The fundamental purpose of continuing professional education is to increase the licensee's professional competence that benefits the public.

(b) Courses the board regards as increasing the licensee's professional competence include:

(1) technical courses in areas such as accounting, audit, tax, management advisory services, and other technical areas of benefit to a licensee and a licensee's employer(s); and

(2) non-technical courses such as communications, advanced courses in foreign languages relating to accounting, ethics, behavioral science, and practice management which are of benefit to a licensee or a licensee's employer(s). Refer to §523.30 of this title (relating to Limitation for Non-technical Courses).

§523.3. Program Objectives.

The stated program objectives should clearly communicate the exact concepts and skills the program will transfer to persons completing it.

§523.4. Education and Experience Prerequisites.

All programs must clearly identify what prerequisites are necessary for enrollment, so a potential participant can determine whether they are qualified to participate in and benefit from the program. If no prerequisite is necessary, a statement to this effect should be made.

§523.5. Program Developers.

A program developer must be prepared to demonstrate satisfactorily their competence to design the program at a high quality level.

§523.6. Program Content.

The program developer must review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. Between these reviews, errata sheets should be issued where appropriate and obsolete materials should be deleted. However, between the time a new pronouncement is issued and the issuance of errata sheets or removal of obsolete materials, the instructor is responsible for informing participants of changes.

§523.7. Program Review.

Course material should be reviewed by a qualified person(s) other than the preparer(s) to ensure compliance with the provisions of these sections and with high standards of content and instructional design. In the case of short or once only programs, more reliance may be placed on the competence of the presenter.

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

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William Treacy

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Texas State Board of Public Accountancy

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Subchapter B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

22 TAC §§523.21-523.32

The new rules are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.21. Program Description Standards.

Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching method(s), and recommended credit hours. Sponsors are responsible for distributing accurate information about their programs.

§523.22. Instructors.

Instructors must be qualified both with respect to program content and teaching methods used. Sponsors should evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

§523.23. Program Sponsors Other Responsibilities.

Sponsors should comply with the standard by encouraging:

- (1) enrollment only by eligible participants;
- (2) timely distribution of materials;
- (3) completion of any advance preparation; and
- (4) assigning the appropriate number of credit hours for participants who arrive late or leave before a program is completed.

§523.24. Learning Environment.

The number of participants and physical facilities should be consistent with the teaching method(s) specified. The learning environment is affected by the number of participants and by the quality of the physical facilities. Sponsors have an obligation to pay serious attention to these two factors. The maximum number of participants for a case-oriented discussion program should be considerably less than for a lecture program. Class size, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled.

§523.25. Evaluation.

(a) All programs should include some means for evaluating quality by both participants and instructors to determine whether:

- (1) objectives have been met;
- (2) prerequisites were necessary or desirable;
- (3) facilities were satisfactory;
- (4) the instructor was effective;
- (5) advance preparation materials, if any, were satisfactory; and
- (6) the program content was timely and effective.

(b) Evaluations should take the form of:

- (1) pretests for advance preparation; and/or
- (2) post-tests for effectiveness of the program; and/or
- (3) other evaluation forms or questionnaires completed at the end of the program or later.

(c) Instructors should be informed of their performance, and sponsors should systematically review the evaluation process to ensure its effectiveness.

§523.26. Program Time Credit Measurement.

(a) All programs should be measured in terms of 50-minute contact hours. The shortest recognized program should consist of one contact hour. A contact hour is 50 minutes of continuous participation in a group program. Under this standard, a credit hour is granted only for each contact hour.

(b) For continuous conferences and conventions, when individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three contact hours.

(c) For university or college courses, each semester hour credit should equal 15 hours toward the requirement. A quarter hour credit should equal 10 hours.

(d) Self-study programs should be pretested to determine average completion time. One half of the average completion time is the recommended credit to be allowed.

§523.27. Credits for Instructors and Discussion Leaders.

When an instructor or discussion leader serves at a program for which participants receive credit and at a level that contributes to the instructor's or discussion leader's professional competence, credit may be given for preparation and presentation time measured in terms of credit hours. For the first time a program is presented, instructors may receive credit for actual preparation hours up to two times the recommended credit hours. For repetitious presentations, the instructor may receive credit only if it can be demonstrated that the subject matter involved was changed sufficiently to require significant additional study or research. The maximum credit for preparation and presentation cannot exceed 20 hours in the reporting period.

§523.28. Credits for Published Articles and Books.

CPE credit hours may be claimed for published articles and books provided they contribute to the professional competence of the licensee. Credit hours for preparation of such publications may be claimed up to 10 hours in any CPE reporting period. In exceptional circumstances, a licensee may submit a request to the board for additional credit, not to exceed a total of 20 credit hours in the reporting period. The request should be accompanied by a copy of the article(s) or book(s) and an explanation justifying the request for additional CPE hours.

§523.29. Minimum Hours Required Per Year as a Participant.

A minimum of 20 credit hours per year must be as a participant in a qualified continuing professional education in a live classroom instruction and/or self-study if the licensee is claiming credit of the requirement as provided for in §523.27- §523.28 of this title (relating to Credits for Instructors and Discussion Leaders and Credits for Published Articles and Books).

§523.30. Limitation for Non-Technical Courses.

CPE credit hours may be claimed for non-technical courses limited to not more than 20 credit hours in the reporting period.

§523.31. Alternative Sources of Continuing Professional Education.

(a) Credit hours may be claimed from other organizations not recognized as formal continuing professional education sponsors. Credit from membership in the committees listed can be claimed using 50 minutes per contact hour at meetings to equal one credit hour:

- (1) Financial Accounting Standards Board (FASB);
- (2) Governmental Accounting Standards Board (GASB);

(3) FASB's Emerging Issues Task Force (EITF);

(4) AICPA's Auditing Standards Board and Accounting Standards Executive Committee;

(5) Financial Executives Institute's Committee on Corporate Reporting (FEI/CCR);

(6) National Association of Accountants' Management Accounting Practices Committee;

(7) AICPA's Accounting and Review Services Committee (ARSC); and

(8) The AICPA's Private Companies Section on Technical Issues Committee.

(b) Credit hours earned from sources other than registered sponsors, or membership on designated committees, must receive prior approval before credit may be claimed.

§523.32. Ethics Course.

(a) General. Licensees certified or registered prior to January 1, 1995, are required to successfully complete within three years of January 1, 1995, a board approved four-hour course of comprehensive study on the Rules of Professional Conduct of the board. A person certified or registered on or after January 1, 1995, shall report to the board the successful completion of the four-hour course within three years of the end of the initial license period. A minimum of two hours of instruction on the board's Rules of Professional Conduct must be taken by and reported on every third subsequent annual license notice.

(1) An individual certified or registered on or after September 1, 1999, must successfully complete and submit to the board proof of completion of the four-hour ethics course prior to being issued a certificate. Within three years of the end of the initial license period, the individual shall take and report completion of a board approved two-hour course. The two-hour course shall be reported on the annual renewal notice. Thereafter, minimum of two hours on instruction on the board's Rules of Professional Conduct must be taken by and reported on every third annual license notice.

(2) A licensee granted retired, permanent disability, or other exempt status is not required to complete the ethics course described during their exempt status. When the exemption status is no longer applicable, the individual must complete the ethics course as defined in §523.32(a) of this title (relating to Ethics Course) and report it on the license notice.

(b) Course content and board approval. Before a provider of continuing professional education can offer this course, the content of the course must be submitted to the continuing professional education committee of the board for approval. Course content shall be approved only after demonstrating, either in a live instructor format, or a computer-based interactive format as defined in §523.1(c)(a)(5) of this chapter (relating to Continuing Professional Education Purpose and Definitions) that the course contains the underlying intent established in the following criteria.

(1) The course shall encourage the certificate or registration holder to educate himself or herself in the ethics of the profession, specifically the Rules of Professional Conduct of the board.

(2) The course shall convey the intent of the board's Rules of Professional Conduct in the certificate or registration holder's performance of professional services, and not mere technical compliance. A certificate or registration holder is expected to apply ethical judgment in interpreting the rules and determining the public interest. The public interest should be placed ahead of self-interest, even if it means a loss of job or client.

(3) The primary objectives of a continuing professional education ethics course shall be to:

(A) emphasize the ethical standards of the profession, as described in this section; and

(B) review and discuss the board's Rules of Professional Conduct and their implications for certificate or registration holders in a variety of practices, including:

(i) a certificate or registration holder engaged in the client practice of public accountancy who performs attest and non-attest services, as defined in §501.2 of this title (relating to Definitions);

(ii) a certificate or registration holder employed in industry who provides internal accounting and auditing services; and

(iii) a certificate or registration holder working in education or in government accounting or auditing.

(4) An ethics course shall meet the requirements of the board's continuing professional education rules as described in this chapter (relating to Continuing Professional Education). Effective June 1, 1996, prior to offering and scheduling an ethics course, a sponsor shall:

(A) ensure that the instructor has completed the board's ethics training program at least every three years or as required by the board;

(B) ensure that the instructor's professional license has never been suspended or revoked for violation of the Rules of Professional Conduct; and

(C) provide its advertising materials to the board's CPE Committee for approval. Such advertisements shall:

(i) avoid commercial exploitation;

(ii) identify the primary focus of the course; and

(iii) be professionally presented and consistent with the intent of §501.43 of this title (relating to Advertising).

(c) Evaluation. At the conclusion of each course, the sponsor shall administer testing procedures to determine whether the program participants have obtained a basic understanding of the course content, including the need for a high level of ethical standards in the accounting profession.

(d) Texas resident. A certificate or registration holder who resides in the state of Texas may not take the ethics course via self-study but must take the ethics course in a live instructor format or in an interactive computer-based format.

(e) Out-of-state resident. A certificate or registration holder who does not reside in the state of Texas may take the course in either a live instructor format, a computer-based interactive format, a self-study format, or may write the board to request an exemption.

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

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Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Subchapter C. CONTINUING PROFESSIONAL EDUCATION REPORTING

22 TAC §523.41, §523.42

The new rules are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.41. Standards for Continuing Professional Education Reporting.

(a) Participants in group or self-study programs must document their participation, including:

- (1) sponsor;
- (2) title or description of content, or both;
- (3) date(s);
- (4) location; and
- (5) number of credit hours.

(b) These standards are designed to encourage participants to document their attendance at group programs or participation in self-study programs. Evidence of completion would normally be the certificate supplied by the sponsor. Documentation by the licensee must be retained for the three most recent full reporting periods.

§523.42. Sponsor's Record.

(a) In order to support the reports required of participants, the sponsor of group or self-study programs must retain for an appropriate period:

- (1) record of participation;
- (2) outline of the course (or equivalent);
- (3) date(s);
- (4) location;
- (5) instructor(s);
- (6) number of credit hours; and
- (7) evaluation of program as directed in §523.25 of this title (relating to Evaluation).

(b) To satisfy the detailed requirements of all jurisdictions, a retention period of three years from the date the program is completed is appropriate. The record of attendance should reflect the credit hours earned by each participant, including those who arrive late or leave early.

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

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Subchapter D. MANDATORY CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAM

22 TAC §§523.61-523.65

The new rules are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.61. Establishment of Mandatory Continuing Professional Education Program.

A licensee shall be responsible for ensuring that CPE credit hours claimed conform to the board's standards as outlined in:

- (1) §523.21 regarding Program Presentation Standards;
- (2) §523.22 regarding Instructions;
- (3) §523.23 regarding Program Sponsors;
- (4) §523.24 regarding Learning Environment;
- (5) §523.25 regarding Evaluation;
- (6) §523.26 regarding Program Measurement;
- (7) §523.27 regarding Credits for Instructors and Discussion Leaders;
- (8) §523.28 regarding Credits for Published Articles and Books;
- (9) §523.29 regarding Minimum Hours Required as a Participant;
- (10) §523.30 regarding Limitation for Non-Technical Courses;
- (11) §523.31 regarding Alternative Sources of Continuing Professional Education; and
- (12) §523.32 regarding Ethics Course.

§523.62. Mandatory Continuing Professional Education Reporting.

(a) To receive a license, a licensee shall report at a minimum, the mandatory continuing professional education credit hours under §523.32 and §523.63 of this title (relating to Ethics Course and Mandatory Continuing Professional Education Attendance) those credits which were accrued during the reporting period.

(b) A licensee shall report continuing professional education credit hours accrued during the reporting period on the license renewal form. Appropriate instructions shall accompany the license renewal form.

(c) The board may not grant exemptions from the requirement to report continuing professional education credit hours accrued. A licensee must report CPE credit hours on the license renewal form, even if the number reported is zero.

(d) A licensee who fails to report the minimum mandatory continuing professional education credit hours accrued during the reporting period will be subject to disciplinary action under §523.64

of this title (relating to Disciplinary Actions Relating to Continuing Professional Education).

§523.63. Mandatory Continuing Professional Education Attendance.

A licensee shall complete at least 120 hours of continuing professional education every three years. The individual shall complete at least 20 hours of continuing professional education each year.

(1) An initial licensee, one who is paying the license fee during the first twelve months period, shall be exempt from the requirement for the period during which the applicant is first licensed.

(2) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement, must pay the required fees and penalties and must accrue the minimum continuing professional education (CPE) credit hours missed.

(3) The board may consider granting an exemption from the continuing professional education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed during the period for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to accrue continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area as described in §523.2 and §523.32 of this title (relating to Standards for Continuing Professional Education Program Development and Ethics Course);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor.

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; data processing; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(IV) for purposes of making a determination as to whether the licensee fits one of the categories listed in this subclause and subclauses (I)-(III) of this clause, the questions shall be resolved in favor of inclusion of the work as "association with accounting work."

(ii) A licensee who has been granted this exemption and who loses the exemption shall accrue continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing professional education hours shall be accrued from the technical area as described in §523.2 and

§523.32 of this title (relating to Standards for Continuing Professional Education Program Development and Ethics Course);

(C) a licensee not residing in Texas, who submits a sworn statement to the board that they do not serve Texas clients from out of state.

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee is on extended active military duty during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance, that is acceptable to the board.

(4) A licensee who has been granted the retired or disabled status under §515.8 of this title (relating to Retirement Status or Permanent Disability) is not required to accrue continuing professional education.

§523.64. Disciplinary Actions Relating to Continuing Professional Education.

(a) A licensee who fails to comply with the provisions of §523.32 of this title (relating to Ethics Course), §523.62 of this title (relating to Mandatory Continuing Professional Education Reporting) §523.63 of this title (relating to Mandatory Continuing Professional Education Attendance) may be subject to disciplinary action under the Public Accountancy Act of 1991, §21, (Texas Civil Statutes, Article 41a-1), for violation of the Rules of Professional Conduct, §501.25 of this title (relating to Mandatory Continuing Professional Education), which requires compliance with §523.32 of this title (relating to Ethics Course), §523.62 of this title (relating to Mandatory Continuing Professional Education Reporting) and §523.63 of this title (relating to Mandatory Continuing Professional Education Attendance).

(b) A licensee shall retain documents or other evidence supporting continuing professional education credit hours claimed for the three most recent full reporting periods to the date the credit hours are reported to the board, but shall submit the supporting evidence to the board if such data is specifically requested.

(c) The board may, as deemed appropriate, audit continuing professional education supplied by a licensee and request that all documentation be provided to the board within a reasonable period of time.

(d) Evidence of falsification, fraud, or deceit in the continuing professional education documentation may necessitate disciplinary action as authorized in the Public Accountancy Act.

§523.65. Denial of a License.

(a) The board shall not issue or renew a license to an individual who has not accrued the required CPE credit hours unless an exemption has been granted by the board.

(b) The board may revoke, suspend, or impose other disciplinary actions defined in the Public Accountancy Act, if a license was issued or renewed in violation of a rule of the Act after notice and hearing as provided in the Public Accountancy Act.

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

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Subchapter E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §§523.71-523.74

The new rules are proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.71. Application as a Sponsor.

(a) Each organization desiring to register as a provider of continuing professional education shall submit an application on forms provided by the board. This application must be complete in all respects.

(b) The board's staff will review each application for registration and notify the applicant of its acceptance or rejection. Accepted sponsors will be assigned a sponsor number. Rejected applicants will be notified of the reason for rejection.

§523.72. Renewal Application.

Sponsors are required to indicate their desire to continue as a registered continuing professional education sponsor annually on forms provided by the board. This application must be complete in all respects. The board's staff will review each renewal application and notify the sponsor of its acceptance or rejection and, if rejected, the reason for rejection.

§523.73. Obligations of the Sponsor.

In consideration for registration as a sponsor of continuing professional education, every organization shall agree, in writing, to the following:

(1) "We understand that after acceptance of the application or reapplication by the board we may advise prospective attendees of the program sponsor agreement, our sponsor number, and the number of credit hours recommended. We further agree that if we notify licensees of this agreement we shall do so by use of the following language. "We have entered into an agreement with the Texas State Board of Public Accountancy to meet the requirements of continuing professional education rules covering maintenance of attendance records, retention of program outlines, qualifications of instructors, program content, physical facilities, and length of class hours. This agreement does not constitute an endorsement by the board as to the quality of the program or its contribution to the professional competence of the licensee."

(2) "We understand that our advertising shall not be false or misleading, nor contain words such as "accredited" or "approved" or any terms which may imply that a determination has been made by the board regarding the merits or quality of the program."

(3) "We agree that board members, board staff, or its official designees may inspect our facilities, examine our records, attend our courses or seminars at no charge, and audit our program to determine compliance with the sponsor agreement and the continuing professional education standards of the board."

(4) "We understand and agree that if we fail to comply with this agreement or fail to meet acceptable standards in our programs, our sponsor agreement may be terminated at any time by the board, our sponsor agreement renewal application denied, and notice of such termination or denial may be provided to licensees by the board."

§523.74. National Registry of Continuing Professional Education Sponsors.

(a) The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education Sponsors; however, organizations are not required to register with the National Association of State Boards of Accountancy.

(b) Organizations that elect to register with this board shall adhere to the obligations of the sponsor identified in §523.73 of this title (relating to Obligations of the Sponsor), and to the standards promulgated by this 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 27, 1999.

TRD-9906233

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



Chapter 527. QUALITY REVIEW

22 TAC §527.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.1 concerning Establishment of Quality Review.

The proposed amendment to §527.1 will allow the use of the new citation to the Public Accountancy Act and eliminates a repetitive and unnecessary parenthetical phrase.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because the rule only changes a statutory citation and eliminates a repetitive and unnecessary parenthetical phrase.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the rule only changes a statutory citation and eliminates a repetitive and unnecessary parenthetical phrase.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because the rule only changes a statutory citation and eliminates a repetitive and unnecessary parenthetical phrase.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that the rule will have the current citation to the Public Accountancy Act. The probable economic cost to persons required to comply with the amendment will be zero because the rule only changes a statutory citation and eliminates a repetitive and unnecessary parenthetical phrase.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 10, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule only changes a statutory citation and eliminates a repetitive and unnecessary parenthetical phrase. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is adopted under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

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

§527.1. Establishment of Quality Review Program.

A quality review program [(the program)] is hereby established pursuant to the Public Accountancy Act [of 1994], §901.159 [§15B], which authorizes the board to provide by rule for review of the work products of licensees.

This 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 27, 1999.

TRD-9906261
William Treacy

Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 7, 1999
For further information, please call: (512) 305-7848

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22 TAC §527.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.3 concerning Definitions.

The proposed amendment to §527.3 will allow the definitions under the Quality Review Chapter to be expanded and clarified.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the amendment will be zero because it only clarifies definitions.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because it only clarifies definitions.

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the amendment will be zero because it only clarifies definitions.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed rule will be that CPAs and firms will have a clearer understanding regarding the applicability and operational procedures of quality review. The probable economic cost to persons required to comply with the amendment will be zero because it only clarifies definitions.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the proposed amendment from any interested person. Comments must be received at the Board no later than 12:00 P.M. on October 15, 1999. Comments should be addressed to Amanda Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701, or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it only clarifies definitions. The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act, Tex. Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159

which authorizes the board to promulgate rules regarding Quality Review.

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

§527.3. *Definitions.*

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

(1) Firm- All practice units owned by the same entity.

(2) [~~(4)~~] Practice unit - Each office of a firm (partnership, corporation, professional limited liability company, registered limited liability partnership, or sole proprietorship) required to be registered with the board for the purpose of the client practice of public accountancy[; including licensees aggregated by the board into a practice unit].

(3) [~~(2)~~] Review or review program - The review conducted under the peer review program. [~~relevant program whether peer review or quality review.~~]

(4) [~~(3)~~] Review year - The review covers a one-year (twelve month) period. Engagements selected for review normally would have periods ending during the year under review. [calendar year within which the review date is to be selected or assigned.]

(5) [~~(4)~~] Special reports - Includes reports issued in connection with the following:

(A) financial statements that are prepared in conformity with a comprehensive basis of accounting other than generally accepted accounting principles;

(B) specified elements, accounts, or items of a financial statement;

(C) compliance with aspects of contractual agreements or regulatory requirements related to audited financial statements.

(D) financial presentations to comply with contractual agreements or regulatory provisions:

(E) financial information presented in prescribed forms or schedules that require a prescribed form of auditor's reports; or

(F) Internal audits by a firm for a client or a governmental entity.

(6) [~~(5)~~] Sponsoring organization - An entity (individual, firm, partnership, professional corporation, professional limited liability company, registered limited liability partnership, or professional organization or association of CPAs) that meets [has met, and at all relevant times continues to meet,] the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have [~~applied for and received] been [approval] approved [from] 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 27, 1999.

TRD-9906266

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 305-7848



Part 23. TEXAS REAL ESTATE COMMISSION

Chapter 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

Subchapter R. LICENSED REAL ESTATE INSPECTORS

22 TAC §535.208, §535.216

The Texas Real Estate Commission (TREC) proposes amendments to §535.208, concerning application for an inspector license, and §535.216, concerning renewal of an inspector license. The amendments clarify the process to be followed when a person previously licensed as an inspector seeks to be relicensed by TREC.

The Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act) contains two provisions relating to the licensing of persons who have previously been licensed as inspectors. Section 23(f) of the Act, adopted in 1991, permits a prior licensee to apply to renew a license within one year after the expiration of a license without being subject to the requirements for original licensing and imposes an additional fee for real estate inspectors and professional inspectors based upon the length of time since the license expired. Section 23(d) of the Act, adopted in 1993, permits a prior licensee to apply for a new license within two years following the expiration of the license without being subject to education, experience, or examination requirements imposed on original applicants. Under the latter provision, an application may be disapproved if the applicant fails to satisfy TREC as to the person's honesty, trustworthiness, or integrity.

The amendments to §535.208 and to §535.216 are intended to create a "late renewal" process under which prior licensees may apply for a license without being subject to the education, experience, or examination requirements imposed on original applicants but are subject to disapproval in the manner of an original application. This process is currently used by TREC for other licenses issued by the agency. Adoption of the amendments would result in consistent application processes for TREC's license applicants and afford prior licensees a two-year period within which to be relicensed without being subject to education, experience, or examination requirements for original licensing.

The amendment to §535.208 would adopt by reference three applications forms which would be used by persons seeking to be licensed, respectively, as apprentice inspectors, real estate inspectors, or professional inspectors. The forms have been modified to reflect that they may be used by persons licensed within the two-year period prior to the filing of the application and to provide information about the additional fee imposed under §23(f) of the Act. The amendment provides a definition of the term "late renewal" and clarifies that an application for a license by a person who held the same type of license no more than two years prior to the filing of the application may be

disapproved for the same reasons as an original application. A non-substantive change also is proposed to clarify that hearings relating to applications are not currently held before the advisory committee of professional inspectors created by the Act.

The amendment to §535.216 would permit a person to file an application for another license for up to two years following the expiration of the prior license without being subject to education, experience, or education requirements for original licensing, subject however to the increased fee provided by §23(f) of the Act if the application is filed within the first year after expiration of the prior license. The amendment also would clarify that, like an original applicant, a prior licensee may not practice until a new license has been received. A reference to a former registration process would also be deleted as unnecessary.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the licensing procedures applicable to prior licensees. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.208. *Application for a License.*

(a) (No change.)

(b) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a License as an Apprentice Inspector, Form REI 2-5 [2-4];

(2) Application for a License as a Real Estate Inspector, Form REI 4-6 [4-5]; and

(3) Application for a License as a Professional Inspector, Form REI 6-6 [6-5].

(c) (No change.)

(d) An application for a license or late renewal of a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing ~~[before the committee]~~ on the denial shall be as provided in the Act, §10 and §535.224 of this title (relating to Proceedings before the Committee). For the purposes

of this section, the term "late renewal" means an application for a license by a person who held the same type of license no more than two years prior to the filing of the application.

(e) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license or late renewal of a license ~~for [to license or] an apprentice or [to license] a real estate inspector.~~

§535.216. *Renewal of License.*

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

(c) If a license has been expired for no more than two years, a previously licensed person may apply for late renewal of the license. An application for late renewal is an application for a license for which the applicant is not required to satisfy education, experience, or examination requirements for an original license. An application for late renewal of a license [Renewal applications] filed no more than one year after expiration of the license is [are] subject to the increased fees provided by the Act, §23(f). An application filed more than one year after expiration of the license must be accompanied by the fee provided by the Act, §23(h) for an application for an original license.

(d) (No change.)

(e) An inspector licensed on active status who timely files a renewal application together with the applicable fee and evidence of completion of any required continuing education courses may continue to practice prior to receiving a new license certificate from the commission. If the license has expired and the licensee files an application for late renewal of [to renew] the license, the licensee may not practice until the new certificate is received.

This 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 24, 1999.

TRD-9906187

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 465-3900



TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 101. TOBACCO

25 TAC §101.5

The Texas Department of Health (department) proposes the repeal of §101.5 and new §101.5 concerning the reporting of nicotine content of cigarettes. The proposal is in response to a petition for rulemaking submitted to the department by Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, and R.J. Reynolds Tobacco Company through their attorneys, Covington and Burling. These rules are proposed to implement Chapter 1216 (House Bill 119)

75th Legislature (1997), which added Health and Safety Code, Subchapter P, "Disclosure of Ingredients in Cigarettes and Tobacco Products." Specifically the new section details the procedures of nicotine yield reporting for cigarettes.

Dr. Philip Huang, M.D., Bureau Chief, Bureau of Disease and Injury Prevention, has determined that for the first five-year period the repeal and new section are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Dr. Huang has also determined that for each year of the first five years the repeal and new sections are in effect, the public benefit anticipated as a result of enforcing the sections will be increased access by the public to information about cigarettes and more consistency with reporting in other states, which will make their decision to use tobacco products better informed. The tobacco industry conservatively estimates that the adoption of the proposed sections will save the industry more than \$1,500 annually per brand style exempted from testing as a result of the new rule. The industry has estimated about 300 brand styles will be so affected. Most of the savings will result from the ability of manufacturers to determine the nicotine yield rating using a procedure that is similar to one currently practiced for the State of Massachusetts' nicotine yield reporting requirements. Approximately the same savings for each brand style exempted will accrue to small or microbusinesses that market cigarettes in Texas. There are no anticipated economic costs to persons who are required to comply with the sections proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Dr. Philip Huang, M.D., Bureau Chief, Bureau of Disease and Injury Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days following publication of this proposal 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 Texas Department of Health or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Health and Safety Code Chapter 161, Subchapter P which requires the Texas Board of Health to adopt standards on the nicotine yield rating of cigarettes and tobacco products, and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The proposed repeal affects Health and Safety Code, Chapter 161.

§101.5. *Cigarette Nicotine Yield Rating Reporting 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 24, 1999.

TRD-9906180

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 458-7236



The new section is proposed under the Health and Safety Code Chapter 161, Subchapter P which requires the Texas Board of Health to adopt standards on the nicotine yield rating of cigarettes and tobacco products, and §12.001 which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The proposed new section affects Health and Safety Code, Chapter 161.

§101.5. *Cigarette Nicotine Yield Rating Reporting Requirements.*

(a) Cigarette manufacturers shall include, as part of the nicotine yield rating for each brand, sub-brand and generic unbranded cigarette sold in the State of Texas, the information specified in this section. For purposes of this section, the term "brand family" shall mean a number of different, though highly similar cigarette products marketed under one general name; e.g., regular, longer length, and menthol cigarettes of the same brand; provided that if the brand styles within a private label or generic cigarette brand family are identical in their formulation and design to the brand styles within one or more other private label or generic cigarette brand families, those brand families shall be treated as a single brand family. If two or more brand styles within a brand family have identical formulations and product designs, the manufacturer may test only one of those brand styles in lieu of testing all of those brand styles. The manufacturer shall indicate in its report to the department the brand styles covered by the results of the brand style tested.

(1) Nicotine delivery under average smoking conditions, reported in milligrams of nicotine per cigarette. Nicotine delivery under average smoking conditions shall be evaluated using the Cambridge Method, which has been approved by the Federal Trade Commission as the standard for nicotine testing since 1966 and adopted for international purposes by the International Organization for Standardization (ISO). See *Federal Register* of August 1, 1967, Volume 32, number 147, page 11178, as modified in *Federal Register* of July 10, 1980, Volume 45, number 134, pages 46483-46487; and ISO 10315, 91-08-01 entitled *Cigarettes-Determination of Nicotine in Smoke Condensates-Gas-Chromatographic Method*, ISO 3308, third edition, 1991-10-15, *Routine Analytical cigarette-Smoking Machine-Definition of Standard Conditions* and ISO 7210, second edition, 1997-01-15, *Routine Analytical Smoking Machine Additional Test Methods*. Two cigarettes shall be randomly selected from each pack for a sample of 60 cigarettes. The following changes shall be made to the method described in the publications cited:

(A) puff volume adjusted to 45 milliliters;

(B) puff interval adjusted to 30 seconds;

(C) puff duration shall remain 2 seconds; and

(D) 50% of the ventilation holes must be blocked by placing a strip of mylar adhesive tape, Scotch brand product no. 600 transparent tape (acetate) or other method approved by the department. The tape shall be cut so that it covers 50% of the circumference and is tightly secured from the end of the filter to the tipping overwrap seam.

(2) For each brand, sub-brand and generic unbranded cigarette which belongs to a brand family that has a national market share of less than 3.0%, as reported in the most recent Maxwell Report (published on or before December 31 of the year preceding the reporting deadline), "Cigarette Brand Sales and Market Share," published by Davenport and Company, Richmond, Virginia, or a comparable report designated by the department, a manufacturer may, instead of using the protocol in subsection (a)(1) of this

section, determine nicotine delivery by application of a numeric factor approved by the department, to the most recent nicotine level reported for a brand style to the Federal Trade Commission, as published in the Federal Trade Commission Report entitled "Tar, Nicotine and Carbon Monoxide of the Smoke of Varieties of Domestic Cigarettes." If no report has been made to the Federal Trade Commission, the manufacturer shall report the nicotine level determined in accordance with the testing methods specified in subsection (a)(1) of this section. The numeric factor shall be derived from the results of the tests conducted in the preceding year pursuant to subsection (a)(1) of this section and shall approximate ratings for nicotine under average delivery that would be derived from testing.

(b) Manufacturers shall classify each brand, sub-brand, or generic unbranded cigarette for nicotine yield according to the following standards:

(1) "High Nicotine." Cigarettes yielding more than 1.2 milligrams per cigarette (mg/cigarette);

(2) "Moderate Nicotine." Cigarettes yielding greater than .2 and less than or equal to 1.2 mg/cigarette;

(3) "Low Nicotine." Cigarettes yielding greater than or equal to .01 and less than or equal to .2 mg/cigarette; or

(4) "Nicotine Free." Cigarettes yielding less than .01 mg/cigarette.

(c) The cigarette nicotine index shall be reported to the department as specified in the following "Cigarette Nicotine Yield Rating Form".

Figure 1: 25 TAC §101.5(c)

(d) For each brand style of cigarette belonging to a brand family with a national market share of 3.0% or greater, as reported in the most recent Maxwell Report (published on or before December 31 of the year preceding the reporting deadline), Cigarette Brand Sales and Market Share, published by Davenport and Company, Richmond, Virginia, or a comparable report designated by the department, the annual report shall also include the following:

(1) total nicotine content of the cigarette, reported in milligrams of nicotine. The protocol for measuring nicotine content in cigarettes is described in "Protocol for Analysis of Nicotine, Total Moisture, and pH in Smokeless Tobacco Products," as announced in the *Federal Register* of May 2, 1997, Volume 62, number 85, pages 24115-24116, or the latest version of this protocol published by the federal government, or a colorimetric method approved by the department. A sufficient number of cigarettes shall be drawn from the composite sample described in subsection (f) of this section to provide a minimum sample size of 100 grams of tobacco;

(2) percent filter tip ventilation; that is, the amount of air dilution in the whole smoke provided by the perforations in the cigarette filter, described in percent. This shall be measured using the Filter Dilution (Ventilation) Testing Instrument (FDT) from Fidus Instrument Corporation, product no. FDT 232; or FIAL Tip and Envelope Ventilation/Pressure Drop QTM5U machine; or equivalent approved by the department, and shall be used in accordance with manufacturer's instructions. Two cigarettes shall be randomly selected from each sampled pack, conditioned, and tested for percent filter ventilation. The average percent filter ventilation shall be computed for a 60 cigarette sample; and

(3) for three sub-brands selected by the department from each brand family that has a national market share of 3.0% or greater, pH of cigarette smoke as determined on a puff by puff basis, under the method described in Harris, J.L., Hayes, L.E., "A method for

measuring the pH of whole smoke", Tobacco Science, 1977: 60: 81-83, or the method described in Sensabaugh, A.J., Jr. and Cundiff, R.H., "A New Technique for Determining the pH of Whole Tobacco Smoke," Tobacco Science, 11:25-30 (1967) and Brunnehan, K.D. and Hofmann, D., "The pH of Tobacco Smoke," Food, Cosmet. Toxicol., 11:115 (1974), or equal method approved by the department.

(e) For each brand style of cigarette belonging to a brand family with a national market share of less than 3.0%, the annual report shall include the following information only for those individual sub-brands selected by the department. For a manufacturer with greater than 35% of national market share, the department will select up to 15 sub-brands for testing. For a manufacturer with a national market share of 20% to 35%, the department will select up to 9 sub-brands for testing. For a manufacturer with a national market share of less than 20%, the department will select up to 6 sub-brands for testing. This testing will be for nicotine delivery, total nicotine content, and percent filter tip ventilation, as described in subsections (a) and (d) of this section.

(f) Sampling and conditioning of Cigarettes. Conditioning for testing of cigarettes shall be done in accordance with the ISO, 3402, third edition, 1991-07-01 entitled *Tobacco and Tobacco Products-Atmosphere for Conditioning and Testing*. Cigarettes shall be sampled using international standard ISO 8243:98 (E) entitled *Cigarette-Sampling*, with samples collected at point of sale and at a single point in time. At a minimum, for each brand sampled, two packages each of cigarettes should be purchased from five retailers located in five separate counties in Texas, for a total of 50 packages purchased. If some varieties are not available in certain locations, additional packages will be purchased where they are available. In the alternative, other samples may be use for testing, provided the submitter certifies that the product sampled is identical to the product uniformly distributed in the State of Texas. In measuring nicotine content, the cigarette manufacturer shall use the following sampling method: two cigarettes shall be randomly selected from each pack and conditioned, the tobacco rod split open, and the cigarette tobacco mixed thoroughly before weighing. The minimum sample size shall be 100 grams of tobacco. If the weight of the tobacco is less than 100 grams, additional cigarettes shall be randomly selected from each pack.

This 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 24, 1999.

TRD-9906181

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 458-7236



Part 16. COUNCIL TEXAS HEALTH CARE INFORMATION

Chapter 1301. HEALTH CARE INFORMATION

Subchapter A. HOSPITAL DISCHARGE DATA RULES

25 TAC §1301.18

The Texas Health Care Information Council (Council) proposes an amendment to §1301.18 concerning the data elements to be released in a public use data file. The amendment is being proposed, in part, to implement the requirements of House Bill (HB) 1513 which was enacted by the 76th Texas Legislature. HB 1513 requires the agency to establish by rule the data elements to be included on the Public Use Data File (PUDF). The Council proposes a new subsection (c)(1) to §1301.18 which provides a list of the data elements that shall be released with each public use data file.

Jim Loyd, Executive Director, Texas Health Care Information Council, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional cost associated with administering or enforcing the section as amended for establishing selected data elements for the public use data file.

Mr. Loyd also has determined that for the first five-year period the proposed amendment is in effect, there will be no anticipated costs to any local government as a result of enforcing or administering the amendment. There will be no foreseeable fiscal implications relating to revenues of the other state or local governments as a result of enforcing or administering the amendment.

Mr. Loyd also has determined that for each year of the first five-year period the proposed amendment is in effect the public benefit anticipated will be a clearly defined set of data elements to be released in the public use data file. Mr. Loyd estimates that there will be no anticipated costs to providers or small businesses as a result of enforcing or administering the amendment.

Comments on the proposed amendment may be submitted to Jim Loyd, Executive Director, Texas Health Care Information Council, Brown-Heatly Building, 4900 North Lamar Suite-3407, Austin, Texas, 78751-2399 no later than 30 days from the date this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §108.006 and §108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data dissemination requirements. The Council also interprets §108.006 as requiring it to establish by rule the data elements to be included in the public use data file. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats to make the incoming data substantially valid, consistent, compatible and manageable.

The Health and Safety Code, §§108.006, 108.009, 108.011 and 108.012 are affected by the proposed amendment.

§1301.18. Hospital Discharge Data Release.

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

(c) Creation of public use data file. The executive director will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements as follows: ~~in the following manner as listed in paragraphs (1)-(11) of this subsection:~~

(1) data elements to be included in the public use data file:

(A) Provider Name (Facility Name)

(B) Patient Sex/Gender

(C) Type of Admission

(D) Source of Admission

(E) Patient ZIP (5-digits)

(F) Patient County

(G) Patient Status

(H) Patient Race

(I) Patient Ethnicity

(J) Source of Payment Code, Non-Standard Codes (Keep first two records, if submitted)

(K) Source of Payment Code, Standard Codes (Keep first two records)

(L) Type of Bill

(M) Encounter Indicator

(N) Principal Diagnosis Code (Current version of ICD)

(O) Other Diagnosis Codes (1) (Current version of ICD)

(P) Other Diagnosis Codes (2) (Current version of ICD)

(Q) Other Diagnosis Codes (3) (Current version of ICD)

(R) Other Diagnosis Codes (4) (Current version of ICD)

(S) Other Diagnosis Codes (5) (Current version of ICD)

(T) Other Diagnosis Codes (6) (Current version of ICD)

(U) Other Diagnosis Codes (7) (Current version of ICD)

(V) Other Diagnosis Codes (8) (Current version of ICD)

(W) Principal Procedure code (if applicable) (Current version of ICD)

(X) Other Procedure code (1) (Current version of ICD)

(Y) Other Procedure code (2) (Current version of ICD)

(Z) Other Procedure code (3) (Current version of ICD)

(AA) Other Procedure code (4) (Current version of ICD)

(BB) Other Procedure code (5) (Current version of ICD)

(CC) Admitting Diagnosis (Current version of ICD)

(DD) External Cause of Injury (if applicable) (Current version of ICD)

(EE) Day of Week Patient is admitted code (Sun. = 1, Mon. = 2, Tues. = 3, Wed. = 4, Thur. = 5, Fri. = 6, Sat. = 7)

(FF) Length of Stay (Statement Covers Period Through-Admission/Start of Care Date)

(GG) Age of patient in years at date of discharge (Statement Covers Period Through date minus Patient Birth Date)

(HH) Encounter Indicator: This indicates whether more than one bill was used to create the encounter.

(II) Day number of Principal Procedure (Calculated Principal Procedure Date minus Admission/Start of Care Date)

(JJ) Day number of Procedure (1) (Calculated Procedure Date (1) minus Admission/Start of Care Date)

(KK) Day number of Procedure (2) (Calculated Procedure Date (2) minus Admission/Start of Care Date)

(LL) Day number of Procedure (3) (Calculated Procedure Date (3) minus Admission/Start of Care Date)

(MM) Day number of Procedure (4) (Calculated Procedure Date (4) minus Admission/Start of Care Date)

(NN) Day number of Procedure (5) (Calculated Procedure Date (5) minus Admission/Start of Care Date)

(OO) HCFA-DRG Code (Obtained from the 3M HCFA-DRG Grouper)

(PP) APR-DRG Code (Obtained from 3M APR-DRG Grouper)

(QQ) Risk of Mortality Score (Obtained from 3M APR-DRG Grouper)

(RR) Severity of Illness Score (Obtained from 3M APR-DRG Grouper)

(SS) Uniform Physician Identifier assigned to Attending Physician

(TT) Uniform Physician Identifier assigned to Operating or Other Physician #1

(UU) Uniform Physician Identifier assigned to Other Physician #2

(VV) Uniform Physician Identifier assigned to Other Physician #3

(WW) Comments

(XX) Accommodations Private Room Charges

(YY) Accommodations Private Room Days

(ZZ) Accommodations Semi-Private Charges

(AAA) Accommodations Semi-Private Days

(BBB) Accommodations Ward Charges

(CCC) Accommodations Ward Days

(DDD) Accommodations Intensive Care Charges

(EEE) Accommodations Intensive Care Days

(FFF) Accommodations Coronary Care Charges

(GGG) Accommodations Coronary Care Days

(HHH) Ancillary Service-Other Charges

(III) Ancillary Service-Pharmacy Charges

(JJJ) Ancillary Service-Medical/Surgical Supply Charges

(KKK) Ancillary Service-Durable Medical Equipment Charges

(LLL) Ancillary Service-Used Durable Medical Equipment Charges

(MMM) Ancillary Service-Physical Therapy Charges

(NNN) Ancillary Service-Occupational Therapy Charges

(OOO) Ancillary Service-Speech Pathology Charges

(PPP) Ancillary Service-Inhalation Therapy Charges

(QQQ) Ancillary Service-Blood Charges

(RRR) Ancillary Service-Blood Administration Charges

(SSS) Ancillary Service-Operating Room Charges

(TTT) Ancillary Service-Lithotripsy Charges

(UUU) Ancillary Service-Cardiology Charges

(VVV) Ancillary Service-Anesthesia Charges

(WWW) Ancillary Service-Laboratory Charges

(XXX) Ancillary Service-Radiology Charges

(YYY) Ancillary Service-MRI Charges

(ZZZ) Ancillary Service-Outpatient Services Charges

(AAAA) Ancillary Service-Emergency Service Charges

(BBBB) Ancillary Service-Ambulance Charges

(CCCC) Ancillary Service-Professional Fees Charges

(DDDD) Ancillary Service-Organ Acquisition Charges

(EEEE) Ancillary Service-ESRD Revenue Setting Charges

(FFFF) Total Charges-Accommodations, for the Claim

(GGGG) Total Ancillary Charges, for the Claim

(HHHH) Total Non-Covered Accommodation Charges, for the Claim

(IIII) Total Non-Covered Ancillary Charges, for the Claim

(2) [(4)] delete patient and insured name, Social Security Number, address and certificate data elements, if submitted; delete patient control and medical record numbers. Assign uniform identifiers and county codes;

(3) [(2)] convert patient birth date to age;

(4) [(3)] convert admission and discharge dates to a length of stay measured in days and a code for the day of the week of the admission;

(5) [(4)] convert procedure and occurrence dates to day of stay values;

(6) [(5)] delete physician and other health professional names and numbers: assign uniform identifiers;

(7) [(6)] convert payer names and identification numbers to uniform payer identifiers: assign codes indicating the primary source of payment;

(8) [(7)] convert facility name, address and identification numbers to a facility identifier;

(9) [(8)] convert all procedure codes to ICD-9-CM;

(10) [(9)] add risk and severity adjustment scores utilizing an algorithm approved by the Council;

(11) [(10)] add indicators of whether the hospital is a children's specialty hospital and whether the hospital is a teaching hospital;

(12) [(11)] add indicators of whether the patient was served in an acute care unit or in a specialty unit such as skilled nursing, long-term care, or psychiatric.

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

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

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

TRD-9906179

Jim Loyd

Executive Director

Council Texas Health Care Information

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-6490



TITLE 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 5. PROPERTY AND CASUALTY INSURANCE

Subchapter E. TEXAS WINDSTORM INSURANCE ASSOCIATION

Division 1. PLAN OF OPERATION

28 TAC §5.4002

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

The Texas Department of Insurance proposes the repeal of §5.4002, concerning the current Building Code Advisory Committee, which is appointed pursuant to the Insurance Code, Article 21.49 §6A(f), to advise and make recommendations to the Commissioner of Insurance on building code specifications in the plan of operation of the Texas Windstorm Insurance Association (TWIA). The repeal of this section is necessary due to the legislative enactment of Senate Bill 677 which repealed Article 21.49 §6A(f) of the Insurance Code and abolished the current Building Advisory Committee effective August 31, 1999 as it had been established under Article 21.49 §6A(f). The statutory authority that formed the basis for the promulgation of §5.4002 was removed by the repeal of Article 21.49 §6A(f). When the statutory authority for a rule is removed then the rule becomes unenforceable and must be repealed because an enforceable rule must be based on currently existing statutory authority. Further, Senate Bill 677 enacted new Article 21.49 §6C

which established a new Building Code Advisory Committee and the requirements governing the composition, organization, and operation of the newly established committee.

The department will consider the repeal of §5.4002 in a public hearing under Docket No. 2422, scheduled for 9:00 a.m. on November 23, 1999, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas.

Alexis Dick, deputy commissioner for the inspections division of the Texas Department Insurance has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal and that there will be no effect on local employment or the local economy.

Ms. Dick has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to clarify the administrative rules regulating the Texas Windstorm Insurance Association by deleting an unenforceable section that might otherwise result in confusion to the public and by providing an additional section for future reorganization of the TWIA plan of operation into multiple sections rather than the single section as it is currently organized. Any costs to persons, organizations, small businesses, or micro-businesses complying with the repeal of this section each year of the first five years the proposed repeal is in effect are the result of the legislative enactment of amendments to Article 21.49 and are not a result of the adoption of this proposed repeal.

Comments on the proposed repeal to be considered by the department must be submitted by 5:00 p.m. on November 8, 1999 to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin Texas 78714-9104. An additional copy of the comments should be submitted to Alexis Dick, Deputy Commissioner for the Inspections Division, Texas Department of Insurance, P.O. Box 149104, MC 103-1A, Austin Texas 78714-9104. Article 21.49 §5A of the Insurance Code requires a hearing to be held before any orders may be issued pursuant to Article 21.49 and provides that any person may appear and testify for or against the adoption of the proposal.

The repeal is proposed pursuant to the Insurance Code, Article 21.49; Insurance Code §36.001 (former Article 1.03A); and the Government Code §§2001.001 et seq. Article 21.49 §6C of the Insurance Code provides that the Commissioner of Insurance shall appoint 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 Association. 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 §§2001.001 et seq. (Administrative Procedure Code) 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 articles of the Insurance Code are affected by this repeal: Insurance Code, Article 21.49

§5.4002. *Building Code Advisory Committee.*

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

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

TRD-9906176

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-6327



Division 9. WINDSTORM BUILDING CODE ADVISORY COMMITTEE ON SPECIFICA- TIONS AND MAINTENANCE

28 TAC §5.4800

The Texas Department of Insurance proposes new 28 TAC §5.4800, concerning the adoption by reference of a new form—BCAC FORM NO. 100-99, entitled "Proposed Change to Windstorm Building Specifications Adopted By the Texas Department of Insurance" to be used by a person or organization in presenting a proposal for a change in an applicable building specification to the commissioner. Pursuant to the Catastrophe Property Insurance Pool Act, Article 21.49 §6C, the Windstorm Building Code Advisory Committee on Specifications and Maintenance (Building Code Advisory Committee) was created by the Texas legislature and is composed of residential builder representatives, insurance industry representatives, members of the public including at least one licensed engineer, and an ex officio member appointed by the commissioner. The purpose of the Building Code Advisory Committee is to advise and make recommendations to the commissioner on building specifications and maintenance in the plan of operation. The task of the Building Code Advisory Committee is to analyze and make recommendations for changes regarding building code specifications adopted by the commissioner in the plan of operation. The promulgation of a new form to be used by a person or organization in presenting a proposal for a change in a building code specification is mandated by Senate Bill 677 which amended Article 21.49 of the Insurance Code to require the new form. The amended statute requires that each proposal for a change in an applicable building code specification must be submitted separately, in writing, and on the form promulgated by the department to the commissioner. The proposed new form is necessary to provide a standardized procedure for allowing a person or organization desiring a change in the building code specifications to present such a proposed change to the commissioner. The promulgation of the new form with standardized information and supporting documentation will facilitate the committee with their task of analyzing and evaluating the proposed change. The new form for proposing a change in a building code specification specifies that a proposal for a change must contain the name, address, and telephone number of the proponent, group, or organization. Further, the form specifies that the proposal must cite to the building code section regarding the specification to be changed, as published in the latest code; the text of the proposed change, with deletions from the current code language struck through with a single line and new language underlined; and a statement of the purpose of the proposed change, with supporting written or printed information. Additionally, the new

form specifies that the form must be completed and submitted to the commissioner at least 30 days before the scheduled date of an advisory committee meeting in order for the proposal to be considered at the meeting. The purpose of the proposed new form is to provide a standardized form for presenting a proposed change in a building code specification to the Building Code Advisory Committee and the commissioner as outlined in the following procedure. The Building Code Advisory Committee reviews and analyzes each proposal for change and then provides an opportunity for public comment on the proposal at the scheduled advisory committee meeting. After consideration of a proposal for change the advisory committee votes to (1) recommend adoption of the proposal as submitted, (2) recommend adoption of the proposal with modifications, (3) recommend rejection of the proposal, or (4) suspend consideration of the proposal and request additional evaluation and study of the proposal. The Building Code Advisory Committee then submits the proposal for change to the commissioner with its recommendation. The commissioner must make a decision regarding the acceptance or rejection of the advisory committee's recommendation within 30 days of the date that he receives the proposal and recommendation.

The department will consider the adoption of new §5.4800 in a public hearing under Docket No. 2423, scheduled for 9:00 a.m. on November 23, 1999, in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas.

Alexis Dick, deputy commissioner for the inspections division of the Texas Department of Insurance, has determined that for the first five-year period the proposed new section is in effect, there will be no fiscal implications for state or local units of government as a result of enforcing or administering the section. Ms. Dick also has determined there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed new section.

Ms. Dick also has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing or administering the new section will be that the proposed new form will facilitate the preparation of a proposal for a change in building code specifications for those persons or organizations desiring to present a change to a building code specification to the commissioner. The new form clearly specifies the type of information the advisory committee needs to efficiently analyze a proposed change to a building code specification. Also, the promulgation of a form requiring standardized information will facilitate the advisory committee in its task of analyzing and evaluating proposed changes because the specific information needed for a complete review and analysis of the proposed change will be included in each proposal for change. Any costs to persons, organizations, small businesses, or micro-businesses complying with the new section each year of the first five years the proposed new section is in effect are the result of the legislative enactment of amendments to Article 21.49 of the Insurance Code, and are not a result of the adoption and implementation of this proposed new section. The requirement of promulgating a form to be used by persons or organizations in presenting a proposal for a change in building code specifications to the commissioner is mandated by the underlying statute and cannot be waived for small businesses or micro-businesses.

Comments on the proposal to be considered by the department must be submitted by 5:00 p.m. on November 8, 1999 to

Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Alexis Dick, Deputy Commissioner for the Inspections Division, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104. Article 21.49 §5A of the Insurance Code requires a hearing to be held before any orders may be issued pursuant to Article 21.49 and provides that any person may appear and testify for or against the adoption of the proposal.

The new section is proposed pursuant to the Insurance Code, Article 21.49; Insurance Code, §36.001 (former Article 1.03A); and the Government Code §§2001.001 et seq. Article 21.49 §6C of the Insurance Code provides that the Commissioner of Insurance shall appoint an advisory committee to advise and make recommendations on building specifications and maintenance in the plan of operation of the Texas Windstorm Insurance Association. 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 §§2001.001 et seq. (Administrative Procedure Code) 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 articles of the Insurance Code are affected by this section: Insurance Code, Article 21.49

§5.4800. Form Promulgated For Use In Proposing A Change To Windstorm Building Code Specifications.

The Commissioner of Insurance adopts by reference a standard form promulgated for use by a person or organization in presenting a proposal for change in the Building Code for Windstorm Resistant Construction or the Windstorm Resistant Construction Guide for consideration by the Windstorm Building Code Advisory Committee on Specifications and Maintenance and presentation of such proposed change to the Commissioner for acceptance or rejection. Specimen copies of this form are available from the Inspections Division of the Texas Department of Insurance, 333 Guadalupe Street, P. O. Box 149104, MC 103-1A, Austin, Texas 78714-9104. They are also available from the Texas Windstorm Insurance Association, P. O. Box 2930, Austin, Texas 78767. The form is more specifically identified as BCAC FORM NO. 100-99-Proposed Change to Windstorm Building Specifications Adopted By the Texas Department of Insurance.

This 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 23, 1999.

TRD-9906177

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 10. TEXAS WATER DEVELOPMENT BOARD

Chapter 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (board) proposes amendments, repeals and new sections to 31 TAC Chapter 363, Financial Assistance Programs. The board proposes to: amend §§363.2, 363.13, 363.16, 363.17, 363.32, 363.33, 363.42, 363.43, 363.51, 363.53, 363.54, 363.86, 363.202, 363.402, 363.602, 363.704, 363.712, 363.721, and 363.809; repeal §§363.3, 363.81-363.84 and 363.511; and new §§363.81-363.85. The proposed changes are the result of the agency's on-going rules review program and are intended to update, clarify, and generally assure that the rules are current and reflective of the administrative requirements and procedures of the agency.

Section 363.2, Definitions of Terms, is amended by deleting the term "bonds" as duplicative of the definition of "debt." The definition of "delivery" is deleted as duplicative in most respects to "closing" and the definition of "closing" is amended to include the concept that the delivery of funds may occur by release of funds to an escrow account. The definition of "grant" is amended to clarify its meaning and to reflect its application to all financial assistance programs of the board. The definition of "release" is amended to reflect its application to grant programs as well as loan programs. The definition of "corporation" is amended to reflect changes in the statute. A new definition for the term "pre-design commitment" is added to clarify the application of §363.16, Pre-design Funding Option.

Also in §363.2, the definitions of "economically distressed area" and "emergency" are deleted in order to move them to new §363.81 under subchapter A, Division 7, Grants for Emergency, the particular program to which they apply. Section 363.3, Memorandum of Understanding Between the Texas Water Development Board and the International Boundary and Water Commission, is repealed, in order to move it to a new Chapter 354, Memoranda of Understanding, into which several such agreements will be consolidated.

Section 363.13, Engineering Feasibility Data, is amended to make the language consistent with the relevant statutory language defining "innovative technology" which must be evaluated.

Section 363.16, Pre-design Funding Option, subsection (a), is amended to clarify the language, to more precisely describe the activities which may be funded under this option and to reflect that the board may hold or retain funds until completion of planning requirements rather than having to release them into escrow until such requirements are fulfilled. Subsection (b) is amended to clarify which of the board's financial assistance programs are not eligible for pre-design funding by deleting a partial listing of some eligible programs and completing the list of ineligible programs by including those related to storage acquisition and state participation projects.

Section 363.17, Water Loan Assistance Fund, is amended to change the title to "Grants from Water Loan Assistance Fund" to clarify the application of these provisions to non-repayable financial assistance. The section is also restructured to add subsection (a) in order to allow for the addition of a new

subsection (b) to clarify that the terms of a grant will be specified in an agreement between the board and the grantee.

Section 363.32, Action by the Board on Application, is amended to clarify that the board may approve an application with conditions (rather than "amend"). The provision related to a date upon which the board's approved financial assistance will expire or no longer be available to an applicant is amended to reflect that the date will be included in the board's commitment to provide the assistance.

Section 363.33, Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects, is amended in paragraph (c)(2) so that the interest rate charged on state revolving fund variable rate loans made by the board under this subchapter will be the actual interest cost to the board for its outstanding variable rate debt plus the actual cost maintaining the variable rate debt in the fund.

Section 363.42, Loan Closing, is amended in paragraph (a)(1) to limit its application to the requirements of those jurisdictional agencies which are identified by the executive administrator of the board. The provisions of §363.43, subsections (a), Release of Funds for Planning, Design and Permits, and (c), Release of Funds for Building Purposes, are amended to include the same requirement for evidence of requisite jurisdictional agency permits and authorizations for each of these stages of project development, by adding new paragraphs (a)(4) and (c)(6), respectively, and renumbering the subsequent paragraphs as appropriate.

Section 363.51, Inspection During Construction, is amended to reflect that project inspection in the normal course of events, in keeping with industry standards, will be conducted "under the supervision" of a registered professional engineer rather than "by" the engineer. The last sentence of the section is deleted to remove a redundant and unnecessary provision.

Section 363.53, As Built Plans, is amended to reflect that "as-built plans" are to be received from the project contractor and retained by the political subdivision rather than submitted to the board. The former requirement has proved burdensome to both the board and to participating political subdivisions due to the voluminous nature of a complete set of project plans and drawings.

Section 363.54, Audits, is amended to reflect that the board is required to conduct environmental audits from time to time and may do so as required to ensure compliance with relevant financial assistance agreements.

A new §363.81, Definitions of Terms, is added to provide definitions of "economically distressed area" and "emergency" which are applicable specifically to emergency financial assistance available from the board pursuant to the provisions of Chapter 15, subchapter C of the Texas Water Code. Existing §§363.81-363.84 are repealed and proposed as new §§363.82-363.85 to accommodate the addition of this new section. In addition, new §363.82 (formerly §363.81) was reworded from its original version to include the specific statutory cite for this financial assistance program.

New §363.85 (formerly §363.84) was amended to change the title to "Additional Application Information" and to clarify that the engineering and environmental information required by this section is in addition to the initial application information that may be required by the executive administrator for purposes of evaluation under the preceding section.

Section 363.86, Grant Agreement, is amended to reflect that the listing of required terms and conditions of a grant agreement between the applicant and the board is not exhaustive and that other provisions specific to a particular grant may be required by the board.

The headings to §§363.202, 363.402, and 363.602 are amended by adding "of terms" to the current headings for clarity and to achieve consistency with other sections in the chapter.

Section 363.511, Memorandum of Understanding Between the Texas Water Development Board and the Texas Department of Housing and Community Affairs, is repealed, in order to move it to a new Chapter 354, Memoranda of Understanding, into which several such agreements will be consolidated.

Section 363.704, Eligibility Requirements, is amended to incorporate semantic changes intended to clarify these requirements. Subparagraph (3)(D) is amended to change "and" to "or" to clarify that an emergency may exist in a situation identified by either subparagraphs (3)(A) through (3)(D) or by subparagraph (3)(E).

Section 363.712 is amended to correct a cite to another section of the chapter. Section 363.721 and §363.809 are amended to add catch lines for consistency with existing structure.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections changes 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 changes as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be more consistent and efficient administration of the board's financial assistance programs as a result of the clarifications and changes incorporated in the proposed amendments. Ms. Todd has 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, repeals, and new 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.

Subchapter A. GENERAL PROVISIONS

Division 1. INTRODUCTORY PROVISIONS

31 TAC §363.2

The amendments are adopted under the authority of the Texas Water Code, §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapters 15, 16, and 17.

§363.2. *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 Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant - A political subdivision or subdivisions which file an application with the board for financial assistance or associated actions.

(2) Board - Texas Water Development Board.

~~(3) Bonds - All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.~~

(3) ~~(4)~~ Building - Erecting, building, acquiring, altering, remodeling, improving, or extending a water supply project, treatment works, or flood control measures.

(4) ~~(5)~~ Closing - The time at which the requirements for loan closing have been completed under §363.42 of this title (relating to Loan Closing) and an exchange of debt for delivery of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.

(5) ~~(6)~~ Commission - Texas Natural Resource Conservation Commission.

(6) ~~(7)~~ Commitment - An action of the board evidenced by a resolution approving a request for financial assistance from any board financial assistance program under this chapter ~~[loan program account].~~

(7) ~~(8)~~ Corporation - A nonprofit water supply corporation created and operating under Texas Water Code, Chapter 49 (formerly [Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 as amended] Article 1434a, Vernon's Texas Civil Statutes).

(8) ~~(9)~~ Debt - All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.

~~(10) Delivery - The time at which payment is made by the board to the loan recipient against the purchase price of the recipient's debt, and the board takes possession of the instruments evidencing the debt. Delivery may occur simultaneously with a release of funds, or without release of funds pursuant to an escrow agreement or master agreement. }~~

(9) ~~(11)~~ Department - Texas Department of Health.

~~(12) Economically distressed areas - For the purposes of §§363.81-363.88 of this title (relating to Grants for Emergency), an area in which water supply or sewer services are or are expected to be inadequate to meet minimal needs of residential users and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs. }~~

~~(13) Emergency - For the purposes of §§363.81-363.88 of this title, a condition in which a public water or wastewater system has already failed or which poses an imminent threat of failure, causing the health or safety of residential users to be in danger. The emergency shall be the result of natural or man-made catastrophes, riots, or hostile military or paramilitary action, including such conditions recognized by a declaration of disaster by the governor of the State. }~~

(10) ~~(14)~~ Escrow - The transfer of funds to a custodian of the funds which will act as the escrow agent or trust agent.

(11) ~~(15)~~ Escrow agent - The third party appointed to hold the funds which are not eligible for release to the loan recipient.

(12) ~~(16)~~ Escrow agent bank - The financial institution which has been appointed to hold the funds which are not eligible for release to the loan recipient.

~~(13) [(17)]~~ Executive administrator - The executive administrator of the board or a designated representative.

~~(14) [(18)]~~ Financial assistance - Loans, grants, or state acquisition of facilities by the board pursuant to the Texas Water Code, Chapters 15; subchapters B, C, E, and J, Chapter 16; subchapters E and F, and Chapter 17; subchapters D, F, G, I, and K.

~~(15) [(19)]~~ Grants ~~[for Emergency]~~ - ~~[For the purposes of §§363.81-363.88 of this title,]~~ financial assistance provided by the board for which repayment is not required ~~[pursuant to Texas Water Code, Chapter 15, subchapter C as provided by state appropriations and/or federal funds].~~

(16) ~~(20)~~ Innovative technology - Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.

~~(17) Pre-design commitment - A commitment by the board prior to completion of planning or design pursuant to §363.16 of this title (relating to Pre-design Funding Option).~~

~~(18) [(21)]~~ Release - The time at which funds are made available to the loan or grant recipient or to a state participation recipient pursuant to a master agreement.

~~(19) [(22)]~~ Trust agent - The party appointed by the applicant and approved by the executive administrator of the board to hold the funds which are not eligible for release to the loan recipient.

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

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Gail Allan

Director, Legal Administration

Texas Water Development Board

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◆ ◆ ◆
31 TAC §363.3

(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, §15.403 and §15.605 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.

The statutory provisions affected by the proposed repeal are Texas Water Code, Chapters 15, 16, and 17.

§363.3. *Memorandum of Understanding Between the Texas Water Development Board and the International Boundary and Water 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 27, 1999.

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Gail Allan
Director, Legal Administration
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◆ ◆ ◆
Division 2. GENERAL APPLICATION PROCEDURES

31 TAC §§363.13, 363.16, 363.17

The amendments are proposed under the authority of the Texas Water Code §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapters 15, 16, and 17.

§363.13. Engineering Feasibility Data.

Applicant shall submit an engineering feasibility report signed and sealed by a professional engineer registered in the State of Texas. The report, based on guidelines provided by the executive administrator, shall provide: description and purpose of the project; entities to be served and current and future population; the cost of the project; a description of innovative technology ~~[and conventional alternatives]~~ considered and reasons for the selection of the project proposed; sufficient information to evaluate the engineering feasibility; and maps and drawings as necessary to locate and describe the project area. The executive administrator may request additional information or data as necessary to evaluate the project.

§363.16. Pre-design Funding Option.

(a) This loan application option will provide an eligible applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan ~~[loan proceeds]~~ for the pre-design, design or building costs associated with a project. Under this option, a loan may be closed and funds necessary ~~[released]~~ to complete planning and design activities released. ~~[If all required planning has been completed and approved, design funds may also be released at the time of closing.]~~ 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 executive administrator may require the applicant to make changes in order to 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) ~~[Wastewater projects from the State Water Pollution Control Revolving Fund (SRF) and water supply and wastewater projects from the Texas Water Development Fund are eligible for pre-design funding.]~~ Flood control, storage acquisition and state participation, reservoir, municipal solid waste, and economically distressed area projects are not eligible for funding under this option.

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

§363.17. Grants from Water Loan Assistance Fund.

(a) The board may provide grants from the Water Loan Assistance Fund for projects that include supplying water or wastewater service to areas in which:

(1) water supply services:

(A) from a community water system, do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC §§290.1-290.26, 30 TAC §§290.38-290.51, and any applicable standards of any governmental unit with jurisdiction over such area;

(B) from individual wells, after treatment, do not provide drinking water of a quality that meets the standards set forth by the commission in 30 TAC §§290.3, 290.4, 290.10, and 290.13, and any applicable standards of any governmental unit with jurisdiction over such area; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(2) sewer services:

(A) from any organized sewage collection and treatment facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 305;

(B) for on-site sewerage facilities, do not comply with the standards and requirements set forth by the commission in 30 TAC Chapter 285 and 313; or

(C) do not exist or are not provided, including a temporary interruption of service due to emergency conditions; and

(D) the financial resources are inadequate to provide water supply or sewer services that meet the standards and requirements of the commission as set forth herein; or

(3) for purposes of any federal funds for colonias deposited in the water assistance fund, such [an] area [that] meets the federal criteria for use of such funds.

(b) Grant funds will be administered according to the terms of an agreement between the board and the grantee.

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

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Gail Allan
Director, Legal Administration
Texas Water Development Board
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◆ ◆ ◆
Division 3. FORMAL ACTION BY THE BOARD

31 TAC §363.32, §363.33

The amendments are proposed under the authority of the Texas Water Code §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapters 15, 16, and 17.

§363.32. *Action of the Board on Application.*

At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, approve with conditions, [~~amend,~~] or continue consideration of the application. A commitment will include a date after which the financial assistance will no longer be available unless extended by the board. [~~Loan approval action will include specification of a commitment period, after which time the commitment shall expire, unless extended by the board.~~] The board may make any changes in the original commitment at the time of extension.

§363.33. *Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.*

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

(c) Interest Rates for Loans from the State Water Pollution Control Revolving Fund.

(1) (No change.)

(2) The interest rate for SRF 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 actual cost of maintaining the variable rate debt in the fund [~~34.5 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. 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 subsection (a)(1) of this section and paragraph (1) of this subsection.

(3) (No change.)

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

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Gail Allan

Director, Legal Administration

Texas Water Development Board

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Division 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §363.42, §363.43

The amendments are proposed under the authority of the Texas Water Code §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapters 15, 16, and 17.

§363.42. *Loan Closing.*

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1) evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met [~~prior to release of building funds~~], including but not limited to permits and authorizations;

(2)-(7) (No change.)

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

§363.43. *Release of Funds.*

(a) Release of funds for planning, design and permits. Prior to the release of funds for planning, design, and permits, the political subdivision shall submit for approval to the executive administrator the following documents:

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

(3) executed consultant contracts relating to services provided for planning, design, and/or permits; [~~and~~]

(4) evidence that the requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations; and

(5) [(4)] other such instruments or documents as the board or executive administrator may require.

(b) (No change.)

(c) Release of funds for building purposes. Prior to the release of funds for building purposes, the political subdivision shall submit for approval to the executive administrator the following documents:

(1) (No change.)

(2) one [~~two~~] executed original copy [~~copies~~] of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;

(3)-(5) (No change.)

(6) evidence that all requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including permits and authorizations; and

(7) [(6)] other such instruments or documents as the board or executive administrator may require.

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

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

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Gail Allan

Director, Legal Administration

Texas Water Development Board

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Division 5. CONSTRUCTION PHASE

31 TAC §§363.51, 363.53, 363.54

The amendments are proposed under the authority of the Texas Water Code, §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapters 15, 16, and 17.

§363.51. *Inspection during Construction.*

After the construction contract is awarded, the political subdivision shall provide for adequate 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 political subdivision shall take corrective action as necessary to complete the project in accordance with approved plans and specifications.]

§363.53. *As-built Plans.*

After a project is completed, the political subdivision shall submit documentation establishing that the political subdivision has received a complete set of as-built drawings from the contractor [to the executive administrator].

§363.54. *Audits.*

The executive administrator is authorized to conduct engineering, environmental, and financial audits of every project which is financed in whole or in part by board financial assistance. Audits may be conducted on site if necessary and board staff shall be provided access to all project records necessary to complete such audit. The political subdivision shall take actions to correct any items found to be in noncompliance with agreements relating to board financial assistance.

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

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Gail Allan

Director, Legal Administration

Texas Water Development Board

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Division 7. GRANTS FOR EMERGENCY

31 TAC §§363.81-363.84

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

The repeals are proposed under the authority of the Texas Water Code §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed repeals are Texas Water Code, Chapters 15, 16, and 17.

§363.81. *Grants for Emergency.*

§363.82. *Terms of Financial Assistance.*

§363.83. *Application.*

§363.84. *Applicability.*

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

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Gail Allan

Director, Legal Administration

Texas Water Development Board

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31 TAC §§363.81-363.86

The amendment and new sections are proposed under the authority of the Texas Water Code §6.101, §15.403 and §15.605 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.

The statutory provisions affected by the proposed amendment and new sections are Texas Water Code, Chapters 15, 16, and 17.

§363.81. *Definitions of Terms.*

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapters 15, 16, or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Economically distressed area An area in which water supply or sewer services are or are expected to be inadequate to meet the minimal needs of residential users and in which financial resources are inadequate to provide water supply or sewer services that will satisfy those needs.

(2) Emergency A condition in which a public water or wastewater system has already failed or which poses an imminent threat of failure, causing the health or safety of residential users to be in danger. The emergency shall be the result of natural or man-made catastrophes, riots, or hostile military or paramilitary action, including such conditions recognized by a declaration of disaster by the governor of the state.

§363.82. *Grants for Emergency.*

Grants for emergencies may be provided by the board from the Water Loan Assistance Fund pursuant to Texas Water code, Chapter 15, Subchapter C to political subdivisions for projects that address the interruption of water or wastewater service due to an emergency and which serve an economically distressed area.

§363.83. *Terms of Financial Assistance.*

The board shall determine the amount and form of grants for emergencies. The amount of grants shall be limited to the amount necessary to restore service or ensure the uninterrupted delivery of service.

§363.84. *Application.*

An applicant shall submit an application in the form and numbers prescribed by the executive administrator. The executive administrator may request additional information needed to evaluate the application and may return any incomplete applications.

§363.85. Additional Application Information.

In addition to the information required pursuant to §363.84 of this title, the engineering information of §363.711(b)(2) of this title (relating to Applications), and the preliminary environmental information of §363.711(b)(3) of this title shall apply to applications for grant assistance under this division.

§363.86. Grant Agreement.

The applicant will execute a grant agreement that sets out the terms and requirements pursuant to which a grant for the emergency will be awarded. These conditions and requirements will include the term of the grant commitment, closing conditions, conditions for environmental approvals, [and] standards for engineering design approvals, and any other provisions required 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.

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Subchapter B. STATE WATER POLLUTION CONTROL REVOLVING FUND

Division 1. INTRODUCTORY PROVISIONS

31 TAC §363.202

The amendment is proposed under the authority of the 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.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapters 15, 16, and 17.

§363.202. Definitions of Terms.

Words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1)-(18) (No change.)

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

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Director, Legal Administration

Texas Water Development Board

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Subchapter D. FLOOD CONTROL

31 TAC §363.402

The amendment is proposed under the authority of the 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.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapters 15, 16, and 17.

§363.402. Definitions of Terms.

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

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

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

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Director, Legal Administration

Texas Water Development Board

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Subchapter E. ECONOMICALLY DISTRESSED AREAS PROGRAM

31 TAC §363.511

(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 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.

The statutory provisions affected by the proposed repeal are Texas Water Code, Chapters 15, 16, and 17.

§363.511. Memorandum of Understanding between Texas Water Development Board and Texas Department of Housing and Community Affairs.

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

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◆ ◆ ◆
Subchapter F. STORAGE ACQUISITION AND STATE PARTICIPATION

31 TAC §363.602

The amendment is proposed under the authority of the 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.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapters 15, 16, and 17.

§363.602. Definitions of Terms.

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

(1)-(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.

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◆ ◆ ◆
Subchapter G. SMALL COMMUNITY EMERGENCY LOAN PROGRAM

Division 1. INTRODUCTORY PROVISIONS

31 TAC §363.704

The amendments are proposed under the authority of the 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.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapters 15, 16, and 17.

§363.704. Eligibility Requirements.

An applicant must meet all of the following requirements to be eligible for financial assistance under this subchapter:

(1) Population. An applicant is is [~~must be~~] a political subdivision with a population of 15,000 or less. For cities, population will be based on latest population estimates and information available to the board. For districts, or water supply corporations, population

will be based on an estimate of the population served by the district or water supply corporation calculated from the current number of connections;

(2) Permanent Financing Not Available. An applicant lacks [~~must not have~~] sufficient time to obtain permanent financing either under other financing programs of the board or from other sources;

(3) Emergency. There is an emergency [~~An emergency must exist~~] that meets the criteria of subparagraphs (A)-(D) or (E) of this paragraph.

(A) The financing will correct a problem that meets one of the following:

(i) The condition has resulted in human fatality within the political subdivision's jurisdiction;

(ii) The condition has resulted in illness or injury within the political subdivision's jurisdiction, documented by the applicable state agency; or

(iii) The condition poses an imminent threat to public health and safety;

(B) The solution to the problem must be beyond the immediate financial means of the political subdivision;

(C) The condition must not be anticipated and must be beyond the control of the political subdivision. If the political subdivision was previously informed by a regulatory agency that this problem existed or was likely to occur, the political subdivision must show that, despite reasonable efforts, it has been unable to resolve the problem; and

(D) The condition must not be a temporary problem caused by one-time or occasional circumstances that pose no permanent threat to public health if not addressed immediately; or [~~and~~]

(E) A condition of drought must exist that poses a threat to public health and safety if not addressed immediately.

(4) Timing. The emergency must have been first discovered by the political subdivision no more than six months prior to the date the application is received by the board, unless the emergency is a condition of drought.

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

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Gail Allan
Director, Legal Administration
Texas Water Development Board
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◆ ◆ ◆
Division 2. APPLICATION PROCEDURES

31 TAC §363.712

The amendment is proposed under the authority of the 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.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapters 15, 16, and 17.

§363.712. *Environmental Review before Board Approval.*

Board staff will use preliminary environmental data provided by the applicant, as specified in §363.711(b)(3) of this title (relating to Applications), and make a written report to the executive administrator on known or potentially significant social or environmental concerns. The executive administrator may recommend approval of the project to the board if, based on preliminary information, there appear to be no significant environmental, permitting, or social issues associated with the project. The loan agreement will provide for the terms and conditions for completion of the environmental review process which will be consistent with §363.16 of this title (relating to Pre-design Funding Option) and with identified mitigation measures with the intent to ensure environmentally responsible and legally compliant project design and implementation.

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

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TRD-9906282

Gail Allan

Director, Legal Administration

Texas Water Development Board

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For further information, please call: (512) 463-7981

Division 3. CLOSING AND RELEASE OF FUNDS

31 TAC §363.721

The amendment is proposed under the authority of the 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.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapters 15, 16, and 17.

§363.721. *Loan Closing.*

(a) **Loan Documents.** Loan documents shall be executed at the time of closing and shall include the following:

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

(b) (No change.)

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

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Gail Allan

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Subchapter H. GROUNDWATER DISTRICT LOAN PROGRAM

31 TAC §363.809

The amendment is proposed under the authority of the 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.

The statutory provisions affected by the proposed amendment are Texas Water Code, Chapters 15, 16, and 17.

§363.809. *Loan Closing.*

(a) **Loan Documents.** Loan documents shall be executed at the time of closing and shall include the following:

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

(b) (No change.)

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 3. TEXAS YOUTH COMMISSION

Chapter 85. ADMISSION AND PLACEMENT

Subchapter B. PLACEMENT PLANNING

37 TAC §85.29

The Texas Youth Commission (TYC) proposes an amendment to §85.29, concerning Program Completion and Movement of Other Than Sentenced Offenders. The amendment to the section will not change the intent or practice, but will reword a section regarding the attainment of parole status by youth committed to TYC. Revisions will clarify that parole status is earned by meeting program completion criteria for release to a youth's home.

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 the clarification of TYC policy intent. 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, §61.075, concerning Determination of Treatment, which provides the Texas Youth Commission authority to discharge the child from control when it is satisfied that discharge will best serve the child's welfare and the protection of the public.

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

§85.29. Program Completion and Movement of Other Than Sentenced Offenders.

(a) Purpose. The purpose of this rule is to provide criteria and a process whereby staff may determine when a youth has completed a program, is eligible to be moved to another program, released home, and/or placed on parole status.

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

(f) Parole Status.

(1) Parole status shall have been earned by the youth when he is deemed to have completed all [residential] program completion criteria for release to home level restriction, subsection (e)(1)(A) or (e)(2)(A) [; subsection (e)] of this section depending on the classifying offense. [~~When a youth has earned parole status and transition to home restriction level placement is pending, he attains parole status in the current program prior to the transition, unless he is in a high restriction program, in which case, he attains parole status on leaving the facility.~~]

(2) When a youth has earned parole status and release to home restriction level placement is pending, he attains parole status in the current program prior to the release, unless he is in a high restriction program, in which case, he attains parole status on leaving the facility.

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

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

Filed with the Office of the Secretary of State, on September 27, 1999.

TRD-9906302

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-6244



37 TAC §85.37, §85.61

The Texas Youth Commission (TYC) proposes an amendment to §85.37, concerning Sentenced Offender Disposition and §85.61, concerning Discharge. The amendments to section §85.37 will correct rule references; name the Parole Division as the specific program in the Texas Department of Criminal

Justice (TDCJ) with which TYC will communicate in arranging for transfer of certain sentence offenders in the Texas Youth Commission system to the TDCJ; and require that the administrator of the sentenced offender department will assign the TYC staff who will represent TYC in a court hearing involving sentenced offenders. The amendments to §85.61 will explain the specific detention time which will be counted toward completion of a sentence established by a court for a youth sentenced to TYC, and will add (in accordance with law) that a criteria for discharge from TYC jurisdiction includes transfer to TDCJ or when the sentence expires unless the youth is under concurrent determinate and indeterminate commitment orders consistent with (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).

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 legal requirements regarding the management of youth sentenced to commitment in TYC. 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, §61.084, concerning Termination of Control, which provides the Texas Youth Commission with the authority to discharge, transfer, or release under supervision a youth in its custody.

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

§85.37. Sentenced Offender Disposition.

(a) Purpose. The purpose of this rule is to establish procedures to be followed when sentenced offenders are moved or returned to court or to the Texas Department of Criminal Justice (TDCJ).

(b) Youth who are sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996, are subject to requirements in this subsection.

(1) Movement Types. The following types of movements may occur under specific conditions addressed in (GAP) §85.33 of this title (relating to Program and Movement of Sentenced Offenders) [~~(GAP) §85.29 of this title (relating to Program Completion and Movement)~~]. The movements are either automatic or may be requested of the juvenile court:

(A) Movement between the TYC programs;

(B) Transfer from a TYC high restriction facility to the Texas Department of Criminal Justice, Institutional Division (TDCJ, ID);

(C) Transfer from a TYC medium or high restriction facility to the TDCJ, Parole Division (TDCJ, PD); [~~Pardons and Paroles (TDCJ, PP);~~]

(D) Transfer from TYC under supervision (parole at home) to the TDCJ, PP;

(2) Transfers.

(A) The TYC superintendent/quality assurance administrator of the high restriction facility where the youth resides or the director in the area where youth previously resided (in the case of a revocation) may request a hearing by the court and direct TYC participation in the hearing.

(B) When a transfer to TDCJ, ID is imminent, a male youth residing in any program other than a TYC operated high restriction facility at the time a transfer hearing is requested, will be moved to a TYC operated high restriction facility for the time remaining before the youth's transfer. Females may be moved to a contract high restriction facility or TYC operated high restriction facility depending on space available. If the transfer is not automatic, in accordance with law, a level I parole revocation hearing shall be held prior to returning the youth to the institution.

(C) When transfers are automatic (court approval is not required) the superintendent or director in the area of the youth's most recent permanent placement shall notify the committing court of the transfer in accordance with TYC policy.

(c) Youth who are sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed before January 1, 1996, are subject to requirements in this subsection.

(1) Court Hearing Preparation.

(A) For youth whose sentence will not be complete prior to their reaching age 18, the program administrator (superintendent) of the youth's placement will, during the sixth month before the month in which the youth will turn 18 years old, send the committing court request for a hearing, pursuant to §54.11 of the Texas Family Code. ["notice of transfer to TDCJ."]

(B) The committing court will set a date for a hearing on the notice of transfer and notify all parties.

(C) The administrator of sentenced offender disposition [The superintendent or TYC director in the area of the youth placement] will appoint appropriate TYC staff to represent TYC at the hearing.

(2) Youth Under 1987 Sentencing Law.

(A) This section applies to youth committed to TYC under determinate sentences for conduct that occurred on or after September 1, 1987, and before September 1, 1991.

(B) On conclusion of the transfer hearing, the court will order:

- (i) release under supervision, or
- (ii) transfer to TDCJ.

(C) A youth residing in an any program other than a high restriction facility at the time of a court order directing the youth's transfer to TDCJ will be moved to a high restriction facility for the time remaining before the youth's transfer at age 18.

(3) Youth Under 1991 Sentencing Law.

(A) This section applies to youth committed to TYC under determinate sentences for conduct that occurred on or after September 1, 1991.

(B) On conclusion of the hearing, the court will order:

(i) recommitment to TYC without a determinate sentence;

(ii) transfer to TDCJ; or

(iii) final discharge.

(C) On entry of an order that the youth be transferred to TDCJ, the youth will be immediately transported and transferred to TDCJ.

§85.61. Discharge.

(a) Purpose. The purpose of this rule is to establish criteria for discharge from agency jurisdiction for any youth committed to the Texas Youth Commission (TYC).

(b) All [~~Texas Youth Commission~~] TYC youth shall by law, be discharged by age 21.

(c) Youth may be recommended for early discharge when specific criteria have been met. Discharge criteria shall be applied according to classification or to special circumstance. Eligibility for discharge according to classification is controlled by the most serious offense for which the youth has ever been classified.

(d) Discharge Criteria.

(1) Classification.

(A) Youth who are sentenced for an offense committed before January 1, 1996, shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court, including the time spent in detention in connection with the committing case [~~offense~~] plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment, refer to (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders);

(ii) the youth is transferred to the Texas Department of Criminal Justice (TDJC) pursuant to an order issued by the juvenile court at a transfer hearing;

(iii) prior to age 18 if ordered by committing court;

(iv) age 21 is reached.

(B) Youth who are sentenced for an offense committed after January 1, 1996, shall be discharged from TYC jurisdiction when one of the following occurs:

(i) expiration of the sentence imposed by the juvenile court; unless under concurrent commitment orders as specified in (GAP)§85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders). Time on the sentence includes the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(I) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including

pre-hearing detention for adjudication/disposition of the offense or for modification of the disposition, but excluding detention time that is ordered as a condition of probation.

(II) For youth committed under concurrent determinate and indeterminate commitment order, refer to (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders);

(ii) the youth is transferred to the Texas Department of Criminal Justice (TDCJ) consistent with (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders.

{(iii) the youth is transferred to the Texas Department of Criminal Justice, Institutional Division, pursuant to an order issued by the juvenile court at a transfer hearing;}

{(iii) the youth has been sentenced for the offense of capital murder, has not completed the 10-year minimum period of confinement and is transferred to the Texas Department of Criminal Justice, Institutional Division, at age 21 to serve the remainder of the sentence; or}

{(iv) the youth has been released on parole, has reached the age of 21 (or younger, if the youth is released on parole after age 19) and is transferred to the Texas Department of Criminal Justice, Pardons and Paroles Division, to serve the remainder of the sentence.}

(C)-(E) (No change.)

(2) (No change.)

(e)-(g) (No change.)

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

Filed with the Office of the Secretary of State, on September 27, 1999.

TRD-9906303

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-6244



Chapter 87. TREATMENT

Subchapter B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.69

The Texas Youth Commission (TYC) proposes an amendment to §87.69, concerning Commitment to State Mental Hospitals. The amendment adds procedures and requirements for the discharge of TYC youth who are eligible under §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth) consistent with placement in a state mental hospital.

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 legal options and provision of opportunities for appropriate treatment of mentally and emotionally disturbed youth. 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 to §87.69 Commitment to State Mental Hospitals is proposed under the Human Resources Code, §61.076, concerning Type of Treatment Permitted, which provides the Texas Youth Commission with the authority to provide any medical of psychiatric treatment that is necessary.

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

§87.69. *Commitment to State Mental Hospitals.*

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

(e) Discharge for Court-Ordered Mental Health Services. For youth eligible for discharge under (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth), the appropriate TYC staff member shall obtain the required application documents from the appropriate county judge, and shall:

(1) ensure a Physician's Certification of Medical Examination is executed by a TYC psychiatrist who has examined the youth within 30 days of the filing of the certificate with the county court;

(2) have the examining TYC psychiatrist sign and swear to the certificate and have the proper program staff sign and swear to the application for court-ordered mental health services;

(3) file all required documents with the appropriate mental health court;

(4) notify the youth's parents, guardian, managing conservator, or any other appropriate party of the hearing date set by the court;

(5) transport the youth to the hearing; and

(6) arrange for all necessary witnesses for the hearing including the TYC examining psychiatrist.

This 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 24, 1999.

TRD-9906202

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-6244



Chapter 91. PROGRAM SERVICES

Subchapter A. BASIC SERVICES

37 TAC §91.15

The Texas Youth Commission (TYC) proposes an amendment to §91.15, concerning Youth Orientation. The amendment to the section will require that youth admitted to TYC facilities be informed of the agency search policy, both orally and in writing. An additional amendment corrects a form number as listed in the rule.

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 that youth will be consistently informed of TYC policies. 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, §61.045, concerning Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to exercise general charge of and to be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

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

§91.15. Youth Orientation.

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

(d) Orientation will include but will not be limited to the following topics on which both oral and written information is provided:

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

(13) search policy;

(14) [(13)] emergency evacuation procedure information;

and

(15) [(14)] notice of confidentiality of alcohol and drug abuse records, Notice to Youth, LS-021 [LS-24].

This 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 23, 1999.

TRD-9906168

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-6244



Chapter 97. SECURITY AND CONTROL

Subchapter A. SECURITY AND CONTROL

37 TAC §97.23

The Texas Youth Commission (TYC) proposes an amendment to §97.23, concerning Use of Force. Three amendments are being made to the section: 1) will clarify that when TYC staff physically or mechanically restrains a youth as a control measure it is done to ensure the safety of the public in addition to that of the staff and other youth; 2) in accordance with legislation passed by the 76th Legislature, TYC staff will collect a blood sample from certain youth to be used for DNA requirements, and that TYC staff may, if necessary, use force (restraint) in the collection; 3) for a restraint in process, the requirement for staff to perform checks every 3 minutes is being changed to a requirement of continuous visual supervision.

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 state law and ensured security and protection for the general public, youth committed to TYC, and TYC staff. 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, §61.045, concerning Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to exercise general charge of and to be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

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

§97.23. Use of Force.

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

(e) Criteria for Use. Force may be used only as a last resort and only as a control measure to ensure the safety and welfare of youth, and staff, or the public. The use of force (to restrain or compel movement) shall be limited to instances of:

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

(7) collection of a DNA sample as required by law. Force may be used only by TYC staff and only when and to the degree staff reasonably believes force is immediately necessary to obtain the sample.

(f) Restrictions.

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

[(3) Only when the self-protection from imminent harm criterion has been met and the behavior has escalated such that a

youth is engaged in imminent and serious self-injury and other less restrictive interventions by staff have failed, may full body restraint be authorized and only for the protection of the youth.]

(3) [(4)] Staff shall use the amount and type of force necessary to control the situation except when a staff member is acting alone in which case he/she shall not be expected to use force or restraint when the risk of harm presented by the youth's conduct does not outweigh the possible risk of harm to youth or staff which would likely result if the staff acted alone.

[(5) When physical or mechanical restraint is employed, staff shall ensure the youth's safety by ensuring adequate respiration and circulation, providing continuous visual supervision, until evaluated by nursing staff: every 3 minutes thereafter and providing assistance as appropriate until the restraint is terminated.]

(4) [(6)] Physical force should be used as a last resort and only when necessary. When use of physical force is necessary, it should be measured and progressive in nature, however, when measured and progressive use is impractical, the amount and type of force necessary to control violence should be used. Physical restraint may be impractical when to do so would likely result in injury to staff.

(5) When physical or mechanical restraint is employed, staff shall ensure the youth's safety by checking the youth for adequate respiration and circulation, providing continuous visual supervision, and providing assistance as appropriate until the restraint is terminated.

(6) [(7)] A physical or mechanical restraint, other than during transportation or a riot, shall be terminated within a short period of time unless the youth is exhibiting or threatening to continue behaviors, which justify the use of restraint. If continued restraint is justified, restraint must be terminated when the youth's behavior ceases to pose a threat or if used during transportation, when the destination is reached.

(g) (No change.)

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

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

TRD-9906191

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-6244



37 TAC §97.27

The Texas Youth Commission (TYC) proposes an amendment to §97.27 concerning Riot Control. Consistent with the amendment to (GAP) §85.23, concerning Classification, as proposed in the September 10, 1999, issue of the *Texas Register*, the amendment to §97.27 will change the explanation of the term riot. The change clarifies that at least three youth must be involved in conduct that threatens imminent harm in order for a youth in TYC in order to be considered participants in a riot.

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 greater protection of TYC youth and staff in residential facilities. 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, §61.045, concerning Operations of Programs and Facilities, which provides the Texas Youth Commission with the authority to seek to establish relationships and to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual, and social needs of the children under its care as those needs would be met in an adequate home.

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

§97.27. Riot Control.

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

(c) Explanation of Terms Used. Riot—a situation in which three [two] or more persons at a contract program or TYC operated facility intentionally participate in conduct that threatens imminent harm to persons or property and substantially obstructs the performance of facility operations or a program therein.

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

(g) Response to Riots. The status of the emergency shall be described in terms of the following categories and continually upgraded or downgraded as appropriate.

(1) (No change.)

(2) Category 2. The incident cannot be controlled and contained by on-duty personnel, requiring the assistance of off-duty personnel.

(3) Category 3. The incident cannot be controlled and contained by institutional staff, requiring the assistance of intra-agency personnel, local law enforcement, and/or fire fighting units.

(4) (No change.)

(h) Approved Riot Equipment and Gear. Staff may act using only equipment approved for use during a riot and only following training in the appropriate procedures and use of such equipment. Approved for use during a riot:

(1) Chemical agent forms are: [Agent Forms.]

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

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

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

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

TRD-9906108

Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 7, 1999
For further information, please call: (512) 424-6244

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 79. LEGAL SERVICES

Subchapter T. ADMINISTRATIVE FRAUD DISQUALIFICATION HEARINGS

40 TAC §79.1906

The Texas Department of Human Services (DHS) proposes to amend §79.1906, concerning advance notice of hearing, in its Legal Services chapter. The purpose of the amendment is to clarify the existing language of the rule. The rule change is based on a recent rule interpretation by the Food and Nutrition Services (FNS), United States Department of Agriculture (USDA), in which FNS determined that client notice requirements are considered met whether or not the certified or first class mail is returned.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the state will be in compliance with state legislation and 7 Code of Federal Regulations (CFR) 273.16 in that the hearing official will no longer be required to receive either the first class or certified letter mail notice for a hearing to be held. Hearing officers will continue to offer a new hearing to those persons who show good cause for failing to attend the scheduled hearing within a reasonable time. It is not anticipated that the change will affect small or micro-businesses. This change is for the purpose of clarifying the existing language and does not change the intent of the existing rule. There is no adverse economic effect on large businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 438-4878 in DHS's Hearings Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-290, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

Under Section 2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§79.1906. *Advance Notice of Hearing.*

(a) (No change.)

(b) Advance notice requirements are met whether or not [when] the certified or first class mail is returned [as undeliverable]. The hearing will be conducted.

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

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

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

TRD-9906167

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 438-3765

◆ ◆ ◆
Part 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

Chapter 182. SPECIALIZED TELECOMMUNICATIONS DEVICES ASSISTANCE PROGRAM

Subchapter A. DEFINITIONS

40 TAC §182.3

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §182.3. The amendment is proposed to broaden the program to include persons with disabilities other than impairment of speech or hearing and to allow services which allow access to the telephone network to be provided through the program.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be the inclusion of persons with disabilities and services under this program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

§182.3. *Definitions.*

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

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

(3) Basic specialized telecommunications devices—A device or devices determined to be necessary and essential to facilitate basic access to the telephone system by a person with a disability [individuals who are deaf, deaf-blind, hard of hearing or speech impaired].

(4) Basic specialized telecommunications service—A service or services determined to be necessary and essential to facilitate basic access to the telephone system by a person with a disability and which is less expensive than a specialized telecommunications device that is an option under this program and meeting the same need.

~~[(4) Deaf-blind person—A natural person or individual who has a hearing impairment, without regard to degree, and regardless of whether the person also has speech impairment, that inhibits the person's comprehension of or communication with others and who has a central visual acuity of 20/200 or less in the better eye with corrective lenses or a field of vision no greater than 20 degrees.]~~

(5) Person with a disability—A person who has a disability which impairs the individual's ability to effectively access the telephone network.

(6) ~~[(5)]~~ Legal guardian—A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

(7) ~~[(6)]~~ Program—Specialized Telecommunications ~~[Devices]~~ Assistance Program (STAP).

(8) ~~[(7)]~~ PUC—Public Utility Commission of Texas.

(9) ~~[(8)]~~ Resident—An individual who resides within the state of Texas with the intent to remain in Texas.

(10) ~~[(9)]~~ RTAC—Relay Texas Advisory Committee.

~~[(10) Speech-impaired person—A natural person who has an impairment of the articulation of speech sounds, fluency and/or voice that would inhibit the person's ability to effectively communicate with others.]~~

(11) (No change.)

(12) Vendor—An entity or a person that is registered with the PUC and can sell basic specialized telecommunication devices or services as defined under this program.

(13) Voucher—A document of record to be exchanged with a vendor guaranteeing payment of up to but not exceeding the amount specific for the basic specialized telecommunications devices or services listed on the face of the voucher.

This 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-9906102

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 407-3250



40 TAC §182.4

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §182.4. The amendment is proposed to broaden the program to include services that would allow access to the telephone network.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be the inclusion of services under this program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

§182.4. *Determination of Basic Device or Service.*

In determining basic devices or services available for voucher exchange, the following criteria shall be applied:

(1) The device or service must be for the purpose of telephone access in the home or business;

(2) The device or service must mainly apply to telephone access functions and not to daily living functions; ~~and~~

(3) The device or service must serve to facilitate interactive communication that is functionally equivalent to that afforded by a basic telephone ; ~~and~~[-]

(4) The service must be less expensive than a basic specialized telecommunications device approved for a voucher under this program and meeting the same need.

(5) ~~[(4)]~~ Due to the limited technology available, devices for individuals who are speech impaired will be evaluated on an individual basis.

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

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

TRD-9906103

David Myers

Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: November 7, 1999
For further information, please call: (512) 407-3250



Subchapter B. PROGRAM REQUIREMENTS

40 TAC §182.21

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §182.21. The amendment is proposed to broaden the program to include persons with disabilities other than impairment of speech or hearing and to allow services which allow access to the telephone network to be provided through the program.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be the inclusion of persons with disabilities and services under this program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

§182.21. *Entities Authorized To Certify Disability.*

(a) An applicant [The application form] must be certified as a person with a disability which interferes with the person's ability to access the telephone network [within the State of Texas] by one of the following:

- (1)-(2) (No change.)
- (3) licensed physician or nurse;
- (4)-(6) (No change.)
- (7) state certified teacher of individuals who are visually impaired; ~~[or]~~
- (8) (No change.)
- (9) state certified special education teacher;
- (10) director of appropriate agency contracted service provider representative (council); or
- (11) director of appropriate independent living center representative.

(b) By signing the application, a certifier is attesting to ~~[the following]:~~

(1) being [he/she is] eligible to certify under the provisions of the law;

(2) having assessed [he/she has reviewed] the applicant's disability [hearing or speech impairment] to determine that the applicant is eligible;

(3) having reviewed [he/she has reviewed] the information on the application [provided by the applicant] to ensure that the form is completed properly and all requested information has been provided; and

(4) having determined that the applicant will be able to benefit from the specialized telecommunications devices or services requested on the application [equipment provided by the voucher].

(c) An [The certifier must sign the] application must be signed by a certifier before the commission can process and approve the application.

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

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

TRD-9906104
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: November 7, 1999
For further information, please call: (512) 407-3250



40 TAC §182.24

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §182.24. The amendment is proposed to broaden the program to include persons with disabilities other than impairment of speech or hearing and to allow services which allow access to the telephone network to be provided through the program.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be the inclusion of persons with disabilities and services under this program. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statutes, code or article is affected by this proposed amendment.

§182.24. *Determination of Voucher Value.*

(a) This program provides financial assistance to certain persons with a disability [individuals who are deaf or have an impairment of hearing or speech] to enable the persons [individuals] to purchase a specialized telecommunications device or service [equipment] to provide telephone network access that is functionally equivalent to that enjoyed by individuals without disability [an impairment of hearing or speech]. The value of each voucher is based on the cost of the basic device or service [equipment] necessary for the applicant to access the telephone network. The value of the voucher will be determined [based] on the basis of recommendations made by the Relay Texas Advisory Committee (RTAC) and upon approval from the Commission in open meeting.

(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 20, 1999.

TRD-9906105

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 407-3250



Part 20. TEXAS WORKFORCE COMMISSION

Chapter 800. GENERAL ADMINISTRATION

40 TAC §800.5

The Texas Workforce Commission (Commission) proposes new §800.5, concerning Commission Professional Development Program.

The purpose of the rule is to implement the provisions of Senate Bill 223 of the 76th Legislative Session by setting forth the provisions applicable to the Commission's Professional Development Program for employee training including but not limited to provisions for employee eligibility and reimbursement of expenditures for training under certain circumstances.

It is the Commission's intent to encourage the career development of employees to improve and enrich the quality of staff so that the Commission is successful in the execution of its mission. The mission of the Commission is to promote and support a workforce system that offers individuals, employers and communities the opportunity to achieve and sustain economic prosperity.

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by or required to do anything by this rule.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in this state as a result of this rule.

Mike Sheridan, Executive Director, 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 help continue encouraging career track improvement in the Commission's employees thus improving the Commission's ability to meet the goals of the mission of the Commission in supporting families seeking employment, training, and education.

Comments on the proposal may be submitted to Greg Kelly, Legal Counsel, Office of Human Resources Management, Texas Workforce Commission Building, 101 East 15th Street, Room 230, Austin, Texas 78778, (512) 463-8148. Comments may also be submitted via fax to (512) 475-1105 or e-mailed to: Greg.Kelly@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the *Texas Register*.

The new rule is proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission programs and Texas Government Code Chapter 656.

The new rule affects Texas Labor Code, Title 2 and Title 4 as well as Texas Government Code Chapter 656.

§800.5. Commission Professional Development Program.

(a) Scope and Purpose. The Commission provides training opportunities to enhance job skills and to retain a well qualified, trained, professional workforce dedicated to the Commission's mission. The Professional Development Program training includes instruction, teaching, or other education received by a state employee that is not normally received by other state employees and that is designed to enhance the ability of the employee to perform the employee's job. This section establishes eligibility and related requirements for employee participation in the Commission's Professional Development Program.

(b) Eligibility. The executive director or the executive director's designee will determine an employee's eligibility for the professional development program. Factors to be considered include but are not limited to:

- (1) An employee's job performance;
- (2) A recommendation from the employee's supervisor;
- (3) The relationship of the training to the employee's position; and

(4) Any other factor deemed relevant by the executive director or his designee.

(c) Restitution from Employees for Training Costs. The employee training is conditional upon all of the following:

(1) The employee shall attend and satisfactorily complete the training, including passing tests or other types of performance measures where required.

(2) At the discretion of the executive director or the executive director's designee, the employee shall complete and file with the Commission prior to the commencement of the training, on forms prescribed by the Commission, an employee training agreement that sets forth the terms and conditions of the training assistance, including a provision for working for the agency for a prescribed period of time or paying back the amount of the assistance.

(3) For any training paid for by the Commission, where the employee does not perform the employee's regular duties for three or more months due to the training, the employee shall:

(A) work for the agency following the training for at least one month for each month of the training period, prorated as appropriate; or

(B) pay the Commission for all costs associated with the training that were paid before, during or after the training, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or compensation leave.

This 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 23, 1999.

TRD-9906163

J. Ferris Duhon

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 463-8812



Part 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

Chapter 878. TRAUMATIC BRAIN INJURY ADVISORY BOARD

40 TAC §878.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Council for Developmental Disabilities or in the Texas

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Council for Developmental Disabilities proposes the repeal of Chapter 878, Traumatic Brain Injury Advisory Board, §878.1, concerning Traumatic Brain Injury Advisory Board. The section and chapter are being repealed because funding for the Traumatic Brain Injury Board has expired and operations of the Board have ceased.

Elsewhere in this issue of the *Texas Register*, the Texas Council for Developmental Disabilities contemporaneously publishes the administrative transfer of Chapter 109 of the Texas Rehabilitation Commission (concerning Developmental Disabilities Program) to the Texas Council for Developmental Disabilities.

Roger A. Webb, Executive Director, Texas Council for Developmental Disabilities, has determined that for the first five-year period the section and chapter are repealed, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Webb also has determined that for each year of the first five years after the section and chapter are repealed, the effect on the public as a result of the repeal will be in conformity with the conditions of the grant award supporting the Board, which concludes on September 30, 1999. There will be no effect on small businesses. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Roger A. Webb, Executive Director, Texas Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751.

The repeal is proposed under the Human Resources Code, §112.020.

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

§878.1. Traumatic Brain Injury Advisory 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 27, 1999.

TRD-9906267

Roger A. Webb

Executive Director

Texas Council for Developmental Disabilities

Earliest possible date of adoption: November 7, 1999

For further information, please call: (512) 424-4080



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 filing 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 22. EXAMINING BOARDS

Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Chapter 523. CONTINUING PROFESSIONAL EDUCATION

Subchapter A. CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

22 TAC §523.1

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.1, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4699).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906234
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.2

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.2, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4700).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906235
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.6

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to

§523.6, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4700).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906236
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



Subchapter B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

22 TAC §523.24

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.24, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4701).

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TRD-9906237
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.25

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.25, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4702).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906238
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §523.26

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.26, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4703).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906239
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §523.27

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.27, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4703).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906240
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §523.28

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.28, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4704).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906241
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §523.29

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.29, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4705).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906242
William Treacy
Executive Director
Texas State Board of Public Accountancy

Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §523.30

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.30, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4706).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906243
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
Subchapter C. CONTINUING PROFESSIONAL EDUCATION REPORTING

22 TAC §523.41

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.41, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4706).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906244
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
Subchapter D. MANDATORY CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAM

22 TAC §523.61

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.61, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4707).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906245
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §523.62

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.62, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4708).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906246
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.63

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.63, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4709).

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TRD-9906247
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.64

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.64, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4710).

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TRD-9906248
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



Subchapter E. REGISTERED CONTINUING EDUCATION SPONSORS

22 TAC §523.71

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.71, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4711).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906249
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.73

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.73, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4712).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906250
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



22 TAC §523.74

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption the amendment to §523.74, which appeared in the June 25, 1999, issue of the *Texas Register* (24 TexReg 4712).

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906251
William Treacy
Executive Director
Texas State Board of Public Accountancy
Effective date: September 27, 1999
For further information, please call: (512) 305-7848



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 4. AGRICULTURE

Part 2. TEXAS ANIMAL HEALTH COMMISSION

Chapter 43. TUBERCULOSIS

Subchapter A. CATTLE

4 TAC §43.2, §43.3

The Texas Animal Health Commission (TAHC) adopts amendments to Chapter 43, Subchapter A, concerning Tuberculosis in Cattle. The TAHC adopts an amendment to §43.2, concerning Interstate Movement requirements and adopts a new §43.3, concerning Requirements for Slaughter Tag Collection for Cattle Slaughter Plants, without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6156) and will not be republished.

The Certificate of Origin requirement is in response to recommendations from the Bi-National Committee regarding all steers and spayed heifers arriving at ports for export from Mexico into Texas. The purpose is to insure that the cattle coming are accompanied by a document specifying the State in Mexico from which the consignment originated as well as indicating that the cattle have received the tuberculosis tests required by the State of destination in the U.S.

The slaughter plant collection is providing specific requirements as authorized by §161.055 of the Texas Agriculture Code. The purpose of the rule is to establish and specify the standard of requirement for collecting and submitting diagnostic specimens. The reason is to insure that the agency can perform a trace-back of animals that are slaughtered and show signs of having tuberculosis. The agency has identified that as being a potential problem because of the fact that some animals have been slaughtered which have shown signs of tuberculosis and the agency was not able to identify adequately the herd of origin.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and

§161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. §161.055 provides the commission authority to require a slaughter plant to collect identification of animals. Also, the Commission relies upon §161.081 to address issues related to importation of these animals.

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 27, 1999.

TRD-9906289

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 17, 1999

Proposal publication date: August 13, 1999

For further information, please call: (512) 719-0714



Subchapter B. GOATS

4 TAC §43.10, §43.11

The Texas Animal Health Commission (TAHC) adopts amendments to Chapter 43, Subchapter B, concerning Tuberculosis in Goats. The TAHC adopts amendments to §43.10, concerning Definitions and §43.11, concerning Accredited Herd Plan for Goats, without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6157). The Subchapter title was changed from "Dairy and Meat Type Goats" to "Goats".

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

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 27, 1999.

TRD-9906290

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 17, 1999

Proposal publication date: August 13, 1999

For further information, please call: (512) 719-0714



Chapter 49. EQUINE

4 TAC §49.1, §49.2

The Texas Animal Health Commission (TAHC) adopts amendments to Chapter 49 concerning Equine. The TAHC adopts amendments to §49.1, concerning Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine and §49.2, concerning Interstate Movement Requirements. Section 49.1 is adopted with changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6159). Section 49.2 is adopted without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* and will not be republished.

The commission received numerous comments on the proposal. The comments were all focused on proposed language for insuring that equine attempting to qualify to be sold without a negative Equine Infectious Anemia (EIA) test or a negative Coggins test would be sold to slaughter. House Bill (HB) 1732 was passed during the 76th Texas Legislative Session relating to the testing of certain equine animals for EIA. The legislation makes it a penalty for a seller of an equine to transfer ownership without having a negative EIA test, unless an animal qualifies for a limited exemption. The Commission is adopting rules which reflect the requirements of the legislation.

All the comments received in response to the proposed rule were supportive of requiring that an equine without a test be required to go "direct" to slaughter. The commission appreciates the comments as well as the support for the rule but would like to clarify that the legislation, and the rule, provides for two exemptions. The second exemption is for a foal that is transferred with a dam that has tested negative for equine infectious anemia during the 12 months preceding the date of the transfer. None of the commenters discussed the nursing foal exemption, but the commission would note that there is research data which documents that a nursing foal receives 95 percent fewer fly bites than an adult equine.

The commission originally proposed language intended to insure that animals sold for slaughter went "direct" to slaughter. The commission's concern was that uninfected equine could be exposed to EIA from an equine of unknown disease status passing through the same market. Also, there had been concern expressed in the comments that even animals sold for slaughter may not end up at slaughter. This would create a loophole for horses of unknown test status. Therefore, the commission proposed the wording "direct" to prevent untested animals from going through these markets. However, in discussions at the Commission's September 16, 1999, meeting they

discussed the proposal and the proposed language of direct, in response to the comments The Commissioners expressed concern that by requiring horses be taken "direct" to slaughter could be a hardship on people trying to sell equine. This could limit this agency's effectiveness to insure that animals sold are either tested before they are sold or at slaughter. The commission appreciates all the comments and concern on insuring that equine sold to slaughter go to slaughter. However, the commission decided that the rule would be more effective by removing the word "direct" from the proposal, as well as the language of "less than eight months old" for a nursing foal that is transferred with a dam. These deletions would make the rule being adopted more reflective of HB 1732. The commission has directed staff to study other methods of insuring that equine sold to slaughter get to slaughter. This will be presented at a future commission meeting for discussion and appropriate action.

The sentiment of most of the commenters is that "all equines sold at public auction or private treaty must have proof of negative Coggins test." The commission appreciates the comments and would note that the requirements of HB 1732, and the rules being adopted by the commission, would apply to any change of ownership, be it through public auction or by private treaty.

The concern presented by most commenters is that if an animal was allowed to transfer through a market, there would be commingling of tested and untested animals. It would be too easy for positive equine to be sold and moved, exposing other equine. Under the requirements, an equine could not undergo transfer of ownership at a market without a negative test unless it qualified for one of the limited exemptions. If equine ownership was transferred without a test, because it was going to a slaughter facility it will be tested at commission expense allowing the commission to perform adequate surveillance on animals which are determined to be positive.

One commenter stated "those consigned directly to slaughter should be sent under quarantine to the slaughter facility from the sale facility unless tested on the sale premises." In response to the comment, the commission would note that the quarantine requirements of the current rules would not become effective until the animal arrived at the slaughter facility.

A commenter representing a group wrote "all horses sold at auction tested for EIA before they even set foot on the grounds of the livestock market." In response, the commission would note that the rule is triggered by a change of ownership and not by mere presence of an animal at a market. Furthermore in the case of animals which go through a market to slaughter, under the requirements of the legislation and rule, the testing would not take place until the animal reached the slaughter facility. The commission would note that all market owners should be aware of the problems of equine arriving at their market without a test. Market owners should be vigilant for the problems associated with equine of unknown status being allowed to commingle with equine which have tested negative. If an equine goes through a market and is found to be positive, there is a potential for infecting other horses which were sold. This, in turn, would expose these markets to potential liability as well as a loss of trust by their customers. It is recommended that market owners keep equine of an unknown status isolated from other equine at the market so as to minimize this potential problem.

One commenter wrote that "I would like to suggest that the rule be clarified and strengthened to require all equidae moving toward or transported to common collection points (i.e., fairs,

horse shows, trail rides, riding/driving clinics, social gatherings, rodeos, racetracks, auction barns, private sale, trials or for whatever reason equine are away from their home address)". The commission appreciates the comment and would note generally that the rule as proposed was focused on the issue of change of ownership as reflected in HB 1732 and not on requirements for events where equine gather. Also, the commission would note that the commission already requires that equine who enter a show, exhibition or fair must have a negative Coggins within the last twelve months.

Another commenter wrote "we fully support the new law regarding testing for EIA (House Bill 1732) and also support most of the proposed regulations. However, the regulation allowing untested equines to be transported directly to slaughter plants where they will be tested at state expense is unacceptable." The commission appreciates the concern of the commenter and would note that the testing of equine which go to slaughter is a requirement of the legislation and the rule is merely reflecting that requirement. The commission would also note that the testing of the animals at the slaughter plant benefits the state as it allows the commission to trace back any animals that test positive and determine the herd of origin. Also the test is inexpensive, quick and performed by a federal-state laboratory making the expense to the state very affordable.

Also, as part of this adoption, the commission is authorizing and recognizing an equine passport or an equine identification card as an appropriate animal health document for equine which travel to interstate shows and fairs from other states. The equine passport or identification card will be valid for six months, require a current EIA test every six months, and serve in lieu of a health certificate among the participating states. Only one horse would be listed on a passport or identification card. One standard format would be used by each state, but information about where to return the document and a unique sequential number would be different by state. A passport or identification card will be in addition to and separate from EIA papers. The passport will be issued and filled out by a private accredited veterinarian. Permanent identification will be required (tattoo, brand, or electronic/microchip technology) on the passport or the identification card and EIA test forms along with the name, age, breed, sex, color/marking, date bled, lab name, test result, accession number, and type of test. The recognition of the equine passport and the equine identification card is also being adopted in 4 TAC §51 concerning Interstate Shows and Fairs.

The amendments are adopted under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorize the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, the Commission relies upon §161.081 to address issues related to importation of these animals. HB 1732 from the 76th Texas Legislative Session provides that the owner of an equine must comply with the legislation for a change of ownership. HB 1732 is codified in the Texas Agriculture Code, Chapter 161, as §161.149.

§49.1. Equine Infectious Anemia (EIA): Identification and Handling of Infected Equine.

(a) Official Test. The agar gel immunodiffusion (AGID) test, also known as the Coggins test, the Competitive Enzyme-Linked Immunosorbent Assay (CELISA) test, and other USDA-licensed tests approved by the commission, are the official tests for equine infectious anemia (EIA) in horses, asses, mules, ponies, zebras and any other equine in Texas.

(b) Authorization to conduct test. Only United States Department of Agriculture (USDA)-approved laboratories, including USDA approved off-site laboratories, are allowed to run the AGID and CELISA or other USDA licensed tests and all tests will be official. Only test samples from accredited veterinarians or other TAHC authorized personnel accompanied by a completed VS Form 10-11 can be accepted for official testing.

(c) Official Identification of Equine Tested for EIA. All official blood tests must be accompanied by a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) listing the description of the equine to include the following: age, breed, color, sex, animal's name, and all distinctive markings (i.e., color patterns, brands, tattoos, scars, or blemishes). In the absence of any distinctive color markings or any form of visible permanent identification (brands, tattoos or scars), the animal must be identified by indicating the location of all hair whorls, vortices or cowlicks with an "X" on the illustration provided on the VS Form 10-11. It must list owner's name, address, the animal's home premise and county, the name and address of the authorized individual collecting the test sample, and laboratory and individual conducting the test. The EIA test document shall list one horse only.

(d) Reactor. A reactor is any equine which discloses a positive reaction to the official test. The individual collecting the test sample must notify the animal's owner of the quarantine within 48 hours after receiving the results.

(e) Retest of reactors. Equine which have been disclosed as reactors may be retested prior to branding provided:

(1) owners or their agents initiate a request to the TAHC Area Director of the area where the horse is located;

(2) retests are conducted within 30 days after the date of the original test;

(3) blood samples for retests are collected by the person who collected the sample for the first test or by TAHC personnel, and the blood samples are submitted to the Texas Veterinary Medical Diagnostic Laboratory (TVMDL) for testing;

(4) the individual collecting the retest sample is provided documentation that the animal being retested is the same as the one shown positive on the initial test and can verify the retested equine as being the same as shown on the original test document; and

(5) the positive animal is held under quarantine along with all other equine on the premise.

(f) Official identification of reactors. A reactor to the official test must be permanently identified using the National Uniform Tag Code number assigned by the USDA to the state in which the reactor was tested followed by the letter "A" (the code for Texas is 74A). The reactor identification must be permanently applied by a representative of the Texas Animal Health Commission who must use for the purpose of identification, a hot-iron brand or freeze-marking brand. The brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. Reactors must be branded within ten days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to branding must be described in a written statement by the accredited veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the Texas Animal Health Commission promptly.

(g) Quarantine. Any equine animal found to be a reactor to the official test will be quarantined by a representative of the Texas Animal Health Commission to the premises of its home, farm, ranch

or stable until natural death, disposition by euthanasia, slaughter, or disposition to a Texas Animal Health Commission approved, diagnostic or research facility. The quarantine shall restrict the infected equine, all other equine on the premise, and all equine epidemiologically determined to have been exposed to an EIA-positive animal to isolation at least 200 yards away from equine on adjacent premises.

(h) Movement of Reactors and Exposed Equine.

(1) Reactor equine. Following official identification, a reactor must be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved from its home premises either:

(A) Directly to a slaughter plant, slaughter-only market, or slaughter-only buying facility; or

(B) Directly to an approved diagnostic or research facility; or

(C) Directly to a livestock market to be sold for slaughter, provided that within 24 hours prior to entry, the equine is inspected by a TAHC veterinarian or a Texas USDA-accredited veterinarian to ensure the equine displays no clinical signs of EIA and has a normal temperature. The auction market must isolate the positive equine from other equine, pen the positive equine under a roof, and hold the positive equine on the premise for no longer than 24 hours.

(2) Exposed equine. Exposed equine must be identified with an "S" brand placed on the left shoulder or left side of the neck, and be accompanied by a VS Form 1-27 permit issued by an accredited veterinarian or other authorized state or federal personnel when moved either:

(A) Directly to a livestock market for sale directly to slaughter provided the exposed equine is quarantined at the market in isolation from other horses; or

(B) Directly to a slaughter plant, slaughter-only market, or slaughter-only buying facility; or

(C) Directly to an approved diagnostic or research facility.

(i) Requirements for testing equine on quarantined premises. All equine determined to have been on the same premise with an EIA-positive horse at the time the positive horse was bled shall be tested by an accredited veterinarian at owner's expense or by Commission personnel. Nursing foals are exempt from testing.

(j) Requirements for Testing Exposed Equine and High Risk Herds.

(1) Exposed equine. All equine epidemiologically determined to have been exposed to an EIA-positive animal shall be quarantined and tested by an Accredited Veterinarian at owner's expense or by Commission personnel. Nursing foals are exempt from testing.

(2) Whole herd testing. All equine except nursing foals that are part of a herd from which a reactor has been classified shall be tested by an Accredited Veterinarian at owner's expense or by Commission personnel. A herd is:

(A) All equine under common ownership or supervision that are on one premise; or

(B) All equine under common ownership or supervision on two or more premises that are geographically separated, but on which the equine have been interchanged or where there has been

contact among the equine on the different premises. Contact between equine on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between premises; or

(C) All equine on common premises, such as community pastures or grazing association units, but owned by different persons. Other equine owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiologic investigation establishes that equine from the affected herd have not had the opportunity for direct or indirect contact with equine from that specific premise.

(3) High Risk Testing. Herds determined to be at high risk shall be tested by an accredited veterinarian at owner's expense or by commission personnel. High risk herds are those epidemiologically judged by a State-Federal veterinarian to have a high probability of having or developing equine infectious anemia. A high risk herd need not be located on the same premise as an infected or adjacent herd.

(k) Release of EIA quarantine. The EIA quarantine may be released by the Texas Animal Health Commission after all quarantined equine test negative at least 60 days following identification and removal of the last EIA-positive equine as set out in subsections (f) and (h) of this section. Epidemiological data may be considered in the release of the quarantine.

(l) Requirements for Change of Ownership. A negative EIA test within the previous 12 months is required for all equine, except zebras, which are eight months of age or older, changing ownership in Texas, except, if the animal is:

(1) sold to slaughter, to be tested at the slaughter facility at Commission expense; or

(2) a nursing foal, that is transferred with its dam and the dam has tested negative for equine infectious anemia during the 12 months preceding the date of the transfer.

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 27, 1999.

TRD-9906291

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 17, 1999

Proposal publication date: August 13, 1999

For further information, please call: (512) 719-0714



Chapter 51. INTERSTATE SHOWS AND FAIRS 4 TAC §51.1, §51.2

The Texas Animal Health Commission (TAHC) adopts amendments to Chapter 51, §51.1 and §51.2, concerning Interstate Shows and Fairs, without changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6161). Section 51.1 provides definitions for terms contained in the chapter. Section 51.2 is general requirements applicable to livestock that are entering shows or fairs.

The commission is authorizing and recognizing an equine passport or equine identification card as an appropriate animal

health document for equine that travel to interstate shows and fairs from other states. The equine passport or equine identification card will be valid for six months, require a current EIA test every six months, and serve in lieu of a health certificate among the participating states. Only one horse will be listed on a passport or identification card. One standard format will be used by each state, but information about where to return the document and a unique sequential number will be different by state. A passport or identification card will be in addition to and separate from EIA papers. The passport will be issued and filled out by a private accredited veterinarian. Permanent identification will be required (tattoo, brand, or electronic/microchip technology) on the passport or identification card and EIA test forms along with the name, age, breed, sex, color/marking, date bled, lab name, test result, accession number, and type of test. The requirements for the equine passport and equine identification card are also adopted in 4 TAC Chapter 49 concerning Equine.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorize the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also the Commission relies upon §161.081 to address issues related to importation of these animals.

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 27, 1999.

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Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: October 17, 1999

Proposal publication date: August 13, 1999

For further information, please call: (512) 719-0714



TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter H. ELECTRICAL PLANNING

16 TAC §§25.161-25.171

The Public Utility Commission of Texas (commission) adopts the repeal of §§25.161-25.171, relating to Electrical Planning with no changes as published in the July 30, 1999, *Texas Register* (24 TexReg 5825). These sections were adopted to implement the Public Utility Regulatory Act (PURA), Chapter 34, relating to Electrical Planning. This chapter required the commission to adopt rules to implement the provisions of Chapter 34 concerning integrated resource planning (IRP) and resource solicitation. By acts of the 76th Legislature, Regular

Session (1999) Senate Bill 7 (SB 7) repealed PURA Chapter 34. Therefore §§25.161-25.171 are no longer necessary. This repeal is adopted under Project Number 21023.

The commission received comments on the proposed repeal from Texas Industrial Energy Consumers (TIEC) and Texas Legal Services Center (TLSC).

TIEC supports the repeal of the commission's IRP rules and believes that SB 7 requires the use of the market to determine resource planning.

TLSC commented that while the IRP process may have been repealed by the Legislature, several of the goals of the IRP process, i.e., encouraging renewables and providing for equity in the provision of demand side management (DSM) services, particularly for renters and low-income customers have been maintained by SB 7. TLSC comments that the repeal of the IRP process puts the previous commitments of Texas New-Mexico Power Company (TNMP) (Docket Number 17751) and Houston Lighting and Power Company (Reliant-HL&P) (Docket Number 18465) regarding their low-income weatherization programs in jeopardy. TLSC takes the position that while the IRP process was the forum in which the parties agreed to pursue these matters, the repeal of the IRP statute should not be taken to mean that either TNMP or Reliant-HL&P should be relieved of these commitments. TLSC states that these commitments are consistent with the goals of PURA §39.903(f) and Senate Bill 86, 76th Legislature, Regular Session (1999) which requires all retail utilities in Texas to assure customer access to low-income weatherization programs. TLSC requests that the commission initiate an investigation to assure utility compliance with these rate orders or establish a minimum DSM interim equity requirement in Project Number 21074, *Energy Efficiency Goal*, simultaneously with the repeal of the IRP rules.

Compliance of utilities with orders issued in other dockets is outside the scope of this rulemaking proceeding. The commission has instructed staff to initiate a project to investigate IRP issues arising out of dockets initiated prior to SB 7. Project Number 21074 will address minimum DSM requirements, including low income energy efficiency programs prior to 2002. However the commission can not establish a minimum DSM requirement simultaneously with the repeal of the IRP rules as a proposed rule has not been published yet in Project Number 21074.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9906186

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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Proposal publication date: July 30, 1999
For further information, please call: (512) 936-7308

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Subchapter I. TRANSMISSION AND DISTRIBUTION

Division 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.227

The Public Utility Commission of Texas (commission) adopts new §25.227, relating to Electric Utility Service for Public Retail Customers with changes to the proposed text as published in the August 20, 1999 *Texas Register* (24 TexReg 6418). The rule is necessary to allow public retail customers the option to purchase power directly from the General Land Office (GLO) under the Public Utility Regulatory Act (PURA) §35.102. The rule establishes terms under which the GLO may take utility service, including transmission, distribution, and customer services to convey power to public retail customers. This new section was adopted under Project Number 21073.

A public hearing on the proposed section was held on September 1, 1999 at 9:00 a.m. Representatives from Central and South West Corporation (CSW), Entergy Gulf States (EGS), the Office of the Attorney General (OAG), Reliant Energy HL&P (Reliant), and TXU Electric (TXU) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received comments on the proposed new section from Austin Energy; Brazos Electric Power Cooperative, Inc. (Brazos); CSW; City Public Service of San Antonio (CPS); El Paso Electric Company (EPE); EGS; the General Land Office (GLO); the Greenville Electric Utility System, the City of Garland, and the City of Denton (collectively, the Cities); OAG; Reliant; Southwestern Public Service Company (SPS); Texas Electric Cooperatives, Inc. (TEC); and TXU.

Reliant and EGS stated that the procedures established for the purpose of this rule should not create a precedent regarding pilot programs, the competition transition charge (CTC), or the functional unbundling of rates.

The commission agrees that the procedures established in this rule are designed to allow expedient implementation of the GLO Power Marketing Program described in PURA §35.102, and that this rule shall not be used as a precedent for any other policy decisions by the commission. The commission recognizes that complete information regarding the competition transition charge and the functional unbundling of rates is not currently available. However, the commission believes that the procedures established in this rule are reasonable, and are within the guidelines set forth by PURA §35.103(b).

The competition transition charge established for the purpose of this rule differs from that contemplated by PURA Chapter 39, Subchapter F, Recovery of Stranded Costs Through Competition Transition Charge. In the proposed rule the competition transition charge is calculated based upon the commission's estimate in the "Potentially Strandable Investment (ECOM) Re-

port: 1998 Update" (ECOM Report), amortized over the average remaining life of the underlying assets. In contrast, the competition transition charge ultimately established under PURA §39.201 will be calculated on stranded costs amortized over a potentially shorter period. Additionally, some stranded costs included in the ECOM Report estimate may be mitigated prior to the establishment of the competition transition charge under PURA 39.201. Therefore, the commission finds the procedures established in this rule for the purpose of calculating the competition transition charge will allow the affected utilities reasonable recovery of stranded costs during the period in which this rule is effect.

TXU and OAG stated that the rule should recognize that public retail customers have the option, but not an obligation, to purchase power from the GLO.

The commission agrees with the commenters and has adopted OAG's suggested language in subsection (a) of the rule.

Austin Energy, CPS, Brazos, TEC, and the Cities suggested language to address the applicability of this rule to municipally owned utilities that have adopted customer choice.

The commission agrees with the commenters and has adopted the related suggested language throughout the rule to reflect the commission's statutory authority as it relates to municipally owned utilities and electric cooperatives.

CPS, Brazos, TEC, and the Cities suggested language to prohibit the GLO from marketing within the service areas of municipally owned utilities and electric cooperatives that have not adopted customer choice. Austin Energy expressed a similar concern by recommending that in "any informational brochures...distributed with regard to the right of the General Land Office to convey power to public retail customers, that there is clarity in stating the availability of this service for those areas where municipally owned utilities or electric cooperatives have not implemented customer choice."

The commission agrees with Austin Energy, and encourages the GLO to adopt such practices. The commission understands that the GLO intends to include a disclaimer in its mailings that clarifies that the service is not available in certain areas. However, the commission does not believe it is necessary to amend the proposed rule in response to these comments. The GLO will be bound by the statutory restrictions relating to availability of the GLO Power Marketing Program in areas in the service areas of municipally owned utilities and electric cooperatives that have not adopted customer choice.

CSW stated that the calculation of the 2.5% of retail load in subsection (b) of the rule should be based on the previous calendar year's system peak.

The commission has determined that the calculation of the 2.5% limit should be fixed for the duration of the period prior to the implementation of customer choice, has added language to subsection (b) of the rule to direct that the calculation be based on the calendar year 1998 system peak.

TXU stated that the priority of public retail customers listed in PURA §35.102 should be incorporated in the rule.

The commission does not agree that the requirements in PURA §35.102 relating to the priority of service to public retail customers need to be re-stated in the rule. The GLO will be bound by the statutory restrictions, whether or not such restrictions are stated in the rule.

OAG stated that the definition of state agency should be clarified by referring to commission Substantive Rule §25.78, relating to State Agency Utility Account Information. OAG further stated that the rule should clarify that the public retail customer may request that the OAG assist in the negotiation of rates and terms for electricity service.

The commission agrees and has adopted OAG's suggested language in the definition of public retail customer given in subsection (c)(5) of the rule. A reference to Texas Government Code §447.008(d) which gives state agencies and institutions of higher education the option to request assistance from the OAG in the negotiation of rates and terms for electricity service has also been added to the definition of public retail customer given in the rule.

CSW, TXU, SPS, and EGS stated that the 48-hour timeframe in which the utilities are required to supply billing data to the GLO may be too brief. TXU further commented that the phrase "billing determinants" was not defined in the rule and should be clarified.

The commission is persuaded by the parties' comments and has amended subsection (d)(3) of the proposed rule to require that billing data be supplied within three business days. Further, the commission has adopted TXU's proposed language to clarify the reference to billing determinants in subsection (d)(3) of the rule.

TXU and OAG stated that the rule should address the confidentiality of the public retail customers' data. GLO stated that a confidentiality agreement would be required of all outside consultants.

The commission does not find it necessary to state in the rule that the public retail customers' data is confidential. To the extent that such data is confidential under the law, that law would control and a commission rule stating it is confidential would be superfluous. A commission rule declaring the information is confidential would not be controlling on the OAG should it receive a request for an Open Records ruling. However, the commission believes it would be useful to put parties on notice that public retail customers' data is subject to the requirements and protections of the Public Information Act, Government Code, Chapter 552. Therefore, a provision has been added to the rule that refers to that section.

TXU stated that the phrase "customer service" in subsection (f)(1) was unclear because the components of the customer service charge are not listed in the rule.

The commission clarified the meaning of the phrase "customer service" by listing the components of the customer service charge in subsection (f)(4) of the rule.

TXU and EGS asserted that the "bundled rates" for the purposes of calculating the power delivery charge should include the fuel factor, or in the alternative, that the data from Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas*, should be recalculated to exclude fuel costs. TXU and EGS expressed concern that the inclusion of fuel costs in the unbundling models used in Project Number 20749 may have caused an understatement of non-generation costs relative to the generation function.

The commission does not agree that any fuel-related charges should be included in the power delivery charge. To the extent that fluctuations in fuel costs may affect the functional

percentages used to compute the power delivery charge, the effect is minimal. In order to facilitate implementation, the commission declines to establish new functional percentages for the purpose of the tariffs required by this rule. The commission believes that the methodology set out in the proposed rule will result in reasonable power delivery charges.

TXU and EGS stated that rates for customers taking service at the transmission level do not contain distribution costs, therefore the credit for transmission-level service is inappropriate.

The commission notes that this issue was considered in the development of the cost unbundling models used in Project Number 20749, and, as a result, distribution costs were assigned to transmission-level service rate classes accordingly. However, the commission recognizes that some utilities have tariffs in place that exclude distribution charges for such customers. To this extent, the commission has adopted TXU's suggested language relating to public retail customers taking service at transmission level .

With respect to the "billing and customer service credit", CSW stated that the affected utilities will incur billing and customer service costs to serve the GLO. TXU stated that the costs for the billing and customer service credit are fixed and will not decrease when a customer switches to the GLO, and that the credit does not contain billing costs.

The commission recognizes that the data to separate the costs of billing to public retail customers is not available at this time. Therefore, an alternative method must be developed to allow the GLO to receive a reasonable credit for billing public retail customers directly. Although an affected utility will incur some costs for customer service to the GLO, the net costs incurred by the utility will be lower, because the utility will not be providing the same level of services when the GLO bills its public retail customers directly. The commission therefore finds the credit equal to the tariff administration, energy services, and other customer service (TECS) portion of the power delivery charge to be a reasonable proxy in the absence of information on billing costs.

TXU, EGS, Austin Energy, CPS, and the Cities maintained that PURA does not authorize direct billing of public retail customers by the GLO prior to January 1, 2002.

The commission disagrees with the commenters, and finds that the authorization for the GLO to directly bill public retail customers is implicitly granted in PURA §35.102, State Authority to Sell or Convey Power. The authority to sell power necessarily includes the authority to bill for it, unless expressly prohibited. The references by the commenters to provisions in Chapters 39, 40, and 41 of PURA, which address the authority of the incumbent utility to perform billing, relate to the implementation of customer choice. These provisions do not apply to the GLO Power Marketing Program established in PURA Chapter 35. The authority of the GLO to sell power is a separate chapter of PURA, largely independent of the implementation of customer choice.

TXU stated that the rule should specify in subsection (g)(1)(B) that weather-adjusted billing determinants should be used for the calculation of the competition transition charge in order to provide consistency with the language of PURA §39.253(g). EGS stated its assumption that the use of year-end April 30, 1999 billing determinants for the calculation of the competition transition charge is a result of on-going negotiations in other

proceedings, and is inefficient because it requires an affected utility to develop data that may not be used for any other purpose. The commission does not intend to incorporate any specific position being advocated in any proceeding outside this rulemaking, and as implied by TXU, merely seeks to provide consistency with the language of PURA §39.253(g). Therefore, the commission agrees with the modification suggested by TXU.

TXU suggested language to clarify the definition of stranded costs in subsection (c)(6).

The commission has adopted TXU's suggested language, which clearly identifies the relevant scenario within the "Potentially Strandable Investment (ECOM) Report: 1998 Update". TXU stated that the rule should contain a provision for a "carrying charge" on the unrecovered stranded cost balance to allow an affected utility the opportunity to earn a reasonable return during the amortization period. TXU further commented that the rule should clarify that transition charges, as defined in PURA §39.302(7) may also be imposed.

The commission agrees that the competition transition charge should include a reasonable return for the years 2000 and 2001 on the unrecovered balance of stranded costs. Therefore the commission has added language to subsection (g)(2) of the rule which instructs utilities to first discount the ECOM Report estimate back to 2000, then calculate a return, as identified in PURA §39.258(7), for the years 2000 and 2001. The commission also believes that the competition transition charge established in this rule will provide reasonable recovery of an affected utility's stranded costs during the period prior to the establishment of a competition transition charge under PURA §39.201.

TXU stated that the competition transition charge established in this rule should be subject to a true-up.

The commission disagrees that a special true-up proceeding is necessary for the competition transition charge established under this rule. PURA §39.262 provides for a true-up proceeding of all competition transition charges, including those established under this section. The commission has added language to clarify this point in new subsection (g)(3) of the rule.

CSW, TXU, and EGS stated that the GLO's responsibility to provide ancillary services should be addressed in the rule.

The commission believes that the responsibility to provide ancillary services and related issues are more appropriately addressed in individual agreements between the GLO and any party or parties with which it contracts to implement the GLO Power Marketing Program. Therefore the commission declines to include a provision relating to ancillary services in the rule.

CSW stated that the timing of the switchover from the utility to the GLO should be restricted to the end of a billing cycle.

The commission recognizes that some administrative efficiency may be gained by timing the switchover at the end of the billing cycle, but does not agree that this efficiency would outweigh the costs of such a delay in all cases. Therefore, the commission declines to include a provision for switchover timing in the rule.

EPE stated that a provision for utilities exempt from PURA Chapter 39 should be added to address the period until such an exemption expires. The suggested provision would allow EPE to collect stranded costs as an amount equal to the margin between the GLO and EPE prices for electricity, and would allow EPE to adjust its functional percentages annually.

The commission recognizes the need for a provision for utilities exempt from PURA Chapter 39 to address the period until such an exemption expires. The commission has adopted such a provision under subsection (h), rate design for electric utilities. New subsection (h)(3) allows EPE a one-time adjustment of its functional percentages, based on costs for the year ending December 31, 2001. However, the commission declines to afford EPE special treatment by setting the competition transition charge at a level different from that set for all other utilities, to capture the entire margin between GLO and EPE prices.

SPS stated that the rule potentially conflicts with non-ERCOT utilities' FERC Open Access Transmission Tariff. SPS recommended that the rule allow non-ERCOT utilities the flexibility to avoid conflicts with other jurisdictions. In commenting on this issue, EGS maintained that if the transmission rate established in this rule "simply represented the disaggregated price for the transmission component of bundled retail service but is not authorization to obtain unbundled transmission service for retail access, no FERC action would be required."

The commission agrees with EGS. This rule does not require the provision of unbundled transmission service but instead establishes a disaggregated price for services that will be provided on a bundled basis in order to expediently effectuate the intent of PURA §35.102. Consequently, the commission does not believe it will be necessary for FERC-jurisdictional utilities to amend their FERC tariffs if the GLO requests the utility to file a tariff pursuant to this rule.

The GLO filed comments supporting the rule, and noted the need to implement the GLO Power Marketing Program in a timely, expeditious manner.

The commission concurs with GLO's comment that the program should be implemented expeditiously. Toward that end, language has been added in subsection (e)(2) of the rule to clarify that the tariffs filed pursuant to this rule may be approved on an interim basis.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §35.102 which grants the Commissioner of the General Land Office the authority to sell or otherwise convey power generated from royalties taken in kind as provided by Natural Resources Code §§52.133(f), 53.026, and 53.077, directly to a public retail customer.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.101, 35.102, 35.103, 35.104, 35.105, and 35.106.

§25.227. *Electric Utility Service for Public Retail Customers.*

(a) Purpose. The purpose of this section is to establish the terms under which the General Land Office may take utility service, including transmission, distribution, and customer services, in order to convey power to public retail customers purchased under the Public Utility Regulatory Act (PURA) §35.102. This section also allows public retail customers the option to purchase power from the General Land Office. This section requires electric utilities, and municipally owned utilities and electric cooperatives that have adopted customer choice, to file tariffs to specify the terms and conditions under which the General Land Office may take utility service from an affected

utility pursuant to PURA §35.103(b). These tariffs must include any stranded costs associated with providing the service.

(b) Application. This section shall apply to electric utilities that provide retail electric service in Texas, and municipally owned electric utilities and electric cooperatives that have adopted customer choice. This section shall not apply to either municipally owned electric utilities or to electric cooperatives that have not adopted customer choice. In a certificated area of an electric utility in which customer choice has not been introduced, the General Land Office may not engage in retail transactions that exceed 2.5% of a retail electric utility's total retail load, calculated based on the system peak for the calendar year 1998.

(c) Definitions. As used in this section, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) Affected utilities - shall refer to all utilities as defined in subsection (b) of this section.

(2) Customer service - As defined in §25.221 of this title (relating to Electric Cost Separation).

(3) Distribution service - As defined in §25.221 of this title (relating to Electric Cost Separation)

(4) Transmission service - As defined in §25.221 of this title (relating to Electric Cost Separation).

(5) Public retail customer - A retail customer that is an agency of this state as defined in §25.78 of this title (relating to State Agency Utility Account Information), a state institution of higher education, a public school district, or a political subdivision of this state. Under Texas Government Code §447.008(d), a state agency or institution of higher education may request assistance from the Office of the Attorney General in the negotiating rates and terms of electric service .

(6) Stranded cost - The amount estimated by the commission in the scenario which assumes retail access beginning in the year 2002, "base" market prices, and including the effects of cost benchmarking and transition plans where applicable, in the "Potentially Strandable Investment (ECOM) Report: 1998 Update," as described in PURA §39.262(i).

(7) Functional percentage - The ratio of each of the transmission, distribution, and customer service costs to total costs for each rate class of each utility, as identified in Appendix F of the Staff Report filed in Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas*.

(d) Obligations of affected utilities.

(1) Each affected utility is obligated to provide the services prescribed by this section on a comparable and non-discriminatory basis, and under the same terms and conditions for service to similarly situated customers.

(2) Each affected utility's obligations shall include, but are not limited to, the obligation to extend electric service to new locations.

(3) The affected utility shall provide to the General Land Office within three business days of collection all demand and/or energy consumption readings applicable to each public retail customer to which the General Land Office conveys power. This information is subject to any protections of the Public Information Act, Texas Government Code, Chapter 552.

(e) Filing requirements.

(1) Upon a request for service pursuant to this section by the General Land Office, an affected utility shall file a tariff to implement the provisions of this section not later than 15 days from the date of the request. The proposed tariffs of electric utilities shall comply with subsection (f) of this section, and with the commission's standard tariff format for this section. As part of this filing, electric utilities shall provide all supporting workpapers and documents used in the calculation of the power delivery charge and the competition transition charge.

(2) The commission shall approve or deny a proposed tariff filed by an electric utility under this section within 30 days of filing. A proposed tariff may be approved on an interim basis, subject to refund or surcharge, prior to final approval.

(f) Tariff requirements. Each tariff of an electric utility shall contain the following provisions listed in paragraphs (1) through (8) of this subsection. Paragraph (8) of this subsection shall apply to all affected utilities as defined in subsection (b) of this section.

(1) Power delivery charge. The sum of the transmission, distribution, and customer services charges established under this section. No credits shall be made to the power delivery charge, except for credits related to transmission-level service and billing and customer service, as provided in paragraphs (5) and (6) of this subsection.

(2) Transmission charge. A charge for transmission service as established in subsection (h) of this section. A separate charge shall be listed for each rate class.

(3) Distribution charge. A charge for distribution service as established in subsection

(h) of this section. A separate charge shall be listed for each rate class.

(4) Customer service charge. A charge for retail customer service equal to the sum of the metering and billing and the tariff administration, energy services, and other customer service charges as established in subsection (h) of this section. A separate charge shall be listed for each rate class.

(5) Transmission-level service credit. A credit equal to the distribution charge, to be applied to the power delivery charge for public retail customers that take electric service at transmission voltage. This credit shall apply only in the event an affected utility does not have a commission-approved tariff for electric service at transmission voltage.

(6) Billing and customer service credit. A credit equal to the tariff administration, energy services, and other customer services portion of the customer service rate, which shall be applied to the power delivery charge if the affected utility does not bill the public retail customer directly on behalf of the General Land Office.

(7) Competition transition charge. A charge as established in subsection (g) of this section for the recovery of stranded costs associated with providing the service.

(8) Terms and conditions. Terms and conditions shall be consistent with the existing bundled rate tariffs.

(g) Competition transition charge (CTC)

(1) The competition transition charge for an electric utility shall be calculated as follows:

(A) The stranded costs for each utility shall be amortized over the average remaining life of the generation asset(s) under-

lying the stranded costs, and shall be allocated to each class pursuant to the method prescribed by PURA §39.253;

(B) The rate design of the CTC for each class shall be consistent with the rate design used to recover the costs of the generation assets underlying the stranded costs in the utility's last rate proceeding, calculated to reflect billing determinants for the year ending April 30, 1999, adjusted for normal weather.

(2) The CTC calculated pursuant to this section shall remain in effect until replaced by the CTC established pursuant to PURA §39.201. The CTC shall include a reasonable return for the years 2000 and 2001 on the unrecovered balance of stranded costs. The year 2000 balance shall be its January 1, 2002 balance discounted at 8.5% per year for each of the years 2000 and 2001. Such return shall be as identified in PURA §39.258(7).

(3) The CTC calculated pursuant to this section shall be subject to PURA §39.262, True-Up Proceeding.

(h) Rate design for electric utilities.

(1) The functional percentages determined for each rate class for each electric utility in Project Number 20749, *Functional Cost Separation of Electric Utilities in Texas*, shall be applied to each component of the existing bundled rate. The existing rate structure shall be maintained.

(2) The rate design required by this section for electric utilities shall remain in effect until replaced by the rate design established pursuant to PURA §39.201.

(3) An affected utility that is not subject to PURA Chapter 39, pursuant to §39.102(c), may request and the commission may grant, a one-time revision of the functional percentages determined for each rate class of that utility in Project Number 20749. The revision shall be based on actual cost data for the year ending December 31, 2001.

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 24, 1999.

TRD-9906183

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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Proposal publication date: August 20, 1999

For further information, please call: (512) 936-7308



Part 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

Chapter 60. TEXAS COMMISSION OF LICENSING AND REGULATION

The Texas Department of Licensing and Regulation adopts amendments to §§60.1, 60.63, and 60.159 regarding the Texas Commission of Licensing and Regulation without changes to the proposed text as published in the August 6, 1999, issue of the *Texas Register* (24 TexReg 5986) and will not be republished.

The 76th Legislature enacted HB3155, which made non-substantive changes to Article 9100 and codified the article into the Occupations Code. These changes are reflected in §§60.1 and 60.63. The amendment to §60.159 clarify the procedure regarding witness testimony and participation by telephone. The amendments will allow the public better accessibility to administrative hearings.

No comments were received regarding the proposal.

Subchapter A. AUTHORITY AND RESPONSIBILITIES

16 TAC §60.1

The amendments are adopted under the Texas Occupations Code, Chapter 51, (Vernon 1999) which authorizes the Texas Commission of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The amendments affect the following statutes:

Air Conditioning and Refrigeration Contractor License Law, Texas Civil Statutes Annotated, article 8861 (Vernon 1999);

Architectural Barriers, Texas Civil Statutes Annotated, article 9102 (Vernon 1999);

Auctioneers, Texas Occupations Code §1802 (Vernon 1999);

Boilers, Texas Health and Safety Code Annotated §755 (1999);

Combative Sports, Texas Occupations Code §2052 (Vernon 1999);

Career Counseling Services, Texas Revised Civil Statutes Annotated, article 52221a-8 (Vernon 1993);

Elevators, Escalators, and Related Equipment, Texas Health and Safety Code Annotated §754 (1995);

Industrialized Housing and Buildings, Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989);

Personnel Employment Services, Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989);

Registration of Property Tax Consultants, Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995);

Service Contract Regulatory Act, Texas Civil Statutes, article 9034 (Vernon 1999)

Staff Leasing Services, Texas Labor Code Annotated §91 (1999);

Regulation of Talent Agencies, Texas Occupations Code §2105 (Vernon 1999);

Temporary Common Workers, Texas Labor Code Annotated §92 (Vernon 1995);

Regulation of Certain Transportation Service Providers, Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997); and

Water Well Drillers and Water Well Pump Installers, Texas Water Code, §§32 and 33 (1999).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9906110

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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Proposal publication date: August 6, 1999

For further information, please call: (512) 463-7348



Subchapter B. ORGANIZATION

16 TAC §60.63

The amendments are adopted under Texas Occupations Code, Chapter 51, (Vernon 1999) which authorizes the Texas Commission of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The amendments affect the following statutes:

Air Conditioning and Refrigeration Contractor License Law, Texas Civil Statutes Annotated, article 8861 (Vernon 1999);

Architectural Barriers, Texas Civil Statutes Annotated, article 9102 (Vernon 1999);

Auctioneers, Texas Occupations Code §1802 (Vernon 1999);

Boilers, Texas Health and Safety Code Annotated §755 (1999);

Combative Sports, Texas Occupations Code §2052 (Vernon 1999);

Career Counseling Services, Texas Revised Civil Statutes Annotated, article 52221a-8 (Vernon 1993);

Elevators, Escalators, and Related Equipment, Texas Health and Safety Code Annotated §754 (1995);

Industrialized Housing and Buildings, Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989);

Personnel Employment Services, Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989);

Registration of Property Tax Consultants, Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995);

Service Contract Regulatory Act, Texas Civil Statutes, article 9034 (Vernon 1999)

Staff Leasing Services, Texas Labor Code Annotated §91 (1999);

Regulation of Talent Agencies, Texas Occupations Code §2105 (Vernon 1999);

Temporary Common Workers, Texas Labor Code Annotated §92 (Vernon 1995);

Regulation of Certain Transportation Service Providers, Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997); and

Water Well Drillers and Water Well Pump Installers, Texas Water Code, §§32 and 33 (1999).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906111

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



Subchapter D. PRACTICE AND PROCEDURE

16 TAC §60.159

The amendments are adopted under Texas Occupations Code, Chapter 51, (Vernon 1999) which authorizes the Texas Commission of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The amendments affect the following statutes:

Air Conditioning and Refrigeration Contractor License Law, Texas Civil Statutes Annotated, article 8861 (Vernon 1999);

Architectural Barriers, Texas Civil Statutes Annotated, article 9102 (Vernon 1999);

Auctioneers, Texas Occupations Code §1802 (Vernon 1999);

Boilers, Texas Health and Safety Code Annotated §755 (1999);

Combative Sports, Texas Occupations Code §2052 (Vernon 1999);

Career Counseling Services, Texas Revised Civil Statutes Annotated, article 52221a-8 (Vernon 1993);

Elevators, Escalators, and Related Equipment, Texas Health and Safety Code Annotated §754 (1995);

Industrialized Housing and Buildings, Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989);

Personnel Employment Services, Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989);

Registration of Property Tax Consultants, Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995);

Service Contract Regulatory Act, Texas Civil Statutes, article 9034 (Vernon 1999)

Staff Leasing Services, Texas Labor Code Annotated §91 (1999);

Regulation of Talent Agencies, Texas Occupations Code §2105 (Vernon 1999);

Temporary Common Workers, Texas Labor Code Annotated §92 (Vernon 1995);

Regulation of Certain Transportation Service Providers, Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997); and

Water Well Drillers and Water Well Pump Installers, Texas Water Code, §§32 and 33 (1999).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906112

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-7348



TITLE 22. EXAMINING BOARDS

Part 11. BOARD OF NURSE EXAMINERS

Chapter 211. BYLAWS

22 TAC §§211.1-211.11

The Board of Nurse Examiners adopts the repeal of §§211.1-211.11 without changes to the proposed text as published in the August 20, 1999 issue of the *Texas Register* (24 TexReg 6425).

The repeal allows for the adoption of new sections.

No comments were received regarding the repeal of Chapter 211.

The repeal is adopted under the Nursing Practice Act, Texas Occupations Code, §301.151, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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 27, 1999.

TRD-9906205

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Effective date: October 17, 1999

Proposal publication date: August 20, 1999

For further information, please call: (512) 305-6816



Chapter 211. GENERAL PROVISIONS

22 TAC §§211.1-211.9

The Board of Nurse Examiners adopts new §§211.1-211.9, concerning Introduction; Purpose and Functions; Organization and Structure; Officers; Meetings; Committees of the Board; Executive Director; Advisory Committees; Conflict of Interest; and General Considerations. Section 211.2 is being adopted with changes to the proposed text published in the August 20, 1999 issue of the *Texas Register* (24 TexReg 6426). Section 211.1 and §§211.3-211.9 are adopted without changes and will not be republished.

The new sections are being adopted after the Board of Nurse Examiners staff reviewed the "bylaws" and determined that the

title of the chapter would be better understood if termed "General Provisions." In addition, The Board of Nurse Examiners is required to have rules in place for the Historically Underutilized Businesses pursuant to Article IX of the 75th Legislative Session and rules for advisory committees as defined by the Texas Administrative Code.

A written comment was received from the Coalition for Nurses in Advanced Practice (CNAP).

CNAP suggested the Board modify §211.2(b)(6) to read as follows:

Examine and license qualified applicants to practice professional nursing and recognize qualified applicants to practice advanced practice nursing in the state of Texas in a manner that ensures that applicable standards are maintained and that practitioners are minimally competent.

CNAP also suggested §211.2(b)(7) read as follows:

Grant licensure by endorsement to registered nurses and grant recognition of advanced practice nurses from other states to ensure standards are maintained and applicable practices are consistent.

CNAP's suggested these changes since the Board of Nurse Examiners recognizes registered nurses who may practice as advanced practice nurses and sets minimum standards for education and competency. They suggest that the rules should specifically identify and recognize advanced practice nursing.

The Board of Nurse Examiners staff agrees to the proposed changes.

CNAP suggested the Board modify §211.6(f)(4) to read as follows:

The Laws and Regulations and Competency Advisory Committees advise and make recommendations to the Board regarding mechanisms to assure that RNs and advanced practice nurses (APNs) understand the laws and regulations affecting the practice of professional and advanced practice nursing and on matters relating to ensuring the maintenance of continued competency of registered and advanced practice nurses respectively.

CNAP suggested these changes so that the duties of the advisory committees would additionally reflect laws and competency requirements of advanced practice nursing.

The Board of Nurse Examiners staff does not agree to the proposed change. The charge of the Board's committees at this time is to develop pilot studies for the Laws and Regulations and Competency Advisory Committees for Registered Nurses. CNAP's suggestions would be in conflict with the Board's charge to these committees.

The new sections are adopted under the Nursing Practice Act, Texas Occupations Code, §301.151, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it. These general provisions will have general applicability to Board functions and to some degree will affect all the formal proceedings required by the Board under the Nursing Practice Act, Texas Occupations Code, 301.001, et seq.

§211.2. *Purpose and Functions.*

(a) Purpose. The purpose of the board is to protect and promote the welfare of the people of Texas. This purpose supersedes

the interest of any individual, the nursing profession, or any special interest group. The board fulfills its mission through two principle areas of responsibility:

- (1) regulation of the practice of professional nursing, and
- (2) accreditation of schools of nursing.

(b) Functions. The board shall perform the following functions as outlined in V.T.C.A., Occupations Code, Chapters 301 and 303, and Vernon's Civil Statutes, Articles 4514, §8(c); 4518, §4; 4519a, §1; 4525.01; 4527a, §3; 4527e; and 4528b.

(1) Establish standards of nursing practice and regulate the practice of professional nursing.

(2) Interpret the Nursing Practice Act and the Rules and Regulations Relating to Professional Nurse Education, Licensure and Practice to nurses, employers, and the public to ensure informed professionals, allied health professionals, and consumers.

(3) Receive complaints and investigate possible violations of the Nursing Practice Act and rules and regulations.

(4) Discipline violators through appropriate legal action to enforce the Nursing Practice Act and rules and regulations.

(5) Provide a mechanism for public comment with regard to the rules and regulations and the Nursing Practice Act and review and modify the rules and regulations when necessary and appropriate.

(6) Examine and license qualified applicants to practice professional nursing and recognize qualified applicants to practice advanced practice nursing in the state of Texas in a manner that ensures that applicable standards are maintained and that practitioners are minimally competent.

(7) Grant licensure by endorsement to registered nurses and grant recognition of advanced practice nurses from other states to ensure standards are maintained and applicable practices are consistent.

(8) Recommend to legislature appropriate changes in the Nursing Practice Act to ensure that the act is current and applicable to changing needs and practices.

(9) Establish standards for nursing education and accredit or deny accreditation to schools of nursing and educational programs which fail to meet or maintain the prescribed course of study or other applicable standards to ensure that high levels of education are achieved.

(10) Monitor the examination results of licensure applicants to determine variances in the level of educational effectiveness.

(11) Provide consultation and guidance to nurse education institutions to facilitate self-study, evaluation, and the development of effective nurse education programs.

(12) Provide advice and counsel to the faculty of educational programs, to staff of health agencies utilizing nursing services, and to practitioners of nursing to continually improve professional service delivery.

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 27, 1999.

TRD-9906206

Katherine A. Thomas, MN, RN

Executive Director

Board of Nurse Examiners

Effective date: October 17, 1999

Proposal publication date: August 20, 1999

For further information, please call: (512) 305-6816

Part 14. TEXAS OPTOMETRY BOARD

Chapter 271. EXAMINATIONS

22 TAC §271.2

The Texas Optometry Board adopts amended Rule 271.2 without change to the proposed text published in the July 30, 1999, issue of the Texas Register (24 TexReg 5837).

The amendment to Rule 271.2 will allow an applicant for licensure to provide documentation regarding the granting of a doctor of optometry degree, allowing the applicant to sit for the jurisprudence examination prior to graduation based on the documentation received, and establish a time element for submission of application fees, required to comply with H.B. 2394, 76th Legislature. The proposed section was published in the July 30, 1999, issue of the Texas Register (24 TexReg 5837).

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.02, §3.03 and §2.14. The Board interprets §3.02 as authorizing the procedures for application to take the examination and interprets §3.03 as authorizing procedures for submitting the examination fee. The Board interprets §2.14 as granting the Board the authority to adopt procedural and substantive rules for the regulation of the optometric profession. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9906194

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: October 14, 1999

Proposal publication date: July 30, 1999

For further information, please call: (512) 305-8502

22 TAC §271.5

The Texas Optometry Board adopts new §271.5 without change to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5838) and will not be republished.

New §271.5 will allow an individual licensed in another state to obtain a license to practice therapeutic optometry in Texas based on the equivalency of another state's licensing examination, as established by House Bill (HB) 2394, 76th Legislature, 1999.

No comments were received.

The new section is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.02, §3.03, §3.085 and §2.14. The Board interprets §3.02 as authorizing the procedures for application to take the examination and interprets §3.03 as authorizing procedures for submitting the examination fee. The Board interprets §3.085 as authorizing licensure without examination. The Board interprets §2.14 as granting the Board the authority to adopt procedural and substantive rules for the regulation of the optometric profession. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lois Ewald

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502



Chapter 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board adopts amendments to Rule 273.4 without change to the proposed text published in the July 30, 1999, issue of the Texas Register (24 TexReg 5838).

The amendment to Rule 273.4 establishes fees, particularly the license renewal and corresponding late fees and the fee for licensure without examination, authorized by H.B. 2394, 76th Legislature.

No comments were received.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, § 2.14. The Board interprets § 2.14 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906196

Lois Ewald

Executive Director

Texas Optometry Board

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Proposal publication date: July 30, 1999

For further information, please call: (512) 305-8502



Chapter 279. INTERPRETATIONS

22 TAC §279.11

The Texas Optometry Board adopts the repeal of §279.11 without change as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5839).

The repeal of the rule will remove language which is not applicable since the Board has incorporated the same language within amendments adopted in §279.13. The rule is in regard to the practice of optometry in nursing homes and other abodes of patient confinement.

No comments were received.

The repeal is adopted under the provisions of Texas Civil Statutes, Article 4552, §5.04 and §2.14. The Texas Optometry Board interprets § 5.04 as authorizing the practice of optometry in nursing homes. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906197

Lois Ewald

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502



22 TAC §279.17

The Texas Optometry Board adopts the repeal of §279.17 without change as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5839).

The repeal of the rule will remove language which defines surgery, which has been superceded by Article 4552-1.02, as amended by the 76th Legislature (1999) in House Bill 1051.

No comments were received.

The repeal is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.02 and §2.14. The Texas Optometry Board interprets §1.02 as authorizing the practice of optometry which does not permit the use of surgery as defined in statute. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lois Ewald

Executive Director

Texas Optometry Board

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For further information, please call: (512) 305-8502



Chapter 280. THERAPEUTIC OPTOMETRY

22 TAC §280.4

The Texas Optometry Board adopts the repeal of §280.4 without change as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5840).

The repeal of §280.4 is required in order to comply with House Bill 1051, 76th Legislature (1999), and will remove language now superceded by Article 4552-1.03 which restricted the use of topical steroids by a therapeutic optometrist.

No comments were received.

The repeal is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.03 and §2.14. The Texas Optometry Board interprets §1.03 as authorizing the interpretation of the therapeutic optometry requirements. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906199
Lois Ewald
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8502



22 TAC §280.5

The Texas Optometry Board adopts amendments to Rule 280.5 without change to the proposed text published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5840).

Amendments are required in order to implement House Bill 1051, 76th Legislature, which redefined the classes of medications that therapeutic optometrists may administer and prescribe. The amendments remove restrictions that were deleted by House Bill 1051.

One comment was received. The Texas Ophthalmological Association had no objections to the proposed changes as published; however, it requested that two items under the list of classifications in subsection 280.5(g) be deleted, particularly (g)(3)(F) "chelating agent," and item (g) (3)(G) "chemical cautery." The Board feels that the Association's comment is not relevant to the amendments proposed. The Board will refer the comments to the Rules Committee for future consideration.

The amended section is adopted under the provisions of Texas Civil Statutes, Article 4552, § 1.03 and § 2.14. The Texas Optometry Board interprets § 1.03 as authorizing the interpretation of the therapeutic optometry requirements. The

Board interprets § 2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9906200
Lois Ewald
Executive Director
Texas Optometry Board
Effective date: October 14, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 305-8502



22 TAC §280.7

The Texas Optometry Board adopts new §280.7 without change to the proposed text as published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5841) and will not be republished.

Section 280.7 is required in order to implement House Bill 1051, 76th Legislature (1999), which establishes a six-member committee to be known as the Optometric Health Care Advisory Committee. This rule will define the committee's responsibilities.

No comments were received.

The new section is adopted under the provisions of Texas Civil Statutes, Article 4552, §1.03A and §2.14. The Texas Optometry Board interprets §1.03A as authorizing the interpretation of the therapeutic optometry requirements, including the establishment of the Optometric Health Care Advisory Committee. The Board interprets §2.14 as authorizing the Board to adopt substantive and procedural rules for the regulation of the profession of optometry. No other code, statute or article is affected by this proposed new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lois Ewald
Executive Director
Texas Optometry Board
Effective date: October 14, 1999
Proposal publication date: July 30, 1999
For further information, please call: (512) 305-8502



Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Chapter 511. CERTIFICATION AS CPA

Subchapter C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57 concerning Definition of Accounting Courses, without changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6228).

The amendment allows the Board to accept accounting courses under certain conditions.

The amendment will function by restating and clarifying that accounting courses must be acceptable to the issuing institution and that at least 15 of the 30 hours must have been taken on the issuing institutions' campus

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.254 which authorizes the board to promulgate rules regarding Education Requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 27, 1999.

TRD-9906209

William Treacy
Executive Director

Texas State Board of Public Accountancy

Effective date: October 17, 1999

Proposal publication date: August 13, 1999

For further information, please call: (512) 305-7848



Chapter 519. PRACTICE AND PROCEDURE

22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7 concerning Administrative Penalties, with changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6229). The change is in subsection (d)(1)(D) in substituting "fail" for "fails".

The amendment allows for prompter compliance with the Board's continuing professional education rules and a reduction in the reoccurrence of belated compliance.

The amendment will function by changing three citations, and by assessing a \$100 administrative penalty against those licensees who do not satisfy the continuing professional education (CPE) requirement. The CPE administrative penalty would be applicable only to those licensees who do not satisfy the CPE requirements and who are also the subject of Board Orders.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which

provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

§519.7. Administrative Penalties.

(a) Board committees and the executive director are delegated the authority to determine that any alleged violation warrants an administrative penalty under Subchapter L of the Public Accountancy Act.

(b) The report of any such determination may be included in a notice of hearing.

(c) A request for a hearing under §901.554 of the Public Accountancy Act shall clearly notify the staff that the hearing must address issues relevant to the assessment of an administrative penalty by including the language "RESPONDENT SPECIFICALLY REQUESTS A HEARING ON ADMINISTRATIVE PENALTIES" in capital letters. Failure to include such language shall be a waiver of the right to a hearing within the meaning of §901.554 of the Public Accountancy Act.

(d) Pursuant to §901.551 of the Public Accountancy Act:

(1) the board imposes an administrative penalty on licensees who, in violation of §901.411 of the Public Accountancy Act:

(A) do not complete at least 120 hours of continuing professional education in each three-year license period;

(B) do not complete at least 20 hours in each one-year license period;

(C) do not comply with board rules for the reporting of continuing professional education; or

(D) fail to complete or report sufficient ethics hours as required by board §523.63 of this title (relating to Mandatory Continuing Professional Education Attendance).

(2) considering the seriousness of violation of §901.411 of the Public Accountancy Act, the hazard and potential hazard to the public from CPAs who are not trained in current accounting standards and practices, the amount necessary to deter future violations, and such other matters as the board considers justice may require, the board sets the administrative penalty for the violations described in §519.7(d)(1) of this title (relating to Administrative Penalties) at \$100 per licensee per license period.

(3) the penalty may be assessed only on licensees against whom a final board order is issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906210

William Treacy
Executive Director

Texas State Board of Public Accountancy

Effective date: October 17, 1999

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For further information, please call: (512) 305-7848



22 TAC §519.9

The Texas State Board of Public Accountancy adopts an amendment to §519.9 concerning Procedures after Hearing, with changes to the proposed text as published in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6230). The change is new language under subsection (e) that adds the excess workload billings from the State Office of Administrative Hearings (SOAH) to the definition of administrative costs.

The amendment allows for increased recovery of the Board's expenses that are incurred in prosecuting cases against licensees in compliance with Article 8930.

The amendment will function by clarifying that, if oral argument is granted, there may not be any references to materials outside the administrative record, and by adding committee costs to evaluate files, cost of support personnel, excess workload billings from SOAH, and the Board's overhead to those costs that may be assessed as administrative costs in contested case hearings.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

§519.9. *Procedures after Hearing.*

(a) Filing of exceptions and replies. Any party of record may, within 15 days of the date of service of the proposal for decision, unless the administrative law judge has set a shorter or longer period of time, file exceptions to the proposal for decision. Replies to these exceptions shall be filed within 15 days after the date of filing the exceptions unless the administrative law judge has set a shorter or longer period of time. A request for extension or decrease of time within which to file exceptions or replies shall be filed with the administrative law judge, and a copy of the request shall be served on all parties of record by the party making the request. The administrative law judge shall promptly notify the parties of the decision with regard to these requests. Additional time shall be allowed only when the interests of justice so require. Upon the expiration of the time for filing exceptions or replies to exceptions, or after time for filing exceptions or replies to exceptions, or after the replies and exceptions have actually been timely filed, the proposal for decision will be considered by the board and either adopted, modified and adopted, or remanded to the administrative law judge. If remanded to the administrative law judge, the revised proposal for decision thereafter rendered by the administrative law judge shall be clearly labeled as an amended proposal for decision. A copy of the proposal for decision shall be served forthwith by the administrative law judge on each party, or each party's attorney of record, and the board. Service shall be in accordance with the board's rules.

(b) Form of exceptions and replies. Exceptions and replies to exceptions shall conform as nearly as practicable to the rules provided for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and any arguments and legal authority relied upon shall be grouped under the exceptions to which they relate. Any party filing exceptions and replies shall provide the board with original and 17 copies.

(c) Oral argument before the board. Any party may request oral argument before the board before the final determination of any proceeding, but the request must be filed in the offices of the board by no later than 5:00 p.m. of the fifth working day prior to the board meeting. Oral argument shall be allowed only at the discretion

of the board. A request for oral argument may be incorporated in the exception, reply to exceptions, or in a separate pleading. In the event oral argument is granted by the board, each party who has filed exceptions and replies may be limited to a maximum of 20 minutes for presentation thereof. The board shall require one spokesman per party and position. Under no circumstances may any party making oral argument to the board refer to or urge reliance on materials that are not part of the administrative record.

(d) Motion for rehearing. In the event a motion for rehearing is filed, the executive director shall have authority to act for the board in either granting or denying such motion.

(e) Administrative cost recovery rule. The board may for good cause and in accordance with the Public Accountancy Act, after notice and hearing, impose direct administrative costs in addition to other sanctions provided by law or these rules. Direct administrative costs include, but are not limited to, attorneys' fees, investigative costs, including the costs of the evaluation of the file by the board's committees, excess workload billings for contested case hearings or hearings related services provided by the State Office of Administrative Hearings pursuant to the General Appropriations Act, Act. VIII-6, Rider 9, witness fees and deposition expenses, travel expenses of witnesses, fees for professional services of expert witnesses, the cost of a study, analysis, audit, or other projects the board finds necessary in preparation of the state's case, paralegal fees and the costs of other support personnel in the enforcement process, and the boards associated overhead costs.

(f) Changes to recommendation. To protect the public interest and to ensure that sound accounting principles govern the decisions of the board, it is the policy of the board to change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge when the proposed order is clearly:

- (1) erroneous;
- (2) against the weight of the evidence;
- (3) based on unsound accounting principles or auditing standards;
- (4) based on an insufficient review of the evidence;
- (5) not sufficient to protect the public interest; or
- (6) not sufficient to adequately allow rehabilitation of the licensee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy
Executive Director
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

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Chapter 521. FEE SCHEDULE

22 TAC §521.1

The Texas State Board of Public Accountancy adopts an amendment to §521.1 concerning License Fees, without changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6232).

The amendment allows the Board to increase its revenue and to use the increased revenues for Board operations in compliance with article 8930.

The amendment will function by increasing the practice unit annual license fee from \$40.00 to \$50.00.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the 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.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §521.2

The Texas State Board of Public Accountancy adopts an amendment to §521.2 concerning Examination Fees, with changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6232). The changes are inserting an (a) in front of the first sentence, deleting former paragraph (1) which will become new §521.12, changing paragraph (2) to subsection (b), deleting "subsequent" in subsection (b), and changing subparagraphs (A), (B) and (C) to paragraphs (1), (2) and (3).

The amendment allows the Board to reduce its losses when it administers the Uniform Certified Public Accountant Examination ("UCPAE") and to receive a partial contribution toward the annual remittance required by Article 8930, Texas Revised Civil Statutes.

The amendment will function by changing the initial UCPAE exam fee from \$120.00 to \$180.00. Subsequent exam fees are being increased from \$30.00 per subject to \$60.00 for one subject, \$90.00 for two subjects and \$180.00 for four subjects.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act.

§521.2. *Examination Fees.*

(a) The following fees shall be effective for the Uniform CPA Examination.

(b) The fee for the initial examination conducted pursuant to the Act shall be \$180.00. The fee for any examination shall be apportioned as follows:

- (1) eligible for one subject—\$60.00;
- (2) eligible for two subjects—\$90.00; and
- (3) eligible for four subjects—\$180.00.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Chapter 526. BOARD OPINIONS

22 TAC §§526.1-526.7

The Texas State Board of Public Accountancy adopts the repeals of §§526.1-526.7 concerning Board Opinions, without changes to the proposal as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6234).

The repeals allows the Board to write new rules on the subject.

The repeals will function by deleting dated and unused internal procedural rules and by replacing them with correct procedural rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the 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.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §§526.1-526.3

The Texas State Board of Public Accountancy adopts new §§526.1-526.3 concerning Board Opinions without changes to the proposed text as published in the August 13, 1999 issue of the *Texas Register* (24 TexReg 6235).

The new sections allow the rules on opinion requests to state the correct, current procedure.

The new sections will function by stating the Board's current opinion request procedures.

No comments were received regarding adoption of the rules.

The sections are adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the 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.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



Chapter 527. QUALITY REVIEW

22 TAC §527.2

The Texas State Board of Public Accountancy adopts an amendment to §527.2 concerning Purpose without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4713).

The amendment allows the rule to have clearer, more accurate language.

The amendment will function by removing unnecessary and dated language from the rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906262

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: October 17, 1999

Proposal publication date: June 25, 1999

For further information, please call: (512) 305-7848



22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4 concerning Quality Review Program with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4714). In paragraph (7) "Generally" was deleted and the phrase "the firm with the largest accounting and auditing practice" was deleted and "their" was replaced with "its." In paragraph (8) "complete" was added and "conduct" was deleted. In paragraph (10) after the word "cleared" the words "and outstanding fees paid" were added.

The amendment allows the rule to be clearer, have more concise language and not have a time limit on extensions.

The amendment will function by removing some unnecessary and incorrect terms, re-wording and combining the substance of two former paragraphs into one paragraph, and removing the 180 day time limit on extensions to perform the quality review.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

§527.4. *Quality Review Program.*

The following operations of the program shall be conducted by the board. This section shall not require any firm to become a member of any sponsoring organization.

(1) Applicability. Participation in the program is required of each firm licensed or registered with the board that performs accounting and/or auditing engagements, including, but not limited to, audits, reviews, compilations, forecasts, projections, or other special reports.

(2) Operation.

(A) Each firm registered with the board shall enroll in the program of an approved sponsoring organization in accordance with paragraph (6) of this section within one year from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the date within 30 days of its assignment.

(B) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review due date.

(3) Minimum standards. The board hereby adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the American Institute of Certified Public Accountants, Inc., as its minimum standards for review of firms.

(4) Oversight. The board shall appoint a Quality Review Oversight Board (QROB) whose function shall be the oversight and monitoring of sponsoring organizations for compliance and implementation of the minimum standards for performing and reporting on reviews. Oversight procedures to be followed by the QROB shall be provided for by rules promulgated by the board. Information concerning a specific firm or reviewer obtained by the QROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. The QROB shall consist of three members, none of whom are current members of the board. The QROB's membership shall consist of:

(A) one non-licensee member who shall have significant experience in the preparation and/or use of financial statements; and

(B) two certificate or registration holders with extensive current experience in accounting and auditing services.

(5) Compensation. Compensation of QROB members shall be set by the board.

(6) Sponsoring organizations. Qualified sponsoring organizations shall be the SEC Practice Section (SECPS), American Institute of Certified Public Accountants (AICPA) Peer Review Program, state CPA societies fully involved in the administration of the AICPA Peer Review Program, National Conference of CPA Practitioners (NCCPAP), and such other entities which are approved by the board.

(7) Mergers, combinations, dissolutions, or separations. In the event that a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(8) The board will accept extensions granted by the sponsoring organization to complete a review, provided the board is notified by the firm within 20 days of the date that an extension is granted.

(9) A firm that has been rejected by a sponsoring organization for whatever reason must make an application to the board and receive authorization to enroll in a program of another sponsoring organization.

(10) A firm choosing to change to another sponsoring organization may do so provided that the firm authorizes the previous sponsoring organization to communicate to the succeeding sponsoring organization any outstanding corrective actions related to the firm's most recent review. Any outstanding actions must be cleared and outstanding fees paid prior to transfer between sponsoring organizations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906254

William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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22 TAC §527.5

The Texas State Board of Public Accountancy adopts an amendment to §527.5 concerning Exemptions with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4715). The changes are making the word "Board" lower case and adding a space between the words "with" and "enrollment."

The amendment allows for the substitution of "firm" for "practice unit" and requires firms to notify the Board that they have

become eligible for quality review within 30 days of their reaching eligibility.

The amendment will function by having a rule with correct terms and by requiring CPA firms to inform the Board of their eligibility for quality review within 30 days of their reaching eligibility.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

§527.5. Exemptions.

A firm which does not perform services as set out in §527.4(1) of this title (relating to Quality Review Program) is exempt from review and shall annually notify the board as to this status. A firm claiming an exemption shall submit a request for the exemption in writing to the board with an explanation of the services offered by the firm. A firm which begins providing services as set out in §527.4(1) of this title shall notify the board of the change in status within 30 days and provide the board with enrollment information within 12 months of the date the services were first provided and have a review within 18 months of the date the services were first provided.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

◆ ◆ ◆
22 TAC §527.6

The Texas State Board of Public Accountancy adopts an amendment to §527.6 concerning Reporting to the Board with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4716). In the first line of subsection (c) "qualified" was changed to "modified." In the third line of subsection (f) "state" was deleted.

The amendment allows the rule to be clearer.

The amendment will function by clearing up some of the language, deleting subsection (c), and replacing "practice unit" with "firm."

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

§527.6. Reporting to the Board.

(a) A firm which is a member of the American Institute of Certified Public Accountants (AICPA) Division for CPA Firms and has had a peer review performed by the SEC Practice Section (SECPS) shall submit to the board a copy of the peer review report (the reviewer's opinion letter), letter of comments (LOC), letter of response (LOR), the conditional letter of acceptance (CLOA) if corrective action is required, and final letter of acceptance (FLOA).

(b) For all peer reviews covering a peer review year, a firm shall submit to the board:

(1) a copy of the report and the letter of acceptance from the sponsoring organization, if such report is unmodified; or

(2) a copy of the report, LOC, LOR, CLOA, and FLOA if the report is modified in any respect or adverse.

(c) If corrective action is required by the sponsoring organization after a modified or adverse review, the firm shall submit to the board a copy of the final letter of acceptance (FLOA) received from the sponsoring organization. If a second adverse opinion is issued, the firm and the licensees involved may be subject to a hearing under the Act.

(d) Any report or document required to be submitted under subsection (b) or (c) of this section shall be filed with the board within ten days of receipt of the notice of acceptance by the sponsoring organization.

(e) Any document submitted to the board under subsection (b) or (c) of this section is confidential pursuant to the Act, and after review by the Quality Review Committee shall either be promptly destroyed by the board's staff, or at the instruction of the committee submitted to the enforcement staff for opening an investigation file relative to such submission.

(f) The reviewed firm or sponsoring organization shall complete the Texas State Board of Public Accountancy Quality Review Compliance Reporting Form. The form shall be filed with the board upon final acceptance of the review by the sponsoring organization. All the information requested on the form shall be provided. The firm shall complete the appropriate portions of the form. The form and all required letters shall be filed with the board within ten days of receipt of the final letter of acceptance (FLOA).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9906255

William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §527.7

The Texas State Board of Public Accountancy adopts an amendment to §527.7 concerning Retention of Documents Relating to Peer Reviews without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4717).

The amendment allows the rule to be clearer.

The amendment will function by replacing "practice unit" with "firm" and by re-writing subsection (b) for clarity.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §527.8

The Texas State Board of Public Accountancy adopts an amendment to §527.8 concerning Oversight Procedures to be Followed by the Quality Review Oversight Board without changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4718).

The amendment allows the rule to be clearer and have the correct names for the American Institute of Certified Public Accountant's ("AICPA") programs.

The amendment will function by using the correct name for the AICPA's programs, by replacing "quality" review with "peer" review and by identifying the Public Oversight Board as being an AICPA program.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



22 TAC §527.9

The Texas State Board of Public Accountancy adopts an amendment to §527.9 concerning Procedures for a Sponsoring Organization with changes from the text as published in the *Texas Register* (24 TexReg 4719). In subsection (a)(2) line one "quality" replaced "peer."

The amendment allows the rule to use "peer review", which is the preferred term in this instance.

The amendment will function by replacing "quality" review with "peer" review.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

§527.9. *Procedures for a Sponsoring Organization.*

(a) To qualify as a sponsoring organization, an entity must submit a peer review administration plan to the board for review and approval by the Quality Review Oversight Board (QROB). The plan of administration must:

(1) establish a peer review report committee (PRRC) and subcommittees as needed, and provide professional staff as needed for the operation of the peer review program;

(2) establish a program to communicate to firms participating in the quality review program the latest developments in peer review standards and the most common findings in the peer reviews conducted by the sponsoring organization;

(3) establish procedures for resolving any disagreement, which may arise out of the performance of a peer review;

(4) establish procedures to resolve matters which may lead to the dismissal of a firm from the peer review program, and conduct hearings pursuant to those procedures;

(5) establish procedures to evaluate and document the performance of each reviewer, and conduct hearings, which may lead to the disqualification of a reviewer who does not meet the AICPA standards;

(6) require the maintenance of records of peer reviews conducted under the program in accordance with the records retention rules of the AICPA; and

(7) provide for periodic reports to the QROB on the results of the peer review program.

(b) A sponsoring organization is subject to review by the board and the QROB.

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 27, 1999.

TRD-9906256

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: October 17, 1999

Proposal publication date: June 25, 1999

For further information, please call: (512) 305-7848

22 TAC §527.10

Texas State Board of Public Accountancy adopts an amendment to §527.10 concerning Peer Review Report Committee with changes from the text as published in the *Texas Register* (24 TexReg 4720). In paragraph (1) "unqualified" was changed to "unmodified." In paragraph (5) a period was added after "continuity" and the rest of the sentence was deleted.

The amendment allows the rule to be clearer and allows a class of persons to be eligible for consideration for serving on the Peer Review Report Committee (PRRC).

The amendment will function by replacing "quality" with "peer" review, replacing "his" state with "any" state, by making some language corrections, and by removing the prohibition that a person who serves on the ethics committee of a state accountancy board or a state society could not also serve on the (PRRC).

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

§527.10. *Peer Review Report Committee.*

A peer review report committee (PRRC) is comprised of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of accepting peer review reports submitted by firms on peer review engagements.

(1) Each member of a PRRC must be active in the practice of public accountancy at a supervisory level in the accounting or auditing function while serving on the committee. The member's firm must be enrolled in an approved practice-monitoring program and have received an unmodified report on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of on-site peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews, paragraph 92.

(2) Each member of the PRRC must be approved for appointment by the governing body of the sponsoring organization.

(3) In determining the size of the PRRC, the requirement for broad industry experience, and the likelihood of some members needing to recuse themselves during the consideration of some reviews as a result of the members' close association to the firm or having performed the review, shall be considered.

(4) No more than one PRRC member may be from the same firm.

(5) The PRRC members' terms shall be staggered to provide for continuity.

(6) A PRRC member may not concurrently serve as:

(A) a member of any state's board of accountancy; or

(B) a member of any state's CPA society's ethics committee.

(7) A PRRC member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence as defined in §501.11 of this title (relating to Independence) or has a conflict of interest. Examples of conflicts of interest include, but are not limited to:

(A) the member's firm has performed the most recent peer review of the reviewed firm's accounting and auditing practice;

(B) the member served on the review team, which performed the current or the immediately preceding review of the enrolled firm;

(C) the member believes he cannot be impartial or objective.

(8) Each PRRC member must comply with the confidentiality requirements of §15B(c) of the Act. The sponsoring organization may annually require its PRRC members to sign a statement acknowledging their appointments and the responsibilities and obligations of their appointments.

(9) A PRRC decision to accept a report must be made by not fewer than three members who satisfy the above criteria.

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 27, 1999.

TRD-9906257

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: October 17, 1999

Proposal publication date: June 25, 1999

For further information, please call: (512) 305-7848



22 TAC §527.11

The Texas State Board of Public Accountancy adopts an amendment to §527.11 concerning Responsibilities of Peer Review Report Committee with changes to the proposed text as published in the June 25, 1999 issue of the *Texas Register* (24 TexReg 4721). The changes are replacing periods with semi colons at the end of paragraphs (1)-(8) and in paragraph (8), the addition of "and" following the new semi-colon.

The amendment allows the rule to use correct terms.

The amendment will function by replacing "QRRR" with "PRRC" and replacing "quality" review with "peer" review.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

§527.11. *Responsibilities of Peer Review Report Committee.*

The PRRC shall:

(1) establish and administer the sponsoring organization's peer review program in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(2) when necessary in reviewing reports on peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures;

(3) monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(4) resolve instances in which there is a lack of cooperation and agreement between the committee and review teams or reviewed firms in accordance with the sponsoring organization's adjudication process;

(5) act upon requests from firms for changes in the timetable of their reviews;

(6) appoint members to subcommittees and task forces as necessary to carry out its functions;

(7) establish and perform procedures for insuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews;

(8) establish a report acceptance process, which facilitates the exchange of viewpoints among committee members; and

(9) communicate to the governing body of the sponsoring organization on a recurring basis:

(A) problems experienced by the enrolled firms in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(B) problems experienced in the implementation of the peer review program; and

(C) a summary of the historical results of the peer review 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 28, 1999.

TRD-9906321

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: October 18, 1999

Proposal publication date: June 25, 1999

For further information, please call: (512) 305-7848



Part 23. TEXAS REAL ESTATE COMMISSION

Chapter 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

Subchapter A. GENERAL PROVISIONS RELATING TO THE REQUIREMENT OF LICENSURE

22 TAC §535.1

The Texas Real Estate Commission (TREC) adopts an amendment to §535.1, concerning when a real estate license is re-

quired, without changes to the proposed text as published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6429). The amendment narrows the scope of the section with regard to nonresidents who may be conducting real estate brokerage from another state via the Internet, mail, telephone, or other medium and clarifies that all the prospective buyers, sellers, landlords, and tenants would have to be legal residents of Texas and that the proposed transaction would have to involve real property located at least partly in Texas before the nonresident would be subject to Texas Civil Statutes, Article 6573a, (the Act). The amendment also clarifies that, as permitted by the Act, nonresident real estate brokers may cooperate in real estate transactions with Texas real estate licensees without being licensed in Texas. Adoption of the amendment is necessary to narrow the application to nonresidents who have significant contacts with the State of Texas, thus permitting regulation of their activities as real estate brokers.

One commenter questioned the constitutionality of the proposed section, urging the members of the commission to readopt the section as it existed prior to the 1999 amendment. Under the prior section, a non-resident broker was not required to be licensed in Texas unless the non-resident was physically in the state when conducting a real estate transaction. The commission determined that with the growth of the Internet and other interstate communications, regulation of transactions conducted from other states was authorized and appropriate if the principals in the transaction were legal residents of Texas and the property was located wholly or in part within Texas. Two commenters opposed the adoption of the amendment on the grounds that all non-resident brokers should be licensed in Texas to handle the sale of property in this state. The commission determined that it lacked the authority to require all non-residents to be licensed in Texas and declined to modify the section as suggested by the commenters.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 21, 1999.

TRD-9906121

Mark A. Moseley
General Counsel

Texas Real Estate Commission

Effective date: October 11, 1999

Proposal publication date: August 20, 1999

For further information, please call: (512) 465-3900



Subchapter J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts an amendment to §535.101, concerning fees, without changes to the proposed text as published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6430). The amendment increases the filing fees for renewing a real estate broker or real estate salesperson license and the fee for filing a request to take a

license examination. Adoption of the amendment is necessary for TREC to generate sufficient revenue to fund appropriations by the 76th Legislature (1999), permitting TREC to continue its programs, hire additional enforcement personnel authorized by the legislature, and purchase a new computer system the agency has been authorized to acquire in FY 2001.

No comments were received regarding the proposal.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 21, 1999.

TRD-9906120

Mark A. Moseley
General Counsel

Texas Real Estate Commission

Effective date: October 11, 1999

Proposal publication date: August 20, 1999

For further information, please call: (512) 465-3900



Subchapter R. LICENSED REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) adopts an amendment to §535.210, concerning fees, without changes to the proposed text as published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6431). The amendment increases the filing fees for applying for or renewing apprentice inspector licenses, real estate inspector licenses, and professional licenses and the fee for filing a request to take a license examination.

Adoption of the amendment is necessary for TREC to generate sufficient revenue to fund appropriations by the 76th Legislature (1999), permitting TREC to continue its programs, hire additional enforcement personnel authorized by the legislature, and purchase a new computer system the agency has been authorized to acquire in FY 2001.

No comments were received regarding the proposal.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

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 21, 1999.

TRD-9906122

Mark A. Moseley
General Counsel

Texas Real Estate Commission

Effective date: October 11, 1999

Proposal publication date: August 20, 1999
For further information, please call: (512) 465-3900

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 1. GENERAL LAND OFFICE

Chapter 5. RECORDS

31 TAC §§5.1-5.3

The General Land Office (GLO) adopts the repeal of Chapter 5, (relating to Records), without changes to the proposal as published in the August 20, 1999 issue of the *Texas Register* (24TexReg 6436).

The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider for readoption each rule pursuant to the Government Code, Chapter 2001. Such reviews shall include at a minimum, an assessment by the agency as to whether the reason for the rule continues to exist. The GLO has determined that because (1) there is no statutory law mandating these rules concerning GLO records, (2) these rules merely paraphrase existing statutes without adding any agency interpretation, policy, or other additional information, and (3) the information can be found on the GLO website, there is no reason for these rules to exist.

No comments were received regarding the repeal of Chapter 5.

The repeal is adopted under Texas Natural Resources Code, §31.051, which provides the commissioner with the authority to make and enforce suitable rules consistent with the 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 27, 1999.

TRD-9906284

Larry R. Soward
Chief Clerk

General Land Office

Effective date: October 17, 1999

Proposal publication date: August 20, 1999

For further information, please call: (512) 305-9129

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Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 65. WILDLIFE

Subchapter N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.318, §65.320

The Texas Parks and Wildlife Department adopts amendments to §65.318 and §65.320, concerning the Migratory Game Bird Proclamation, with changes to the proposed text as published

in the April 30, 1999, issue of the *Texas Register* (24 TexReg 3299). The change to §65.318, concerning Open Seasons and Bag and Possession Limits—Late Season: delays the opening dates for duck season in the High Plains Mallard Management Unit without reducing the length of the season; shortens the first split in the North Zone duck season and adds the days to the end of the second split; shortens the first split in the South Zone duck season and adds the days to the end of the second split; delays the opening date for white-fronted geese in the Eastern Zone by one week without affecting the length of the season and increases the bag limit to two birds; increases the bag limit for Canada geese in the Western Zone; and adds two days to the end of the season for Canada geese in the Eastern Zone while increasing the bag limit during the period from January 24 to February 1. The change also reduces the daily bag limit on scaup from six to three, and moves the youth-only duck season back by one week in the High Plains Mallard Management Unit and the North and South Zones. The change to §65.320, concerning Extended Falconry Season—Late Season Species, adds a day of falconry opportunity in October and delays the opening date of the extended falconry season by one week without affecting the length of the season.

The amendments are necessary to implement commission policy to provide the maximum hunter opportunity possible under frameworks issued by the U.S. Fish and Wildlife Service, and to discharge the department's statutory duty to manage the migratory game bird resources of this state.

The amendment to §65.318, concerning Open Seasons and Bag and Possession Limits—Late Season, establishes the season dates and bag limits for the hunting of late-season species of migratory game birds in the state. The amendment to §65.318, concerning Extended Falconry Season—Late Season Species, establishes the season dates and bag limits for the hunting of late-season species of migratory game birds by means of falconry in the state.

The department received 104 comments concerning adoption of the proposed amendments.

Fifty-two commenters requested that the duck season run later than proposed. The department agrees with the commenters, and responds that since federal frameworks offered that opportunity this year, the changes have been made accordingly.

Six commenters requested higher bag limits for various species of late-season migratory game birds. The department disagrees with the comments and responds that the bag limits for all species in Texas are the maximum allowable under federal law. No changes were made as a result of the comments.

Five commenters requested that electronic calls be made legal for the take of light geese. The department disagrees with the comments and responds that its limitations on means and methods are in strict accordance with federal law, which does not allow the use of electronic calls. No changes were made as a result of the comments.

Two commenters opposed adoption of the season length for white-fronted geese in the Eastern Goose Zone, preferring a longer season with a smaller bag limit. The department disagrees with the comments and responds that surveys show a hunter preference for the shorter season and higher bag limit. No changes were made as a result of the comment.

Three commenters opposed the increased bag limits for geese. The department disagrees with the comments and responds

that as a matter of policy the commission adopts the most liberal provisions possible under federal law in the interests of providing the public with the greatest opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and requested that the department revise the regulatory definitions for 'baiting' and 'baited area,' to eliminate the conditional tense in the phrase, "...if that salt, grain, or other feed could serve as a lure or attraction..." The department disagrees with the comment and responds that commission policy is to conform with all federal law without being more restrictive than federal law allows, and that the rule in question had already been adopted.

Thirty-seven commenters were in favor of the proposal. Texas Wildlife Association commented in favor of adoption.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, Subchapter C, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.318. Open Seasons and Bag and Possession Limits—Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one pintail, two redheads, one canvasback, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser.

(A) High Plains Mallard Management Unit: October 23-26, 1999, and October 30, 1999-January 23, 2000.

(B) North Zone: October 30-31, 1999, and November 13, 1999-January 23, 2000.

(C) South Zone: October 30-November 28, 1999, and December 11, 1999-January 23, 2000.

(2) Geese.

(A) Western Zone.

(i) Light geese: October 30, 1999-February 13, 2000. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 30, 1999-February 13, 2000. The daily bag limit for dark geese is five, which may not include more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: October 30, 1999-February 13, 2000. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: October 30, 1999-January 23, 2000. The daily bag limit for white-fronted geese is two.

(II) Canada geese and brant: October 30, 1999-February 1, 2000. The daily bag limit is one Canada goose or one brant, except during the period from January 24-February 1, when the bag limit is three in the aggregate.

(3) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season—Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 16, 1999;

(B) North Zone: October 23, 1999; and

(C) South Zone: October 23, 1999.

§65.320. Extended Falconry Season—Late Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons. Ducks, coots, and mergansers:

(1) High Plains Mallard Management Unit: October 16, 1999; and

(2) Remainder of the state: October 23, 1999, and January 24-February 8, 2000.

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

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 21, 1999.

TRD-9906129

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: October 11, 1999

Proposal publication date: April 30, 1999

For further information, please call: (512) 389-4775



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 2. TEXAS REHABILITATION COMMISSION

Chapter 109. DEVELOPMENTAL DISABILITIES PROGRAM

40 TAC Chapter 109

In order to comply with Section 8 of the House Bill 1610, 76th Legislature, Regular Session, which transfers all functions, obligations, rights, contracts, records and rules of Chapter 109 of the Texas Rehabilitation Commission to the Texas Council for Developmental Disabilities as of September 1, 1999, the Texas Register is administratively transferring the rules of 40 TAC Chapter 109 to 40 TAC Chapters 876-878. Please see the conversion chart in the Tables and Graphics section of this issue.

Figure: 40 TAC Chapters 876, 877, and 878



Part 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

Chapter 876. GENERAL PROVISIONS

40 TAC Chapter 876

In order to comply with Section 8 of the House Bill 1610, 76th Legislature, Regular Session, which transfers all functions, obligations, rights, contracts, records and rules of Chapter 109 of the Texas Rehabilitation Commission to the Texas Council for Developmental Disabilities as of September 1, 1999, the Texas Register is administratively transferring the rules of 40 TAC Chapter 109 to 40 TAC Chapters 876-878. Please see the conversion chart in the Tables and Graphics section of this issue.

Figure: 40 TAC Chapters 876, 877, and 878



Chapter 877. GRANT AWARDS

40 TAC Chapter 877

In order to comply with Section 8 of the House Bill 1610, 76th Legislature, Regular Session, which transfers all functions, obligations,

rights, contracts, records and rules of Chapter 109 of the Texas Rehabilitation Commission to the Texas Council for Developmental Disabilities as of September 1, 1999, the Texas Register is administratively transferring the rules of 40 TAC Chapter 109 to 40 TAC Chapters 876-878. Please see the conversion chart in the Tables and Graphics section of this issue.

Figure: 40 TAC Chapters 876, 877, and 878



Chapter 878. TRAUMATIC BRAIN INJURY ADVISORY BOARD

40 TAC Chapter 878

In order to comply with Section 8 of the House Bill 1610, 76th Legislature, Regular Session, which transfers all functions, obligations, rights, contracts, records and rules of Chapter 109 of the Texas Rehabilitation Commission to the Texas Council for Developmental Disabilities as of September 1, 1999, the Texas Register is administratively transferring the rules of 40 TAC Chapter 109 to 40 TAC Chapters 876-878. Please see the conversion chart in the Tables and Graphics section of this issue.

Figure: 40 TAC Chapters 876, 877, and 878



== 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 Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 72, Staff Leasing Services. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director of Legal Services, P. O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-2872, or by e-mail, theda.lambert@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the Texas Register. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

16 TAC §72.1. Authority

16 TAC §72.10. Definitions

16 TAC §72.20. Licensing Requirements

16 TAC §72.70. Responsibility of Licensee

16 TAC §72.71. Responsibility of Licensee - Records

16 TAC §72.80. Fees - Licensing Application

16 TAC §72.81. Fees - Licensing

16 TAC §72.82. Fees - Background Check

16 TAC §72.83. Fees - Duplicate Licensing/Name Change

16 TAC §72.90. Sanctions - Administrative Sanctions/Penalties

TRD-9906326

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: September 28, 1999



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 75, Air Conditioning and Refrigeration Contractor License Law. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director of Legal Services, P. O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-2872, or by e-mail, theda.lambert@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the Texas Register. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

16 TAC §75.1. Authority

16 TAC §75.10. Definitions

16 TAC §75.20. Licensing Requirements - Application and Experience Requirements

16 TAC §75.21. Licensing Requirements - Examinations

16 TAC §75.22. Licensing Requirements - General
16 TAC §75.23. Licensing Requirements - Temporary Licenses
16 TAC §75.24. Licensing Requirements - Renewal
16 TAC §75.25. Licensing Requirements - Reissuance
16 TAC §75.26. Certificate of Registration
16 TAC §75.30. Exemptions
16 TAC §75.40. Insurance Requirements
16 TAC §75.65. Advisory Board
16 TAC §75.70. Responsibilities of the Licensee
16 TAC §75.80. Fees
16 TAC §75.90. Sanctions - Administrative Sanctions/Penalties
16 TAC §75.100. Technical Requirements
TRD-9906323
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: September 28, 1999



Adopted Rule Reviews

General Services Commission

Title 1, Part 5

The General Services Commission (the "Commission") has completed the review of Title 1, Texas Administrative Code, Part V, Chapter 125, Subchapter A, Sections 125.1, 125.3, and 125.29 concerning Travel Management Services as noticed in the August 20, 1999, issue of the Texas Register (24 TexReg 6526). The Commission readopts Chapter 125, Subchapter A pursuant to S.B. 178, 76th Leg., §1.1 (1999) which added to the Texas Government Code new Sec. 2001.39 (relating to Agency Review of Existing Rules), and finds that the reason for adopting Subchapter A of Chapter 125 continues to exist.

The Commission received no comments as to whether the reasons for adopting the rules continue to exist. As part of this review process, the Commission proposed amendment to Title 1, T.A.C., Chapter 125, Subchapter A, Sections 125.1, 125.3, and 125.29. The amendments were published and the August 20, 1999, issue of the Texas Register (24 TexReg 6404). The Commission received no comments on the proposed amendments. The adoption of the amendments may be found in the Adopted Section of this Texas Register.

TRD-9906368
Judy Ponder

General Counsel
General Services Commission
Filed: September 29, 1999



Board of Nurse Examiners

Title 22, Part 11

The Board of Nurse Examiners adopts the review of Chapter 211, General Provisions 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 211 continues to exist.

No comments were received regarding the review of this chapter.

TRD-9906204
Kathy Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Filed: September 27, 1999



Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board adopts the review of Title 22, Chapter 279, Interpretations, pursuant to House Bill 1, Article IX, Section 167, 75th Legislature, 1997, and the review plan previously filed by the agency. The proposed rule review appeared in the June 11, 1999, issue of the Texas Register (24 TexReg 4482).

Sections: 279.11, 279.12, 279.13, 279.14, 279.15 and 279.16 regarding interpretations.

The agency proposed the repeal of 279.11, published in the July 30, 1999, issue of the Texas Register (24 TexReg 5839), which was adopted on September 24, 1999. That final adoption is being filed concurrently with this rule review adoption.

The agency finds that the reasons for adopting these rules continue to exist. As part of the review process, no changes are proposed to the rules.

There were no comments on the review as proposed.

TRD-9906192
Lois Ewald
Executive Director
Texas Optometry Board
Filed: September 24, 1999



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 1 TAC §81.114(b)

	1st Degree	2nd Degree	3rd Degree
Consanguinity Blood Relation	Father	Grandfather	Aunt
	Mother	Grandmother	Uncle
	Son	Grandson	Great-grandson
	Daughter	Granddaughter	Great-granddaughter
		Brother	Great-grandfather
		Sister	Great-grandmother
			Niece
			Nephew
Affinity Relation by Marriage	Father	Spouse's Grandfather	
	Mother	Spouse's Grandmother	
	Daughter	Spouse's Granddaughter	
	Son	Spouse's Grandson	
		Spouse's Sister	
		Spouse's Brother	

Figure: 1 TAC § 81.117(a)

The formula for estimating turnout for the 2000 primary elections is:

$$A \times B + C = D$$

- Where:
- A =** the percentage of voter turnout for Governor or another statewide race in the 1998 party primary (percentage is the sum of all votes cast for all candidates for Governor or other statewide office in the 1998 primary divided by the number of registered voters).
 - B =** the number of registered voters as of December, 1999.
 - C =** 25% of the number resulting when you multiply A x B.
 - D =** Preliminary Estimated 2000 Turnout.

Figure: 1 TAC § 81.118(a)

**Number of Election Workers
Per Voting Precinct**

(Includes one judge and one alternate judge who serves as a clerk)

Estimated Turnout per Polling Location	Paper Ballot	Punch Card, Optical Tabulators and Voting Machine
200 or fewer	3	3
201 - 400	5	4
401 - 700	6	5
701 - 1100	8	6
1101 or more	12	8

Figure: 1 TAC §81.124(g)

Administrative Personnel		
# of Polls	Costs Allowed Thru March 31	Additional Month For Runoff
10 or less	\$300	\$75
11 - 25	\$1,500	\$375
26 - 50	\$3,000	\$750
51 - 140	\$12,000	\$3,000
141 - 325	\$24,000	\$6,000
326 - 500	\$40,000	\$10,000
Over 501	\$52,000	\$13,000

Figure: 1 TAC § 81.126(a)

Number of Voting Machines, Devices, and/or Precinct Ballot Counters		
Estimated Voter Turnout Per Voting Precinct	Voting Machines	Punch Card Devices
300 or fewer	2	2
301 - 600	2	4
601 - 900	2	6
For each additional: 300 voters	1	2

Figure: 1 TAC §81.149(a)

**Number of Election Workers
Per Joint-Voting Precinct**

(Includes two co-judges and two alternate judges who serves as a clerk)

Estimated Turnout per Joint-Polling Location	Paper Ballot	Punch Card, Optical Tabulators and Voting Machine
200 or fewer	4	4
201-400	6	5
401-700	7	6
701-1100	9	7
1101 or more	13	9

Figure: 1 TAC § 81.152(a)

The formula for estimating turnout for the 2000 joint primary elections is:

$$(A \times B) + C + D = E$$

- Where:**
- A = the percentage of voter turnout for Governor or another statewide race in the 1998 party primary (percentage is the sum of all votes cast for all candidates for Governor or other statewide office in the 1998 primary divided by the number of registered voters).**
 - B = the number of registered voters as of December 1998.**
 - C = 25% of the number resulting when you multiply A x B.**
 - D = Combined turnout for both parties.**

E = Preliminary Estimated 2000 Turnout for Joint-Primary Election.

FIGURE 1: 25 TAC §101.5(c)

**Cigarette
Nicotine Yield Rating**

- (1) Brand _____ Sub-Brand _____
- (2) Total nicotine content in cigarette tobacco (milligrams) _____
- (3) pH of smoke _____ Percent filter ventilation _____
- (4) Nicotine delivery under average smoking conditions _____
- (5) No. of puffs per cigarette:
- (6) Classification:
- (> 1.2 milligrams: high; >0.2-1.2: moderate; 0.01-0.2: low; <0.01: nicotine free)

**Chewing and/or Snuff Tobacco
Nicotine Yield Rating**

- (1) Brand _____ Sub-Brand _____
- (2) Total Nicotine content in tobacco (mg/ g of tobacco) _____
- (3) pH _____
- (4) Total unionized (free) nicotine (mg/g of tobacco) _____
- (5) Classification _____
- (>2.0 milligrams: high; >0.5-2.0: moderate; 0.1-0.5: low; <0.01: nicotine free)

Figure: 40 TAC Chapters 876, 877, 878

Transferred Rules

Texas Council for Developmental Disabilities

Chapter 876. General Provisions

Chapter 877. Grant Awards

Chapter 878. Traumatic Brain Injury Advisory Board

Previously 40 TAC Chapter 109. Developmental Disabilities Program

OLD

109.1 Definitions

109.2 Legal Basis

109.3 Administration

109.4 Organization

109.5 Grant Awards

109.6 Appeal of Grant Awards

109.7 Traumatic Brain Injury
Advisory Board

NEW

876.1 Definitions

876.2 Legal Basis

876.3 Administration

876.4 Organization

877.1 Grant Awards

877.2 Appeal of Grant Awards

878.1 Traumatic Brain Injury
Advisory Board

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.

Central Texas Council of Governments

Public Notice for Solid Waste Grant Applications

"Fiscal year 2000 Solid Waste Grant applications will be available beginning October 21 at the Planning and Regional Services Division of CTCOG located at 201 East 2nd Avenue in Belton. Eligible entities include: cities, counties, public schools and school districts (excluding universities and post-secondary institutions), and general and special law districts with responsibility for water-quality protection or municipal solid waste management. Please call (254)-933-7075 with questions."

TRD-9906207

Jennifer E. Lawyer

Project Coordinator-Resource Conservation

Central Texas Council of Governments

Filed: September 27, 1999



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects during the period of September 13, 1999, through September 24, 1999:

FEDERAL AGENCY ACTIONS:

Applicant: Vijay Jain; Location: The project is located on an unnamed nontidal slough located next to a Chevron service station at 8115 Harborside Drive, in Galveston, Galveston County, Texas; CCC Project Number: 99-0344-F1; Description of Proposed Action: The applicant proposes to retain fill material placed into 12,600 square feet of wetlands. The work was conducted without a Department of the Army Permit. Purpose of the work was to expand an existing parking lot for the service station; Type of Application: U.S.A.C.E.

permit application #21646 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Exxon Pipeline Company; Location: The project is located in Bessie Heights Marsh, south of Bridge City and north of Sabine Lake and the Neches River in Orange County, Texas; CCC Project Number: 99-0345-F1; Description of Proposed Action: The applicant proposes to place concrete/sand bags or riprap equivalent at four designated locations on an existing 4-inch pipeline to maintain the cover necessary to protect the integrity of the pipeline. The designated sites are relatively shallow, approximately 1 to 3 feet deep, open water areas of the marsh; Type of Application: U.S.A.C.E. permit application #21789 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Halliburton Energy Services; Location: The project is located in the Galveston Ship Channel at 1800 Pelican Island Road on Pelican Island, Galveston, Galveston County, Texas; CCC Project Number: 99-0346-F1; Description of Proposed Action: The applicant proposes to hydraulically dredge a 400-foot-long by 300-foot-wide area in front of their dock facilities to a depth of 28 feet mean low tide and conduct periodic maintenance dredging for a period of 10 years. Approximately 43,400 cubic yards of material will be excavated from the site and placed in the Port of Galveston Disposal Site located approximately 0.5 mile northeast of the site; Type of Application: U.S.A.C.E. permit application #21791 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9906366

Larry R. Soward
Chief Clerk
General Land Office
Filed: September 29, 1999

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Concho Valley Workforce Development Board

Public Notice

The Concho Valley Workforce Development Board is announcing that we are amending our Master Board Plan to change the Fiscal Agent/Grant Recipient from Jones, Hay, Marschall, McKinney, C.P.A. to the Concho Valley Workforce Development Board. This change will take effect not earlier than 30 days from this notice.

TRD-9906164
Johnny Griffin
Executive Director
Concho Valley Workforce Development Board
Filed: September 23, 1999

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Office of Consumer Credit Commissioner

Notices of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/27/99 - 10/04/99 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/27/99 - 10/04/99 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/99 - 10/31/99 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/99 - 10/31/99 is 10% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9906161
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 22, 1999

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The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/04/99 - 10/10/99 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/04/99 - 10/10/99 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 10/01/99 - 10/31/99 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 10/01/99 - 10/31/99 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-9906337
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 28, 1999

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Texas Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from Medical Community Credit Union (Odessa) seeking approval to merge with Neighborhood Credit Union (Odessa) with Medical Community Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-9906372
Lynette Pool
Deputy Commissioner
Texas Credit Union Department
Filed: September 29, 1999

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Texas Education Agency

Request for Proposals Concerning an Evaluation of the Effective Use of the Texas Library Connection

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-99-028 from nonprofit organizations, institutions of higher education, private companies, individuals, and other entities experienced in information management, development of survey instruments, and data gathering and analysis, etc., to evaluate the effective use of the Texas Library Connection (TLC) by Texas public schools and regional education service centers. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of the RFP is to solicit information that will assist TEA in selecting a contractor who will gather, analyze and submit data from the participating TLC campuses and regional education service centers. The proposer will plan and implement a methodology for evaluating the effective use of the TLC, including at least five case studies from diverse areas of the state. The proposer will, based on the data collected, prepare and submit reports identified and defined by the proposer through this RFP and by TEA. The data

and reports will allow TEA to evaluate the effect of the use of the resources provided through the TLC and to identify implications for future implementation strategies for the TLC.

The proposer will use data collected through this proposal, data and input from TEA, and statistics compiled by current database vendors to identify campuses and districts that are successfully using the TLC. The proposer will further identify what elements are common among those campuses that assist in the success of the TLC.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than Wednesday, December 15, 1999, and an ending date of no later than Wednesday, March 1, 2000.

Project Amount. One contractor will be selected to receive a maximum of \$50,000 during the contract period.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-99-028 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 emailing dcc@tmail.tea.state.tx.us. Provide your name, complete mailing address, and telephone number, including area code in the request. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Gloria McClanahan, Instructional Technology Division, Texas Education Agency, (512) 475-3255.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Tuesday, November 16, 1999.

TRD-9906370

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Filed: September 29, 1999



Texas Department of Health

Notice of Amendment to Request for Proposals for Projects to Provide Abstinence Education

INTRODUCTION

In the September 10, 1999, issue of the *Texas Register* (24 TexReg 7302), TRD 9905580, the Texas Department of Health (department) requested proposals for the Title V Abstinence Education Grant funding for federal fiscal year 2000. Proposals are to be reviewed and contracts awarded on a competitive basis.

This amendment is in accordance with the Request for Proposals (RFP) released, which states the department's right to alter, amend, or modify any provision of the RFP, or to withdraw this RFP at any time prior to the execution of a contract if it is determined to be in the best interest of the department and the State of Texas. The decision of the department is administratively final in this regard.

PURPOSE

The purpose of this amendment is to increase the project and budget period from 7 months to 19 months.

PROJECT AND BUDGET PERIODS

Contracts will now be funded for 19 months beginning February 1, 2000, and ending August 31, 2001. There is no set cap on individual budgets.

CONTACT PERSON

Further information regarding this amendment may be obtained from Kathy Clement, Child Health and Safety, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Telephone (512) 458-7700.

TRD-9906182

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: September 24, 1999



Notice of Request for Proposals for Independent Contractors to Conduct National Highway Traffic Safety Administration Child Passenger Safety Workshops

Introduction

The Texas Department of Health (department) Traffic Safety Program (TSP), Safe Riders, announces the availability of fiscal year 2000 Texas Department of Transportation funding to provide for instruction in National Highway Traffic Safety Administration (NHTSA) four day child passenger safety workshops. It is expected that the contract will begin on or before January 1, 2000, and will be made for an eight month budget period within a project period of one year.

Approximately \$36,000 is expected to be available to fund twelve individuals. Specific dollar amounts to be awarded to each applicant will depend upon the number of inspections the individual and safe riders agree upon for that individual to perform. Continued funding in future years will be based upon the availability of funds.

The Request for Proposals (RFP) will be available from the Traffic Safety Program on October 25, 1999. To obtain a copy you may call Susan Warren at 1-800-252-8255 or you may download the RFP from the Texas Marketplace at <http://www.marketplace.state.tx.us>. Questions regarding the RFP should also be addressed to Ms. Warren.

Eligible Applicants

Eligible applicants are individuals with a minimum of one year of experience as a Certified American Automobile Association (AAA) National Highway Traffic Safety Administration (NHTSA) standardized child passenger safety technical training instructor of child passenger safety. Applicants are required to have experience working as a AAA instructor in Texas; must be United States citizens; and must have a current AAA child passenger safety instructor certification, including instructor number and documentation of highest level of education (general equivalency diploma, high school, associate, baccalaureate, or master's degree). Individuals must submit

a current resume. Individuals who are current or former employees of the department or the Texas Department of Transportation are not eligible.

Submission Requirements

The original application and three copies must be received by the Traffic Safety Program, Safe Riders, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 no later than 5:00 p.m., Central Standard Time, on November 15, 1999.

Review and Award Criteria

Applications will be screened by the RFP Evaluation Committee of the TSP. Any applications that are incomplete or received after the deadline will not be considered. Eligible and complete applications will be reviewed and scored by the evaluators according to the guidelines detailed in the RFP.

TRD-9906367

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: September 29, 1999



Texas Health and Human Services Commission

Public Notices

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 99-03, Amendment Number 558.

The amendment changes the reimbursement for Targeted Case Management services for persons with chronic mental illness and individuals with mental retardation or a related condition. The amendment is effective April 1, 1999.

If additional information is needed, please contact Deborah Hankey, Texas Department of Mental Health Mental Retardation, at 512-206-5743.

TRD-9906364

Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: September 29, 1999



The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 99-05, Amendment Number 560.

The amendment adds a third exception to the homebound requirement for home health services. The amendment is effective July 1, 1999.

If additional information is needed, please contact, Nancy Nichols, Texas Department of Health, at 512-338-6511.

TRD-9906365

Marina S. Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: September 29, 1999



Heart of Texas Council of Governments

Request for Proposal

The Heart of Texas Workforce Development Board (HOTWDB) is soliciting proposals for marketing services to assist in informing the public of HOTWDB's role as the key provider of workforce programs. The HOTWDB oversees activities in the six counties of the Heart of Texas region: Bosque, Falls, Freestone, Hill, Limestone and McLennan. Proposals are due on October 7, 1999 at 5:00 p.m. Any proposal received after that date and time will not be considered. A pre-proposal conference will be held September 28, 1999, 10:00 a.m. at 300 Franklin Avenue, Waco, Texas, 76701.

For proposal specifications, the Request for Proposal (RFP) is available from the Heart of Texas Council of Governments, 300 Franklin Avenue, Waco, Texas, 76701, or by calling (254) 756-7822 or (800) 637-0536.

The Heart of Texas Workforce Development Board reserves the right to reject any and/or all bids, and to make awards as they may appear to be advantageous to HOTWDB.

TRD-9906189

Brenda Campbell

Executive Assistant

Heart of Texas Council of Governments

Filed: September 24, 1999



Texas Higher Education Coordinating Board

Request for Proposals for Bond Counsel

The Texas Higher Education Coordinating Board (the "Board") solicits responses to this Request for Proposal ("RFP") from law firms interested in providing bond counsel services to the Board for the period September 1, 1999 to August 31, 2001.

Proposals from HUB certified firms are encouraged. State agencies are required to make a good faith effort to assist Historically Underutilized Businesses (HUBs) in receiving contract awards issued by the State of Texas. The goal of this program is to promote fair and competitive business opportunities for all businesses contracting with the state. HUB certified firms are defined as for-profit business entities that are certified by the Texas General Services Commission, at least 51% owned by a "socially disadvantaged person or persons" which includes Black Americans, Hispanic Americans, Women, Asian Pacific Americans and Native Americans.

Non-HUB firms are encouraged, in the event they are selected as bond counsel, to consider entering into a partnership arrangement with a HUB firm. If the selected firm chooses to enter into such an arrangement, both the selected firm and the HUB firm would be parties to the contract as Co-Counsel. The selected firm would function as the managing partner making all decisions on division of work between the two firms and would be the contact to the Board on all matters.

FORM OF RESPONSE

A. Scope of Services

Responses to this RFP should be based upon performance of the following tasks:

(1) Regarding bond issues, the firm will:

(a) assist the Board in obtaining approval of the issue by the Bond Review Board and represent the Board at hearings of the Bond Review Board;

(b) prepare all legal documents required by the Board, Comptroller, Treasurer, Attorney General or outside parties;

(c) request and obtain approval of the Bond issue from the Attorney General, Governor and other required parties; and

(d) review all financial models and render opinions on the legality and relevant tax position of the proposed scenario.

(2) Regarding state and federal laws, the firm will:

(a) review issues and, in concert with the financial services firm and staff, recommend alternative legislative action where appropriate;

(b) if requested by the Board or staff, draft desired legislation at the federal or state level, and assist as necessary in informing state and federal officeholders of salient issues; and

(c) in response to real or anticipated changes in state and federal law, regulation or public policy, the firm will be expected to advise the Board and staff of potential or real impact on existing or anticipated:

(i) bond issues,

(ii) investment policy, and

(iii) loan policy.

(3) The firm will advise the Board and staff on the legality of new loan policy proposals and legal aspects of anticipated impacts on investment and loan policy.

(4) The firm will advise the Board and staff on the legality of proposed debt restructuring techniques.

(5) The firm will advise the Board on all other matters necessary or incidental to the issuance of the bonds.

B. Qualifications

Responses to this request for proposals should include at least the following information in the order requested:

(1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in bond issuance matters;

(2) the names, experience, and qualifications for performing the legal services requested of the individual attorneys who would be assigned to perform services under the contract;

(3) efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services and proposed use of women and minorities in regard to the services required under this contract, if any, and previous experience and involvement working with HUB certified firms (if your firm is not HUB certified) or as a HUB certified firm in a co-counsel relationship;

(4) disclosures of conflicts of interest, identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Board or to the State of Texas, or any of its boards, agencies, commissions, universities or elected or appointed officials;

(5) confirmation of willingness to comply with policies, directives and guidelines of the Board and the Attorney General of the State of Texas; and

(6) contact information for the proposer, including address, telephone and fax number, and the name of the individual who will be the Board's primary contact on the contract.

C. Compensation

For the scope of services defined in this RFP, the proposal must specify:

(1) the firm's proposed hourly billing rates for attorneys and other staff who would be assigned to perform services under the contract; flat fees or other fee arrangements; and billable expenses;

(2) how fees may differ in the cases of a competitive versus a negotiated sale; and

(3) if the firm proposes that the Board bear the costs of incidental expenses associated with a financing or the anticipated day-to-day interaction, what type of incidental expenses and estimated costs the Board will be expected to bear.

SELECTION CRITERIA

The Board will make its selection based on demonstrated knowledge and experiences, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of the Board and the state, and reasonableness of proposed fees.

The Board has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the Board to do so. Issuance of this RFP in no way constitutes a commitment by the Board to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. The successful firm will be required to sign the Texas Attorney General's Outside Counsel Agreement. The Board previously contracted with the law firm of McCall, Parkhurst & Horton, LLP for these services and intends to award the contract to McCall, Parkhurst & Horton, LLP unless a better offer is received.

TERMS AND CONDITIONS

(1) The Board reserves the right to reject any or all proposals or to award the contract to the next most qualified firm if the successful firm does not execute a contract within 30 days after the award of the proposal.

(2) The Board reserves the right to request clarification of information submitted and to request additional information of one or more applicants.

(3) The Board and staff will perform an evaluation of the selected firm's performance as necessary, and the Board shall have the right to terminate its contract by specifying the date of termination in a written notice to the firm at least 30 working days before the termination date. In this event, the firm shall be entitled to just and equitable compensation for any satisfactory work completed.

(4) Any agreement or contract resulting from the acceptance of a proposal shall be on forms either supplied by or approved by the Board and shall contain, as a minimum, applicable provisions of the request for proposals. The Board reserves the right to reject any agreement that does not conform to the request for proposals and any Board requirements for agreements and contracts.

(5) The selected firm shall not assign any interest in the contract and shall not transfer any interest in the same without prior written consent of the Board.

(6) No reports, information or data given to or prepared by the firm under the contract shall be made available by the firm to any

individual or organization without the prior written approval of the Board.

(7) Any and all data provided by the Board during the requests for proposals process or under a contract for bond counsel services is the property of the Board and shall be returned to the Board upon request.

(8) Specific analytical software developed at the request and expense of the Board is the property of the Board and, upon request, shall be returned to the Board.

RELEASE OF INFORMATION AND OPEN RECORDS

Information submitted in response to this RFP shall not be released by the Board during the proposal evaluation process. After the evaluation process is completed as determined by the Board, all proposals and information contained therein may be subject to public disclosure under Chapter 552 of the Texas Government Code.

INSTRUCTIONS TO PROPOSERS

(1) All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal-Bond Counsel Services." All proposals must be received by 11:00 a.m. (Central Time) on October 29, 1999.

(2) Seven copies of the proposal are required and may be mailed to: Texas Higher Education Coordinating Board, Attention: James McWhorter, Assistant Commissioner for Administration, P.O. Box 12788, Austin, Texas, 78711; or hand delivered to Room 5.140, 7745 Chevy Chase Drive, Austin, Texas, by 11:00 a.m. (Central Time) on October 29, 1999. Each proposal should indicate the name and phone number of the principal contact for the firm.

(3) Questions or comments concerning this request for proposals should be directed to: James McWhorter, Assistant Commissioner for Administration, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711, (512) 483-6160.

TRD-9906185

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Filed: September 24, 1999

Texas Department of Housing and Community Affairs

Notice of Administrative Hearing

Manufactured Housing Division

Tuesday, October 12, 1999, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North 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. Carolyn Stewart to hear alleged violations of §7(d) of the Act and §80.125(e) of the Rules by installing a manufactured home without obtaining, maintaining or possessing a valid installer's license. SOAH 332-99-1713. Department MHD1998002146UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas, 78711-2489, (512) 475-3589.

TRD-9906373

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 29, 1999

Texas Department of Human Services

Announcement of Available Funds and Request for Proposal to Provide Services for Elderly Refugees in Dallas/Tarrant and Harris Counties

The Texas Department of Human Services is pleased to announce the availability of discretionary funding to provide services for elderly refugees in Dallas/Tarrant and Harris counties. The Code of Federal Regulations (CFR) 45, parts 400 and 401, give the State the authority to contract with public and private agencies for the provision of discretionary elderly refugee services. These grants are for social and supportive services to older refugees to help link them to mainstream programs for the elderly and to provide culturally and linguistically appropriate services to older refugees that are not currently being provided in the community. The estimated amount of funds available for allocation is \$175,000. The allocations per services and per geographic area are listed in the RFP. TDHS is the single state agency responsible for the administration of the discretionary elderly assistance funds.

Funds will be awarded on a competitive basis to public and private agencies, which can demonstrate the greatest aptitude for effectively providing the requested services to the target population in response to the Request for Proposals (RFP). The target population consists of persons admitted to the United States as "refugees" under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA. Eligibility also includes Cubans and Haitians under section 208 of the INA. Assistance Act of 1980 (P.L. 96-422); Kurdish asylees under 8 CFR 274.12(a) and 8 CFR 272.12(c)(11); certain Amerasians from Vietnam who were admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing and Related Appropriations Act of 1988. Eligible persons must possess original Immigration and Naturalization Services (INS) documents, which verify admission under one of the above laws. Services are restricted to refugees who are age 60 or over and who reside in Dallas/Tarrant and Harris counties.

APPLICATION DEADLINE: Five copies of the proposal must be mailed or delivered, not faxed or sent electronically, to Caitriona Lyons, Refugee Program Coordinator, Texas Department of Human Services, 701 West 51st Street, P.O. Box 149030, Mail Code W-623, Austin, Texas, 78714-9030. Proposals must be received no later than 5:00 p.m. CST on November 22, 1999. A copy of the RFP will be sent upon written request to Caitriona Lyons at the address listed above.

TRD-9906350

Paul Leche

Agency Liaison

Texas Department of Human Services

Filed: September 29, 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 incorporation to the State of Texas by INTERWORLD INSURANCE COMPANY, a domestic fire and casualty company. The home office is in Addison, Texas.

Application to change the name of EBPLIFE INSURANCE COMPANY to GENAM BENEFITS INSURANCE COMPANY, a foreign life company. The home office is in Oklahoma City, Oklahoma.

Application to change the name of UNIGARD SECURITY INSURANCE COMPANY to SEATON INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Seattle, Washington.

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-9906371

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 29, 1999



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of HCC Benefits Corporation, 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-9906338

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: September 28, 1999



Interagency Council on Early Childhood Intervention

Request for Proposals

The Texas Interagency Council on Early Childhood Intervention (ECI) is soliciting proposals from Information and Technology Consulting Groups and Companies for a feasibility study to evaluate ECI's ability to adopt an existing client-centered network data system, while meeting the agency's service, system, data collection, and reporting needs. The contract is expected to begin November 12, 1999 and will continue through February 29, 2000.

Contact Person.

The Request for Proposal (RFP) is available to all interested providers upon written request to Amber Isaacs, Texas Interagency Council on Early Childhood Intervention, 4900 North Lamar, Suite 2110, Austin,

Texas 78751-2399. A copy may also be obtained by calling (512) 424-6780 or by visiting the ECI office. Questions should be directed to Amber Isaacs at (512) 424-6780.

Closing Date.

All proposals to be considered must be received in the ECI administrative office by 5:00 p.m. on October 29, 1999 or be postmarked by October 27, 1999.

Selection Criteria.

The Texas Interagency Council on Early Childhood Intervention desires services which represent the best combination of price and quality. Selection will be based on the following: the budget detail for the plan development; the extent to which the proposer's offer promises to satisfy ECI's present and future database needs; the knowledge, experience, or familiarity of early intervention systems and related data; the demonstration of related products; and the completeness of the offer and requested information.

TRD-9906377

Donna Samuelson

Deputy Executive Director

Interagency Council on Early Childhood Intervention

Filed: September 29, 1999



Texas Natural Resource Conservation Commission

Enforcement Orders, Week Ending September 29, 1999

An agreed order was entered regarding CITY OF LUBBOCK, LUBBOCK POWER & LIGHT, Docket Number 1998-1049-IWD-E; WQ Permit Number 03668 on September 20, 1999 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITGO PRODUCTS PIPELINE COMPANY, Docket Number 1998-1357-IWD-E; Registration Number L-03793 on September 20, 1999 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MILITARY HIGHWAY WATER SUPPLY CORPORATION, Docket Number 1998-1020-MWD-E; Permit Number 13462; Enforcement ID Number 9191 on September 20, 1999 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CITY OF NOME, Docket Number 1998-0933-MWD-E; WQ Permit Number 11564-001; Enforcement ID Number 8629 on September 20, 1999 assessing \$12,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-

4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BENJAMIN JACOB & GEORGE P. SAMUEL DOING BUSINESS AS PINE FOREST MOTEL AND MAGANBHAI R. PATEL, BHAGUBHAI B. PATEL AND VINUBHAI B. PATEL DOING BUSINESS AS HOLIDAY MOTEL, Docket Number 1998-1074-MWD-E; WQ Permit Number 12161-001; Enforcement ID Number 12891 on September 20, 1999 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRAZORIA COUNTY MUD NUMBER 6, Docket Number 1998-1018- MWD-E; WQ Permit Number 13784-001 on September 20, 1999 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator at (512) 239-2175, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEATHERFORD HOLDING U.S., INC., Docket Number 1998-0970-MWD-E; Expired Water Quality Permit Number 12522-001 on September 20, 1999 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAVARRO TRUCK STOP, INC., Docket Number 1998-1131-OSI-E; OSS Facility Permit Number 175-010 on September 20, 1999 assessing \$4,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRIMESTORE, INC., Docket Number 1998-1516-EAQ-E; Edwards Aquifer Protection Plan Number 98072001 on September 20, 1999 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Patrick Hudson, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ST. ANDREW'S EPISCOPAL SCHOOL, Docket Number 1999-0261- EAQ-E; EAPP 97102801 on September 20, 1999 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Patricia Reeh, Enforcement Coordinator at (512) 339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARVIN SHEAD DOING BUSINESS AS ROADRUNNER-BMX, Docket Number 1998-0659-PWS-E; PWS Number 0840223; Enforcement ID Number 6406 on September 20, 1999 assessing \$469 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STEVE ELLISTON DOING BUSINESS AS UNIVERSITY PARK MOBILE HOME PARK, Docket Number 1998-1448-PWS-E; PWS Number 1840104 on September 20, 1999 assessing \$1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at (512) 239-1406, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VILLAGE FARMS OF DELAWARE, L.L.C. DOING BUSINESS AS VILLAGE FARMS OF TEXAS, L.P., Docket Number 1998-1372-PWS-E; PWS Number 1220012; Enforcement ID Number 12853 on September 20, 1999 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Clint Pruett, Enforcement Coordinator at (512) 239-2042, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORMAN SADIK DOING BUSINESS AS HILL COUNTRY KITCHEN, Docket Number. 1998-1134-PWS-E; PWS Number 2270272 on September 20, 1999 assessing \$813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at (512) 239-1406, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VILLAGE FARMS OF MARFA, L.L.P., Docket Number 1998-0518-PWS-E; PWS Number 1890013; Enforcement ID Number 12506 on September 20, 1999 assessing \$5,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Clint Pruett, Enforcement Coordinator at (512) 239-2042, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMISTAD WATER SUPPLY CORP. AND CARRIE SUNIGA, Docket Number 1998-1067-PWS-E; PWS Number 0130060 on September 20, 1999 assessing \$4,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548 or Jayme Brown, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE GOODYEAR TIRE & RUBBER COMPANY, Docket Number 1998-0529-AIR-E; Account Number HG-0288-M; Enforcement ID Number 10726 on September 20, 1999 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED PARCEL SERVICE, INCORPORATED, Docket Number 1998-1499-AIR-E; Ac-

count Number EE-1201-B; Enforcement ID Number 13214 on September 20, 1999 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF CORPORATION, Docket Number 1998-1466-AIR-E; Account Number BL-0021-O on September 20, 1999 assessing \$17,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GULF ELECTROQUIP, LTD., Docket Number 1999-0003-AIR-E; Account Number HG-2932-N; Enforcement ID Number 13228 on September 20, 1999 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPT OF CRIMINAL JUSTICE-MARK STILES UNIT, Docket Number 1998-0905-AIR-E; Air Account Number JE-0762-G; Enforcement ID Number 12491 on September 20, 1999 assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CALPINE CORPORATION, Docket Number 1999-0049-AIR-E; Air Account Number HG-9954-A on September 20, 1999 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PARKER TRAILER SALES, INCORPORATED, Docket Number 1999-0047-AIR-E; Account Number TF-0060-P on September 20, 1999 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NATIONS WAY TRANSPORT SERVICE, INCORPORATED, Docket Number 1998-1443-AIR-E; Account Number EE-1956-K; Enforcement ID Number 12395 on September 20, 1999 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FFP MARKETING COMPANY, INCORPORATED, Docket Number 1998-1496-AIR-E; Air Account Number EE-1993-E on September 20, 1999 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EL PASO INDEPENDENT SCHOOL DISTRICT, Docket Number 1998-1498-AIR-E; Account Number EE-1240-O; Enforcement ID Number 13215 on September 20, 1999 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED SALT CORPORATION, Docket Number 1998-1340-AIR-E; Account Number FG-0039-A; Enforcement ID Number 13114 on September 20, 1999 assessing \$27,450 in administrative penalties with \$5,490 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HEALTH JET INCORPORATED DOING BUSINESS AS CHUNG'S GOURMET FOODS, Docket Number 1998-1509-AIR-E; Air Account Number HG-7805-J on September 20, 1999 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding PRICE CONSTRUCTION, INC. DOING BUSINESS AS GONZALES CONCRETE BATCH PLANT, Docket Number 1998-1275-AIR-E; Air Account Number 93-5283-O on September 20, 1999 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548 or Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RAYMOND CARILLO, Docket Number 1999-0118-PST-E; TNRCC ID Number 04709 on September 20, 1999 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Gayle Zapalac, Enforcement Coordinator at (512) 239-1136, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANK DRUMMOND DOING BUSINESS AS F.E. DISTRIBUTING, Docket Number 1999-0457-PST-E; PST Facility ID Number 0046964 on September 20, 1999 assessing \$3,850 in administrative penalties with \$770 deferred.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SID JONES DOING BUSINESS AS SID'S FOOD STORE, Docket Number 1999-0006- PST-E; PST Facility ID Number 0015149 on September 20, 1999 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MCGOWN OIL COMPANY DOING BUSINESS AS WINNIE CHEVRON AND MR. MARK BROWN, Docket Number 1998-0997-PST-E; PST Facility ID Number 0047142 on September 20, 1999 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RELIANT ENERGY ENTEX, Docket Number 1999-0056-MLM-E on September 20, 1999 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITGO REFINING AND CHEMICALS CO., L.P.; Docket Numbers 1997-0151-IHW-E and 1998-0579-IHW-E on September 3, 1999 assessing \$650,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Johnson, Enforcement Coordinator at (512) 239-2555, or Paul Sarahan, Attorney at (512) 239-3422, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding JIM WYLAND, Docket Number 1998-0206-OSI-E; SOAH Docket Number 582- 98-2173 on September 23, 1999 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nathan Block, Staff Attorney at (512) 239-4706, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9906355

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 29, 1999



Final Public Notice of Deletion

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) is issuing notice of deletion (delisting) of a facility from the state registry (state Superfund registry) of sites which may constitute an imminent and substantial endangerment to public

health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site which is being deleted is the Double R Plating state Superfund site which was originally published for listing on the state Superfund register in the September 10, 1991 issue of the *Texas Register* (16 TexReg 4989).

This notice is issued to finalize the deletion process which began on July 16, 1999, when the executive director of the TNRCC issued a public notice in the *Texas Register* (24 TexReg 5595) of TNRCC's intent to delete the Double R Plating site from the state Superfund registry. The notice (24 TexReg 5595) further indicated that the TNRCC shall, upon requests filed with or initiated by the executive director, hold a public meeting, in accordance with 30 TAC §335.344(b), if a written request was filed with the executive director of the TNRCC within 30 days of notice of the agency's intent to delete. Equivalent publication of the notice (24 TexReg 5595) was also published in the July 7, 1999 editions of the *Atlantic Citizen Journal* and *Cass County Sun*.

The TNRCC did not receive a request for a public meeting from the potentially responsible parties or any interested persons during the request period (within 30 days of publication of notice), therefore, the Double R Plating state Superfund site is hereby deleted from the Texas state Superfund registry. All inquiries regarding the deletion of this site should be directed to Bruce McAnally, TNRCC Community Relations, 1-800-633-9363 (within Texas only) or 512-239-2141.

TRD-9906294

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: September 27, 1999



Notice of Application and Notice of Administrative Completeness on the Application for Standby Fees, Impact Fees, District Conversions, or District Creations

The following notice was issued on September 22, 1999.

WILLIAMSON-TRAVIS COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1B (District) has filed a resolution with the Texas Natural Resource Conservation Commission (TNRCC) to convert from a water control and improvement district operating pursuant to Chapter 51 of the Texas Water Code to a municipal utility district operating under Chapter 54 of the Texas Water Code. The TNRCC will conduct a hearing under the authority of Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC.

Petitioners filed a petition for creation of SAN DIEGO MUNICIPAL UTILITY DISTRICT Number 1 of Duval and Jim Wells Counties with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that the petitioners are title owners of land to be included in the proposed District. The petition further states that the proposed District will provide water and sanitary sewer service for the people of the City of San Diego. The proposed District will contain approximately 7,842 acres and is within the city limits and the extraterritorial jurisdiction of the City of San Diego, and is not within such jurisdiction of any other city.

Petitioners filed a petition for creation of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 371 with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioners are owners of a majority in value of the land to be included in the proposed District; (2) there are several lienholders on the land to be included in the proposed district and they have consented to the District creation; (3) the proposed District will contain approximately 305.80 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, and is not within such jurisdiction of any other city. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and wastewater system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately \$18,600,000.

If a written hearing request is not filed during the 30-day comment period, which extends from the day after the date of the second newspaper publication, the Executive Director may approve the above application. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the TNRCC Internal Control Number; (3) the statement "I/we request a public hearing"; and (4) a brief description of how you would be adversely affected by the granting of the request in a way not common to the general public. You may also submit your proposed adjustments to the application which would satisfy your concerns.

If a hearing request is filed, the Executive Director will not approve the application and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, contact the Public Interest Counsel, MC-103, at the same above P.O. Box 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-9906353
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 29, 1999



Notice of Minor Amendment on a Municipal Solid Waste Facility

Liquid Waste Processing, 1908 Waurika Freeway, Wichita Falls, Texas 76303, has applied for a minor amendment to Permit Number 2229, which would authorize the acceptance of commercial car wash grit trap waste without the necessity of a Toxicity Characteristic Leaching Procedure (TCLP). The municipal solid waste facility is located on a 1.15 acre site on the east side of the City of Wichita Falls, Texas, at the intersection of S.H.240 and S.H. 79 in Wichita County.

The Executive Director of the TNRCC has prepared draft permits which, if approved, will authorize the minor amendments to these permits.

Written comments concerning these minor amendments may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239-3300. Comments must be received no later than ten days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations. Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040

TRD-9906357
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 29, 1999



Notice Of Municipal Solid Waste Management Application for September 17, 1999

GTM Waste Processing, Inc., P.O. Box 7400, Houston Texas 77248 has applied to the TNRCC to amend existing Permit Number: MSW-2241 (Proposed Permit Number MSW-2241A) for a Type V municipal solid waste processing facility to increase capacity from 400,000 gallons per month to 3,000,000 per month by extending the operating hours, adding similar process equipment, and accepting grit trap and septic wastes. If the permit is granted, the applicant would be authorized to process grease trap, grit trap, and septic waste by aerobic digestion, dewatering, aeration and clarification.

Written comments concerning these minor amendments may be submitted to the TNRCC, Chief Clerk's Office, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 telephone (512) 239-3300. Comments must be received no later than ten days from the date this notice is mailed. Written comments must include the following: (1) your name (or for a group or association, the name of an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; and (3) the location of your property relative to the applicant's operations. Individual members of the public who wish to inquire about the information contained in this notice may contact the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9906356
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 29, 1999



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1)COMPANY: George C. Bryan doing business as ABC Plumbing; DOCKET NUMBER: 1998-1228-OSI-E; TNRCC IDENTIFICATION (ID) NUMBER: 12627; LOCATION: Seadrift, Calhoun County, Texas; TYPE OF FACILITY: plumbing company; RULES VIOLATED: 30 TAC §285.50(b) and (c) and THSC, §366.071 by representing himself as an installer and installing and/or altering a total of two onsite sewage facility system (OSSF) drainfields without possessing a valid certificate of registration with the TNRCC; 30 TAC §285.30(i) by failing to conduct a site soil evaluation to determine the suitability of the site for the OSSF drainfields; 30 TAC §285.58(a)(3) and (11), §285.5(1), and THSC, § 366.051(c) and §366.054 by installing the OSSF drainfields without an approved plan and authorization to construct from Calhoun County, by failing to call for inspections from the permitting authority, and by failing to notify Calhoun County of the intended date to begin construction of the OSSF drainfields; 30 TAC §285.31 and §285.91(10) by failing to meet the setback and separation requirements by installing one OSSF drainfield within 10 feet of a water well and by installing another OSSF drainfield over a six-inch public water supply line; and 30 TAC §285.33(b)(1)(A) and (a)(1)(A) by installing approximately 180 linear feet of graveless drainfield pipe when 592 linear feet was required; PENALTY: \$4,875; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE:

6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(2)COMPANY: S and S Convenience Store, Incorporated doing business as One Stop; DOCKET NUMBER: 1998-1084-PST-E; TNRCC ID NUMBER: 0009090; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.50(b)(1) and the Code, §26.3475(c) by failing to provide proper release detection equipment, method, and/or procedure; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c) by failing to provide proper overflow prevention equipment for all USTs at the facility; and 30 TAC §334.7(a)(1) and the Code, §26.346(a) by failing to register all USTs with the commission as required; PENALTY: \$11,000; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Rizwan Gaddi doing business as Sunny's Food Store; DOCKET NUMBER: 1998-0883-PST- E; TNRCC ID NUMBER: 29865; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with USTs; RULES VIOLATED: 30 TAC §115.242(3) and (9), and THSC, §382.085(b) by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition and free of defects and by failing to post a clear description of the operating instructions on all Stage II VRS dispensers; 30 TAC §115.245(1)(A) and THSC, §382.085(b) by failing to meet the proper performance criteria for the Stage II VRS; 30 TAC §115.246(7)(A) and THSC, §382.085(b) by failing to maintain all records for the Stage II VRS on-site during business hours; and 30 TAC §115.248(1) and THSC, §382.085(b) by failing to provide certified training for a facility representative; PENALTY: \$8,500; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9906328

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: September 28, 1999



Notices of Opportunity to Comment on Settlement Agreement 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 **November 7, 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 November 7, 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: Boral Lifetile Inc.; DOCKET NUMBER: 1999-0543-IHW-E; IDENTIFIER: Solid Waste Registration Number 38267; LOCATION: Poteet, Atascosa County, Texas; TYPE OF FACILITY: roof tile manufacturing; RULE VIOLATED: 30 TAC §335.2(b), by failing to dispose of industrial solid waste at an unauthorized facility; 30 TAC §335.8(b)-(d), by failing to properly notify, conduct, and submit reports for closure activities; 30 TAC §335.4 and the Code, §26.121, by allowing unauthorized discharges at the site of high alkalinity leachate; 30 TAC §335.5, by failing to properly record an industrial solid waste landfill on the deed to the site where the wastes were originally disposed; and 30 TAC §335.6(c), by failing to submit notification of additional information and changes to the industrial solid waste activities conducted at the site; PENALTY: \$7,920; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(2)COMPANY: Borderland, Inc.; DOCKET NUMBER: 1999-0584-AIR-E; IDENTIFIER: Air Account Number EE-0120-J; LOCATION: Clint, El Paso County, Texas; TYPE OF FACILITY: cattle feed yard; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a), by failing to obtain a permit for an animal feeding operation; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Rebecca Cervantes, (915) 778-9634; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(3)COMPANY: Clover House, Inc. doing business as Clover House Retreat; DOCKET NUMBER: 1999- 0522-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0540025; LOCATION: near Spur, Crosby County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(a)(1) and the THSC, §341.033(d), by failing to collect routine bacteriological samples; and 30 TAC §290.51, by failing to pay public health service fees; PENALTY: \$600; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(4)COMPANY: Eagle Wrecker Service, Incorporated; DOCKET NUMBER: 1999-0621-MWD- E; IDENTIFIER: On-Site Sewage (OSS) Facility Number 101036; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: automobile repair shop and wrecker lot; RULE VIOLATED: 30 TAC §285.33(c)(2)(C) and the THSC, §366.004, by applying effluent to an unseeded bare disposal field; and 30 TAC §285.39(1)(F) and the THSC, §366.004, by building a parking lot over the treatment works and its disposal field; PENALTY: \$313; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5)COMPANY: William J. Heck; DOCKET NUMBER: 1999-0498-OSI-E; IDENTIFIER: OSS Registration Number 5184; LOCATION: Pearland and Missouri City, Brazoria and Fort Bend Counties, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC

§285.58(a)(3) and the THSC, §366.051(c), by failing to obtain proof of a permit and approved plan from the authorized agent before beginning to construct an on-site sewage facility; PENALTY: \$400; ENFORCEMENT COORDINATOR: Merrilee Gerberding, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6)COMPANY: New Salem Water Supply Corporation; DOCKET NUMBER: 1998-1227-PWS- E; IDENTIFIER: PWS Number 2010026; LOCATION: New Salem, Rusk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(b)(1), by failing to provide proper disinfectant treatment to the surface water; 30 TAC §290.118(1), by failing to provide proper filtration treatment to surface water; 30 TAC §290.113(a), by failing to maintain a pH value greater than or equal to seven; 30 TAC §290.46(d)(1), (e)(1) and (2), (f)(1)(A) and (2)(c), (i), (j), (l), (m), (p)(3), (s), (t), and (y), by failing to compile and submit monthly operating reports, have a competent water works operator with a Grade "B" or higher surface water certification or a Grade "C" surface water certification, provide equipment capable of continuous monitoring with automatic plant shutdown and notification capabilities, maintain a minimum free chlorine residual of 0.2 milligrams per liter throughout the distribution system, monitor disinfectant residuals entering this distribution system, adopt an adequate plumbing ordinance, complete customer service inspection certifications prior to providing continuous water service, flush dead end mains at least monthly or more often and maintain a log of the flushing, initiate a maintenance program to improve the general appearance of the facility, conduct visual inspection of the filter media and the internal surface of the pressure filters annually, issue boil water notification, maintain distribution lines and appurtenances in a watertight condition, and install electrical wiring in securely mounted conduit; 30 TAC §290.106(a)(1) and (b), by failing to ensure that its sample siting plan is representative of water throughout the distribution system and collect bacteriological repeat samples; 30 TAC §290.112, by failing to maintain records and documentation required for the operation of a surface water plant; 30 TAC §290.44(h)(1), by failing to implement a back flow prevention program; 30 TAC §290.42(d)(2)(A), (d)(3), (d)(10)(C)(iv), (d)(12), (d)(6)(B) and (C), (d)(7)(F), (d)(13), (e)(4)(C), (e)(6), (e)(7), and (j), by failing to provide a vacuum breaker on each hose bibb within the facility, ensure discharges of wastewater were in accordance with appropriate statutes and regulations, identify influent, effluent, waste backwash, and chemical feed lines by labels or various colors of paint, equip each filter unit with an operating rate-of-flow controller and a loss-of-head indicator, clearly label all chemical bulk and day tanks to indicate the tank's contents, store dry chemicals off the floor in a dry, aboveground-level room and to protect against flooding or wetting from floors, walls, and ceilings, apply coagulant continuously to the water during the treatment process, provide an adequately equipped plant laboratory and area to perform control tests, have standby disinfection equipment to provide uninterrupted operation, house the gas chlorination facility in a separate room or building, have adequate ventilation for the gas chlorination facility, and compile a thorough plant operations manual for operator review and reference; 30 TAC §290.41(e)(2), by failing to locate the raw water intake in a manner to secure the best quality of water; 30 TAC §290.45(A), (B), (C), (E), (F), and (G), by failing to meet the minimum water system capacity requirements; 30 TAC §290.43(c)(2), (4), and (8), by failing to lock the roof hatch and provide the hatch with a suitable gasket to prevent contaminants from entering the ground storage tank, provide an operable water level indicator on the ground storage tank, and protect the ground storage tank from corrosion by proper painting; and 30 TAC §290.41(c)(3)(O), by

failing to provide a properly constructed intruder-resistant fence; PENALTY: \$13,300; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7)COMPANY: Norris Cylinder Company; DOCKET NUMBER: 1999-0782-MLM-E; IDENTIFIER: Air Account Number GJ-0082-A and Solid Waste Registration Number 31545; LOCATION: Longview, Gregg County, Texas; TYPE OF FACILITY: cylinder manufacturing; RULE VIOLATED: 30 TAC §122.130(b)(1), §122.121, and the Act, §382.085(b) and §382.054, by failing to apply for and obtain a federal operating permit; 30 TAC §116.155(2)(F)(iv) and the Act, §382.085(b), by failing to report volatile organic compound usage records per emission point; 30 TAC §335.112(a)(8) and 40 Code of Federal Regulations (CFR) §265.174, by failing to conduct weekly inspections of the hazardous waste container storage area; and 30 TAC §335.13(k) and 40 CFR §262.42(b), by failing to submit an exception report for manifests; PENALTY: \$16,875; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8)COMPANY: Oozi Enterprises, Inc. doing business as Fina Foods; DOCKET NUMBER: 1999-0634-PST- E; IDENTIFIER: Petroleum Storage Tank (PST) Identification Number 38759; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.241 and the Act, §382.085(b), by dispensing fuel without having a Stage II vapor recovery system (VRS) installed; 30 TAC §334.49(a) and the Code, §26.3475, by failing to install corrosion protection equipment on three underground storage tanks (USTs); 30 TAC §334.93(a) and the Code, §26.352(f), by failing to provide financial responsibility for taking corrective action and compensating a third party for injury or damage for a UST system; and 30 TAC §334.7(d)(3) and the Code, §26.346, by failing to provide written notice regarding a change in station ownership; PENALTY: \$5,040; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(9)COMPANY: Paktank Corporation-Deer Park Terminal; DOCKET NUMBER: 1999-0658- IWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number 0084115; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: general warehousing and storage; RULE VIOLATED: NPDES Permit Number 0084115 and the Code, §26.121, by failing to comply with permit limits for chemical oxygen demand; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Lynda Clayton, (512) 239-5917; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10)COMPANY: Starr County; DOCKET NUMBER: 1999-0760-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 1762; LOCATION: Rio Grande City, Starr County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.285, §330.286, and 40 CFR §258.74, by failing to provide a financial assurance mechanism with the appropriate content and wording; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11)COMPANY: Mr. Shawn Ward; DOCKET NUMBER: 1999-0664-LII-E; IDENTIFIER: Landscape Irrigator License Number LI0006638; LOCATION: Rockport, Aransas County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: the Code, §34.007(a), by operating without a valid certificate of registration;

PENALTY: \$180; ENFORCEMENT COORDINATOR: Susan Johnson, (512) 239-2555; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12)COMPANY: Waste Management of Texas, Incorporated doing business as Pecan Prairie Recycling & Disposal Facility; DOCKET NUMBER: 1999-0642-MSW-E; IDENTIFIER: MSW Permit Number 1503; LOCATION: Kingston, Hunt County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.113(f), by failing to maintain an intermediate cover along the south side of the fill area; 30 TAC §330.114(4) and §330.139, by failing to monitor and remove the leachate from the collection sumps and by allowing the water to accumulate adjacent to the fill area; 30 TAC §330.134, by failing to prevent the accumulation of water to come in direct contact with the intermediate cover along the inactive fill area; 30 TAC §312.9, by failing to pay the waste sludge management fees; and 30 TAC §334.21 and §334.128(a), by failing to pay the required underground and aboveground storage tank fees; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(13)COMPANY: Davis Young doing business as Young Auto Service; DOCKET NUMBER: 1999-0601- MSW-E; IDENTIFIER: Enforcement Identification Number 13728; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: auto repair shop; RULE VIOLATED: 30 TAC §324.4, §331.3, and the Code, §26.121, by allowing the disposal of used oil and used oil filters down an abandoned water well; 30 TAC §324.6 and CFR §279.22(b), by failing to store used oil in containers and labeling the used oil containers; 30 TAC §324.15 and 40 CFR §279.22(d), by failing to immediately take corrective measures to remediate spills from used oil to the ground surface and the ground water; 30 TAC §330.1182(a) and (e), by failing to immediately remediate spills from used oil filters and to remove from service or repair the used oil filter containers; and 30 TAC §330.1186(f), by failing to label the used oil filter containers; PENALTY: \$4,750; ENFORCEMENT COORDINATOR: Michael De La Cruz, (512) 239-0259; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(14)COMPANY: L & Zaheer Brothers, Incorporated; DOCKET NUMBER: 1998-0831-PST-E; IDENTIFIER: PST Identification Number 0041847; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(9) and the Act, §382.085(b), by failing to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II VRS; 30 TAC §115.246(3) and the Act, §382.085(b), by failing to maintain a maintenance log for all repairs/replacements conducted at the facility; 30 TAC §115.245(2) and the Act, §382.085(b), by failing to maintain proof of attendance and completion of training; 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475, by failing to equip each separate pressurized line with an automatic line leak detector; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; PENALTY: \$600; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3607; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9906325

Paul Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: September 28, 1999



The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Amoco Pipeline Company; DOCKET NUMBER: 1998-0850-AIR-E; TNRCC IDENTIFICATION (ID) NUMBER: 12730; LOCATION: near China Grove, Scurry County, Texas; TYPE OF FACILITY: crude oil pipeline breakout station; RULES VIOLATED: 30 TAC §122.130(b), §122.121, and the THSC, §382.054 and §382.085(b) by failing to submit the initial federal operating permit application on or before February 1, 1998 and by operating affected emission units without a federal operating permit; PENALTY: \$5,500; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2)COMPANY: Amoco Pipeline Company; DOCKET NUMBER: 1998-0849-AIR-E; TNRCC ID NUMBER: 12729; LOCATION: Bowie, Montague County, Texas; TYPE OF FACILITY: crude oil pipeline breakout station; RULES VIOLATED: 30 TAC §122.130(b), §122.121, and the THSC, §382.054 and §382.085(b) by failing to submit the initial federal operating permit application on or before February 1, 1998 and by operating affected emission units without a federal operating permit; PENALTY: \$5,500; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3)COMPANY: Nasser S. Jaser doing business as Bestop Number 3; DOCKET NUMBER: 1998-0576-PST-E; TNRCC ID NUMBER: 0012805; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §115.242(3)(D) and THSC, §382.085(b) by failing to maintain all components of the Stage II vapor recovery system (VRS); 30 TAC §115.244(1) and (3), and THSC, §382.085(b) by failing to conduct daily inspections of the Stage II VRS; 30 TAC §334.50(d)(1)(B)(iii)(I) by failing to record inventory volume measurement and the amount still remaining in the tank each operating day; and 30 TAC

§334.7(d)(3) by failing to provide an amended registration for any change or additional information; PENALTY: \$2,500; STAFF ATTORNEY: Lisa Lemanczyk, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4)Carpenter Company; DOCKET NUMBER: 1998-0547-AIR-E; TNRCC ID NUMBER: BF- 0012-H; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: polyurethane foam manufacturing; RULES VIOLATED: 30 TAC §116.115(a) and THSC, §382.085(b) by failing to reduce its auxiliary blowing agent (ABA) emissions through a control device with 90% efficiency, or to reduce ABA emissions through process changes by at least 60%; PENALTY: \$2,500; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5)COMPANY: Chris Potter, B. Carl Potter, and STL Enterprises, Incorporated; DOCKET NUMBER: 1997-0725-MSW-E; TNRCC ID NUMBER: 33516; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: municipal solid waste; RULES VIOLATED: 30 TAC §330.4 by operating an unauthorized municipal solid waste type IV landfill without a permit; 30 TAC §330.8 by storing, processing, and/or disposing of municipal solid waste at an unauthorized facility; and 30 TAC §330.5 by allowing the open burning of solid waste; PENALTY: \$19,200; STAFF ATTORNEY: Scott McDonald, Litigation Division, MC 175, (512) 239-6005; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(6)COMPANY: Shannon Rushing doing business as a Jackson Hill Marina; DOCKET NUMBER: 1998-0907- MWD-E; TNRCC ID NUMBER: 11111-001; LOCATION: Broaddus, San Augustine County, Texas; TYPE OF FACILITY: wastewater treatment; RULES VIOLATED: 30 TAC §305.64(b) by failing to apply for the transfer of the permit at least 30 days prior to purchasing the facility; 30 TAC §305.125(5) by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §319.1, §319.7(a)(1)-(5) and (d), and the Code, §26.121 by failing to submit monthly effluent reports and failing to report biological oxygen demand (BOD₅) daily maximum and daily average and total suspended solids (TSS); 30 TAC §305.125(11)(B) and §319.7(a)(1)-(5) by failing to maintain records of daily monitoring activities performed by the operator; 30 TAC §305.125(1) and the Code, §26.121 by failing meet BOD₅ permit limits and to meet TSS permit limits; the Code, §26.121 by failing to prevent sludge deposits in the unnamed tributary of Sam Rayburn Reservoir which receives effluent from the treatment system; 30 TAC §317.4(b)(1) and the Code, §26.034(b) by failing to equip the treatment system with an influent bar screen; 30 TAC §317.7(e) and the Code, §26.034 by failing to surround the treatment system with an intruder-resistant fence and by failing to secure the electrical controls for the treatment system; and 30 TAC § 290.51 and THSC, §341.041 by failing to pay public health service fees; PENALTY: \$8,125; STAFF ATTORNEY: Nathan Block, Litigation Division, MC 175, (512) 239-4706; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-9906327

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: September 28, 1999

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Notice of Opportunity to Comment on Shutdown Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Shutdown Orders. Texas Water Code (the Code), §26.3475 authorizes the TNRCC to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The TNRCC staff proposes a shutdown order after the owner or operator of a underground storage tank facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. Pursuant to the Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 8, 1999**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Shutdown Order if a comment discloses facts or consideration that indicate that the consent to the proposed Shutdown Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Shutdown Order is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed Shutdown Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Shutdown Order should be sent to the attorney designated for the Shutdown Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 8, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Shutdown Orders and/or the comment procedure at the listed phone numbers; however, comments on the Shutdown Orders should be submitted to the TNRCC in **writing**.

(1)FACILITY: Quick Stop; OWNER: Javid Malik; DOCKET NUMBER: 1999-0869-PST-E; TNRCC IDENTIFICATION NUMBER: 48526; LOCATION: Galena Park, Harris County, Texas; TYPE OF FACILITY: retail gasoline service station with underground storage tanks (UST); RULES VIOLATED: 30 TAC §334.50(a)(1)(A) by failing to provide proper release detection for the USTs; 30 TAC §334.51(b) by failing to provide proper spill and overflow prevention equipment for the UST; and 30 TAC §334.49(a) by failing to provide corrosion protection for the UST; PENALTY: Shutdown Order; STAFF ATTORNEY: John Wright, Litigation Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767- 3500.

TRD-9906329

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: September 28, 1999

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Notice of Water Quality Applications

The following notices were issued during the period of September 22, 1999 through September 28, 1999.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE**.

CITY OF ALBANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10035-002, to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 60,000 gallons per day. The plant site is located at 917 Railroad Street at the intersection of Railroad Street and North Avenue C in the City of Albany in Shackelford County, Texas

ARCH CHEMICALS, INC. has applied for a major amendment to TNRCC Permit Number 00647 to authorize the removal of effluent limitations for ammonia-nitrogen at Outfall 001 and the removal or revision of the effluent limitations for chemical oxygen demand at Outfall 001. The current permit authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0006726 issued on July 16, 1991 and TNRCC Permit Number 00647 issued on May 21, 1993. The applicant operates an inorganic chemicals manufacturing plant. The plant site is at 1400 Olin Road, approximately 2,000 feet east of State Highway 380 and approximately 2.7 miles south of the intersection of State Highway 380 and State Highway 90 on the south side of the City of Beaumont, Jefferson County, Texas.

BELL COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NUMBER 2 has applied for a renewal of TNRCC Permit Number 11091-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The plant site is located immediately east of the Missouri-Kansas-Texas Railroad approximately 2,000 feet south of Farm-to-Market Road 436 in Bell County, Texas.

BIG OAK LIMITED has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 13522-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located approximately 1,500 feet southwest of the intersection of Maple Springs Road and Interstate Highway 20 in Harrison County, Texas.

LOGAN A. BOGGS has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14049-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The plant site is located approximately 3,000 feet due west of the intersection of West Circle Drive and Farm-to-Market Road 105, and 1,000 feet due south of West Circle Drive in Orange County, Texas. The treated effluent is discharged to unnamed tributary; thence to Tennile Creek; thence to the Neches River Tidal in Segment Number 0601 of the Neches River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary. The designated uses for Segment Number 0601 are contact recreation and intermediate aquatic life uses. No significant degradation of high quality receiving waters is anticipated.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 1 has applied for a renewal of TNRCC Permit Number 12332-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 500 feet north of Marys Creek, approximately 4,800 feet west of Farm-to-Market Road 1128 and approximately 1.2 miles south of Farm-to-Market Road 518 in Brazoria County, Texas.

C&P UTILITIES, INC. has applied for an amendment to TNRCC Permit Number 12342-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 25,000 gallons per day to a daily average flow not to exceed 45,000 gallons per day. The plant site is located approximately 800 feet north of Zaka Road, west of Windfern Road at the southeast corner of Maple Leaf Gardens in Harris County, Texas.

CITY OF CHILLICOTHE has applied for a renewal of TNRCC Permit Number 10639-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 113,000 gallons per day. The plant site is located approximately 2 miles north-northeast of the intersection of Farm-to-Market Roads 91 and 924, approximately 2.5 miles north of the intersection of Farm-to-Market Road 91 and U.S. Highway 287 in Hardeman County, Texas.

CITY OF CLEVELAND has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10766-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. Issuance of the proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 0766-002 will replace the existing NPDES Permit Number TX0053481 issued on December 18, 1987 and TNRCC Permit Number 10766-002. The plant site is located east of the City of Cleveland, approximately 1.8 miles northeast of the intersection of United States Highway 59 and State Highway 321/105 in Liberty County, Texas. The treated effluent is discharged to an unnamed tributary of Tarkington Bayou; thence to Tarkington Bayou; thence to Luce Bayou; thence to Lake Houston in Segment Number 1002 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life uses for the unnamed tributary and high aquatic life uses for Tarkington Bayou. The designated uses for Segment Number 1002 are high aquatic life uses, public water supply and contact recreation.

CITY OF CUNEY has applied for a renewal of TNRCC Permit Number 13728-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The plant site is located 0.5 mile south of State Highway 175 and 0.6 mile east of the Neches River in Cherokee County, Texas.

8900 NORTH FREEWAY L.C. has applied for a renewal of TNRCC Permit Number 11657-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The plant site is located at the intersection of Gulf Bank Road and Interstate Highway 45 in Harris County, Texas.

ED PIPES has applied for a renewal of TNRCC Permit Number 14043-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The plant site is located southeast of the City of San Antonio on the northeast side of U.S. Highway 181 and approximately 600 feet southeast of the intersection of U.S. Highway 181 with Loop 1604 in Bexar County, Texas.

EGP FUELS COMPANY has applied for a renewal of TNRCC Permit Number 00440, which authorizes the discharge of cooling tower blowdown, process wastewater, stormwater, demineralizer regenerate wastewater, and domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via Outfall 001 and stormwater on an intermittent and flow-variable basis via Outfalls 002 and 003. The applicant operates the Morgan's Point Plant, an organic chemicals manufacturing facility. The plant site is located at 1200 North Broadway in the City of Morgan's Point, Harris County, Texas

FOREST HILLS MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TNRCC Permit Number 11807-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 200,000 gallons per day to a daily average flow not to exceed 800,000 gallons per day. The plant site is located south of Frick Road, approximately 2.5 miles northwest of the intersection of West Mount Houston Road and Veterans Memorial Boulevard (formerly Stuebner-Airline Road) in Harris County, Texas

FREEPORT-MCMORAN SULPHUR L.L.C. has applied for a renewal of TNRCC Permit Number 01634, which authorizes the discharge of utility wastewaters, washwater, and stormwater on an intermittent and flow variable basis via Outfall 001; and stormwater on an intermittent and flow variable basis via Outfall 002. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0003867, issued on September 12, 1983 and TNRCC Permit Number 01634, issued on August 28, 1998. The applicant operates a sulphur storage and shipping facility. The plant site is located in the 4500 block of Port Industrial Boulevard, one fourth of a mile west of the Galveston Island/Pelican Island Causeway, on the south side of the Galveston Ship Channel, in the City of Galveston, Galveston County, Texas.

CITY OF GREENVILLE has applied for a renewal of TNRCC Permit Number 02984, which authorizes the discharge of once through cooling water at a daily average flow not to exceed 111,000,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0103080 issued on July 29, 1988 and TNRCC Permit Number 02984, issued on January 21, 1994. The applicant operates the Greenville Steam Electric Station, a facility which generates electric power by steam. The plant site is located approximately 500 yards east of the intersection of State Highway 69 and Farm-to-Market Road 1569 on the west shore of Greenville Reservoir No. 4, north of the City of Greenville, Hunt County, Texas.

HANSON CONCRETE PRODUCTS, INC. has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit No. 03461. The draft permit authorizes the discharge of the discharge of process wastewater, hydrostatic test water and stormwater on an intermittent and flow variable basis via Outfall 001. The applicant operates a concrete pressure pipe manufacturing facility. The plant site is located at 11201 Spencer Road, 4000 feet northwest of the intersection of Fisher Road and Brittmore Road, Harris County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 116 has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10955-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The plant site is located at 5335 Strack Road approximately 5,000 feet west from the intersection of Strack Road and Stuebner-Airline Road in Harris County, Texas.

HARSCO CORPORATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 13034-001 (renumbered as TPDES Permit Number 04102) to authorize the discharge of process wastewater from EDM cooling and non-contact cooling water. The current permit authorizes the discharge of domestic wastewater at a daily average flow not to exceed 3,500 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0097098 issued on September 14, 1990 and TNRCC Permit Number 13034-001, issued on August 30, 1996. The applicant operates an architectural and structural metal manufacturing facility. The plant site is located at 1514 Sheldon Road, in the northwest corner of the intersection of Jacintoport Boulevard and Sheldon Road, in the City of Channelview, Harris County, Texas.

HINES HORTICULTURE, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 03015, which authorizes the discharge of stormwater runoff and irrigation water runoff at a daily maximum flow not to exceed 4,800,000 gallons per day via Outfall 001. The applicant operates a plant nursery. The plant site is located on Farm to Market (FM) Road 359 approximately 1/2 mile south of FM 1093 and north of the City of Rosenberg, Fort Bend County, Texas.

HOCKLEY RAIL CAR, INC. has applied for a renewal of TNRCC Permit Number 13472-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located at 17000 Premium Drive, immediately north of Betka Road Between Premium Drive and Kermier Road, west of the City of Hockley in Harris County, Texas

CITY OF HOUSTON has applied for a National Pollutant Discharge Elimination System (NPDES) wastewater permit. The applicant has an existing Texas Natural Resource Conservation Commission (TNRCC) Permit Number 10495-126. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 2.0 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960 and approximately 1,320 feet north of the intersection of State Highway 249 and Mills Road in Harris County, Texas.

CITY OF HOUSTON has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10495-148, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 488,000 gallons per day. The plant site is located at 10155 Tidwell Road on the west bank of Greens Bayou, north of and adjacent to Tidwell Road in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TNRCC Permit Number 10495-149, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The plant site is located approximately 1,100 feet north of Hamblen Road, approximately 2,750 feet east of the intersection of U.S. Highway 59 and State Highway 494, and 4,400 feet south of the Montgomery-Harris County Line in Harris County, Texas

JACKSON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 1 has applied for a renewal of TNRCC Permit Number 10911-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 62,000 gallons per day. The plant site is located at the east end of Elm Street and approximately 3,000 feet southwest of the intersection of Farm-to-Market Road 616 and Farm-to-Market Road 1593 in the eastern section of Lolita in Jackson County, Texas.

JACKSON COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NUMBER 2 has applied for a renewal of TNRCC Permit Number 10196-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The plant site is located approximately 1,500 feet east of Farm-to-Market Road 234 and approximately 1,600 feet north of Farm-to-Market Road 616 in Vanderbilt in Jackson County, Texas.

CITY OF LA MARQUE has applied for a renewal of TNRCC Permit Number 10410-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located adjacent to Mahan Park approximately 1,300 feet south of the intersection of Woodlawn and Lake Streets, on North Bank of Highland Bayou in Galveston County, Texas.

LIVING WATERS ARTESIAN SPRINGS, LTD has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 03462, which authorizes the discharge of process wastewater and stormwater via Outfall 001 at a daily average flow of process wastewater not to exceed 55,300,000 gallons per day and a daily maximum flow of process wastewater and stormwater not to exceed 60,800,000 gallons per day. The applicant operates an intensive aquaculture operation engaged in the cultivation of catfish, tilapia, largemouth bass, hybrid stripped bass, red drum, and koi for human consumption. The plant site is located at 13690 Southwest Highway 1604, approximately 400 feet east-southeast of the intersection of State Highway 1604 and Farm-to-Market Road 2536 (Pearsall Road), and approximately 13 miles southeast of the City of San Antonio, Bexar County, Texas.

NORTHEAST WASHINGTON COUNTY WATER SUPPLY CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14065-002, to authorize the discharge of treated water treatment filter backwash water at a daily average flow not to exceed 3,750 gallons per day. The plant site is located approximately 12,300 feet east-northeast of the intersection of State Highway 36 and State Highway 390 in Washington County, Texas.

CITY OF PEARLAND has applied for a renewal of TNRCC Permit Number 10134-005, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The plant site is located at the confluence of an unnamed drainage ditch with Cowart Creek, approximately 0.5 mile southeast of the intersection of County Road 127 and Dixie Farm Road (County Road 126) in Brazoria County, Texas

PHILIPS ELECTRONICS NORTH AMERICA CORPORATION has applied to the Texas Natural Resource Conservation Commission for a major amendment to TNRCC Permit Number 03835 to authorize an increase in the discharge of treated groundwater and stormwater from a daily average flow not to exceed 14,400 gallons per day to a variable flow via Outfall 001. The applicant operates a groundwater treatment unit at a former electronics manufacturing facility. The plant site is located on Harvey Road approximately 1.5 miles south of U.S. Highway 180 and approximately 0.4 miles east of Farm-to-Market Road 1195 in the City of Mineral Wells, Parker County, Texas.

QUALITY PRODUCTS FINISHING, INC. has applied to the Texas Natural Resource Conservation Commission for a major amendment to TNRCC Permit Number 03223 to authorize an increase in the discharge of treated wastewater from a daily average flow not to exceed 12,000 gallons per day to a daily average flow not to exceed

25,000 gallons per day via Outfall 001. The applicant operates a prepaint cleaning and coating facility. The plant site is located east of Fairbanks North Houston Road and approximately 0.75 miles north of Taub Road, west of State Highway 149 and approximately 17 miles northwest of the City of Houston, Harris County, Texas.

QUEST SEPARATION TECHNOLOGIES has applied for a major amendment to TNRCC Permit Number 03686 to authorize the addition of an internal outfall which will discharge non-contact reverse osmosis reject water at a daily average flow not to exceed 18,000 gallons per day. The current permit authorizes the discharge of stormwater and previously monitored effluents on an intermittent and flow variable basis via Outfall 001, which will remain the same; discharge stormwater and previously monitored effluents on an intermittent and flow variable basis via Outfall 002; discharge of stormwater on an intermittent and flow variable basis via Outfall 003, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit No. 03686, issued on April 4, 1997. The applicant operates a polyethylene wax refining and tolling facility. The plant site is located approximately one mile southwest of the intersection of State Highway 146 and Fairmont Parkway in Bayport Industrial Park, and bordered on the east by Southern Pacific Railroad in the City of La Porte, Harris County, Texas.

CITY OF RIESEL has applied for a renewal of TNRCC Permit Number 11015-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day in the interim phase. The current permit only authorizes the disposal of treated domestic wastewater via irrigation of 45 acres in the final phase. The plant site is located approximately 0.5 mile west of State Highway 6 on West Charles Street and on the east bank of West Sandy Creek in the City of Riesel in McLennan County, Texas.

CITY OF ROMA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11212-002, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 4,900 feet southeast of the intersection of U.S. Highway 83 and the U.S. Customs Toll Bridge Road; approximately 900 feet south of U.S. Highway 83 in Starr County, Texas

ROSE METAL RECYCLING, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 02998 to authorize an increase in the permit limit for total PCB's from 1 microgram per liter ($\mu\text{g/L}$) to 10 $\mu\text{g/L}$. The current permit authorizes the discharge of stormwater runoff on an intermittent and flow variable basis via Outfall 001. The applicant operates a junkyard and metals recycling facility. The plant site is located at 2902 Center Street, approximately one quarter mile north of Washington and Glenwood Cemeteries, between Studmont Street and Sawyer Street, north of Buffalo Bayou and south of Interstate Highway 10 in the city of Houston, Harris County, Texas.

SAM HOUSTON AREA COUNCIL BOY SCOUTS OF AMERICA has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14095-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located two miles northeast of the intersection of State Highway 6 and Farm-to-Market Road 2988 and 0.4 mile southeast of Sommerford Cemetery, on the unnamed tributary of Grassy Creek in Grimes County, Texas.

SOUTHERN WATER CORPORATION has applied for a renewal of TNRCC Permit Number 10610-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed

475,000 gallons per day. The plant site is located on the south bank on Halls Bayou, approximately 4500 feet west of Interstate Highway 45 in Harris County, Texas.

TEMPLE-INLAND FOREST PRODUCTS CORPORATION has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 01820 to authorize relocation of the wet deck storage pond outfall stream from Outfall 001 to Outfall 002 and to authorize transfer of water from Pond B1 to two ponds authorized by TNRCC Permit Number 03848 during drought conditions. The current permit authorizes the discharge of wastewaters (including log soak water, condensate, cooling water, boiler and scrubber blowdown, wet decking water, and wastewater from the collection sump associated with Outfall 002) and stormwater on a continuous and flow variable rate via Outfall 001, wastewaters (including noncontact cooling water and chain lubrication water) and stormwater on an intermittent and flow variable rate via Outfall 002, and stormwater runoff on an intermittent and flow variable rate via Outfall 003 which will remain the same. The applicant operates an integrated forest products complex. The plant site is located north of Farm to Market Road (FM) 2426 approximately 1/4 mile east of the intersection of FM 2426 and FM 1 in the City of Pineland, Sabine County, Texas

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TNRCC Permit Number 10823-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,850,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,850,000 gallons per day. The plant site is located within the Texas Department of Criminal Justice Coffield Farm Unit at the southwest terminus of Farm-to-Market Road 2054 at a point approximately 4.5 miles southwest of Tennessee Colony in Anderson County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of Permit Number 11660-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day via irrigation of 1.5 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 approximately two miles north of the intersection of Interstate Highway 37 and U.S. Highway 77 on the east side and within the right-of-way of Interstate Highway 37 in San Patricio County, Texas.

TEXAS ECOLOGISTS, INC. has applied to the Texas Natural Resource Conservation Commission for a renewal of TNRCC Permit Number 02888, which authorizes the discharge of stormwater on an intermittent and flow variable basis via Outfalls 001, 002, and 003. The applicant operates a Hazardous and Non-Hazardous Waste Disposal Facility. The plant site is located approximately 1/2 mile southwest of the intersection of Farm to Market Road 2826 and Farm to Market Road 892, approximately four miles south of the City of Robstown, Nueces County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit Number 11951-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via irrigation of 3.25 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 on Ranch Road 187 approximately 4 mile north of the City of Vanderpool in Bandera and Real Counties County, Texas.

CITY OF THREE RIVERS has applied for a renewal of TNRCC Permit Number 10301-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000

gallons per day. The plant site is located approximately 900 feet southwest of the intersection of State Highway 72 and Avenida Street in the City of Three Rivers in Live Oak County, Texas.

TRAVIS VISTA WATER AND SEWER SUPPLY CORPORATION has applied for a renewal of TNRCC Permit Number 11531-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The plant site is located at 4811 Park Lane, approximately 600 feet northwest of Farm-to-Market Road 620 and one mile east of Mansfield Dam in Travis County, Texas.

VALLEY MUNICIPAL UTILITY DISTRICT NUMBER 2 has applied for a renewal of TNRCC Permit Number 03936, which authorizes the discharge of process wastewater at a daily average flow not to exceed 500,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 03936, issued on December 5, 1997. The applicant operates a reverse osmosis process water treatment plant. The plant site is located on the west side of State Highway 83, approximately 1.25 miles north of the intersection of State Highway 83 and Farm-To-Market Road 511 and approximately 3.5 miles south of the intersection of State Highway 83 and State Highway 100 in the city of Rancho Viejo, Cameron County, Texas.

CITY OF WELLMAN has applied for a renewal of Permit Number 13642-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day via irrigation of 33 acres of agricultural 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 0.25 mile north and 1.2 miles east of the City of Wellman in Terry County, Texas.

WRIGHT MATERIALS INC. has applied for a renewal of TNRCC Permit Number 02027, which authorizes the discharge of treated wastewater on an intermittent and flow variable basis via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing TNRCC Permit Number 02027, issued on December 11, 1992. The applicant operates the Nason Plant Number 1, a sand and gravel washing operation. The plant site is located on Farm-to-Market Road 3088, approximately 1.5 miles northwest of the intersection of Farm-to-Market Road 624 and Farm-to-Market Road 666, and approximately ten miles northwest of the City of Robstown, Nueces County, Texas.

TRD-9906354

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 29, 1999



Notice of Water Rights Applications

Notice is given that TEXAS PARKS AND WILDLIFE DEPARTMENT, Matagorda County Courthouse, Room 101, Bay City, Texas 77414, applicant, seeks a permit pursuant to §11.121, Texas water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The application was declared administratively complete on July 20, 1999. The Executive Director recommends that public notice of the application be given pursuant to 30 TAC §295.152. Notice should be mailed pursuant to 30 TAC §295.153.(a) and (b) to the water right holders in the Brazos-Colorado Coastal Basin. The applicant seeks authorization to maintain an ex-

isting off-channel reservoir, to construct two additional off-channel in Brazoria County reservoirs and to divert and use not to exceed 4,000 acre-feet of water per annum from two points on Jones Creek in the Brazos-Colorado Coastal Basin to the reservoirs for wetland habitat for migrating, wintering and resident shore birds, waterfowl and wading birds. Water will be pumped at a maximum rate of 20,000 gpm (44.6 cfs) at a point at Latitude 28.937 $\frac{1}{2}$ ° N and 95.423 $\frac{1}{2}$ ° W also described as being N 20.58 $\frac{1}{2}$ ° E 6105 from the southwest corner of the Concepcion Areola Original Survey Abstract Number A-142. Water will also be pumped from a point at a maximum of 10,000 gpm (22.3 cfs) at a point at Latitude 28.417 $\frac{1}{2}$ ° N and 95.424 $\frac{1}{2}$ ° W also described as being N 62 $\frac{1}{2}$ ° E 8412 from the southwest corner of the Concepcion Areola Original Survey Abstract No. A-142. The existing 150 acre surface acre off-channel reservoir is located at Latitude 28.92 $\frac{1}{2}$ ° N and Longitude 95.40 $\frac{1}{2}$ ° W also described as being North 63 $\frac{1}{2}$ ° East 8,412 feet from the aforesaid survey and has a capacity of 60 acre-feet at operating capacity. A 550 acre off-channel lake will be located at the 10,000 gpm diversion point (identified above) and will have an operating capacity of 620 acre-feet of water. Another off-channel reservoir will be located at the site of the 20,000 gpm diversion point (identified above) and will have an operating capacity of 320 acre-feet of water. Ownership of the land upon which the reservoirs will be constructed is evidenced by a mitigation deed filed in Volume 88620 pages 719 et seq of the official records or Brazoria County, Texas. This project is being conducted in conjunction with the United States Fish and Wildlife Service and Ducks Unlimited.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following:

- (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any;
- (2) applicant's name and permit number;
- (3) the statement "[I/we] request a contested case hearing;"
- (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and
- (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at 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-9906358

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: September 29, 1999



Proposals for Decisions

The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on September 22, 1999. In the Matter of an Enforcement Against Mohammed Astab Sultan doing business as Brown's Grocery; SOAH Docket Number 582-99-1582; TNRCC Docket Number 98-0602-PST-E. In the matter to be considered by the Texas natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9906351

Douglas A. Kitts

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: September 29, 1999



The State Office Administrative Hearing has issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on September 27, 1999. Application of AquaSource Development Company for a Certificate of Convenience and Necessity. SOAH Docket Number 582-99-0203 ;TNRCC Docket Number 1998-1478-UCR and 1998-1479-UCR. In the matter to be considered by the Texas natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 North Interstate 35, Austin, Texas. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-9906352

Douglas A. Kitts

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: September 29, 1999



Public Notice of Intent to Delete

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) is issuing a public notice of intent to delete a facility from the state registry (state Superfund list) of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site proposed for deletion is the Poly-Cycle Industries, Inc. (Poly-Cycle) state Superfund site in Palmer Texas, which was originally published for listing on the state Superfund registry in the March 6, 1998 issue of the *Texas Register* (23 TexReg 2621). The site is located west of State Highway 75, 1/2 mile north of Palmer, Ellis County, Texas, at the northern end of Main Street.

The executive director has determined that this site has been accepted under the TNRCC Voluntary Cleanup Program and is therefore,

eligible for deletion from the list of sites proposed for the state Superfund registry in accordance with 30 TAC §335.344(c)(5).

In accordance with 30 TAC §335.344(b), the TNRCC shall upon requests filed with or initiated by TNRCC executive director, hold a public meeting to receive comments on this intended deletion. This meeting is not considered a contested case hearing within the meaning of Texas Government Code, Chapter 2001. Requests for a public meeting must be filed with the executive director before 5:00 p.m., October 8, 1999.

If a public meeting is requested, notice shall be provided by first class mail to all potentially responsible parties, and by publication in a newspaper of general circulation in Ellis County, where the facility is located, at least 30 days prior to the date set for the meeting. The person submitting the request shall bear the cost of the publication of the notice. The executive director does not intend to initiate a public meeting.

If a public meeting challenging this determination of eligibility for deletion by the executive director is not requested by a potentially responsible party or any interested person(s) before the designated date, the Poly-Cycle state Superfund site will be deleted from the state Superfund registry.

All inquiries regarding the Poly-Cycle state Superfund site or requests for a public meeting should be directed to Mr. Jeffery Patterson, TNRCC, Remediation Division, MC-143, P.O. Box 13087, Austin, Texas 78711-3087; telephone (1-800) 633-9363 (within Texas only) or (512) 239-2489. A portion of the record for this site, including documents pertinent to the executive director's determination, is available for review during regular business hours at the City of Palmer City Hall, 113 Jefferson, Palmer, Texas; telephone (972) 845-3288. Copies of the complete public file may be obtained during regular business hours at the TNRCC, Central Records, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753; telephone (1-800) 633-9363 (within Texas only) or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9906293

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: September 27, 1999



North Texas Tollway Authority

Notices of Intent

Notice of Invitation: The North Texas Tollway Authority (the NTTA), a regional tollway authority and political subdivision of the State of Texas, intends to issue a request for qualifications (RFQ) to enter into an agreement with a qualified engineering firm pursuant to Chapter 366 of the Texas Transportation Code and Chapter 2254, Subchapter A, of the Texas Government Code to provide general consulting civil engineering services as the General Engineering Consultant (GEC) for the NTTA. To be considered, proposers must submit a Letter of Request, requesting a copy of the RFQ, which letter must also contain the name of the provider, a contact person, and an address to which the RFQ may be sent. The NTTA will send only one copy of the RFQ to each provider.

Overview of Request for Qualifications: The NTTA intends to select a GEC which will operate as an extension of, and in complete coordination with, the NTTA's staff with respect to all

projects which now or in the future are studied, constructed or operated by the NTTA. To that end, the GEC shall be expected to represent and forward the interests of the NTTA throughout all aspects and phases of the NTTA's activities and shall, when and as requested by the NTTA, fully support the NTTA in its dealings with contractors and suppliers, engineers and other consultants, the NTTA's counsel and accountants, traffic and revenue advisors, rating agencies and underwriters, governmental entities and the public, all in accordance with the highest professional standards. The GEC also shall assist the NTTA in achieving the goals established in the NTTA's Strategic Plan. In addition, the GEC shall perform the obligations of the "Consulting Engineers" under the NTTA's current Trust Agreements, as amended, and all supplemental, superseding or additional trust agreements. The GEC shall be expected to commit the personnel and resources required to respond promptly and fully to the responsibilities and tasks assigned by the NTTA throughout the term of the GEC's performance of the services.

The required consultant services will encompass the numerous facets of feasibility evaluation, conceptual design, planning, financing, management, coordination, and liaison necessary to produce complete conceptual plans, typical specifications, and estimate documents required for turnpike projects. The NTTA anticipates that the GEC will not be asked to prepare detailed designs and construction plans, but the GEC should be prepared to perform that work if unexpected circumstances cause the NTTA to request it. Further, the GEC shall be required to prepare project-wide typical standard designs, pavement designs, standard typical sections, and standard retaining wall design options as may be required on some or all of the turnpike projects.

The resulting agreement with the GEC shall provide for a five (5) year term, subject to the NTTA's periodic review, approval and satisfaction with the GEC's performance, and may be terminated by the NTTA upon specified circumstances or extended upon agreement of both parties.

During the contract term, the NTTA shall request services on an as-needed basis through the issuance of work authorizations.

Deadline: A Letter of Request notifying the NTTA of the provider's request for an RFQ will be accepted by fax at (214) 461-2053, or by mail or hand delivery to: North Texas Tollway Authority, 3015 Raleigh Street, P. O. Box 190369, Dallas, Texas 75219, Attn: Ms. Nancy Greer.

Letters of Request will be received until 1:00 p.m. on October 29, 1999.

Agency Contact: Any requests for additional information regarding this notice of invitation should be sent, in writing, to Katharine D. Nees, NTTA Deputy Executive Director, at the above address or fax number.

TRD-9906208

Katharine D. Nees

Deputy Executive Director

North Texas Tollway Authority

Filed: September 27, 1999



Notice of Invitation. The North Texas Tollway Authority (the NTTA), a regional tollway authority and a political subdivision of the State of Texas, intends to issue a request for qualifications (RFQ) to enter into an agreement or agreements with a qualified engineering firm or firms pursuant to Chapter 366 of the Texas Transportation Code and Chapter 2254, Subchapter A, of the Texas Government Code to provide advance project development services

for the possible future eastern extension of the President George Bush Turnpike from its present terminus in Dallas County at State Highway 78 to Interstate Highway 30, a distance of approximately 10 miles (the Eastern Extension). These services are to include the preparation of a combined Major Transportation Investment Study and Environmental Impact Statement (MTIS/EIS) and schematic designs (Schematics) for the proposed Eastern Extension, as well as all planning, environmental analysis, documentation, and geometrics associated therewith.

To be considered, potential proposers must submit a Letter of Request, requesting a copy of the RFQ, which letter must also contain the name of the proposer, a contact person, and an address to which the RFQ may be sent. The NTTA will send only one copy of the RFQ to each proposer.

Overview of Request for Qualifications. The NTTA intends to select a qualified engineering firm or firms that will operate as an extension of, and in complete coordination with, the NTTA's staff and the NTTA's other consultants to prepare the MTIS/EIS and Schematics. The NTTA has completed preliminary traffic and revenue and engineering studies of the subject corridor to assess the project's potential as a toll highway financed through the sale of revenue bonds. These studies, together with other previous studies of the corridor, including a preliminary environmental review, will be used as appropriate to supplement the MTIS/EIS and Schematics.

Major Transportation Investment Study and Environmental Impact Statement. The selected firm(s) will prepare the MTIS/EIS in accordance with all State and Federal regulations to the extent necessary to achieve a Record of Decision for the MTIS/EIS from the Federal Highway Administration. The NTTA has contracted with the North Central Council of Governments (NCTCOG) for the development of the Major Transportation Investment Study (MTIS) portion for this project. Thus, the selected engineering firm(s) will be required to work with NCTCOG to include the MTIS in the EIS. The selected firm(s) will also be required to coordinate public involvement required for the preparation of the MTIS/EIS.

The scope of services pertaining to the MTIS/EIS also will include (1) a section discussion purpose and need of the project, (2) identification and evaluation of the study area, (3) identification, evaluation and analysis of preliminary corridor alternatives, (4) evaluation and analysis of a limited number of feasible corridor alternatives, and (5) assessment of the environmental impacts associated with the project, including a comparative cost estimate for each alternative.

Schematics. The selected firm(s) will (1) determine the approximate right-of-way requirements for each of the most feasible alternatives being considered; (2) develop a preliminary plan and profile of the most feasible alternatives in sufficient detail to prepare order-of-magnitude cost estimates for each alternative; (3) identify locations for potential toll collection facilities for each of the most feasible alternatives; and (4) develop project schematic plans for the preferred alignment. Schematic plans shall include plan and profile, right-of-way limits, control of access, toll plaza locations, ramp plan and profile, traffic volumes and other technical information in sufficient detail for submission and receipt of approvals from the NTTA, TxDOT, and the Federal Highway Administration (FHWA).

Miscellaneous. The selected firm(s) will establish a technical work group that will meet with the NTTA staff on a periodic basis to review status of work activities and identify and resolve study issues. Also, the selected firm(s) will coordinate and conduct the appropriate public involvement to inform the public about the project and to try and achieve a reasonable consensus for the selection of a preferred alternatives.

Deadline. A Letter of Request notifying the NTTA of a request for an RFQ will be accepted by fax at (214) 461-2053, or by mail or hand delivery to: North Texas Tollway Authority, 3015 Raleigh Street, P. O. Box 190369, Dallas, Texas 75219, Attn: Ms. Nancy Greer.

Letters of Request will be received until 1:00 p.m. on October 29, 1999.

Agency Contact. Any requests for additional information regarding this notice of invitation should be sent, in writing, to Mr. Mark Bouma, P.E., Director of Engineering, at the above address or fax number.

TRD-9906359
Scott Young
General Counsel
North Texas Tollway Authority
Filed: September 29, 1999



Texas Department of Protective and Regulatory Services

Request for Proposal—At Risk Mentoring Services

The Texas Department of Protective and Regulatory Services (PRS) Division of Prevention and Early Intervention (prior to 9-1-99, was known as Community Initiatives for Program Development) announces a Request for Proposals (RFP) for contracts to provide at risk youth mentoring services in various locations in Texas. **The RFP will be released on or about October 6, 1999.**

Brief Description of Services: Community based services will be provided to youth ages 7 to 17 who are at risk of substance abuse, educational failure, dropping out of school, juvenile delinquency, gang activity, running away, or other factors that may lead to any of these behaviors. Goals will be to reduce the occurrence or risk of occurrence of the above named outcomes in youth served. The services to be purchased include the following: outreach/recruitment to community, youth, and mentors; orientation of youth and potential mentors; eligibility determination/screening/selection; training of mentors and youth; matching youth with mentors; case planning; monitoring/supervision of matches; participant recognition/retention; and case closure.

Eligible Applicants: Eligible offerors include private non profit and for profit corporations, cities, counties, state agencies/entities, partnerships and individuals. Charitable community or religious organizations, as well as Historically Underutilized Businesses, are encouraged to submit proposals.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due November 18, 1999, at 4:00 p.m. The effective dates of contracts awarded under this RFP will be January 1, 2000, through August 31, 2000, with minimum/maximum amounts of \$33,333 to \$133,333 being available to fund contracts during this 8 month fiscal period. If contracts are renewed for the following fiscal year, minimum/maximum amounts of \$50,000 to \$200,000 will be available.

Contact Person: Potential offerors may obtain a copy of the RFP on or about October 6, 1999. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Judy Mayfield, **Mail**

Code E-541; c/o Kim Wedel; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714- 9030; Fax: 512-438-2031.

TRD-9906316
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Filed: September 27, 1999



Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On September 24, 1999, Texas Comm South, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60012. Applicant intends to transfer control to Topp Telecom, Inc., a non-certificated company, and to expand its geographic area to include the entire state of Texas.

The Application: Application of Texas Comm South, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 21444.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326 no later than October 13, 1999. You may contact the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21444.

TRD-9906342
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 1999



Notices of Applications for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 22, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of CI², Inc., doing business as CI Squared, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21280 before the Public Utility Commission of Texas.

Applicant intends to provide digital subscriber line, ISDN, TI-Private Line, Switch 56 KBPS, Frame Relay, Fractional TI and long distance services.

Applicant's requested SPCOA geographic area includes the areas of all incumbent local exchange companies within the state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer

Protection at (512) 936-7120 no later than October 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906343
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 1999



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 22, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Americas.Com, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 21430 before the Public Utility Commission of Texas.

Applicant intends to provide local telephone service, long distance service, frame relay service, consumer DSL service, business DSL service, and business data solutions.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906315
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 23, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Grande River Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 21440 before the Public Utility Commission of Texas.

Applicant intends to provide the entire range of local exchange and exchange access telecommunications services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 13, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906309
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Filed: September 27, 1999



Notice of Application for Transmission Cost of Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 24, 1999, for a transmission cost of service (TCOS), pursuant to Public Utility Commission Substantive Rule §25.191. A summary of the application follows.

Docket Title and Number: Initial Transmission Cost of Service Filing for Rayburn Country Electric Cooperative, Inc., Docket Number 21265 before the Public Utility Commission of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than October 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9906344
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 29, 1999



Notice of Petition for Approval of Demand-Side Management Contract and Associated Costs

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application for approval of a contract and costs associated with demand-side management resources, pursuant to the commission's Interim Order on the Preliminary Plan in Docket Number 16995 and the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.001 (Vernon 1999).

Docket Style and Number: Petition of Central Power and Light Company for Approval of Contract and Costs Associated with Demand-Side Management Program. Docket Control Number 21441.

The Application: Central Power and Light Company (CPL) requests the commission (1) certify its demand-side management (DSM) contract with Utility Conservation Services-Texas, L.L.C. (UCONS); (2) find that CPL prudently and reasonably entered the UCONS contract and that all costs properly incurred thereunder are reasonable and necessary; (3) find that the UCONS contract and costs count towards any requirement that CPL have certain DSM programs in place or spend a certain amount of funds on DSM in the years 2000 and 2001; and (4) find that the DSM resources count towards the energy efficiency requirements of §39.905 of the Public Utility Regulatory Act. The UCONS contract calls for CPL to make payments totaling \$3.7 million over a five-year period. CPL is not requesting authority to increase charges to customers for recovery of, or a separate cost recovery mechanism for, any of the costs associated with the UCONS contract for the years 2000 and 2001. CPL will propose, however, a cost recovery method for the UCONS program for rates effective beginning January 1, 2002.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing- and

speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906339
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 1999



Notice Of Workshop And Form For Reporting Access Line Count Information And Request For Comments

The Public Utility Commission of Texas (commission) has approved publication of proposed new §26.465 relating to Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers (CTPs). Proposed §26.465 will implement the provisions of House Bill (HB) 1777, Act of May 25, 1999, 76th Legislature, Regular Session, chapter 840, 1999 Texas Session Law Service 3499 (Vernon) (to be codified as Local Government Code §§283.001 et seq.). The commission is also proposing forms and instructions for reporting access line count information to be used in implementing §26.465.

A copy of the forms and instructions for reporting access line count information can be obtained after October 20, 1999 at the commission's Central Records, by sending an email to hb1777@puc.state.tx.us, or by downloading the information from the HB 1777 web site at <http://www.puc.state.tx.us/telecomm/projects/20935/20935.cfm>. The commission staff will hold a separate workshop to discuss forms and instructions for reporting access line count information in the Commissioners' Hearing Room, Room 7-100, at the commission offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas, 78701, on Friday, November 5, 1999, at 3:00 p.m. until 5:00 p.m. Interested persons may submit written comments on the form and instructions on or before October 29, 1999. The commission is specifically interested in learning whether the forms are clear and easy to use, and whether additional instructions are needed to accommodate special circumstances.

If you have any questions regarding the proposed workshop, forms or instructions contact Elango Rajagopal at (512) 936-7392 or Diane Parker at (512) 936-7204. It is not necessary to pre-register for the workshop. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906190
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 24, 1999



Public Notice of Amendment to Interconnection Agreement

On September 21, 1999, Southwestern Bell Telephone Company and MFS Communications Company, Inc. filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1999) (PURA). The joint application has been designated Docket Number 21098. The joint application and

the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21098. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 11, 1999, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21098.

TRD-9906178
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 23, 1999



Public Notices of Interconnection Agreements

On September 17, 1999, Media Communication Consultants, L.L.C., United Telephone Company of Texas, Inc. doing business as Sprint, and Central Telephone Company of Texas doing business as Sprint (collectively, Sprint), collectively referred to as applicants, filed a joint application for approval of an adoption of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of

1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21414. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21414. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 19, 1999, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21414.

TRD-9906341
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 1999



On September 17, 1999, Now Communications, Inc., United Telephone Company of Texas, Inc. doing business as Sprint, and Central

Telephone Company of Texas doing business as Sprint (collectively, Sprint), collectively referred to as applicants, filed a joint application for approval of an adoption of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 21415. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 21415. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by October 19, 1999, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to Public Utility Commission Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 21415.

TRD-9906340
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 28, 1999

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Public Notice of Workshop on Provisions of PURA Affecting Chapter 52, Chapter 58, and Chapter 59 Electing Local Exchange Companies and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss one or more possible rulemakings to implement Public Utility Regulatory Act (PURA) procedural matters relating to new services and promotional offerings, and pricing and packaging flexibility tariffs introduced by Chapters 52, 58, and 59 local exchange companies (Project Number 21161); §§52.0583, 52.0584, 52.0585, 59.030, 59.031, and 59.032, relating to new services, promotional offerings, and pricing and packaging flexibility by Chapter 52 and Chapter 59 electing companies (Project Number 21159); PURA Chapter 58 provisions relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings (Project Number 21155); and PURA Chapter 58 provisions relating to New Services (Project Number 21157). The workshop will be held on Monday, November 15, 1999, beginning at 9:00 a.m. in Room 1-111 and continue on Tuesday, November 16, 1999 in Room 1-100 on the first floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701. The Commissioners may attend the workshop.

Project Number 21161, *Rulemaking to Establish Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Tariffs Pursuant to PURA Chapters 52, 58 and 59*; Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings, and Pricing and Packaging Flexibility for PURA Chapter 52 and 59 Companies*; Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions relating to Customer Specific Contracts, Packaging Flexibility, and Promotional Offerings*; and Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provisions of New Services* have been established for these proceedings. Through this workshop, the commission will gather information from interested persons on certain provisions of PURA, effective September 1, 1999, that affect Chapter 52, Chapter 58 and Chapter 59-electing local exchange companies. The agenda for the workshop will be available in Central Records no later than November 8, 1999.

This project deals with the procedural aspects of PURA, Chapter 52, Chapter 58 and Chapter 59. Projects 21155, 21157, and 21159 deal with the substantive aspects of PURA, Chapter 52, Chapter 58 and Chapter 59. These projects will give separate notice, but will be discussed jointly at the workshop. Therefore, both substantive and procedural aspects of implementing these sections of PURA will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees.

Before the workshop commences, the commission requests interested persons file comments addressing staff questions. These questions are available in Central Records under Project Number 21161, or from the commission's Web site located at www.puc.state.tx.us. On the Web site, questions are located under Project Number 21161 on the "Telecommunications Competition" page.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 20 days of the date of publication of this notice. All comments should reference Project Number 21161. On or before November 8, 1999, the commission will file an agenda for the workshop, which will be available in Central Records under Project Number 21161. Copies of the agenda will also be available at the workshop.

Questions regarding Project Number 21161 may be referred to Melene Dodson, Office of Policy Development, (512) 936-7161 or Martin Wilson, Office of Regulatory Affairs, (512) 936-7292. Because this project is being discussed jointly with other projects, questions concerning Project Number 21159 may be referred to Anne McKibbin, Office of Regulatory Affairs, (512) 936-7390 or via email. Questions concerning Project Number 21157 may be referred to Lynne LeMon, Office of Regulatory Affairs, (512) 936-7382. Questions concerning Project Number 21155 may be referred to Diana Zake, Office of Policy Development, (512) 936-7242. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906307
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999

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Public Notice of Workshop in Provisions of PURA Affecting Chapter 52 and Chapter 59 Electing Local Exchange Companies and Request for Comments

The Public Utility Commission of Texas (commission) will host a workshop to discuss one or more possible rulemakings to implement Public Utility Regulatory Act (PURA) §§52.0583, 52.0584, 52.0585, 59.030, 59.031, and 59.032, relating to new services, promotional offerings, and pricing and packaging flexibility by Chapter 52 and Chapter 59 electing companies. The workshop will be held on Monday, November 15, 1999, beginning at 9:00 a.m. in Room 1-111 and will continue on Tuesday, November 16, 1999 in Room 1-100 on the first floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701.

Project Number 21159, *Rulemaking to Implement New Services and Promotional Offerings, and Pricing and Packaging Flexibility for PURA Chapter 52 and 59 Companies*, has been established for this proceeding. Through this workshop, the commission will gather information from interested persons on certain provisions of PURA, effective September 1, 1999, that affect Chapter 52 and Chapter 59-electing local exchange companies. The workshop discussion of PURA §§52.0583, 52.0584, and 52.0585 will begin at 9:00 a.m., while the discussion of PURA §§ 59.030, 59.031, and 59.032 will begin no earlier than 1:00 p.m.

This project deals with the substantive issues of PURA, Chapter 52 and Chapter 59. Procedural aspects of PURA, Chapter 52 and Chapter 59 will be dealt with in Project Number 21161, *Rulemaking to Establish a Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Tariffs Pursuant to PURA Chapters 52, 58 and 59*. These two projects will give separate notice, but will be discussed jointly at the workshop. Therefore, both substantive and procedural aspects of implementing these sections of PURA will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees.

Before the workshop commences, the commission requests interested persons file comments addressing staff questions. These questions are available in Central Records under Project Number 21159, or from the commission's Web site located at www.puc.state.tx.us. On the Web site, questions are located under Project Number 21159 on the "Telecommunications Competition" page.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 20 days of the date of publication of this notice. All comments should reference Project Number 21159. On or before November 8, 1999, the commission will file an agenda for the workshop, which will be available in Central Records under Project Number 21159. Copies of the agenda will also be available at the workshop.

Questions concerning Project Number 21159 may be referred to Anne McKibbin, Office of Regulatory Affairs, (512) 936-7390 or via email: Anne.McKibbin@puc.state.tx.us. Because this project is being discussed jointly with project 21161, questions concerning Project Number 21161 may be referred to Melene Dodson, Office of Policy Development, (512) 936-7161 or Martin Wilson, Office of Regulatory Affairs, (512) 936-7292. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906306
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999



Public Notices of Workshops on Provisions of PURA Affecting Chapter 58 Electing Local Exchange Companies and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss one or more possible rulemakings to implement Public Utility Regulatory Act (PURA) §§58.003, 58.004, 58.063, 58.152 and 60.042, relating to customer-specific contracts, packaging, term and volume discounts, pricing and packaging flexibility, promotional offerings, and prices by Chapter 58 electing companies. The workshop will be held on Monday, November 15, 1999 beginning at 9:00 a.m. in Room 1-111 and continue on Tuesday, November 16, 1999 in Room 1-100 on the first floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, 78701.

Project Number 21155, *Rulemaking to Implement PURA Chapter 58 Provisions Relating to Customer Specific Contracts, Packing Flexibility, and Promotional Offerings*, has been established for this proceeding. Through this workshop, the commission will gather information from interested persons on certain provisions of PURA, effective September 1, 1999, that affect Chapter 58-electing local exchange companies. The agenda for the workshop will be available in Central Records no later than November 8, 1999. The agenda will also be posted on the Commission's Web site.

This project deals with certain substantive issues of PURA, Chapter 58. Procedural aspects of PURA, Chapter 58 will be dealt with in Project Number 21161, *Rulemaking to Establish a Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Tariffs Pursuant to PURA Chapters 52, 58 and 59*. These two projects will give separate notice, but will be discussed jointly at the workshop. Therefore, both substantive and procedural aspects of implementing these sections of PURA will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for discussion of general or specific issues of interest to attendees.

Before the workshop commences, the commission requests interested persons file comments addressing staff questions in this project.

These questions are available in Central Records under Project Number 21155, or from the commission's Web site located at www.puc.state.tx.us. On the Web site, questions are located under Project Number 21155 on the "Telecommunications Competition" page.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 20 days of the date of publication of this notice. All comments should reference Project Number 21155. On or before November 8, 1999, the commission will file an agenda for the workshop, which will be available in Central Records under Project Number 21155. Copies of the agenda will also be available at the workshop.

Questions concerning Project Number 21155 may be referred to Diana Zake, Office of Policy Development, (512) 936-7242. Questions concerning Project Number 21161 may be referred to Melene Dodson, Office of Policy Development, (512) 936-7161 or Martin Wilson, Office of Regulatory Affairs, (512) 936-7292. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906304
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999



The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss one or more possible rulemakings to implement Public Utility Regulatory Act (PURA) §58.152 relating to nonbasic service prices and §58.153 relating to new services (Project Number 21157). The workshop will be held on Monday, November 15, 1999 beginning at 9:00 a.m. in Room 1-111 and will continue on Tuesday, November 16, 1999 in Room 1-100 on the first floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, 78701.

Project Number 21157, *Rulemaking to Implement PURA Chapter 58 Provision of New Services*, has been established for this proceeding. Through this workshop, the commission will gather information from interested persons on certain provisions of PURA, effective September 1, 1999, that affect Chapter 58-electing local exchange companies. The agenda for the workshop will be published no later than November 8, 1999.

Project Number 21157 deals with certain substantive issues of PURA Chapter 58, particularly issues relating to new services and issues relating to pricing of nonbasic services. Procedural aspects of PURA Chapter 58 will be dealt with in Project Number 21161, *Rulemaking to Establish a Process for New Services and Promotional Offerings, and Pricing and Packaging Flexibility Tariffs Pursuant to PURA Chapters 52, 58 and 59*. These two projects will give separate notice, but will be discussed jointly at the workshop. Therefore, both substantive and procedural aspects of implementing these sections of PURA will be open for discussion at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees.

Before the workshop commences, the commission requests interested persons file comments addressing questions on the provision of new services by Chapter 58-electing local exchange companies and on the pricing of nonbasic services. These questions are available in Central Records under Project Number 21157, or from the commission's

Website located at www.puc.state.tx.us. On the Website, questions are located under Project Number 21157 at the "Telecommunications Competition" page.

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 20 days of the date of publication of this notice. All comments should reference Project Number 21157. On or before November 8, 1999, the commission will file an agenda for the workshop, which will be available in Central Records under Project Number 21157. Copies of the agenda will also be available at the workshop.

Questions about Project Number 21157 may be referred to Lynne LeMon, Office of Regulatory Affairs, (512) 936-7382. Because this project is being discussed jointly with Project Number 21161, questions concerning Project Number 21161 may be referred to Melene Dodson, Office of Policy Development, (512) 936-7161 or Martin Wilson, Office of Regulatory Affairs, (512) 936-7292. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906305
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999



Request for Comments on Form for Annual Report of Electric Utilities

The Public Utility Commission of Texas (commission) proposes a new form, *Annual Report of Electric Utilities Pursuant to §39.257 of the Public Utility Regulatory Act (PURA)* to be used by utilities to fulfill the statutory requirements of PURA as amended by Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service, 2543, 2580 (Vernon)(to be codified as the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.257). Project Number 21075 is assigned to this proceeding. The proposed form will be used in the determination of any positive difference between the annual revenues and costs of each electric utility required to file the report.

Copies of the proposed form are available in the commission's Central Records Division, Room G-113, under Project Number 21075 or through the commission's web page at www.puc.state.tx.us.

In addition to comments on the proposed new form, the commission also requests interested parties to file comments to the following question: What methodologies are available for electric utilities to earn a return on regulatory assets and stranded costs up to the date of securitization of such items? Your answer should include the pros and cons of each method identified as well as a discussion of whether it complies with PURA.

Written comments on the proposed form and question may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas, 78701 within 20 days after publication of this notice. Reply comments, if any, should be submitted 30 days after publication of this notice. All comments should refer to Project Number 21075.

Any questions pertaining to the proposed form or question should be directed to Ruth Stark at (512) 936-7460 or ruth.stark@puc.state.tx.us. Hearing and speech-impaired individuals

with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906308
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999



Request for Comments on Form for Standard Tariff Format for Filings Pursuant to §25.227

The Public Utility Commission of Texas (commission) proposes a new form, *Standard Tariff Format for Filings Pursuant to §25.227*, to be used by utilities to fulfill the statutory requirements of the Public Utility Regulatory Act (PURA) as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, Chapter 405, 1999 Texas Session Law Service, 2543, 2553 (Vernon) (to be codified as the Public Utility Regulatory Act, Texas Utilities Code Annotated §§35.102, 35.103, 35.104, 35.105, and 35.106). Project Number 21073 is assigned to this proceeding. At the September 23, 1999 Open Meeting, the commission approved new rule §25.227, relating to Electric Utility Service for Public Retail Customers. The new rule may be found in the October 8, 1999 *Texas Register* Adopted Rules section, or in the commission's Central Records under Project Number 21073, or through the commission's web page at www.puc.state.tx.us. The proposed form will be used in implementing the new rule.

Copies of the proposed form are available in the commission's Central Records Division, Room G-113, under Project Number 21073. Written comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas, 78701 within seven days after publication of this notice. All comments should refer to Project Number 21073.

Any questions pertaining to the proposed form should be directed to Connie Corona at (512) 936-7380. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9906314
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 27, 1999



Texas Council on Purchasing from People with Disabilities

Extension of the Memorandum of Agreement between the Texas Council on Purchasing from People with Disabilities and TIBH Industries, Inc.

In accordance with Section 122.019(d), Human Resources Code, the Texas Council on Purchasing from People with Disabilities (the "Texas Council") submits this Extension of the Memorandum of Agreement between the Texas Council and The Designated Central NonProfit Agency, TIBH Industries, Inc. ("TIBH") for notification to all community rehabilitation programs and organizations interested on issues affecting the disabled community throughout the State of Texas. The Texas Council ratified the Extension at its duly posted

meeting of September 24, 1999. The Extension was duly executed by the Texas Council and TIBH prior to September 1, 1999.

The Texas Council provided previous notice, in the November 27, 1998 issue of the Texas Register (23 TexReg 12005) of the Memorandum of Agreement between the Texas Council and The Designated Central Non-Profit Agency, TIBH Industries, Inc. The purpose was to notify all community rehabilitation programs interested in or affected by the agreement. This agreement was the result of a mediated settlement agreement between the Texas Council and TIBH approved by both parties on June 26, 1998 and June 29, 1998 respectively. The Memorandum of Agreement outlined the duties of both parties to administer the State Use program, as provided in Chapter 122, Texas Human Resources Code, and Texas Administrative Code, §189.4 and §189.8.

The State Use Program allows for the development of products and services produced by individuals with disabilities, receiving services in community rehabilitation programs that are sold through TIBH to state agencies and political subdivisions within Texas. The Extension of the Memorandum of Agreement between the Texas Council and The Designated Central NonProfit Agency, TIBH Industries, Inc., continues the relationship between the parties until August 31, 2001.

Copies of the Extension of the Memorandum of Agreement or the Agreement itself can be obtained from Erica Goldbloom, Council Coordinator, Texas Council on Purchasing from People with Disabilities, located at the General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047.

TRD-9906362

Chester S. Beattie, Jr.

Legal Counsel

Texas Council on Purchasing from People with Disabilities

Filed: September 29, 1999



Railroad Commission of Texas

Dissent Filed by Commissioner Charles R. Matthews Regarding Commissioners' Notebook Item Number 1, Proposed Reorganization Plan dated September 14, 1999

I am filing this dissent to explain my opposition to the proposed reorganization plan. Although I have serious concerns with the plan, my opposition was not based on these concerns. I opposed the plan because I was not given enough time to evaluate the proposal. Unlike my fellow commissioners, I had not been given an opportunity to see the plan or any of its iterations until the day before we were to vote on it. (The established practice at the Commission is that copies of material to be voted on in Conference are delivered to the commissioners five days before the Conference.) I asked that the vote be passed until the next open meeting so that I would be able to take some time to look at the plan, talk to affected staff, and understand how the plan might work. I was denied this opportunity. Hence, I could not in good conscience vote for a plan for which I had serious unresolved concerns. A copy of the transcribed tape of this meeting item is attached to this dissent.

I am also opposed to the manner in which promotions and compensation were decided. In approving the reorganization plan, the Commission delegated to the aides the responsibility of approving both the staff who were promoted as a result of the reorganization and the amount of their raises. There was no discussion whatsoever about these issues at Conference. Instead, after conference, shortly before noon on September 14, 1999, my office received a memorandum that had already been approved by the aides from the other two

offices. In the memorandum, six staff members were promoted and over \$47,000 in raises authorized. I am further concerned that none of these jobs was posted, either internally or externally. While we are filling the jobs with qualified staff, I believe we have deprived ourselves of the opportunity of making certain that we truly had chosen the best qualified.

Even though the actions taken during the meeting on September 14, 1999, did not violate the Open Meetings Act, they certainly did not conform to the spirit of the Act. I strongly believe in open government and the right of the public to know what its officials are doing. I also believe that the public's right to know what its elected officials are doing extends to Commission personnel actions, which includes posting open positions and setting forth salary ranges for these jobs.

I hope that the process used for adopting the reorganization plan was an aberration and that in the future, our decision-making processes will be fair to all Commission employees and open to the public.

Respectfully submitted, Charles R. Matthews, Commissioner, Texas Railroad Commission

Excerpts from transcript of Railroad Commission Conference, September 14, 1999, regarding Commissioners' Notebook Item 1 - Proposed Reorganization Plan

Chairman Garza: Let me go ahead and lay out the first of the Commissioners' notebook items. Tab 1 is the adoption of proposed reorganizational plan. Let me first start by saying that I think that the use of reorganization is a bit dramatic, but was necessary given some of the language in the statute which...CHANGED TAPE...without an Executive Director in this agency, certainly going back to the time that I came on board here and whether that was by design or default, essentially it's given us an opportunity to look at the structure of the organization at the top of the agency. And if you look at the Executive Director format, what you realize, was you had an ED with 10 direct reports and funneling information to what I thought was sort of an hourglass and then back up to the Commission. What you see in the private sector many times is a model that I think that works a bit more effectively in terms of focusing the resources on certain substantive areas. You see a chief executive officer and you see a chief operating officer. Recognizing that we're obviously not in the private sector and we are a regulatory body, there is the necessity to have certain direct reports outside of the CEO, COO framework. So clearly something like Public Information where that is the extension of the Commission out to the media and out to the public should be a direct report, the regulatory function through the General Counsel's Office, clearly because it is the central focus of this agency should be a direct report. And then the two sort of core charges, the support being the Administrative and Finance personnel and the prime policy area being the Oil and Gas, Gas Services, AFRED, Surface Mining and Rail Divisions, are more substantively related to each other than they are to Administrative and Finance. So I would propose to do two things. One is to eliminate the ED position. Now have a series of reports where under essentially the Energy Division, you have those energy related substantive areas and under the Administrative and Finance you have those administrative and finance areas. Ask the Director of Administration and Finance to lead this key subject area with respect to Administration and Finance, and that would be Kathy Pyka. Ask Ron Kitchens to lead the Energy area and now have albeit what looks like a bit flatter management structure, you have essentially fewer reports, whereas now, with no ED we have 10 direct reports and this structure you'd have about half of those. If we'd replace the ED, we'd have 10 to 1 and then one up, I think this provides a bit more balance. The second component of the plan is really a variation on something that I think the Legislature has asked us to do in the

past. And again, there are no direct models to the business plan. Unlike those of you that represent companies here and I suppose too often live and die on quarterly earnings reports and what the market is doing in terms of assessing your performance, here we don't have a comparable. So my suggestion would be that we have a quarterly reporting document that would integrate, and the formulation of this is ongoing, that would include those sort of external dictates. LBB performance standards are external dictates. Clearly, the LBB has said these are your performance standards with respect to certain functions of the agency. Clearly the State Auditor's Office has laid out certain parameters that we have to meet each time. But those too often, I don't think often enough reflect the internal challenges that the agency faces and the internal goals that we've set for the agency, so in addition to a quarterly report on how we stand *vis-a-vis* the external standards that we'll be judged by the Legislature, we need to prioritize some internal standards where we say for example, how are we doing? Let's use ECAP, the electronic compliance effort, because that seems to have become the marquee effort for the Commission. Year-to-date are we 10 percent complete, 15 percent complete, 25 percent complete? Theoretically, if it's a one-year project, at every quarter you should add the 25 percent completion on the year-to-date total. But a reporting instrument where we as commissioners can say look at it, know where we are year-to-date in terms of the external standards, as a Commission, set some priorities with respect to the internal standards and be able to look at and know where we are year-to-date and I think this structure allows us both to be more responsive as an agency and this internal reporting mechanism allows us all to have a relatively objective tool by which we can hold each other accountable. The Commission can be held accountable in terms of the priorities we set and the individuals that are responsible for the performance in terms of those goals that the Commission sent, can be held accountable objectively. I think it provides a very clear tool in terms of where we go forward. I've had the opportunity to visit with a number of you all on this and I want to say that no plan is formed in a vacuum. Certainly the legislative process allowed me to look at how this agency responds during times of external pressures to put it in a nice euphemism, during the legislature, and throughout the evaluation process of the various division directors, I recognized really what extraordinary talented people we have. And throughout the last eight months I have asked questions, observed and tried to take in a good deal, sometimes for lack of a better word, through osmosis in this agency, and I think in terms of a structure, this is the best structure that would allow us to go forth. I've got, and I've told a number of people, there is one very selfish interest in that as we go into Sunset, something that I hope to be very involved with. The very core question that is asked during Sunset is are you as relevant today as this agency was in 1891, essentially. You know, are you as relevant and central to Texas and Texas' future and if you can't answer that question yes, you're very right to survive as an agency is threatened and I think in order to do that I think you have to continue to not only be a dynamic agency, we can continually reassess what our mission is. I think our mission and I hope it's come through from time to time is being balanced in terms of natural resources. Oil and Gas *vis-a-vis* water. How we perform our regulatory function in that regard I think is going to be a central question that's asked during sunset. If we don't perform it well, I think there is going to be a real temptation to say there's an agency that can perform it better or certainly there's an agency that should be given the opportunity to perform it better. And so I think as we go through the challenge of Sunset, this organization, this new organization will allow us to be a bit more responsive. I do want to simply close with saying it is the product of a lot of discussions both informal and formal and I do want to thank the many of you that were part of it however unwittingly and unknowingly, but I do think it's a good plan. What I'd like to

do is because recognizing that this sort of forum does not lend itself to a great deal of specifics is when I get back to the office, if the Commission supports this effort and they've had the opportunity to look at the memo on it, was to post it, to encourage questions and to allow the directors who I visited with to go back to their respective divisions and lay out for them what we've proposed this morning. That's my story.

Commissioner Matthews: Mr. Chairman, I appreciate all the hard work you've obviously put in this. Unfortunately, the first time that I got a copy of this was less than 24 hours ago, which is really not sufficient time for me to fulfill the responsibilities that I've got of looking at what you're doing and I also would like the opportunity to visit with these senior staff folks and talk about what's occurring here. I see the change, but I'm not sure that I totally understand how it's going to function. As I look at the organization chart you've got, you appear to have a dual...two executive directors. That you've got folks who maybe are in the role of senior directors? I don't know what your terms is going to be for them. I've got a whole list of questions as to how they would function. I also have a concern about ITS and that under this proposal, ITS would be under Administrative Services, which at first seems like a good idea, but most of their work is done in the Oil and Gas section. I mean that's who they spend most of their efforts for and I'm not real sure how that's all going to work out. And so I would like some time to take a look at this and talk to the people involved and try to get a feel for how it might work. I'm not opposed to it, I don't, I just don't know enough about it to know how to vote. Twenty-four hours is just, you know we're all busy, I just haven't had time to sufficiently really understand it.

Chairman Garza: Well let me make two quick comments. The organizational chart is pretty straight forward. I'm less concerned with semantics and what we characterize these individuals as I am in function. I think the model is good with particular respect to information services, I think the model is very good because you have, first, like I say, we have a whole lot of talent in this agency that I think this model better utilizes. And secondly, I recognize your concern with respect to the questions you may have and certainly, within the constraints of open meetings would be happy to visit with Carole, obviously because this conversation can't go on at some point, but I would like to move the adoption of it and if there's a necessity to look at it, tweak it in the future, I'd like to be working off the adopted plan as laid out this morning and move from there. So I put that in the form of a motion.

Commissioner Williams: I would second that motion. I had the opportunity and I cannot speak for other offices but obviously I had the opportunity to see this plan particularly as it was being developed over the last several weeks and while it has not been perhaps in the formal document that we have before us today, prior to yesterday, obviously had an opportunity to sort of participate and understand the development of what we are now calling...OFF MICROPHONE...as well as had the opportunity to speak with staff regarding...OFF MIKE... viability...with that in mind, but also with the understanding that we're going develop and improve as we go.

Commissioner Matthews: Well, Commissioner, all I'm asking for is the same level of participation that obviously you've already had. This is my first look at it. It arrived in my office about 10:30 yesterday morning and that's just, you know I have not had the opportunity to talk to anyone and what I'm asking for is the courtesy out of my colleagues to take a look at it and to talk to people here at the Commission. Obviously, both you and the Chairman have had the opportunity to speak to people about it and how it works and how it might work and I have not had that opportunity. And my suggestion would be unless there's some big hurry, that we delay this to our

next conference and then we'll all be at the same level at what we're proposing. It's very difficult for me to vote for something that I don't know anything about.

Chairman Garza: Okay, motion's been moved and seconded, all in favor? Any opposed?

Commissioner Matthews: I oppose.

Chairman Garza: One opposition, item carries.

TRD-9906330

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Filed: September 28, 1999



Workshop Announcement for Gas Utility Ratemaking Review-GUD 8953

The Railroad Commission of Texas will hold a workshop to initiate an effort to review and revise gas utility ratemaking rules adopted under authority of 16 TAC Chapter 7.

TIME and PLACE: 1:30 p.m. on Tuesday, October 19, 1999, Room 12-170 of the Travis Building (1701 North Congress Avenue, Austin, Texas)

GOAL: The revised rules should: 1. provide better guidance to utilities for preparing and filing rate information; 2. narrow the areas of disagreement in a rate proceeding; 3. reduce the rate case expenses of the parties, which are ultimately passed on to consumers; 4. result in more detailed and consistent filings; and 5. result in a simpler, more efficient rate review process.

AGENDA: 1. Develop Issues in Need of Change 2. Define Stakeholder Groups 3. Determine Schedule of Future Meetings

COMMENTS: Please e-mail, fax, or mail comments and suggested issues at your earliest convenience to Mark Evarts, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, TX 78711-2967, 512-463-7122 (PHONE), 512-463-7962 (FAX), gurr@rrc.state.tx.us (e-mail). For more information, see rrc.state.tx.us/pub/gs/gurr.pdf.

REGISTRATION AND CONTACT INFORMATION - GUD 8953: Participants must register to attend the October 19th workshop. Provide the information requested below by October 15th via e-mail, fax, or mail to register and facilitate future communication between stakeholders. Participants must state whether they will attend the Gas Utility Ratemaking Review Workshop or, if they cannot attend, must ask to be included on the contact list. To register, please include the following information: contact person's name, organization name, phone number, fax number, address, city, state, and zip, and e-mail address.

TRD-9906331

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel

Railroad Commission of Texas

Filed: September 28, 1999



Rains County

Request for Comments and Proposals from Interested Parties Interested in Providing Additional Medicaid Certified Nursing Facility Beds

House Bill 606, 75th Legislature, the State of Texas, permits a County Commissioners' Court of a rural county (defined as a county with a population of 100,000 or less) 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 in available beds in the county.

Rains County Commissioners' Court is considering desirability of requesting that TDHS contract for more Medicaid nursing facility beds in Rains County. The Commissioners' Court is soliciting comments from all interested parties on the appropriateness of such a request. Additionally, the Commissioners' Court seeks to determine if qualified entities are interested in submitting proposals to provide these additional Medicaid certified nursing facility beds. Comments and/or proposals should be submitted to the Rains County Commissioners' Court, Rains County Courthouse, 100 Quitman Street, Emory, Texas 75440, telephone (903) 473-2555, by 5:00 p.m. on October 1, 1999. Action will be taken by the Commissioners' Court at its regular meeting on October 14, 1999.

TRD-9906162

Robert Sisk

Judge

Rains County

Filed: September 22, 1999



Texas Savings and Loan Department

Notice of Application of Change of Control of a State Savings Bank

Notice is hereby given that on August 8, 1999, application was filed with the Savings and Loan Commissioner of Texas for change of control of Texas Bank, S.S.B., Buffalo, Texas (in organization) by: Eagle Bancshares, Inc. 101 N. Mount St., Fairfield, Texas, 75840

This application is filed pursuant to 7 TAC §§75.121-127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-9906184

James L. Pledger

Commissioner

Texas Savings and Loan Department

Filed: September 24, 1999



Texas A&M University System, Board of Regents

Award of Consultant Contract Notification

THIS MEMO SERVES AS NOTIFICATION TO LEGISLATIVE COMMITTEES, LBB and GBPO

Description of work to be performed under contract:

1. To demonstrate and maintain accreditation with the Commission on Collegiate Nursing Education.
2. To Conduct program evaluation and implement interventions in a timely manner.
3. Content consists of development of program evaluation measures, printing of survey

tools, statistical analysis of data, preparation of reports, interim reports where notation of trends are made.

Name and address of the consultant selected:

Intered 4640 East Elwood Suite One Phoenix, AZ 85040 Bob Horne
602-894-5550

Amount of Contract:

\$95,340.00

Dates of award and completion of work to be performed:

60 months beginning September 1, 1999 through August 31, 2005.

Note: Intered was previously contracted for three years. Amount of previous contract was \$47,478.95. After extensive research and posting on Texas Marketplace, this consultant has all qualifications to meet the need of the university.

TRD-9906317

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University System, Board of Regents

Filed: September 28, 1999



The University of Texas System

Request for Proposal

UT TeleCampus Web-Based Common Student Application for The University of Texas System

RFP No.: OITDE-02_99

Proposal Submission Deadline: 3:00 p.m. CST, October 11, 1999

In order to add more value to the online environment of the UT TeleCampus (UTTC), we are seeking to further streamline our process with the addition of an online, web-based, student application for admission. The selected solution must provide the following:

*Single application for admission to any of the University of Texas component institutions participating in the UT TeleCampus.

*Student and institutional access must be secured with passwords and must be able to support the use of Certificates of Authority.

*Ability to process application fees online via credit card transactions, and support use of electronic Funds Transfer of funds back to UTTC and components.

*Web application hosted by vendor in a high-security, high-availability environment.

*Marketing support through web-portal exposure, with active linking to the UTTC site.

*Ability to track in-process applications.

*Ability to communicate with prospective and in-process applicants.

*Ability to integrate online application data with the existing application systems.

*Ability to create an online facsimile of existing paper application.

*Ability to print completed applications for use in existing manual processes.

To respond to this RFP, proposals must be submitted to:

Rob Robinson

Coordinator of Telecommunication Services

Information and Technology Manager - UT TeleCampus

The University of Texas System

201 West Seventh Street

Austin, Texas 78701-2981

(512) 499-4397

rrobinson@utsystem.edu

TRD-9906160

Francie A. Frederick

Executive Secretary to the Board of Regents

The University of Texas System

Filed: September 22, 1999



Texas Workforce Commission

Request for Proposal Number SI99-09, Choices and Food Stamp Employment and Training Program for North East Texas, Notice of Withdrawal

The Texas Workforce Commission has withdrawn RFP SI99-09 for Choices and Food Stamp Employment & Training in North East Texas, as released in the Texas Register on July 30, 1999, 24TexReg 5949-5950.

TRD-9906322

J. Randel Hill

General Counsel

Texas Workforce Commission

Filed: September 28, 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
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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

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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

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