

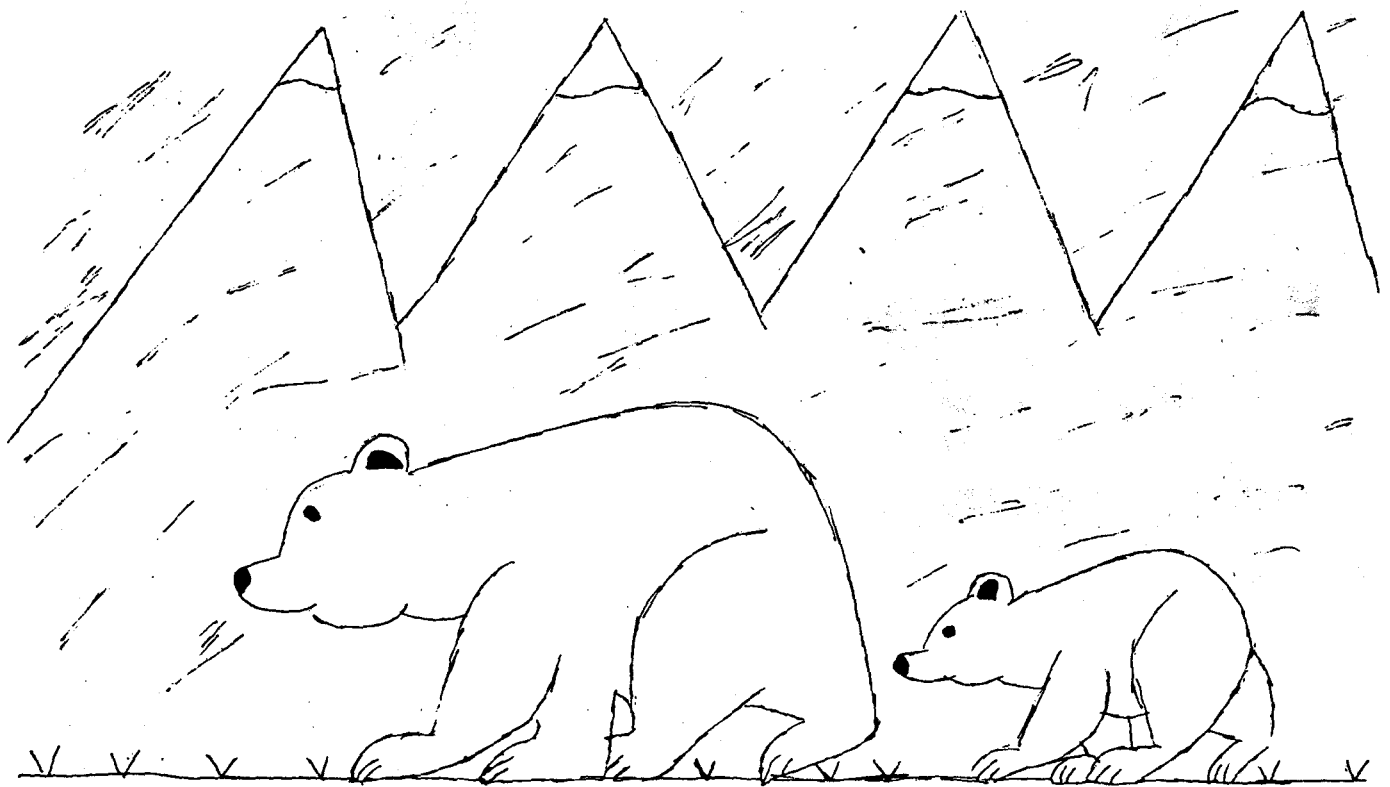
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# TEXAS REGISTER

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***This month's front cover artwork:***

***Artist:***

***Oshanae Black***

***East Bernard Junior High***

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

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Open Records Requests..... 11047  
Request for Opinion..... 11047

**PROPOSED RULES**

**TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

MEDICAID REIMBURSEMENT RATES

1 TAC §355.8065..... 11049

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

HOUSING TRUST FUND RULES

10 TAC §§51.1-51.3, 51.5-51.14, 51.17, 51.18..... 11050  
10 TAC §§51.4, 51.15, 51.16..... 11056

**TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1-3.6, 3.8, 3.9, 3.12, 3.15..... 11056

**TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

PROFESSIONAL CONDUCT

22 TAC §§501.1-501.4..... 11060  
22 TAC §§501.11-501.15..... 11060  
22 TAC §§501.21-501.26..... 11061  
22 TAC §§501.31-501.33..... 11061  
22 TAC §§501.36-501.43, 501.45-501.49..... 11061  
22 TAC §501.50..... 11062

RULES OF PROFESSIONAL CONDUCT

22 TAC §501.51..... 11062  
22 TAC §501.52..... 11063  
22 TAC §501.53..... 11065  
22 TAC §501.54..... 11066  
22 TAC §501.60..... 11067  
22 TAC §501.61..... 11067  
22 TAC §501.62..... 11068  
22 TAC §501.70..... 11069  
22 TAC §501.71..... 11071  
22 TAC §501.72..... 11072  
22 TAC §501.73..... 11072  
22 TAC §501.74..... 11073  
22 TAC §501.75..... 11074  
22 TAC §501.76..... 11075  
22 TAC §501.77..... 11076

22 TAC §501.80..... 11077  
22 TAC §501.81..... 11078  
22 TAC §501.82..... 11079  
22 TAC §501.83..... 11080  
22 TAC §501.84..... 11082  
22 TAC §501.90..... 11082  
22 TAC §501.91..... 11084  
22 TAC §501.92..... 11085  
22 TAC §501.93..... 11085  
22 TAC §501.94..... 11086

**TEXAS CANCER COUNCIL**

POLICIES AND PROCEDURES

25 TAC §§701.3-701.7..... 11087  
25 TAC §701.8..... 11087

RELATIONSHIP BETWEEN COUNCIL AND PRIVATE ORGANIZATIONS AND DONORS

25 TAC §702.2..... 11088

PROJECT CONTRACTS AND GRANTS

25 TAC §§703.1, 703.3, 703.4, 703.6-703.8, 703.10, 703.12, 703.13..... 11088

**COMPTROLLER OF PUBLIC ACCOUNTS**

TAX ADMINISTRATION

34 TAC §3.1201..... 11090

**TEXAS COMMISSION ON FIRE PROTECTION**

STANDARDS FOR CERTIFICATION

37 TAC §§421.1, 421.5, 421.13..... 11091

FIRE SUPPRESSION

37 TAC §423.13..... 11092  
37 TAC §423.203, §423.211..... 11093

FIRE INVESTIGATION

37 TAC §431.3..... 11094

MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.7..... 11095

APPLICATION CRITERIA

37 TAC §§463.2, 463.4, 463.6..... 11095

**TEXAS WORKFORCE COMMISSION**

CHILD CARE AND DEVELOPMENT

40 TAC §809.46..... 11097

CHILD CARE AND DEVELOPMENT

40 TAC §809.103..... 11099

40 TAC §809.121 .....	11100	22 TAC §§523.61-523.65 .....	11109
<b>ADOPTED RULES</b>		22 TAC §§523.71-523.74 .....	11109
<b>TEXAS DEPARTMENT OF AGRICULTURE</b>		22 TAC §523.1 .....	11109
<b>PERISHABLE COMMODITIES HANDLING AND</b>		22 TAC §523.2 .....	11110
<b>MARKETING PROGRAM</b>		22 TAC §523.3 .....	11110
4 TAC §14.1 .....	11101	22 TAC §523.4 .....	11111
4 TAC §§14.10, 14.13 .....	11101	22 TAC §523.5 .....	11111
<b>TEXAS HIGHER EDUCATION COORDINATING</b>		22 TAC §523.6 .....	11111
<b>BOARD</b>		22 TAC §523.7 .....	11112
<b>AGENCY ADMINISTRATION</b>		22 TAC §523.21 .....	11112
19 TAC §§1.1, 1.5, 1.6, 1.8 .....	11102	22 TAC §523.22 .....	11112
19 TAC §1.10, §1.11 .....	11102	22 TAC §523.23 .....	11113
19 TAC §§1.21-1.41 .....	11102	22 TAC §523.24 .....	11113
19 TAC §§1.21-1.29 .....	11103	22 TAC §523.25 .....	11113
19 TAC §§1.71-1.75 .....	11103	22 TAC §523.26 .....	11113
<b>TEXAS OPTOMETRY BOARD</b>		22 TAC §523.27 .....	11114
<b>THERAPEUTIC OPTOMETRY</b>		22 TAC §523.28 .....	11114
22 TAC §280.1 .....	11103	22 TAC §523.29 .....	11114
<b>TEXAS STATE BOARD OF PLUMBING EXAMINERS</b>		22 TAC §523.30 .....	11115
<b>ADMINISTRATION</b>		22 TAC §523.31 .....	11115
22 TAC §361.10 .....	11104	22 TAC §523.32 .....	11115
<b>TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY</b>		22 TAC §523.41 .....	11116
<b>CERTIFICATION AS CPA</b>		22 TAC §523.42 .....	11117
22 TAC §511.21 .....	11104	22 TAC §523.61 .....	11117
22 TAC §511.22 .....	11105	22 TAC §523.62 .....	11117
22 TAC §511.76 .....	11105	22 TAC §523.63 .....	11118
<b>FEE SCHEDULE</b>		22 TAC §523.64 .....	11119
22 TAC §521.3 .....	11106	22 TAC §523.65 .....	11119
22 TAC §521.4 .....	11106	22 TAC §523.71 .....	11119
22 TAC §521.5 .....	11106	22 TAC §523.72 .....	11120
22 TAC §521.7 .....	11107	22 TAC §523.73 .....	11120
22 TAC §521.8 .....	11107	22 TAC §523.74 .....	11120
22 TAC §521.9 .....	11107	<b>QUALITY REVIEW</b>	
22 TAC §521.10 .....	11107	22 TAC §527.1 .....	11121
22 TAC §521.11 .....	11108	22 TAC §527.3 .....	11121
22 TAC §521.12 .....	11108	<b>COMPTROLLER OF PUBLIC ACCOUNTS</b>	
<b>CONTINUING PROFESSIONAL EDUCATION</b>		<b>CENTRAL ADMINISTRATION</b>	
22 TAC §§523.1-523.7 .....	11108	34 TAC §1.33 .....	11122
22 TAC §§523.21-523.32 .....	11109	34 TAC §1.300 .....	11122
22 TAC §523.41, §523.42 .....	11109	<b>TAX ADMINISTRATION</b>	
		34 TAC §3.1001 .....	11122

<b>TEXAS WORKFORCE COMMISSION</b>	
GENERAL ADMINISTRATION	
40 TAC §800.5 .....	11126
<b>RULE REVIEW</b>	
<b>Proposed Rule Review</b>	
Texas Department of Health.....	11129
<b>Adopted Rule Review</b>	
Texas Higher Education Coordinating Board.....	11129
<b>TABLES AND GRAPHICS</b>	
<b>Tables and Graphics</b>	
Tables and Graphics.....	11131
<b>IN ADDITION</b>	
<b>Office of the Attorney General</b>	
Request for Proposal .....	11135
<b>Coastal Coordination Council</b>	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program .....	11138
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings .....	11139
<b>Texas Education Agency</b>	
Notice of Correction: Dates of Project in Request for Applications Concerning Texas Ready to Read Grants.....	11139
<b>Employees Retirement System of Texas</b>	
Request for Application.....	11139
Request for Proposal.....	11140
<b>Texas Health and Human Services Commission</b>	
Cancellation of Joint Public Hearing.....	11140
Rescheduled Joint Public Hearing.....	11140
<b>Texas Department of Housing and Community Affair</b>	
Announcement of the Request for Proposals for Organizations to Provide Training to Nonprofit Organizations in the Principles and Applications of Homebuyer Education, and to Certify Participants as Homebuyer Education Providers. ....	11141
<b>Texas Department of Insurance</b>	
Insurer Services .....	11141
Notices of Public Hearings.....	11142
Third Party Administrator Applications.....	11142
<b>Legislative Budget Board</b>	
Fiscal Studies Roundtable 2000-01 Biennium Meeting.....	11142
<b>Texas Lottery Commission</b>	
Instant Game Number 166 "Sunny Money".....	11143
Instant Game Number 167 "Sizzlin' 7's".....	11147
Instant Game Number 168 "Feather Your Nest".....	11151
Instant Game Number 170 "Scratch Happy".....	11155
Instant Game Number 171 "Lucky Duck" .....	11159
<b>Texas Department of Mental Health and Mental Retardation</b>	
Public Hearing Notice.....	11163
<b>Texas Natural Resource Conservation Commission</b>	
Notice of Availability and Request for Comments.....	11164
Notice of Public Hearing (Chapter 111).....	11164
Notice of Water Quality Applications.....	11165
<b>Public Utility Commission of Texas</b>	
Notices of Applications for Service Provider Certificate of Operating Authority.....	11169
Notices of Applications to Amend Certificate of Convenience and Necessity.....	11169
Public Notices of Amendments to Interconnection Agreements.....	11170
Public Notices of Interconnection Agreements.....	11171
<b>Teacher Retirement System of Texas</b>	
Report of Fiscal Transactions, Accumulated Cash and Securities and Rate of Return on Assets and Report of Balance Sheet, Actuarial Valuation and Unfunded Liabilities.....	11172
<b>Texas Department of Transportation</b>	
Notice of Intent.....	11184
Request for Proposal.....	11185
<b>Texas Turnpike Authority Division of the Texas Department of Transportation</b>	
Notices of Intent.....	11185
<b>Texas Water Development Board</b>	
Applications Received.....	11186

# OFFICE OF THE ATTORNEY GENERAL

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

## Open Records Requests

*Parties interested in submitting a brief to the Attorney General concerning these ORQ's are asked to please submit the brief no later than January 3, 2000.*

**ORQ-43.** Requested by: No requestor: Pursuant to §552.011 of the Texas Government Code, in order to maintain uniformity in the application, operation and interpretation of the Public Information Act, this office will prepare and publish a formal decision on the following issue, regarding whether the identities and addresses of crime victims maintained by governmental bodies, including local police departments, the Texas Department of Criminal Justice, and the Attorney General's Crime Victims Compensation Division, are excepted from public disclosure by common-law or constitutional privacy (ID# 131600-99).

**ORQ-47.** Requested by: The Honorable Frank Malda, Chair, Committee on Intergovernmental Relations, Texas Senate, P.O. Box 12068, Austin, TX 78711-2068, regarding whether a municipality's disclosure to a municipally appointed citizen advisory board of information pertaining to a municipally owned power utility that is reasonably related to a competitive matter waives the municipality's claim to withhold such information under §552.131 of the Government Code, enacted by Senate Bill 7, Act of May 27, 1998, 76th Legislature, Regular Session (ID# 131597-99).

TRD-9908195  
Elizabeth Robinson  
Assistant Attorney General  
Office of the Attorney General  
Filed: December 1, 1999

◆ ◆ ◆

## Request for Opinion

**RQ-0146-JC.** Requested by: The Honorable Glen Wilson, Parker County Attorney, One Courthouse Square, Weatherford, Texas 76086, regarding the method of selecting a county purchasing agent, and related questions (Request Number 0146-JC).

## Briefs requested by December 23, 1999.

TRD-9908192  
Elizabeth Robinson  
Assistant Attorney General  
Office of the Attorney General  
Filed: December 1, 1999

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# PROPOSED RULES

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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.

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## TITLE 1. ADMINISTRATION

### Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### Chapter 355. MEDICAID REIMBURSEMENT RATES

##### Subchapter J. PURCHASED HEALTH SERVICES

##### Division 4. HOSPITAL SERVICES

###### 1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8065, concerning disproportionate share hospital reimbursement. Specifically, the amendment changes the distribution of disproportionate share hospital funding.

Don Green, Chief Financial Officer, has determined that for each year of the first five years the proposed amendment is in effect enforcing or administering the amendment will have no foreseeable implications relating to costs or revenues of the state. The amendment does have foreseeable implications relating to cost or revenues of local governments. Although individual hospitals affiliated with local governments (that is, hospital districts and city/county hospitals) may realize either an increase or decrease in revenues, the amendment will result in the aggregate in increased revenues of \$16,149,579 for fiscal year (FY) 2000; \$26,978,287 for FY 2001; \$27,698,607 for FY 2002; \$28,438,160 for FY 2003; and \$29,197,459 for FY 2004.

Mr. Green also has determined that for each year of the five years the amendment is in effect, the public benefit anticipated as a result of enforcing the section will be that additional reimbursement will be available for public hospitals that transfer funds for federal matching. There will be no effect on small businesses or micro-businesses and there are no anticipated economic costs to persons who are required to comply with the proposed section. There is no impact on local employment. The

proposed amendment affects only hospitals, therefore, there is no effect on small businesses or micro businesses.

A public hearing on the proposed amendment will be held at 9:30 a.m. on December 20, 1999, in the Public Hearing Room, Texas Department of Health, 12555 Riata Vista Circle, Austin, Texas, 78727.

Comments on this proposed amendment may be submitted to Henry Welles, Program Specialist, Reimbursement and Analysis, Texas Department of Health, Mail Code Y-995, 1100 West 49th Street, Austin, Texas, 78756-3168, within 30 days of publication in the *Texas Register*. To comply with federal regulations, a copy of this proposal is being sent to each field office of the Texas Department of Human Services where it will be available for public review upon request for a period of 30 days.

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

This amendment affects Government Code §531.021(b), which provides HHSC with the authority to adopt rules governing the determination of Medicaid reimbursements.

§355.8065. *Additional Reimbursement to Disproportionate Share Hospitals.*

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

(f) Reimbursing Medicaid disproportionate share hospitals. The department shall reimburse Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Before the start of the next state fiscal year, the department determines the size of the available

funds to reimburse disproportionate share hospitals for the next state fiscal year, which begins each September 1. The funds available to reimburse the state chest hospitals and state mental hospitals equal the total of their adjusted hospital specific limits. The available fund for the remaining hospitals equals the lesser of the funds remaining in the state's annual disproportionate share hospital allotment or the sum of qualifying hospitals' adjusted hospital specific limits. Payments shall be made in the following manner, unless the department determines the hospital's proposed reimbursement has exceeded its specific limit.

(1) (No change.)

(2) For the remaining hospitals, payments will be based on both weighted inpatient Medicaid days and weighted low income days. The department weighs each hospital's total inpatient Medicaid days and low income days by the appropriate weighing factor. The department defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs shall receive weights based proportionally on the MSA population according to the 1990 United States census. MSAs with populations greater than or equal to 150,000, according to the 1990 census, are considered as the "largest MSAs." Children's hospitals also shall receive weights because of the special nature of the services they provide. All other hospitals receive weighing factors of 1.0. The inpatient Medicaid days of each hospital shall be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund shall be divided into two parts. One half [~~Two-thirds~~] of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days. One-half [~~One-third~~] of the available fund will reimburse each qualifying hospital by its percent of the total low income days. Reimbursement for the remaining hospitals is determined monthly as follows.

(A) (No change.)

(B) A qualifying hospital receives a monthly disproportionate share payment based on the following formula.

~~Figure: 1 TAC §355.8065(f)(2)(B)~~

~~Figure: 1 TAC §355.8065(f)(2)(B)~~

(C) All MSA population data are from the 1990 United States census. The specific weights for certain hospital districts and children's hospitals are as follows:

(i) (No change.)

(ii) MSAs with populations greater than or equal to 150,000 and less than 300,000 are weighted at 2.75 [~~2.25~~].

(iii) MSAs with populations greater than or equal to 300,000 and less than 1 million are weighted at 3.0 [~~2.50~~].

(iv) MSAs with populations greater than or equal to 1 million and less than 3 million are weighted at 3.25 [~~2.75~~].

(v) MSAs with populations greater than or equal to 3 million are weighted at 3.75 [~~3.25~~].

(D)-(H) (No change.)

(g)-(i) (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 November 24, 1999.

TRD-9908048

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 458-7236



## TITLE 10. COMMUNITY DEVELOPMENT

### Part 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### Chapter 51. HOUSING TRUST FUND RULES

##### 10 TAC §§51.1-51.3, 51.5-51.14, 51.17, 51.18

The Texas Department of Housing and Community Affairs (the Department) proposes amendments to §§51.1-51.3, 51.5-51.14, 51.17, and 51.18, concerning the Housing Trust Fund Rules.

The amendments are being proposed by the Department to provide procedures for the allocation of Housing Trust funds available under state law to eligible public entities, nonprofit organizations, for profit entities, and persons and families, to provide safe, decent, and sanitary housing for low, very low, and extremely low income families and individuals and persons with special needs. The amendments are proposed to provide clarification and corrections and to provide relocation requirements, application eligibility requirements for principals, and a prohibition against discrimination on the basis of Section 8 assistance, inspection and monitoring requirements, an appeals process, additional reporting requirements and to clarify the executive director's authority regarding the project changes.

Daisy Stiner, Executive Director of the Department, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Stiner also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing these rules will be the allocation of housing trust funds within the State of Texas to enhance the State's ability to provide affordable housing. There are no anticipated economic costs to persons or businesses who are required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Keith Hoffpauir, Program Manager, Housing Trust Fund Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711.

The amended sections are proposed under the Texas Government Code, Chapter 2306, which provides the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the department and its programs.

The Texas Administrative Code is affected by the proposed amendments.

##### §51.1. Purpose.

This part describes policies and procedures applicable to the distribution of funds pursuant to the Housing Trust Fund authorized under Texas Government Code, Chapter 2306, subchapter I.



§51.2. *Program Goals and Objectives.*

(a) The Housing Trust Fund ~~is~~ ~~shall be~~ used by the Department to provide loans, grants, or other comparable forms of assistance to local units of government, ~~[the Department,]~~ public housing authorities, community housing development organizations, nonprofit organizations, for profit entities, and income-eligible persons, families, and households to finance, acquire, rehabilitate, and develop affordable, decent, safe, and sanitary housing.

(b) The Housing Trust Fund ~~is~~ ~~shall be~~ used by the Department to provide assistance for persons and families of low, very low, and extremely low income in financing, acquiring, rehabilitating, and developing affordable, decent, safe, and sanitary housing.

(c) The Housing Trust Fund ~~is~~ ~~shall be~~ used by the Department to provide technical assistance and capacity building to nonprofit organizations, and community housing development organizations engaged in developing affordable housing for persons and families of low, very low, and extremely low income.

§51.3. *Definitions.*

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

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

(5) Community Housing Development Organizations—A nonprofit organization that satisfies the requirements of 24 CFR 92.2, ~~[as amended], as certified by the Department [a HOME Program].~~

(6)-(8) (No change.)

~~(9) Federal Government—The United States of America or any department, division, agency or instrumentality, corporate or otherwise, of the United States of America.]~~

(9) ~~[(10)]~~ Housing Development Costs—The total of all costs incurred in financing, creating, or purchasing any housing development, including, but not limited to, a single-family dwelling, which are approved by the Department as reasonable and necessary. The costs may include, but are not limited to:

(A) the value of land and any buildings on the land owned by the sponsor, or the cost of land acquisition and any buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing sites;

(B) cost of site preparation, demolition, and development;

(C) fees paid or payable in connection with the planning, execution, and financing of the housing development, such as those to the architects, engineers, attorneys, accountants;

(D) cost of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(E) cost of construction, rehabilitation, reconstruction, fixtures, ~~[furnishings,]~~ equipment, machinery, and apparatus related to the real property;

(F) cost of land improvements, including ~~[without limitation,]~~ landscaping ~~[and off-site improvements]~~, whether or not the costs have been paid in cash or in a form other than cash;

(G) necessary expenses in connection with initial occupancy of the housing development;

(H) an allowance established by the Department for contingency reserves and reserves for any anticipated operating deficits during the first two years of occupancy; and

(I) the cost of the other items, including tenant relocation, if tenant relocation costs are not otherwise being provided for, as the Department shall determine to be reasonable and necessary for the development of the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

(10) ~~[(11)]~~ Housing Development or Housing Project—Any real or personal property, project, building, structure, facilities, work, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, which meets or is designed to meet minimum property standards consistent with those prescribed in the Housing Trust Fund Property Standards, found in the Program Guidelines, for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by persons and families of low, very low, and extremely low income, and persons with special needs. The term may include buildings, structures, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other non-housing facilities, such as administrative, community and recreational facilities the Department determines to be necessary, convenient, or desirable appurtenances.

(11) ~~[(12)]~~ Housing Finance Division—The division ~~[or divisions]~~ of the Department responsible for the administration of the Housing Trust Fund.

(12) ~~[(13)]~~ Joint Venture—An agreement between a lead applicant and a cooperating entity formed to administer or implement a Housing Trust Fund project.

(13) ~~[(14)]~~ Lead Applicant—An Eligible Applicant designated in a Housing Trust Fund application to assume contractual liability and legal responsibility as the Recipient executing the written agreement with the State.

(14) ~~[(15)]~~ Local Units of Government—A county; an incorporated municipality; a special district; a council of governments; any other legally constituted political subdivision of the state; a public, nonprofit housing finance corporation created under the Local Government Code, Chapter 394; or a combination of any of the entities described here.

(15) ~~[(16)]~~ Low Income Persons and Families—Persons and families earning not more than 80% of the area median income as determined by the United States Department of Housing and Urban Development, with allowances for family size.

(16) ~~[(17)]~~ Metropolitan and Metro—Areas designated by the Bureau of the Census as metropolitan statistical areas (MSA) or primary metropolitan statistical areas (PMSA) in the most recent decennial census.

(17) ~~[(18)]~~ Non-metropolitan and Non-Metro—Refers to all areas outside those areas designated as MSAs by the Bureau of the Census in the most recent decennial census.

(18) ~~[(19)]~~ Nonprofit Organization—Any public or private, nonprofit organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and

(C) has a tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code of 1986, §501(c), as amended; ~~[is neither controlled by, nor under the direction of,~~

individuals or entities seeking to derive profit or gain from the organization. A nonprofit organization may be sponsored in part by a for-profit entity, but: ]

~~[(i) the for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm;]~~

~~[(ii) the for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two thirds of the board members; and]~~

~~[(iii) the organization must be free to contract for goods and services from vendors of its own choosing;]~~

~~[(D)] has a tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code of 1986, §501(c), as amended;]~~

~~[(E) does not include a public body (including the participation jurisdiction) or an instrumentality of a public body. An organization that is state or locally chartered may qualify as a nonprofit organization; however, the state or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the Board members can be public officials;]~~

~~[(F) has standards of financial accountability that conform to Attachment F of the Office of Management and Budget, Circular Number A-100 (revised) "Standards for Financial Management Systems"; and]~~

~~[(G) has among its purposes, the provision of decent housing that is affordable to low, very low, and extremely low income persons, as evidenced by its charter, articles of incorporation, resolutions or bylaws.]~~

~~(19) [(20)] Person with Special Needs—An individual [A person or family of low, very low, or extremely low income] who:~~

~~(A) is considered disabled under a state or federal law;~~

~~(B) is elderly (age 60+);~~

~~(C) is designated by the Board as experiencing a unique need for affordable, decent, safe housing that is not being met adequately by private enterprise; or [-]~~

~~(D) is legally responsible for caring for an individual described by subparagraphs (A), (B) or (C) of this paragraph and meets the income guidelines of a person of low, very low or extremely low income.~~

~~(20) [(21)] Predevelopment Costs—Reimbursable costs related to a specific eligible housing project including:~~

~~(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control, and title clearance;~~

~~(B) Pre-construction [~~Preconstruction~~] housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments architectural plans and specifications, zoning approvals, engineering studies and legal fees.~~

~~(C) Predevelopment costs do not include general operational or administrative cost.~~

~~(21) [(22)] Public Housing Authority—A housing authority established under the Texas Local Government Code, Chapter 392.~~

~~(22) [(23)] Real Property—All land, including improvements and fixtures and property of any nature appurtenant, or used in connection therewith, and every estate, interest, and right, legal or equitable therein, including leasehold interests, terms for years, and liens by way of judgment, mortgage or otherwise.~~

~~(23) [(24)] Recipient—Community housing development organization, nonprofit organization, for profit entity, local unit of government, or public housing authority that is approved by the Department to receive and administer housing trust funds in accordance with these rules.~~

~~(24) [(25)] Rural Project—A project located within an area which:~~

~~(A) is situated outside the boundaries of a PMSA or MSA; or~~

~~(B) is situated within the boundaries of a PMSA or MSA if it has a population of not more than 20,000, and does not share boundaries with an urbanized area; or~~

~~(C) has received financing or has received a commitment for financing from Texas Rural Development.~~

~~(25) [(26)] State—The State of Texas.~~

~~(26) [(27)] Total Bond Indebtedness—All single-family mortgage revenue bonds (including collateralized mortgage obligations), multifamily mortgage revenue bonds and other debt obligations issued or assumed by the Department and outstanding as of August 31 of the year of calculation, excluding:~~

~~(A) all such bonds rated Aaa by Moody's Investors Service or AAA by Standard Poor's Corporation for which the Department has no direct or indirect financial liability from the Department's unencumbered fund balances; and~~

~~(B) all other such bonds, whether rated or unrated, for which the Department has no direct or indirect financial liability from the Department's unencumbered fund balances, unless Moody's or Standard Poor's has advised the Department in writing that all or a portion of the bonds excluded by this clause should be included in a determination of total bond indebtedness.~~

~~(27) [(28)] Unencumbered Fund Balances—Uncommitted amounts on deposit in each independent or separate unrestricted fund established by the housing finance division or its administrative component units.~~

~~[(A) the sum of the balances resulting at the end of each Department fiscal year from deducting the sum of bond indenture and credit rating restrictions and liabilities from the sum of amounts on deposit in indenture funds and other tangible and intangible assets of each Department housing bond program; and ]~~

~~[(B) uncommitted amounts on deposit in each independent or separate unrestricted fund established by the housing finance division or its administrative component units.]~~

~~(28) [(29)] Very low Income Persons and Families—Persons and families earning not more than 60% of the area median income as determined by the United States Department of Housing and Urban Development, with allowances for family size.~~

~~§51.5. Allocation of Housing Trust Funds.~~

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

(d) At least 35% of the housing trust funds allocated each funding cycle shall be distributed to community housing development organizations. This 35% will be based on the amount of funds remaining after funds identified in subsection (c) of this section are allocated. In the event that there is an insufficient number of qualifying applicants for this allocation, any remaining funds will then be made available to other qualifying applicants, as outlined in the eligibility section of [specified in] the Program Guidelines as amended each program cycle.

(e)-i) (No change.)

#### §51.6. *Basic Eligible Activities.*

The Department shall make grants and loans from the Housing Trust to Eligible Applicants for purposes consistent with §51.2 [§5.2] of this title (related to Program Goals and Objectives). Eligible uses of trust funds include, but are not limited to the following:

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

~~[(4) To support Department sponsored activities authorized under the Act, subject to the requirements of the Housing Trust Fund and implementing regulations.]~~

#### §51.7. *Ineligible Activities and Restrictions.*

Any activity is ineligible for housing trust funds unless the activity will result in the financing, acquisition, rehabilitation, or development of affordable, decent, safe, and sanitary housing for low, very low, and extremely low income persons or families, or will provide capacity building to community housing development organizations and nonprofit organizations engaged in developing housing for low, very low, and extremely low income persons and families. Ineligible activities and restrictions include the following:

(1) General Government Expenses. Housing trust funds may not be used to carry out the regular responsibilities of the ~~unit of general~~ local unit of government.

(2) (No change.)

(3) Relocation and Prohibition against Involuntary Displacement. Housing trust funds shall not be utilized on a project that has the effect of permanently and involuntarily displacing low, very low, and extremely low income persons and families. All such persons and families who are resident tenants of a project development or building prior to the submission of a Housing Trust Fund application must be provided the opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the building or development upon completion of the project. The property owners must provide all persons and families affected by project development with the following:

(A) Written notices of the right to remain or the need to relocate;

(B) Payment of the costs of temporary relocation; and

(C) Payments for those persons and families which are required to move permanently.

(4) (No change.)

#### §51.8. *Maintenance of Effort.*

(a) Housing Trust Fund monies [trust funds] shall not be used ~~[by local government]~~ to supplant or replace existing housing funds for housing for low, very low, and extremely low income persons and families.

(b) If other federal funds are available to a local unit of government applicant for any proposed housing project, the local unit of government applicant shall affirmatively show that it has

undertaken reasonable efforts to secure such funding for the proposed housing project.

#### §51.9. *Application Procedure and Requirements.*

(a) The Department shall, from time to time, solicit applications for loans and grants from Eligible Applicants.

(b) Housing development applicants [The applicant] shall submit, in an application form and process prescribed by the Department, project information including, but not limited to:

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

(c) (No change.)

(d) Capacity building and technical assistance applicants will be required to submit a specific application as outlined in the Program [form that will follow] Guidelines [guidelines] as amended each program cycle. [prescribed by the Department.]

#### §51.10. *Criteria for Funding.*

(a) In considering applications for funding, the Department ~~[and Board shall]~~ considers [eonsider] the following:

(1) Threshold Criteria. To be considered for funding, a housing project must first demonstrate that it meets each of the following [all the] threshold criteria [set forth as follows]:

(A) (No change.)

(B) The applicant provides evidence of its ~~[their]~~ ability to carry out the project in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing development.

(C) (No change.)

(2) Evaluation Factors. The Board and Department ~~considers [will eonsider]~~ applications for housing trust funds using the following system:

(A) Applications are ~~[will be]~~ evaluated against the threshold criteria during each funding cycle. Applications not meeting the threshold criteria are ~~[will be]~~ returned to the applicant without further review.

~~[(B) Applications not meeting the threshold criteria may be revised and subsequently resubmitted for consideration.]~~

(B) ~~[(C)]~~ Applications are ~~[will then be]~~ ranked according to the criteria hereinafter set forth:

(i) leveraging of funds: the extent to which the project will leverage State funds with other resources, including federal resources, and private sector funds;

(ii) community involvement: the extent to which the project involves a broad range of community representatives, including low, very low, and extremely low income individuals who may expect to reside in the proposed housing project, in the design and development of the proposed housing project;

(iii) very low income targeting: the extent to which the project will provide safe, decent and affordable housing to very low income persons and families;

(iv) long term affordability: the extent to which the project will ensure the longest possible use of assisted units as affordable housing for low, very low, and extremely low income persons and families;

(v) housing need: the geographical area of the State to be served and the extent to which there is a need for safe, decent, and affordable housing in this area;

(vi) special housing needs: the extent to which the project provides affordable housing and services for persons with special needs;

(vii) financial feasibility: the extent to which the project is financially feasible, taking into consideration the contribution of housing trust funds, as determined in accordance with generally accepted underwriting standards as promulgated by federal insurers or other similar guarantors of such projects;

(viii) need for funds: the extent to which other resources are not available in the locality to carry out the housing project;

(ix) minority participation: the extent to which the project has minorities and/or women participating in the ownership, development or management of the project;

(x) energy conservation: the extent to which the project design promotes energy and/or water conservation with the result of reducing residents' utility costs;

(xi) innovation: the extent to which the project involves a new or particularly innovative approach for meeting housing needs in the area being served;

(xii) services: the extent to which the project includes a program of services for occupants of the proposed housing including, but not limited to, programs that address home health care, mental health service, alcohol and drug treatment, job training, child care and case management and provides for tenant involvement in the development and administration of the services;

(xiii) cost-effectiveness: the extent to which the project is cost-effective and provides the greatest number of affordable, decent, safe and sanitary low, very low, and extremely low income housing units for the least amount of housing trust funds expended or committed;

(xiv) barriers to affordable housing: the extent to which local governments propose to eliminate or reduce barriers to affordable housing created by existing public policies, such as zoning regulations, building permit requirements, etc.;

(xv) geographic balance: the extent to which the project will contribute to achieving a fair and equitable geographic distribution of housing trust funds.

(C) An application that does not meet the threshold criteria may be revised and resubmitted for consideration in subsequent funding cycles.

(3) The Department will not recommend an application for funding if it includes a principal who is or has been:

(A) Barred, suspended, or terminated from procurement in a state or federal program and listed in the List of Parties Excluded from Federal Procurement of Non-procurement Programs;

(B) The subject of enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with a state or federal agency or another governmental entity; or

(C) If the applicant has unresolved compliance or audit findings related to previous or current funding agreements with the Department.

(b) The Department assigns ~~[shall establish a system for assigning]~~ a weight to the ~~[preceeding]~~ evaluation factors in subsection (a)(2)(B) of this section and gives ~~[giving]~~ priority to funding applications ~~[application]~~ according to the weight assigned.

(c) The Board ~~has~~ has ~~[shall have]~~ final approval on all recommendations for funding.

(d) Eligible Applicants that have been approved for funding and that require a material change in the project description must provide a written request for the material change to the Department prior to implementing the change.

(1) A material change may include, but is not limited to, the following:

(A) Change in project site;

(B) Change in the number of units or set asides; and

(C) Increase in funding.

(2) Failure to comply with this subsection may result in the termination of funding to the applicant.

(e) The Executive Director of the Department may approve nonmaterial changes in the project description and in the scope of work to be performed for clarification and necessary administrative adjustments, provided that any such change does not increase the dollar amount of the original award of funds.

#### *§51.11. Prohibition against Discrimination.*

(a) No person shall on the ground of race, color, family composition (reasonable occupancy standards are acceptable), national origin or sex, be excluded ~~from~~ [for] participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with housing trust funds made available under the Act.

(b) No person who holds a voucher or certificate of eligibility for assistance pursuant to Section 8 of the United States Housing Act of 1937, as amended, because of the status of such person as holder of voucher or certificate, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with housing trust funds made available under the Act.

(c) Whenever the Department determines that a Recipient of housing trust funds has failed to comply with subsections ~~[subsection]~~ (a) or (b) of this section, the Department shall attempt to secure compliance. If within a reasonable period of time the Recipient fails to comply, the Department may:

(1) refer the matter to the State Attorney General or the Texas Commission on Human Rights, whichever is applicable and in accordance with the laws of the State of Texas, with a recommendation that an appropriate civil action be instituted; or

(2) take such other action as may be provided by law.

#### *§51.12. Other Program Requirements.*

(a) (No change.)

(b) Conflict of Interest.

(1) (No change.)

(2) Persons Covered. The conflict of interest provisions of paragraph (1) of this subsection apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of the Recipient. ~~[Department or State of Texas. These provisions shall not, however, restrict the Department from utilizing trust funds as authorized under §51.6(d) of this title (relating to Basic Eligible Activities).]~~

(c) Right to Inspect and Monitor.

(1) The Department may, at any time, inspect and monitor the records and the work of the project so as to ascertain the level of project completion, quality of work performed, inventory levels of stored material, compliance with the approval plans and specifications, property standards, and program rules and requirements.

(2) Any unsatisfactory findings in the inspection may result in a reduction in the amount of funds requested or termination of funding.

(3) Within 45 days of completion of any construction, and before the release of any retainage funds, Recipients are required to notify the Department of the completion by submitting a certificate of completion and any other documents required by program guidelines, including, but not limited to, the following:

(A) Architect's Certification of Substantial Compliance;

(B) Recipient's Certificate of Substantial Completion;  
and

(C) Recipient's and supplier's Release of Lien and warrantee.

(4) The Department performs a final close-out visit and assists owners in preparing for long-term compliance requirements upon completion of project development.

(d) Compliance.

(1) Recipient must maintain compliance with each of its written agreements with the Department.

(2) Restrictions are stated and enforced through a regulatory agreement.

(3) These restrictions include, but are not limited to the following:

(A) Rent restrictions;

(B) Record keeping and reporting; and

(C) Income targeting of tenants.

(4) The Department monitors compliance with project restrictions and any other covenants by Recipient in any Housing Trust Fund agreement. An annual per unit compliance fee is charge for this review.

(5) Prior to the leasing of any units, project owners are provided guidance and training by the Department to assist project owners in adhering to restriction and reporting requirements.

*§51.13. Citizen Participation.*

(a) The Department ~~holds~~ ~~[shall hold]~~ at least one public hearing annually, and additional public hearings prior to consideration of ~~[if]~~ any proposed significant changes to these rules, to solicit comments from the public, eligible applicants, and Recipients on the Department's rule, guidelines, and procedures for the Housing Trust Fund.

(b) The Department ~~considers~~ ~~[shall consider]~~ the comments it receives at public hearings. The Board ~~[shall]~~ annually ~~reviews~~ ~~[review]~~ the performance, administration, and implementation of the Housing Trust Fund in light of the comments it receives. At this time the Board ~~[shall]~~ also ~~reviews~~ ~~[review]~~ funding goals and set-asides established in §51.5 of this title (relating to Allocation of Housing Trust Funds).

(c) (No change.)

(d) Applicants will be notified as to whether or not they are being recommended for funding seven days prior to the date recommendations are made to the Board. Applicants may appeal the funding recommendation to the Board at the meeting of the Board at which the recommendations are presented.

(e) Complaints will be handled in accordance with the Department's complaint procedures of 10 TAC §1.2 [§12].

*§51.14. Records To Be Maintained.*

(a) Recipients are required, at least on an annual basis, to submit to the Department information including, but not limited to [The Department shall maintain the following records on projects assisted with housing trust funds]:

[(1) A copy of all applications submitted in response to a request for funding proposals;]

[(2) A copy of a written agreement with each Recipient of housing trust funds indicating the total number of dwelling units which will be financed, rehabilitated, acquired, constructed, or assisted with housing trust funds;]

[(3) The total cost of the project, including both housing trust funds and other funds;]

[(4) The agreement with the Recipient on the affordability of the dwelling unit;]

[(5) The size and income of the household for each unit occupied by a low, very low, or extremely low income person or family;]

[(6) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for and benefited from any project or activity funded in whole or in part with housing trust funds made available under the Act. These data shall be updated annually.]

[(b) The Department shall also require, at least on an annual basis, a report from Recipients of housing trust funds. This report shall provide information including, but not limited to:]

(1) such information as may be necessary to determine whether a project funded with housing trust is benefiting low, very low, and extremely low income persons and families;

(2) the monthly rent or mortgage payment for each dwelling unit in each structure assisted with housing trust funds; ~~and~~ ]

(3) such information as may be necessary to determine whether Recipients have carried out their housing activities in accordance with the requirements and primary objectives of the housing trust fund and implementing regulations; [-]

(4) The size and income of the household for each unit occupied by a low, very low, or extremely low income person or family;

(5) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for and benefited from any project or activity funded in whole or in part with housing trust funds made available under the Act. This data shall be updated annually; and

(6) A final statement of accounting upon completion of the project.

(b) Recipients shall maintain records pertinent to the tenant's files for a period of at least three years.

(c) Recipients shall maintain records pertinent to Housing Trust Fund funding awards including but not limited to project costs and certification work papers for a period of at least five years.

(d) Recipient shall maintain records in an accessible location.

§51.17. *Funding Cap.*

No more than 25% of the housing trust funds may be allocated to any single project for each/any calendar year. [The Board in its discretion may waive the provision of this section.]

§51.18. *Waiver .*

The Board may, in its discretion, waive any one or more of the rules set forth in this chapter to accomplish its legislative mandates or for other compelling circumstances [and/or bond criteria].

This 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 November 23, 1999.

TRD-9908011

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 475-3726



**10 TAC §§51.4, 51.15, 51.16**

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§51.4, 51.15, 51.16, concerning the Housing Trust Fund Rules. The repeals by the Department are proposed to provide clarification and corrections for the allocation of Housing Trust funds.

Daisy Stiner, Executive Director of the Department, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Stiner also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of repealing these rules will be to provide clarification and corrections for allocation of housing trust funds within the State of Texas and to enhance the State's ability to provide affordable housing. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposed repeals may be submitted to Keith Hoffpauir, Program Manager, Housing Trust Fund Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711.

The repeals are proposed under the Texas Government Code, Chapter 2306, which provides the Texas Department of Housing and Community Affairs with the authority to adopt rules governing the administration of the department and its programs.

The Texas Administrative Code is affected by the proposed repeals.

§51.4. *Availability of Funds and Schedule.*

§51.15. *Public Access to Program Records.*

§51.16. *Department Funding.*

This 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 November 23, 1999.

TRD-9908012

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 475-3726



**TITLE 13. CULTURAL RESOURCES**

**Part 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION**

**Chapter 3. STATE PUBLICATIONS DEPOSITORY PROGRAM**

**13 TAC §§3.1-3.6, 3.8, 3.9, 3.12, 3.15**

The Texas State Library and Archives Commission proposes amendments to 13 TAC §§3.1 - 3.6, 3.8, 3.9, 3.12, and 3.15, relating to the Texas State Publications Depository Program.

The proposed revisions primarily bring the State's retention periods for records and print and electronic records in closer accordance. They also clarify definitions in existing rules, remove redundant language, revise deposit requirements for specific types of publications, provide complete lists of exemptions for print and electronic publications, revise publication reporting requirements and deadlines, specify the Director and Librarian's authority to approve exemptions from minimum standards for print depository libraries, and add a minimum standard requirement for electronic depository libraries.

Michael Piper, Library Resource Sharing Division Director, has determined that for the first five years the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Mr. Piper also has determined that for each of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be to clarify rules pertaining to electronic and print state publications and records, and to protect the interests of the state as required under law. There are no cost implications to either small businesses, micro-businesses, or persons required to comply with the amended rules as proposed.

Comments on the amended rules may be submitted to Michael Piper, Library Resource Sharing Divisions Director, Texas State Library and Archives Commission, PO Box 12927, Austin, TX 78711-2927.

The amended rules are proposed under Government Code §441.103(b), which provides authorization for the commission to adopt rules relating to the deposit of state publications at the Texas State Library and Archives Commission, and under

Government Code §441.102(a), which provides authorization for the commission to adopt rules relating to the distribution of state publications by the Texas State Library and Archives Commission.

The amended rules affect Government Code, §§441.101 - 441.104.

§3.1. *Definitions.*

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

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

(7) Internet connection—A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard protocols listed in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community [RFC 1920 or its current successor document].

(8) (No change.)

(9) Print state publication—a state publication that is published in a format that is accessible without the use of a computer, including information published on paper, in microformat, on audio tapes, vinyl discs or audio compact discs, on videotape or film, or on any other media that is not specifically cited in this definition and that is not an electronic format as defined in this section.

(10) ~~[(9)]~~ Publicly distributed—Provided to persons outside of the agency, in print or other physical medium [media], or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency.

~~[(10)]~~ Request for Comments (RFC)—A version of an Internet specification, published as part of the "Request for Comments" (RFC) document series, the official publication channel for Internet standards documents and other publications of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.]

(11)-(12) (No change.)

(13) State publication—Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency, and is publicly distributed by or for the agency. The term does not include information the distribution of which is ~~[solely]~~ limited to contractors with or grantees of the agency, ~~[staff]~~ persons within the agency or within other government agencies, or members of the public under a request made under the open records law, Government Code, Chapter 552. ~~[The term includes but is not limited to: a publication distributed in print, on microform, as audiovisual material, as interactive media or on electronic external storage device; an on-line publication which is an index to other on-line publications, one or more text, graphic, or other digital files, or a user interface to a computer database.]~~

(14)-(16) (No change.)

(17) Uniform Resource Locators—The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community [RFC 1738 or its current successor document].

§3.2. *State Publications in Multiple Information Formats.*

When a state publication is distributed to the public ~~[available]~~ in multiple formats simultaneously, state agencies are required to provide access to or copies of ~~[a]~~ that publication to the Commission in all formats in which the publication is publicly distributed [applicable formats if all formats are publicly distributed]. State agencies are not required to provide copies to the Commission of a publication on electronic external storage devices if the state publications are made available by an Internet connection.

§3.3. *Standard Deposit Requirements for State Publications in All Formats.*

(a) State agencies are required to deposit or make accessible copies of all state publications that have not been exempted from the State Publications Depository Program [program] in §3.5 of this title (relating to Standard Exemptions for State Publications in Print Formats Only, [All Information Formats]) ~~[and]~~ , in §3.6 of this title (relating to Standard Exemptions for ~~[Depositing]~~ State Publications in Print Electronic Format Only), or under §3.7 of this title (relating to Special Exemptions). The standard number of copies to be deposited is based on the number of copies produced or the medium in which it is made available.

(b) For print state publications only:

(1) (No change.)

(2) If fewer than 300 copies are produced, four copies must be deposited with the State Publications Depository Program [program].

(c) For state publications available in electronic format ~~[only]~~ but not by an Internet connection:

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

(d) For state publications available by an Internet connection:

(1) State agencies are required to provide the Texas State Library with guaranteed access [at least one Internet connection], at no charge, to state publications available by an Internet connection ~~[that are not exempted from the program].~~

(2) State agencies must meet the following minimum requirements when providing state publications by Internet connection:

(A) Accessibility. State publications made available by an Internet connection will be accessible:

(i) by anonymous File Transfer Protocol (FTP), Telnet, Gopher, or Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in [the current standard as identified in RFC 1920, or its current successor document] Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(ii)-(iii) (No change.)

(B) (No change.)

(C) Availability. Issues [Except for state publications listed in §3.6 of this title, issues] of a serial state publication and current versions only of all other state publications will be accessible on-line by Internet connection for two [five] years from the date of release or last modification with an average availability by the Internet connection of 23 out of 24 hours, seven days a week.

(D) Supersession. For state publications that are updated as needed to keep information accurate, or that are replaced by other publications, the superseded versions must remain available by Internet connection. See §3.9(c)(2) of this title regarding updated publications.

(E) Archival publications. For those publications defined as archival (see §6.1 of this title), one copy must be submitted to the Texas State Archives in accordance with §§6.91 - 6.99 of this title.

(e) Records retention. If there is a difference in the retention period, as specified in the Texas State Records Retention Schedule (second edition or subsequent edition as applicable), for a state record that becomes a state publication because it has been publicly distributed, the greater of the two retention periods applies. State agencies are reminded that compliance with this section does not constitute compliance with records retention rules for state government records. See Texas State Records Retention Schedule (second edition or subsequent edition as applicable) and §§6.1 - 6.10 of this title for complete information about records retention requirements.

#### §3.4. Special Depository Requirements for Print State Publications.

Except for state publications available only by an Internet connection, ~~publicly distributed~~ state publications must be deposited in the following minimum quantities regardless of the number of copies or different media originally intended to be produced by the agency. For printed state publications, agencies are expected to incorporate these deposit requirements into their printing orders.

(1) Fifty-five copies of the following state publications must be deposited with the State Publications Depository Program:

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

~~[(C) State or strategic plans (for agency services, programs within its jurisdiction);]~~

(C) ~~[(D)]~~ Codes (published as compendia);

(D) ~~[(E)]~~ Regulations (published as compendia); and

(E) ~~[(F)]~~ Directories (of facilities, services, providers).

(2) Three copies of annual financial reports, ~~and~~ annual operating budgets, and state or strategic plans (for agency services, programs within its jurisdiction) must be deposited with the State Publications Depository Program.

(3) (No change.)

#### §3.5. Standard Exemptions for State Publications in Print Format Only [All Information Formats].

The ~~[For all formats, the]~~ Director and Librarian has exempted from deposit requirements certain kinds of state publications distributed in print format ~~[from deposit requirements]~~. A state agency is not required to deposit these state publications in print format ~~[or provide access to state publications or other information in the materials listed as follows]:~~

(1)-(5) (No change.)

(6) calendars;

(7) ~~[(6)]~~ contracts;

(8) ~~[(7)]~~ correspondence;

(9) course schedules;

(10) certain curriculum catalogs (departmental only);

(11) ~~[(8)]~~ drafts of plans, reports;

(12) ~~[(9)]~~ fiction;

(13) forms;

(14) ~~[(10)]~~ fund raising materials;

(15) ~~[(11)]~~ grant proposals, bids;

(16) hearings (transcripts of);

(17) job listings;

(18) ~~[(12)]~~ literary criticisms;

(19) ~~[(13)]~~ memorabilia;

(20) ~~[(14)]~~ memoranda (including e-mail);

(21) news or press releases;

(22) newsletters and mailing lists meant only for employee, faculty or student use;

(23) ~~[(15)]~~ notices of sale;

(24) ~~[(16)]~~ daily or weekly periodicals (which are summarized in monthly or quarterly publications);

(25) personnel manuals;

(26) ~~[(17)]~~ photographs;

(27) ~~[(18)]~~ poetry;

(28) policy handbooks (intended for internal use only);

(29) programs (announcements of);

(30) ~~[(19)]~~ recruitment materials;

(31) ~~[(20)]~~ reprints (reissued without change);

(32) ~~[(21)]~~ stationery;

(33) ~~[(22)]~~ student publications (those produced by students); ~~and~~

(34) telephone directories (meant only for employee, faculty, or student use); and

(35) ~~[(23)]~~ volunteer newsletters.

#### §3.6. Standard Exemptions for [Depositing] State Publications in Electronic [Print] Format Only.

The Director and Librarian has exempted from deposit requirements certain kinds of state publications distributed in electronic ~~[print]~~ format. A state agency is not required to deposit or provide access to these state publications in electronic ~~[print]~~ format ~~[but must make them available in electronic format if they are publicly distributed by an Internet connection or on electronic external storage devices]:~~

(1) agendas ~~[calendars]~~;

(2) advertisements ~~[charts]~~;

(3) alumni materials ~~[course schedules]~~;

(4) announcements ~~[certain curriculum catalogs (departmental only)]~~;

(5) artwork ~~[forms]~~;

(6) contracts ~~[hearings (transcripts of)]~~;

(7) correspondence ~~[job listings]~~;

(8) drafts of plans, reports ~~[news or press releases]~~;

(9) fiction ~~[newsletters and mailing lists meant only for employee, faculty, or student use]~~;

(10) fund raising materials ~~[personnel manuals]~~;

(11) grant proposals, bids ~~[policy handbooks (student and faculty)]~~;



- and] (12) literary criticisms; [programs (announcements of);
- (13) non-print memorabilia; [telephone directories  
(meant only for employee, faculty, or student use])
- (14) memoranda (including e-mail);
- (15) notices of sale;
- (16) daily or weekly periodicals (which are summarized  
in monthly or quarterly publications);
- (17) photographs;
- (18) poetry;
- (19) recruitment materials;
- (20) reprints (reissued without change);
- (21) stationery;
- and (22) student publications (those produced by students);
- (23) volunteer newsletters.

§3.8. *State Publications Contact Person.*

Each state agency must designate in writing or via the Internet one person [or more persons] to act as liaison with the State Publications Depository Program [program:] for print publications and one person to act as liaison with the State Publications Depository Program for electronic publications; an agency may elect to designate the same person to fulfill the liaison duties for both print and electronic publications. Agencies may request, by writing to the Program, to designate additional liaisons in cases where [The number of liaisons designated by an agency should reflect] the size and complexity of the agency's [it's] publishing activities merit additional coverage. Each liaison must deposit all state publications within the scope of his or her designated responsibility, provide information and resolve problems about them, maintain records of the agency's state publications, negotiate exemptions from deposit requirements, and submit publication reporting forms.

§3.9. *Publication Reporting Form.*

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

(c) Each state publication made available by Internet connection must be reported on an electronic form within five [one] working days [day]:

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

§3.12. *Minimum Standards for Designated Print Depository Libraries.*

(a) To meet minimum standards, a designated print depository library must:

- (1) process and shelve physical state publications within 30 days of receipt;
- (2) check all shipping lists to insure that physical state publications are received, and if not, promptly claimed;
- (3) mark and date physical state publications received in shipments to distinguish them from state publications received from other sources;
- (4) provide an orderly, systematic record of depository holdings and subsequent arrangement of state publications;
- (5) furnish a minimum of 400 linear feet of shelving for depository state publications;

(6) designate a professional librarian to be responsible for state publications and to act as liaison with the Texas State Library;

(7) provide reference service from state publications to all Texas residents;

(8) provide access to state publications through reference tools, public catalogs, and national, state, and local computer networks which is comparable with that of similar information available through the library;

(9) implement a circulation and interlibrary loan policy for state publications which is consistent with the institution's general loan policy;

(10) retain print [physical] state publications for a minimum of five years unless otherwise instructed, and submit a disposal list in electronic format to the Texas State Library for distribution before such state publications are discarded;

(11) provide appropriate equipment for the retrieval, use and storage of all state publications;

(12) publicize state publications through displays and announcements of significant new state publications; and

(13) display a sign, identifying its depository library status.

(b) The Director and Librarian may exempt print depository libraries from some or all of the minimum standards defined in this section upon written request from the print depository library. Justification for such exemptions may include factors such as:

(1) cooperative agreements made between print depository libraries regarding alternate methods of providing state publications to citizens of the state or

(2) extenuating circumstances at a print depository library that constitute an undue burden on the library in managing its state publications collection.

§3.15. *Minimum Standards for Designated Electronic Depository Libraries.*

To meet minimum standards, a designated electronic depository library must:

(1) maintain an Internet connection available to the public which meets the provisions of §1.100 of this title (relating to Standards for Local Library Internet Access); except that electronic depository libraries need not meet the standards in §1.100(b)(5)(B)(7) and (8) [7 and 8] regarding staff access to Internet services and Internet accessibility of the local catalog;

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

(9) display a sign, identifying its electronic depository library status; and [-]

(10) provide print copies of Internet-accessible electronic publications to requesting libraries in Texas upon demand to fill patron requests.

This 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 November 23, 1999.

TRD-9908014

Raymond Hitt

Assistant State Librarian



## TITLE 22. EXAMINING BOARDS

### Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### Chapter 501. PROFESSIONAL CONDUCT

The Texas State Board of Public Accountancy (Board) proposes the repeal of Chapter 501, §§501.1-501.4, 501.11-501.15, 501.21-501.26, 501.31-501.33, 501.36-501.43, and 501.45-501.50, concerning Professional Conduct. The repeal is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

The proposed repeal will allow the Board to rewrite and relocate the rules contained in this Chapter.

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 and to local governments expected as a result of enforcing or administering the repeal will be zero because the rules are only being re-written and relocated within the Chapter and because the repeals impose no additional burden on anyone;

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the repeals will be zero because the rules are only being re-written and relocated within the Chapter and because the repeals impose no additional burden on anyone; and,

C. the estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the repeals will be zero because the rules are only being re-written and relocated within the Chapter and because the repeals impose no additional burden on anyone.

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 that the rules contained in Chapter 501 will be re-written and relocated in a more logical manner. The probable economic cost to persons required to comply with the repeals will be zero because the rules are only being re-written and relocated within the Chapter and because the repeals impose no additional burden on anyone.

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

Mr. Treacy has determined that the proposed repeals will not have an adverse economic effect on small businesses because the rules are only being re-written and relocated within the Chapter and because the repeals impose no additional burden on anyone. 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 repeals are 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 repeals are to be

adopted; and if the repeals 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 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 Board requests comments on the proposed repeals from any interested person. Comments must be received at the Board no later than noon on December 28, 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.

#### Subchapter A. GENERAL PROVISIONS

##### 22 TAC §§501.1-501.4

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas 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, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

§501.1. Preamble.

§501.2. Definitions.

§501.3. Applicability.

§501.4. Practice of Public Accountancy.

This 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 November 29, 1999.

TRD-9908112

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



#### Subchapter B. PROFESSIONAL PRACTICES

##### 22 TAC §§501.11-501.15

*(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, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

- §501.11. *Independence.*
- §501.12. *Integrity and Objectivity.*
- §501.13. *Payment of Commissions.*
- §501.14. *Commission and Receipt of Other Compensation.*
- §501.15. *Services for Fees.*

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

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 William Treacy  
 Executive Director  
 Texas State Board of Public Accountancy  
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## Subchapter C. PROFESSIONAL STANDARDS

### 22 TAC §§501.21-501.26

*(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, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

- §501.21. *Competence.*
- §501.22. *Auditing Standards.*
- §501.23. *Accounting Principles.*
- §501.24. *Other Professional Standards.*
- §501.25. *Mandatory Continuing Professional Education.*
- §501.26. *Incomplete Occupations.*

This 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. CLIENT RECORDS

### 22 TAC §§501.31-501.33

*(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, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

- §501.31. *Confidential Client Communications.*
- §501.32. *Records.*
- §501.33. *Working Papers.*

This 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. OTHER RESPONSIBILITIES AND PRACTICES

### 22 TAC §§501.36-501.43, 501.45-501.49

*(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, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

- §501.36. *Reportable Events.*
- §501.37. *Practicing Without a License or Through an Unregistered Entity.*
- §501.38. *Ownership in a Passive Interest.*
- §501.39. *Frivolous Complaints.*
- §501.40. *Registration Requirements.*
- §501.41. *Discreditable Acts.*
- §501.42. *Acting through Others.*
- §501.43. *Advertising.*
- §501.45. *Competitive Bidding.*
- §501.46. *Form of Practice.*
- §501.47. *Firm Names.*

§501.48. *Responses.*

§501.49. *Complaint Notice.*

This 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



## 22 TAC §501.50

*(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 repeals are proposed under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by these proposed repeals.

§501.50. *Contract.*

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

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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 501. RULES OF PROFESSIONAL CONDUCT

### Subchapter A. GENERAL PROVISIONS

#### 22 TAC §501.51

The Texas State Board of Public Accountancy (Board) proposes new §501.51 concerning Preamble and General Principles. This new rule is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

Proposed new §501.51 will allow old Rule 501.1 to be relocated and written in clearer language.

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 none because this is a relocated rule and only grammatical changes were made;

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 none because this is a relocated rule and only grammatical changes were made; and

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 none because this is a relocated rule and only grammatical changes were made.

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's purpose in drafting the Rules of Professional Conduct will be clarified though more precise language.

The probable economic cost to persons required to comply with the new rule will be none because this is a relocated rule and only grammatical changes were made.

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 noon on December 23, 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 this is a relocated rule and only grammatical changes were made. 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, Section 901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and Section 901.156 which authorizes the board to promulgate rules regarding professional conduct.

§501.51. Preamble and General Principles.

(a) These rules of professional conduct were promulgated under the Public Accountancy Act, which directs the Texas State Board of Public Accountancy to promulgate rules of professional conduct "in order to establish and maintain high standards of competence and integrity in the practice of public accountancy and to insure that the conduct and competitive practices of licensees serve the purposes of the Act and the best interest of the public."

(b) The services usually and customarily performed by those in the public, industry, or government practice of accountancy involve a high degree of skill, education, trust, and experience which are professional in scope and nature. The use of professional designations carries an implication of possession of the competence associated with a profession. The public, in general, and the business community, in particular, rely on this professional competence by placing confidence in reports and other services of accountants. The public's reliance, in turn, imposes obligations on persons utilizing professional designations, both to their clients and to the public in general. These obligations include maintaining independence of thought and action, continuously improving professional skills, observing, where applicable, generally accepted accounting principles and generally accepted auditing standards, promoting sound and informative financial reporting, holding the affairs of clients in confidence, upholding the standards of the public accountancy profession, and maintaining high standards of personal and professional conduct in all matters.

(c) The board has an underlying duty to the public to insure that these obligations are met in order to achieve and maintain a vigorous profession capable of attracting the bright minds essential to serving adequately the public interest.

(d) These rules recognize the First Amendment rights of the general public as well as licensees and do not restrict the availability of accounting services. However, public accountancy, like other professional services, cannot be commercially exploited without the public being harmed. While information as to the availability of accounting services and qualifications of licensees is desirable, such information should not be transmitted to the public in a misleading fashion.

(e) The rules are intended to have application to all kinds of professional services performed for the public in the practice of public accountancy, including services relating to accounting, auditing and other assurance services, taxation, financial advisory services, litigation support and management advice and consultation, to mention only the broad areas in which services are currently being offered by those in the practice of public accountancy. A licensee who is engaged in the practice of public accountancy outside the United States may conduct that practice in accordance with the standards of professional conduct applicable to the country in which he is practicing.

(f) Finally, these rules also recognize the duty of certified public accountants to refrain from committing acts discreditable to the profession. These acts, whether or not related to the accountant's practice, impact negatively upon the public's view of the profession.

(g) In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions and appropriate committees of professional organizations, but will not be bound thereby.

This 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 November 29, 1999.

TRD-9908118

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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

◆ ◆ ◆  
**22 TAC §501.52**

The Texas State Board of Public Accountancy (Board) proposes new §501.52 concerning Definitions. This new rule is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

Proposed new §501.52 will allow unnecessary definitions from old Rule 501.2 to be eliminated, grammatical changes to be made to existing definitions, a technically correct definition of "financial statement" to be used, and the rest of the definitions to be transferred from old Rule 501.2.

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 none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made;

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 none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made; and

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 none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made.

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 an accurate list of definitions will be used in the Rules of Professional Conduct. The probable economic cost to persons required to comply with the new rule will be none in that the Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made.

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 noon on December 23, 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 Rule is only being relocated, unnecessary definitions are being deleted, and grammatical changes are being made. 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, Section 901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and Section 901.156 which authorizes the board to promulgate rules regarding professional conduct.

§501.52. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) Act—The Public Accountancy Act, Chapter 901, Occupations Code (Vernon's 1999).

(2) Advertisement—A message which is transmitted to persons by, or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or license holder to perform professional services.

(3) Board—The Texas State Board of Public Accountancy.

(4) Certificate or registration holder—The holders of all currently valid:

(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pursuant to the Act, or pursuant to corresponding provisions of a prior Act; and

(B) registrations with the board for the practice of public accounting in this state.

(5) Charitable organization—An organization which has been granted tax exempt status under the Internal Revenue Code of 1986, §501(c), as amended.

(6) Client —

(A) The person or entity which retains a certificate or registration holder for the performance of professional services regardless of the fee arrangement;

(B) any person or entity upon whose financial statements the certificate or registration holder is retained to report or opine, whether or not this is the same person or entity which retains the certificate or registration holder.

(7) Commission—Compensation for recommending or referring any product or service to be supplied by another person.

(8) Contingent fee—A fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a certificate or registration holder's non-contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority.

(9) Financial statements—A presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles. For the purposes of this definition, financial forecasts, projections and similar presentations and financial presentation included in tax returns are not financial statements.

(10) Firm—A proprietorship, partnership, or professional or other corporation, or other business engaged in the practice of public accountancy.

(11) Good standing—Compliance by a certificate or registration holder with the Board's licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the certificate or registration holder must be in compliance with all the provisions of the board order to be considered in good standing.

(12) Licensee—The holder of a license issued by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior act.

(13) Person—An individual, partnership, corporation, registered limited liability partnership, or limited liability company.

(14) Practice of public accountancy—The practice of public accountancy includes the client practice of public accountancy and the industry or government practice of public accountancy.

(A) Client Practice. Client practice of public accountancy is the offer to perform or the performance by a certificate or registration holder for a client or a potential client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(i) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof;

(ii) the furnishing of management or financial advisory or consulting services;

(iii) the preparation of tax returns or the furnishing of advice or consultation on tax matters;

(iv) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and/or

(v) litigation support services.

(B) Industry or government practice. Industry or government practice of public accountancy is:

(i) the preparation of, or reporting on, financial statements (including historical or prospective financial statements or any element thereof) by an individual licensed under the Act, of the individual's employer or an entity affiliated with the employer, when the financial statement or report is to be used by an investor, a third party, or a financial institution;

(ii) the preparation of a tax return of the individual's employer or an entity affiliated with the employer, if the tax return is filed with a taxing authority; or

(iii) the supervision of those activities described in clauses (i) and (ii) of this subparagraph.

(C) A certificate or registration holder not engaged or employed to any extent in either the client practice of public accountancy or the industry or government practice of public accountancy is not engaged in the practice of public accountancy. Furthermore, the preparation of reports exclusively for internal use by the management and/or board of directors of the individual's employer or an entity affiliated with the employer is not the practice of public accountancy.

(D) For purposes of this section, an entity shall be deemed "affiliated with" a licensee's employer only if, and so long as, the employer (directly or indirectly through another entity affiliated with the employer) possesses the power to direct the management of the entity through ownership of a majority of the voting securities or other applicable voting equity interests of the entity.

(15) Practice unit—An office of a firm required to be registered with the board for the purpose of practicing public accountancy.

(16) Professional services—Any services performed or offered to be performed in the course of the practice of public accountancy.

(17) Report—When used with reference to financial statements, means either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the person or firm issuing such language; and it includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special knowledge or competence.

This 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

Earliest possible date of adoption: January 9, 2000

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



## **22 TAC §501.53**

The Texas State Board of Public Accountancy (Board) proposes new §501.53 concerning Applicability of Rules of Professional Conduct. This new rule is the result of the Rule Review required by Rider 167 of the General Appropriations Act of 1997.

Proposed new §501.53 will allow old Rule 501.3 to be transferred and citations to other Rules to be updated.

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 none because it only transfers an old Rule and updates citations;

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 none because it only transfers an old Rule and updates citations; and

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 none because it only transfers an old Rule and updates citations.

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 old Rule concerning applicability of professional conduct will be updated and correct citations will be used. The probable economic cost to persons required to comply with the new rule will be none because it only transfers and updates an old Rule and its citations.

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 noon on December 23, 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 it only transfers an old Rule and updates citations. 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, Section 901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and Section 901.156 which authorizes the board to promulgate rules regarding professional conduct.

*§501.53. Applicability of Rules of Professional Conduct.*

(a) All of the rules of professional conduct shall apply to and must be observed by a certificate or registration holder engaged in the client practice of public accountancy.

(b) A licensee employed exclusively in the industry or government practice of public accountancy shall not issue, nor otherwise be associated with, financial statements that do not conform to the accounting principles described in Section 501.61 of this title (relating to Accounting Principles).

(c) The following rules of professional conduct shall apply to and be required to be observed by certificate or registration holders employed exclusively in the industry or government practice of public accountancy, and to certificate or registration holders not engaged in the practice of public accountancy:

(1) Section 501.71 of this title (relating to Integrity and Objectivity);

(2) Section 501.72 of this title (relating to Competence);

(3) Section 501.76 of this title (relating to Acting through Others);

(4) Section 501.90 of this title (relating to Discreditable Acts);

(5) Section 501.92 of this title (relating to Frivolous Complaints);

(6) Section 501.93 of this title (relating to Responses); and

(7) Section 501.94 of this title (relating to Mandatory Continuing Education Reporting).

This 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



## 22 TAC §501.54

The Texas State Board of Public Accountancy (Board) proposes new §501.54 concerning Conversion Chart and Savings Clause.

Proposed new §501.54 will allow the cites from the repealed Rules of Professional Conduct to be paired with their new cites and for actions taken by the Board under the old Rules to be valid.

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 none because it is just a conversion chart.

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 none because it is just a conversion chart.

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 none because it is just a conversion chart.

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 licensees will be able to pair up the old Rules with their revised counterparts. The probable economic cost to persons required to comply with the new rule will be none because it is just a conversion chart.

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 noon on December 23, 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 it is just a conversion chart. 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, Section 901.151 (Vernon 1999) which provides the agency with the authority to adopt rules deemed necessary or advisable to effectuate the Act and Section 901.156 which authorizes the board to promulgate rules regarding professional conduct.

### §501.54. Savings Provisions and Disposition Table.

(a) Repeal or amendment of Chapter 501 shall not abate any pending claims, liabilities or prosecutions.

(b) The following table shows the disposition of board rules in Chapter 501:

Figure: 22 TAC §501.54(b)

This 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

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





## Subchapter B. PROFESSIONAL STANDARDS

### 22 TAC §501.60

The Texas State Board of Public Accountancy (Board) proposes new §501.60, concerning Auditing Standards. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.60 will allow old §501.22 to be transferred and one minor redundancy to be eliminated.

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 none because it only transfers and grammatically changes an old rule;

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 none because it only transfers and grammatically changes an old rule, and;

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 none because it only transfers and grammatically changes an old rule.

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 old §501.3 will have updated citations to other Rules of Professional Conduct. The probable economic cost to persons required to comply with the new rule will be none because it only transfers and grammatically changes an old 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 requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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 it only transfers and grammatically changes an old 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 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

#### §501.60. Auditing Standards.

A certificate or registration holder shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an auditor with respect to such financial statements, unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organizations, Programs, Activities and Functions issued by the United States General Accounting Office, and in other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements must be justified.

This 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



### 22 TAC §501.61

The Texas State Board of Public Accountancy (Board) proposes new §501.61, concerning Accounting Principles. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.61 will allow old §501.23 to be relocated and one minor grammatical change to be made.

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 none because the Rule is only being relocated and grammatically corrected;

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 none because the Rule is only being relocated and grammatically corrected; and

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 none because the Rule is only being relocated.

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 old §501.11 will be relocated and grammatically corrected. The probable economic cost to persons required to comply with the new rule will be none

because the Rule is only being relocated and grammatically corrected.

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 noon on December 23, 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 Rule is only being relocated and grammatically corrected. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

#### §501.61. Accounting Principles.

A certificate or registration holder shall not issue a report asserting that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the certificate or registration holder can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the certificate or registration holder's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the generally accepted accounting principles would result in a misleading statement. For purposes of this section, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

This 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

#### **22 TAC §501.62**

The Texas State Board of Public Accountancy (Board) proposes new §501.62, concerning other Professional Standards. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.62 will allow old §501.24 to be relocated.

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 none because it is only relocating §501.24;

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 none because it is only relocating §501.24; and

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 none because it is only relocating §501.24.

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 §501.24 will be relocated into the reorganized rules of professional conduct. The probable economic cost to persons required to comply with the new rule will be none because it is only relocating §501.24.

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 noon on December 23, 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 it is only relocating Rule 501.24. 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 section is proposed 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 §901.156

which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.62. Other Professional Standards.

A certificate or registration holder in the performance of consulting services, accounting and review services, or any other attest service shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be interpreted by:

(1) Statements on Standards on Consulting Services (SSCS) issued by the American Institute of Certified Public Accountants;

(2) Statements on Standards for Accounting and Review Services (SSARS) issued by the American Institute of Certified Public Accountants;

(3) Statements on Standards for Attestation Engagements (SSAE) issued by the American Institute of Certified Public Accountants; or

(4) similar pronouncements by other entities having similar generally recognized authority.

This 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. RESPONSIBILITIES TO CLIENTS

### 22 TAC §501.70

The Texas State Board of Public Accountancy (Board) proposes new §501.70, concerning Independence. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.70 will allow old §501.11 to be relocated and for the language in subsection (a) to be clarified.

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 none because the Rule is only being relocated and the language in subsection (a) is being simplified;

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 none because the Rule is only being relocated and the language in subsection (a) is being simplified; and

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 none because the Rule is only being relocated and the language in subsection (a) is being simplified.

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 Rule will be relocated and subsection (a) will be easier to read and comprehend. The probable economic cost to persons required to comply with the new rule will be none because the Rule is only being relocated and the language in subsection (a) is being simplified.

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 noon on December 23, 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 Rule is only being relocated and the language in subsection (a) is being simplified. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.70. Independence.

(a) A certificate or registration holder must be independent in fact and in appearance when performing an engagement in which the certificate or registration holder will issue a report on financial statements of any client, except for a report in which lack of independence may be cured by disclosure under applicable professional standards.

(b) Independence will be considered to be impaired if, for example, during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder:

(1) had or was committed to acquire any direct or material indirect financial interest in the client;

(2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client;

(3) had any joint closely-held business investment with the client or any officer, director, partner, or principal stockholder thereof which was material in relation to the net worth of the certificate or registration holder; or

(4) had any loan to or from the client or any officer, director, partner, or principal stockholder thereof other than certain "grandfathered loans" and "other permitted loans" which will not be considered to impair independence.

(A) Grandfathered loans—Loans from a financial institution made under that institution's normal lending procedures, terms, and requirements, and that meet the other specified conditions stated herein. Grandfathered loans must, at all times, be current as to all terms and such terms shall not be renegotiated after the latest of the dates in clauses (i)-(iv) of this subparagraph. Grandfathered loans include those which:

(i) existed as of January 1, 1997;

(ii) were obtained from a financial institution prior to its becoming a client requiring independence;

(iii) were obtained from a financial institution for which independence was not required and that were later sold to a client for which independence is required; or

(iv) were obtained from a firm's financial institution client requiring independence, by a borrower prior to his or her becoming a member of the firm or registration holder, such as:

(I) loans obtained by the certificate or registration holder which are not material to the net worth of the borrower;

(II) home mortgages; and

(III) other secured loans in which the collateral must equal or exceed the remaining balance of the loan at January 1, 1997, and at all times thereafter.

(B) Other permitted loans—Personal loans obtained from a financial institution client from which independence is required which were made under that institution's normal lending procedures, terms and requirements. Such loans must, at all times, be kept current as to all terms. Other permitted loans include:

(i) automobile loans and leases collateralized by the automobile;

(ii) loans of the surrender value under terms of an insurance policy;

(iii) loans fully collateralized by cash deposits at the same financial institution; and

(iv) credit cards and cash advances on checking accounts with an aggregate balance not paid currently of \$5,000 or less.

(c) Independence also will be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing his report, the certificate or registration holder:

(1) was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of any employee;

(2) was a trustee for any pension or profit-sharing trust of the client;

(3) receives from a third party, or had a commitment to receive from the client or third party, with respect to services or products procured or to be procured by the client, other compensation which was material in relation to the aggregate normally-recurring fees charged annually to the client for reports on financial statements;

(4) had a commitment from the client for a contingent fee in violation of §501.72 of this title (relating to Contingency Fees); or

(5) had an engagement to provide for the supervision of an individual as provided for in §511.124(a)(1) of this title (relating to Acceptable Supervision).

(d) Independence will be presumed to be impaired if the certificate or registration holder performs audit services, other than for charitable organizations, for a fee that is less than the direct labor cost reasonably expected, at the time the engagement was accepted, to be incurred in performing such services. For this purpose direct labor costs means the total compensation of the person or persons expected to perform the service for the time they are expected to serve on the audit plus all payroll expenses related to such compensation.

(e) A certificate or registration holder's independence may be impaired by a close relative's association with a client. Close relatives are defined as spouses and dependent persons, whether or not related, and defined as dependent and non-dependent children, grandchildren, stepchildren, brothers, sisters, parents, grandparents, parents-in-law, and their respective spouses.

(1) Certificate and registration holders must consider whether the strength of personal and business relationships between the certificate or registration holder and the close relative would lead a reasonable person who is aware of all the facts to conclude that the situation poses an unacceptable threat to the certificate or registration holder's objectivity and appearance of independence. In reaching this conclusion, the certificate or registration holder should consider the specific association with the client.

(2) A certificate or registration holder's independence will be presumed to be impaired with respect to a client if:

(A) during the period of the professional engagement or at the time of expressing an opinion, the certificate or registration holder participating in the engagement has knowledge of a close relative who has a material financial interest in the client;

(B) during the period covered by the financial statements, during the period of the professional engagement, or at the time of expressing an opinion:

(i) the certificate or registration holder participating in the engagement has a close relative who could exercise significant influence over the operative, financial, or accounting policies of the client or is otherwise employed in a position in which the close relative's activities are normally an element of or subject to significant internal accounting controls;

(ii) a proprietor, shareholder, or individual in a managerial position in a certificate or registration holder's office, has a close relative who could exercise significant influence over the client's operating, financial, or accounting policies, if that proprietor, shareholder or individual participates in a significant portion of the engagement.

(f) The examples of impaired independence described in subsections (b)-(e) of this section are not intended to be all-inclusive.

This 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 November 29, 1999.

TRD-9908125

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



## 22 TAC §501.71

The Texas State Board of Public Accountancy (Board) proposes new §501.71, concerning Receipt of Commissions and Other Compensation. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.71 will allow old §501.14 to be relocated, elimination of a redundant list of services, and clearer language to be used.

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 none because it only relocates an old Rule, eliminates a redundant list of services, and uses clarifying language;

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 none because it only relocates an old Rule, eliminates a redundant list of services, and uses clarifying language; and

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 none because it only relocates an old Rule, eliminates a redundant list of services, and uses clarifying language.

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 old §501.14 will be relocated and clarified so that it will be easier to read and comprehend. The probable economic cost to persons required to comply with the new rule will be none because it only relocates an old Rule, eliminates a redundant list of services, and uses clarifying language.

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 noon on December 23, 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 it only relocates an old Rule, eliminates a redundant list of services, and uses clarifying language. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

### §501.71. Receipt of Commissions and Other Compensation.

(a) A certificate or registration holder shall not for a commission recommend or refer to a client any product or service or refer any product or service to be supplied to a client, or receive a commission, when the licensee or the licensee's firm also performs services for that client requiring independence under §501.70 of this chapter (relating to Independence).

(b) This prohibition applies during the period in which the certificate or registration holder is engaged to perform any of the services requiring independence and during the period covered by any of the historical financial statements involved in such services requiring independence.

(c) A certificate or registration holder who receives or agrees to receive other compensation with respect to services or products recommended, referred, or sold by him to another person shall, no later than the making of such recommendation, referral, or sale, make the following disclosures in writing to such other persons:

(1) if the other person is a client, the nature, source, and amount of all such other compensation; or

(2) if the other person is not a client, the nature and source of any such other compensation.

(d) The disclosure shall be made regardless of the amount of other compensation involved.

(e) This section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.

This 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 November 29, 1999.

TRD-9908126

William Treacy

Executive Director

Texas State Board of Public Accountancy  
Earliest possible date of adoption: January 9, 2000  
For further information, please call: (512) 305-7848

◆ ◆ ◆  
**22 TAC §501.72**

The Texas State Board of Public Accountancy (Board) proposes new §501.72, concerning Contingency Fees. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.72 will allow old §501.15 to be relocated, elimination of a redundant list of services and a definition, and clearer language to be used.

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 none because it only relocated an old Rule, eliminates a redundant list of services and a definition, and uses clarifying language;

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 none because it only relocated an old Rule, eliminates a redundant list of services and a definition, and uses clarifying language; and

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 none because it only relocated an old Rule, eliminates a redundant list of services and a definition, and uses clarifying language.

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 §501.15 will be relocated and clarified so that it is easier to read and comprehend. The probable economic cost to persons required to comply with the new rule will be none because it only relocates an old Rule, eliminates a redundant list of services and a definition, and uses clarifying language.

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 noon on December 23, 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 it only relocates an old Rule, eliminates a redundant list of services and a definition, and uses clarifying language. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.72. Contingency Fees.

(a) A certificate or registration holder shall not perform for a contingent fee any professional services for, or receive such a fee from, a client for whom the certificate or registration holder performs services requiring independence under §501.70 of this chapter (relating to Independence).

(b) A certificate or registration holder shall not prepare an original or amended tax return or claim for a tax refund or other similar tax services for a contingent fee for any client during the period in which the licensee or the licensee's firm is engaged to perform any of the services referenced by subsection (a) of this section and the period covered by any historical or prospective financial statements involved in any of the referenced services.

(c) A certificate or registration holder shall not perform an engagement as a testifying accounting expert for a contingent fee.

(d) The prohibitions outlined in subsections (a) and (b) of this section apply during any period in which the certificate or registration holder is engaged to perform any of the services referenced by subsections (a) and (b) of this section, and the period covered by any historical or prospective financial statements involved in any of the referenced services.

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

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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 §501.73**

The Texas State Board of Public Accountancy (Board) proposes new §501.73, concerning Integrity and Objectivity. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.73 will allow old §§501.12, 501.13 and 501.26 to be relocated and minor grammatical changes to be made.

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 none because it only consolidates three old Rules and makes minor clarifying changes;

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 none because it only consolidates three old Rules and makes minor clarifying changes; and

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 none because it only consolidates three old Rules and makes minor clarifying changes.

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 three similar Rules will be consolidated and made easier to read and comprehend. The probable economic cost to persons required to comply with the new rule will be none because it only consolidates three old Rules and makes minor clarifying changes.

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 noon on December 23, 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 it only consolidates three old Rules and makes minor clarifying changes. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.73. Integrity and Objectivity.

(a) A certificate or registration holder in the performance of professional services shall maintain integrity and objectivity, shall

be free of conflicts of interest and shall not knowingly misrepresent facts nor subordinate his or her judgment to others. In tax practice, however, a certificate or registration holder may resolve doubt in favor of his client as long as there is reasonable support for the position.

(b) A conflict of interest may occur if a certificate or registration holder performs a professional service for a client or employer and the certificate or registration holder has a relationship with another person, entity, product, or service that could, in the certificate or registration holder's professional judgment, be viewed by the client, employer, or other appropriate parties as impairing the certificate or registration holder's objectivity. If the certificate or registration holder believes that the professional service can be performed with objectivity, and the relationship is disclosed to and consent is obtained from such client, employer, or other appropriate parties, then this rule shall not operate to prohibit the performance of the professional service because of a conflict of interest.

(c) Certain professional engagements, such as audits, reviews, and other services, require independence. Independence impairments under §501.70 (relating to Independence), its interpretations and rulings cannot be eliminated by disclosure and consent.

(d) A certificate or registration holder shall not pay a commission to a third party to obtain a client unless, prior to being engaged by such client, the certificate or registration holder discloses to the client in writing the fact and the fixed or variable amount of such commission. This section does not apply to payments made to a certificate or registration holder for the purchase of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.

(e) A certificate or registration holder shall not concurrently engage in the practice of public accountancy and in any other business or occupation which impairs independence or objectivity in rendering professional services, or which is conducted so as to augment or benefit the accounting practice unless these rules are observed in the conduct thereof.

This 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



**22 TAC §501.74**

The Texas State Board of Public Accountancy (Board) proposes new §501.74, concerning Competence. This new rule is the result of the Rule Review required by Rider 167 (section)7 of the General Appropriations of 1997.

Proposed new §501.74 will allow old §501.21 to be relocated and subsections(a)(1)-(a)(3), (b), (c), and (d) to be added in order to clarify the general standard in subsection (a).

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 none because the new clarifying standards only codify existing Board interpretations on competence;

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 none because the new clarifying standards only codify existing Board interpretations on competence; and

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 none because the new clarifying standards only codify existing Board interpretations on competence.

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 old §501.21 will be relocated and clarified through additional language. The probable economic cost to persons required to comply with the new rule will be none because the new clarifying standards only codify existing Board interpretations on competence.

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 noon on December 23, 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 new clarifying standards only codify existing Board interpretations on competence. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.74. Competence.

(a) A certificate or registration holder shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with §501.60 of this title (relating to Auditing Standards), §501.61 of this title

(relating to Accounting Principles), and §501.62 of this title (relating to Other Professional Standards).

(1) Competence to perform professional services involves both the technical qualifications of the certificate or registration holder and the certificate or registration holder's staff and the ability to supervise and evaluate the quality of the work being performed.

(2) The certificate or registration holder may have the knowledge required to complete the professional services with competence prior to performance. In some cases, however, additional research or consultation with others may be necessary during the performance of the professional services. If a certificate or registration holder is unable to gain sufficient competence through these means, the certificate or registration holder shall suggest to the client the engagement of someone competent to perform the needed professional service, either independently or as an associate.

(b) A certificate or registration holder shall exercise due professional care in the performance of professional services.

(c) A certificate or registration holder shall adequately plan and supervise the performance of professional services.

(d) A certificate or registration holder shall obtain sufficient data to afford a reasonable basis for conclusions and recommendations in relation to any professional services performed.

This 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

Earliest possible date of adoption: January 9, 2000

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



**22 TAC §501.75**

The Texas State Board of Public Accountancy (Board) proposes new §501.75, concerning Confidential Client Communications. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.75 will allow old §501.31 to be relocated and for minor clarifying changes to be made regarding exceptions to the rule.

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 none because it only relocates and clarifies an old Rule;

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 none because it only relocates and clarifies an old Rule; and

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 none because it only relocates and clarifies an old Rule.

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 old Rule will be relocated and the Rule will be easier to read and comprehend. The probable economic cost to persons required to comply with the new rule will be none because it only relocates and clarifies an old 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 requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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 it only relocates and clarifies an old 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 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.75. Confidential Client Communications .

Except by permission of the client or the authorized representatives of the client, a certificate or registration holder or any partner, officer, shareholder, or employee of a certificate or registration holder shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional services rendered to the client by the certificate or registration holder. Such information shall be deemed confidential. However, nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, pursuant to a subpoena or other compulsory process, in investigations or proceedings under the Act, in ethical investigations conducted by private professional organizations, or in the course of quality reviews.

This 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 November 29, 1999.

TRD-9908130

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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

◆ ◆ ◆  
**22 TAC §501.76**

The Texas State Board of Public Accountancy (Board) proposes new §501.76, concerning Records and Work Papers. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations of 1997.

Proposed new §501.76 will allow old §501.32 and §501.33 to be consolidated and relocated, grammatical and clarifying changes to be made, and an unnecessary definition to be deleted.

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 none because the rules are being relocated and consolidated, clarifying changes are being made, and an unnecessary definition is being deleted;

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 none because the rules are being relocated and consolidated, clarifying changes are being made, and an unnecessary definition is being deleted; and

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 none because the rules are being relocated and consolidated, clarifying changes are being made, and an unnecessary definition is being deleted.

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 two rules will be relocated, clarified, and consolidated so that the new rule will be easier to read and comprehend. The probable economic cost to persons required to comply with the new rule will be none because the rules are being relocated and consolidated, clarifying changes are being made, and an unnecessary definition is being deleted.

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 noon on December 23, 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 rules are being relocated and consolidated, clarifying

changes are being made, and an unnecessary definition is being deleted. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

§501.76. Records and Work Papers.

(a) Upon request, regardless of the status of the client or former client's account, a certificate or registration holder shall provide to the client or former client any accounting or other records, whether in the form of hard copy or computer readable format, belonging to, or obtained from or on behalf of, the client that the certificate or registration holder removed from the client's premises or received on behalf of the client. The certificate or registration holder may make and retain copies of such records when they form the basis of work done by him. For a reasonable charge for personnel time and photocopying, a certificate or registration holder shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

(1) a copy of the client's tax return;

(2) a copy of any report or other document previously issued by the certificate or registration holder to or for such client provided that furnishing such reports to or for a client or former client would not cause the certificate or registration holder to be in violation of the portions of §501.60 of this title (relating to Auditing Standards) concerning subsequent events;

(3) a copy of the certificate or registration holder's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

(b) A certificate or registration holder, when performing an engagement that is terminated prior to the completion of the engagement, is required to return or furnish the originals of only those records originally obtained by the certificate or registration holder from the client.

(c) Working papers developed by a certificate or registration holder during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the certificate or registration holder for a client, shall be and remain the property of the certificate or registration holder who developed the working papers.

(1) Working papers, whether in the form of hard copy or computer readable format, are those papers developed by the certificate or registration holder incident to the performance of his

engagement which do not result in changes to the client's records or are in part of the records ordinarily maintained by the client.

(2) Analyses of inventory or other accounts as part of the certificate or registration holder's selective audit procedures, even when prepared by client personnel at the request of the certificate or registration holder, are the certificate or registration holder's working papers.

(3) If the analyses described in paragraph (2) of this subsection result in changes to the client's records, the certificate or registration holder is required to furnish the details from his working papers in support of the journal entries recording such changes unless the journal entries themselves contain all necessary details.

(d) Working papers include, but are not limited to:

(1) letters of confirmation and representation;

(2) excerpts of company documents;

(3) audit programs;

(4) internal memoranda;

(5) schedules;

(6) flowcharts; and

(7) narratives.

(e) Working papers which constitute client records include, but are not limited to:

(1) worksheets in lieu of books of original entry such as listings and distributions of cash receipts or cash disbursements;

(2) worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar depreciation records;

(3) all adjusting and closing journal entries and supporting details when the supporting details are not fully set forth in the explanation of the journal entry; and

(4) consolidating or combining journal entries and worksheets and supporting detail in arriving at final figures incorporated in an end product such as financial statements or tax returns.

This 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-9908131

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



**22 TAC §501.77**

The Texas State Board of Public Accountancy (Board) proposes new §501.77, concerning Acting through Others. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations of 1997.

Proposed new §501.77 will allow old §501.42 to be relocated.

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 none because it only relocates old §501.42;

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 none because it only relocates old §501.42; and

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 none because it only relocates old §501.42.

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 old Rule will be relocated. The probable economic cost to persons required to comply with the new rule will be none because it only relocates old Rule 501.42.

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 noon on December 23, 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 it only relocates old Rule 501.42. 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 section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new rule.

*§501.77. Acting through Others.*

A certificate or registration holder shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the certificate or registration holder, would place him in violation of these rules of professional conduct.

This 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 November 29, 1999.

TRD-9908132

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



## Subchapter D. RESPONSIBILITIES TO THE PUBLIC

### 22 TAC §501.80

The Texas State Board of Public Accountancy (Board) proposes new §501.80 concerning Practice of Public Accountancy. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.80 will allow old §501.4 to be relocated and clarifying and grammatical changes to be made.

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 none because an old rule is being relocated and grammatical changes are being made;

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 none because an old Rule is being relocated and grammatical changes are being made; and

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 none because an old rule is being relocated and grammatical changes are being made.

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 old rule will be relocated and made easier to read and comprehend.

The probable economic cost to persons required to comply with the new rule will be none because an old Rule is being relocated and grammatical changes are being made.

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

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because an old rule is being relocated and grammatical changes are being made. 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 Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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.

The new section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

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

§501.80. Practice of Public Accountancy.

(a) A certificate or registration holder may not engage in the practice of public accountancy unless he holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

(b) Any licensee of this board in good standing as a certified public accountant or public accountant may use such designation whether or not the licensee is in the client, industry, or government practice of public accountancy. However, a licensee who is not in the client practice of public accountancy may not in any manner, through use of the CPA designation or otherwise, claim or imply independence from his employer or that the licensee is in the client practice of public accountancy.

This 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 November 29, 1999.

TRD-9908133

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



**22 TAC §501.81**

The Texas State Board of Public Accountancy (Board) proposes new §501.81 concerning Registration Requirements. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.81 will allow old §501.40 to be relocated, to be written in a clearer manner, and to update citations to the Public Accountancy Act.

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 none because the rule is only being relocated, clearer language is being used, and updated citations are being used;

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 none because the rule is only being relocated, clearer language is being used, and updated citations are being used; and

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 none because the rule is only being relocated, clearer language is being used, and updated citations are being used.

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 rule will be relocated, clarified, and have updated citations. The probable economic cost to persons required to comply with the new rule will be none because the rule is only being relocated, clearer language is being used, and updated citations are being used.

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

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because none because the rule is only being relocated, clearer language is being used, and updated citations are being used. 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 Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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.

The new section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other statues, articles or codes are affected by this proposed new section.

§501.81. Registration Requirements.

(a) A certificate or registration holder engaged in the client practice of public accountancy must practice through an entity meeting the ownership requirements of the Act and registered with the board pursuant to the Act, §901.351, if:

(1) the certificate or registration holder engages in the client practice of public accountancy in an entity that is eligible for registration and is required to register under the Act, §901.351 and §901.354; or

(2) the services offered or performed include the performance of attest or compilation services, or issuance of reports on financial statements, including historical or prospective financial statements or any element thereof.

(b) A certificate or registration holder engaged in the client practice of public accountancy who is not required to practice through an entity registered with the board pursuant to subsection (a) of this section must, in each advertisement or written statement by the certificate or registration holder and/or by his employer or principal, in which reference is made to the certificate or registration holder's CPA designation or his or her association with the employer or principal as such, include an asterisk by the name of the employer or principal, which asterisk shall refer to a notation included within conspicuous proximity and with reasonable prominence that says "Not qualified to register with the Texas State Board of Public Accountancy to practice public accountancy in Texas." The notation must be printed in type not less bold than that contained in the body of the advertisement or written statement. If the advertisement is in audio format only, the foregoing notation shall be clearly declared at the conclusion of each such presentation.

(c) The requirements of this section do not apply with regard to a certificate or registration holder performing services:

(1) as a licensed attorney at law of this state while in the practice of law or as an employee of a licensed attorney when acting within the scope of the attorney's practice of law; or

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the legally permitted activities of the institution's trust department.

(d) On the third determination by the board that a certificate holder has practiced without a license or through an unregistered entity in violation of subsection (c) of this section, the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

This 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 November 29, 1999.

TRD-9908134

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



## 22 TAC §501.82

The Texas State Board of Public Accountancy (Board) proposes new §501.82 concerning Advertising. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.82 will allow old §501.43 to be relocated, the definitions section to be reorganized, and clarifying language changes to be used.

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 none because the rule is only being relocated, restructured, and clarified;

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 none because the rule is only being relocated, restructured, and clarified; and

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 none because the rule is only being relocated, restructured, and clarified.

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 old rule will be relocated, restructured, and written in clearer language.

The probable economic cost to persons required to comply with the new rule will be none because the rule is only being relocated, restructured, and clarified.

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

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule is only being relocated, restructured, and clarified. 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 Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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.

The new section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

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

### §501.82. Advertising.

(a) A certificate or registration holder shall not use or participate in the use of:

(1) any written, oral, or electronic communication having reference to the certificate or registration holder's professional services that contains a false, fraudulent, misleading or deceptive statement or claim; nor

(2) any written, oral or electronic communication that refers to the certificate or registration holder's professional services that is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(b) Definitions:

(1) A "false, fraudulent, misleading, or deceptive statement or claim" includes, but is not limited to, a statement or claim which:

(A) contains a misrepresentation of fact;

(B) is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(C) is intended or likely to create false or unjustified expectations of favorable results;

(D) implies educational or professional attainments or licensing recognition not supported in fact;

(E) represents that professional services can or will be completely performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged;

(F) contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived;

(G) implies the ability to improperly influence any court, tribunal, regulatory agency or similar body or official due to some special relations;

(H) consists of self-laudatory statements that are not based on verifiable facts;

(I) makes untrue comparisons with other accountants;  
or

(J) contains testimonials or endorsements that are not based upon verifiable facts.

(2) Broadcast—Any transmission over the airwaves or over a cable, wireline, Internet, or e-mail system.

(3) Coercion—Compelling by force so that one is constrained to do what his free will would otherwise refuse.

(4) Compulsion—Driving or urging by force or by physical or mental constraint to perform or forbear from performing an act.

(5) Direct personal communication—Either a face-to-face meeting or a conversation by telephone.

(6) Duress—Any conduct which overpowers the will of another.

(7) Harassing—Any word, gesture, or action which tends to annoy, alarm, and verbally abuse another person.

(8) Intimidation—Willfully to take, or attempt to take, by putting in fear of bodily harm.

(9) Overreaching—Tricking, outwitting, or cheating a person into doing an act which he would not otherwise do.

(10) Threats—Any menace of such a nature and extent as to unsettle the mind of the person on whom it operates, and to take away from his acts that free and voluntary action which alone constitutes consent.

(11) Vexatious-Irritating or annoying.

(c) It is a violation of these rules for a certificate or registration holder to persist in contacting a prospective client when the prospective client has made known to the certificate or registration holder, or the certificate or registration holder should have known the prospective client's desire not to be contacted by the certificate or registration holder.

(d) In the case of direct mail communication, the certificate or registration holder shall retain a copy of the actual mailing along with a list or other description of persons to whom the communication was mailed or otherwise distributed. Such copy shall be retained by the certificate or registration holder for a period of at least 36 months from the date of the last transmission or use.

(e) Subsection (d) of this section does not apply to persons when:

(1) the communication is made to a person who is at that time a client of the certificate or registration holder;

(2) the communication is invited by the person to whom it was made; or

(3) the communication is made to a person seeking to secure the performance of professional services which are currently not being provided by another certificate or registration holder.

(f) In the case of radio and television broadcasting, the broadcast shall be recorded and the certificate or registration holder shall retain a recording of the actual transmission for at least 36 months.

This 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 November 29, 1999.

TRD-9908135

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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

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**22 TAC §501.83**

The Texas State Board of Public Accountancy (Board) proposes new §501.83 concerning Firm Names. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.83 will allow old §501.47 to be relocated and minor grammatical and clarifying changes to be made.

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 none because the rule is only being relocated and only minor clarifying changes are being made;

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 none because the rule is only being relocated and only minor clarifying changes are being made; and

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 none because the rule is only being relocated and only minor clarifying changes are being made.

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 old rule will be relocated and clarified for easier reading and comprehension. The probable economic cost to persons required to comply with the new rule will be none because the Rule is only being relocated and only minor clarifying changes are being made.

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

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule is only being relocated and only minor clarifying changes are being made. 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 Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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.

The new section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

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

§501.83. Firm Names.

(a) A firm name may not include descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter. However, names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A firm name is misleading if:

- (1) it is not the lawful and registered name of the firm;
  - (2) the name contains a misrepresentation of facts;
  - (3) the name indicates character or grade of service which is not based upon verifiable facts;
  - (4) the name is likely to mislead or deceive because it fails to make full disclosure of relevant facts; the following are examples, but are not inclusive:
    - (A) the name indicates a geographic area of service which is not based on verifiable facts; or
    - (B) the firm name includes a non-owner firm employee or a non-CPA.
  - (5) the name is intended or likely to create false or unjustified expectations of favorable results;
  - (6) the name implies special expertise;
  - (7) the name implies educational or professional attainment or licensing recognition of the firm and/or of its owners, partners, or shareholders which are not supported in fact;
  - (8) the name of the firm that is incorporated does not include the words "corporation," "incorporated," "professional corporation," or "company," or an abbreviation thereof as a part of the firm name; the words "professional corporation," or "PC" are not included with the firm name each time it is used; and the name of a firm organized under the limited liability partnership rules does not include the words "professional limited liability company" or "professional limited liability partnership" as appropriate, or an abbreviation thereof as part of the firm name unless the entity was organized prior to September 1, 1993;
  - (9) the name includes the designation "and company," "company," "group," "associates" or "and associates" or abbreviations thereof or similar names implying more than one employed licensee in the firm unless there are at least two licensees involved full time in the practice;
  - (10) the name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof; except that an acronym may be used for a firm name if the acronym is composed exclusively of the first letters of the surnames of current or past partners or shareholders of the firm;
  - (11) the name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor; or
  - (12) the name contains other representations or implications that in reasonable probability will cause a reasonably prudent person to misunderstand or be deceived.
- (c) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.
- (d) The name of any former partner or former shareholder may not be used in a registered firm name during the period when the former partner or former shareholder has been prohibited from practicing public accountancy or prohibited from using the title "CPA" or "PA."

This 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 November 29, 1999.

TRD-9908136

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



## 22 TAC §501.84

The Texas State Board of Public Accountancy (Board) proposes new §501.84 concerning Form of Practice. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.84 will allow old §501.46 to be relocated and unnecessary statutory citations to be removed.

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 none because the rule is only being relocated and unnecessary statutory citations will be deleted;

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 none because the rule is only being relocated and unnecessary statutory citations will be deleted; and

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 none because the rule is only being relocated and unnecessary statutory citations will be deleted.

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 rule will be relocated and easier to read and comprehend.

The probable economic cost to persons required to comply with the new rule will be none because the rule is only being relocated and unnecessary statutory citations will be deleted.

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

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule is only being relocated and unnecessary statutory citations will be deleted. 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 Board requests comments on the proposed new rule from any interested person. Comments must be received at the Board no later than noon on December 23, 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.

The new section is proposed 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

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

### §501.84. Form of Practice.

A certificate or registration holder may practice public accountancy only in a proprietorship, a partnership, a limited liability company, a registered limited liability partnership, a professional public accounting corporation organized under the laws of the State of Texas or an equivalent law of another state, territory, or foreign country, or as an employee of one of these entities.

This 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 November 29, 1999.

TRD-9908137

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



## Subchapter E. RESPONSIBILITIES TO THE BOARD/PROFESSION

### 22 TAC §501.90

The Texas State Board of Public Accountancy (Board) proposes new §501.90 concerning Discreditable Acts. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.90 will allow old §501.41 to be relocated, updated citations to the Act to be used, and a repetitive subsection to be deleted.

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 none because it is only a relocated rule with updated citations and a deleted redundant subsection;

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 none because it is only a relocated rule with updated citations and a deleted redundant subsection; and



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 none because it is only a relocated rule with updated citations and a deleted redundant subsection.

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 old Rule will be relocated and updated with a redundancy deleted. The probable economic cost to persons required to comply with the new rule will be none because it is only a relocated rule with updated citations and a deleted redundant subsection.

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 noon on December 23, 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 none because it is only a relocated rule with updated citations and a deleted redundant subsection. 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, 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new section.

§501.90. Discreditable Acts.

A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter K or Section 901.458 of the Act applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;

(7) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(8) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(9) fiscal dishonesty or breach of fiduciary responsibility of any type;

(10) failure to comply with a final order of any state or federal court;

(11) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(12) misrepresenting facts or making a misleading or deceitful statement to a client;

(13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing authority;

(14) threats of bodily harm or retribution to a client;

(15) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(16) causing a breach in the security of the CPA examination;

(17) voluntarily disclosing information communicated to the certificate holder by an employer, past or present, or through the certificate holder's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to a subpoena or other compulsory process in a court proceeding;

(D) in an investigation or proceeding by the board under the Public Accountancy Act; or

(E) in an ethical investigation conducted by a professional organization of certified public accountants; and

(18) breaching the terms of an agreed consent order entered by the Board or violating any Board Order.

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

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

TRD-9908138  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: January 9, 2000  
For further information, please call: (512) 305-7848

◆ ◆ ◆  
**22 TAC §501.91**

The Texas State Board of Public Accountancy (Board) proposes new §501.91 concerning Reportable Events. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.91 will allow old §501.36 to be relocated and for clarifying language on reportable offenses to be used.

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 none because it only relocates an old Rule and uses clarifying language;

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 none because it only relocates an old Rule and uses clarifying language; and

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 none because it only relocates an old Rule and uses clarifying language.

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 old Rule is relocated and clarified for easier reading and comprehension. The probable economic cost to persons required to comply with the new rule will be none because it only relocates an old Rule and uses clarifying language.

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 noon on December 23, 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 it only relocates an old Rule and uses clarifying language. 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, 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new section.

§501.91. Reportable Events.

(a) A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee has knowledge of these events:

(1) the conviction or imposition of deferred adjudication of the licensee of any of the following:

(A) a felony or any crime of which fraud or dishonesty is an element;

(B) any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary.

(2) the cancellation, revocation, or suspension of a certificate, other authority to practice or refusal to renew a certificate or other authority to practice as a certified public accountant or a public accountant, by any state, foreign country or other jurisdiction; or

(3) the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency or other licensing agency.

(b) The report required by subsection (a) of this section shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(c) Nothing in this section imposes a duty upon any licensee to report to the board the occurrence of any of the events set forth in subsection (a) of this section either by or against any other licensee.

(d) As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

This 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 November 29, 1999.

TRD-9908139  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Earliest possible date of adoption: January 9, 2000  
For further information, please call: (512) 305-7848

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## 22 TAC §501.92

The Texas State Board of Public Accountancy (Board) proposes new § 501.92 concerning Frivolous Complaints. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.92 will allow old §501.39 to be relocated and renamed, and for clearer language to be used.

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 none because an old Rule is only being relocated and renamed with one clarifying change in language;

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 none because an old Rule is only being relocated and renamed with one clarifying change in language; and

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 none because an old Rule is only being relocated and renamed with one clarifying change in language.

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 old Rule will be relocated, renamed and clarified. The probable economic cost to persons required to comply with the new rule will be none because an old Rule is only being relocated and renamed with one clarifying change in language.

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 noon on December 23, 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 none because an old Rule is only being relocated and renamed with one clarifying change in language. 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, 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new section.

### §501.92. Frivolous Complaints.

A certificate holder who, in writing to the board, accuses another certificate holder of violating the rules of the board shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause is a violation of this rule.

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

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

TRD-9908140

William Treacy  
Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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

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## 22 TAC §501.93

The Texas State Board of Public Accountancy (Board) proposes new §501.93 concerning Responses. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.93 will allow old §501.48 to be relocated and clarifying changes to be made in subsection (d).

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 none because the Rule is only being relocated and clarified;

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 none because the Rule is only being relocated and clarified; and

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 none because the Rule is only being relocated and clarified.

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 old Rule will be relocated and clarified. The probable economic cost to persons required to comply with the new rule will be none because the Rule is only being relocated and clarified.

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 noon on December 23, 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 Rule is only being relocated and clarified. 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, 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new section.

§501.93. Responses.

(a) An applicant, certificate or registration holder shall substantively respond in writing to any communication from the board requesting a response, within 30 days of the mailing of such communication by registered or certified mail to the last address furnished to the board by the applicant, certificate or registration holder.

(b) Failure to respond substantively to written board communications, or failure to furnish requested documentation and/or working papers, constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(c) Each applicant, certificate holder and each person required to be registered with the board under the Act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

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

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

TRD-9908141

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



## 22 TAC §501.94

The Texas State Board of Public Accountancy (Board) proposes new §501.94 concerning Mandatory Continuing Professional Education. This new rule is the result of the Rule Review required by Rider 167 (section) of the General Appropriations Act of 1997.

Proposed new §501.94 will allow old §501.25 to be relocated and proper citations to other Rules to be used.

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 none because the Rule is only being relocated and updated citations are being used;

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 none because the Rule is only being relocated and updated citations are being used; and

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 none because the Rule is only being relocated and updated citations are being used.

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 old Rule will be relocated and updated citations will be used. The probable economic cost to persons required to comply with the new rule will be none because the Rule is only being relocated and updated citations are being used.

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 noon on December 23, 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 Rule is only being relocated and updated citations are being used. 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, 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 §901.156 which authorizes the board to promulgate rules regarding professional conduct.

No other articles, statutes, or code is affected by this proposed new section.

§501.94. Mandatory Continuing Professional Education.

Each certificate or registration holder shall comply with the mandatory continuing professional education reporting and the mandatory continuing professional education attendance requirements of Chapter 523 of this title (relating to Mandatory Continuing Professional Education Program). Once an individual's license has been suspended a third time by the board for failing to complete the 120 hours of continuing professional education required by §523.63 of this title (relating to Mandatory CPE Attendance), the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

This 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 November 29, 1999.

TRD-9908142

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: January 9, 2000

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



## TITLE 25. HEALTH SERVICES

### Part 11. TEXAS CANCER COUNCIL

#### Chapter 701. POLICIES AND PROCEDURES

##### 25 TAC §§701.3-701.7

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

The Texas Cancer Council proposes the repeal of §§701.3-701.7 concerning officers, committees, executive director, meetings, and actions requiring council approval. The Council finds that the rules concern the internal management and policy-making functions of the Council and the agency and are not the proper subject of rules.

Mickey Jacobs, Executive Director of the Texas Cancer Council, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of repealing the rules.

Ms. Jacobs also has determined that for each year of the first five years the public benefit anticipated as a result of repealing the rule will be the deletion of inappropriate rule language that incompletely or inaccurately restates applicable statute. There are no anticipated economic costs to persons who were required to comply with the rule.

Ms. Jacobs has determined that the rule repeal shall not have an effect on small businesses or on micro businesses.

Comments on the proposed repeal may be submitted to Ms. Mickey Jacobs, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas, 78711.

The repeal is proposed under the Texas Health and Safety Code Annotated §102.002 and §102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, and the Texas Government Code Annotated, §2001.004 (Vernon 1998 Pamphlet).

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

§701.3. Officers.

§701.4. Committees.

§701.5. Executive Director.

§701.6. Meetings.

§701.7. Actions Requiring Council Approval.

This 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 November 24, 1999.

TRD-9908098

Mickey L. Jacobs, M.S.H.P.

Executive Director

Texas Cancer Council

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-3190



##### 25 TAC §701.8

The Texas Cancer Council proposes an amendment to §701.8 concerning the copies of public records. The amendment is being proposed so that as General Services Commission amends rules, Texas Cancer Council need not also amend this rule.

Ms. Mickey Jacobs, the Executive Director of the Texas Cancer Council, has determined that for the first five-year period the rule is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the amendment.

Ms. Jacobs 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 clarification of the policies and procedures the Council will follow to implement the *Texas Cancer Plan*. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Ms. Jacobs has determined that the amended rule shall not have an effect on small businesses or on micro businesses.

Comments on the proposed amendment may be submitted to Ms. Mickey Jacobs, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas, 78711.

The amendment is proposed under the Texas Health and Safety Code Annotated, §102.002 and §102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, Texas Government Code Annotated, §552.262 which requires state governmental bodies

to use the rules adopted by the General Services Commission in determining charges for providing copies of public information.

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

*§701.8. Charges for Copies of Public Records.*

(a) The charge to any person requesting copies of any public record of the Council will be the charge established by the General Services Commission at 1 TAC §§111.61-111.70 (relating to Costs of Copies of Open Records) [as amended on September 18, 1996].

(b) (No change.)

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

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

TRD-9908099

Mickey L. Jacobs, M.S.H.P.

Executive Director

Texas Cancer Council

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-3190



## Chapter 702. RELATIONSHIP BETWEEN COUNCIL AND PRIVATE ORGANIZATIONS AND DONORS

### 25 TAC §702.2

The Texas Cancer Council proposes amendments to §702.2 concerning donations. The amendment is being proposed to use a more accurate legal standard to determine whether granting something of value to a private entity is constitutional under Article III §51 of the Texas Constitution.

Mickey Jacobs, Executive Director of the Texas Cancer Council, has determined that for the first five-year period the rule is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the amendment.

Ms. Jacobs 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 amendment will be clarification of the established guidelines for the relationship between the Council and private organizations or donors as required by Texas Government Code Annotated §2255.001 (Vernon 1998). There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Ms. Jacobs has determined that the amended rule shall not have an effect on small businesses or on micro businesses.

Comments on the proposed amendment may be submitted to Mickey Jacobs, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas, 78711.

The amendment is proposed under the Texas Health and Safety Code Annotated, §102.002 and §102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, and the Texas Government Code Annotated, §2255.001 (Vernon 1998 Pamphlet) which directs state agencies to adopt rules governing the relationship

between the donor organization and the agency and its employees.

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

*§702.2. Donations.*

(a) (No change.)

(b) A member or an employee of the council shall not authorize a donor to use the property of the council, unless the property is used in accordance with a contract between the council and the donor, the contract is found by the council to serve a public purpose, the contract contains provisions to ensure the public purpose continues, and the council is reasonably compensated [~~or the council is otherwise reasonably compensated~~] for the use of the property.

This 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 November 24, 1999.

TRD-9908100

Mickey L. Jacobs, M.S.H.P.

Executive Director

Texas Cancer Council

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-3190



## Chapter 703. PROJECT CONTRACTS AND GRANTS

### 25 TAC §§703.1, 703.3, 703.4, 703.6-703.8, 703.10, 703.12, 703.13

The Texas Cancer Council proposes amendments to §§703.1, 703.3, 703.4, 703.6-703.8, 703.10, 703.12, and 703.13, concerning preamble, scope, application requirements, review process, project approval, publicity and publications, funding restrictions, amendment of contract, and termination of contract. The amendments are being proposed in:

#### §703.1. Preamble.

The language of this rule is changed to identify the proper citation.

#### §703.3. Scope.

The word "other" is deleted and the word "will" is changed to "may" throughout in order to clarify that the Council may accept unsolicited proposals from non-state and private sector applicants.

#### §703.4. Application Requirements.

The word "to" is changed to "and" and "a" is replaced with "with each" in order to clarify that an applicant should submit a separate application each time.

#### §703.6. Review Process.

The language of this rule is amended to clarify the process by which proposals are reviewed by Council staff, committees of the Council or other advisory committees.

#### §703.7. Project Approval.

This rule is amended to clarify the requirements for contractors to abide by the terms of the contract, the Uniform Grant Management Standards (UGMS), and Council rules.

§703.8. Publicity and Publications.

This rule is amended to delete language not needed and to inform the public about how decisions about their grants may come about.

§703.10. Funding Restrictions.

Language is being changed to amend and clarify the funding restrictions to which contractors must be subject.

§703.12. Amendment of Contract.

Language is being added to clarify the conditions that a contract may be amended.

§703.13. Termination of Contract.

Clarifying language and a step for the reconsideration of application denials are being added to streamline the process of handling reconsideration requests, and to clarify the role of the Council contract management committee.

Mickey Jacobs, Executive Director of the Texas Cancer Council, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to cost or revenues for state or local government as a result of enforcing or administering the amendments.

Ms. Jacobs also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the amendments will be clarification of the procedures and requirements concerning the submission, approval, and cancellation of grants related to the implementation of the *Texas Cancer Plan*. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Ms. Jacobs has determined that the amended rules shall not have an effect on small businesses or on micro businesses.

Comments on the proposed amendments may be submitted to Mickey Jacobs, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas, 78711.

The amendments are proposed under the Texas Health and Safety Code Annotated, §102.002 and §102.009 which provide the Texas Cancer Council with the authority to develop and implement the *Texas Cancer Plan*, §102.010 (b) which authorizes the Board to adopt rules governing the submission and approval of grant requests and the cancellation of grants, and the Texas Government Code Annotated, § 2001.004 (Vernon 1998 Pamphlet).

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

§703.1. Preamble.

(a) As authorized by the Health and Safety Code, §102.009 and §102.010 [~~Chapter 102~~], the council may contract with public or private persons to implement the Texas cancer plan, if funds are available.

(b) (No change.)

§703.3. Scope.

(a) (No change.)

(b) Sources.

(1) (No change.)

(2) Grants to ~~other~~ non-state or private organizations. The council may ~~will~~ solicit public and private entities to submit proposals in response to a request for applications that may ~~will~~ be published from time to time in the *Texas Register*. The Council may also accept unsolicited proposals from nonstate and private sector applicants.

(c) (No change.)

§703.4. Application Requirements.

(a) (No change.)

(b) Format Content. The format consists of the forms and related material that the applicant shall complete and ~~to~~ submit with each ~~a~~ grant application

(1)-(5) (No change.)

§703.6. Review Process.

(a) Each proposal shall be reviewed by council staff for completeness, relevance to the published request-for-application, adherence to council policies, technical merit, and budget appropriateness. Staff analyses of each eligible proposal received will be prepared and submitted to the council before the council makes a funding decision ~~[prior to funding decisions]~~.

(b) All proposals that council staff determine meet the minimum requirements of subsection (a) of this section may be submitted to a committee of the Council or another advisory committee ~~[All eligible proposals for new projects may be submitted to an advisory group or to a special committee]~~ of the council for an additional technical review. Reports from the advisory ~~[groups and special]~~ committees will be submitted to the council before the council makes a funding decision ~~[prior to funding decisions]~~.

(c) Council members may review a proposal in its entirety prior to making a ~~the~~ funding decision.

(d) The council shall review recommendations from advisory ~~[groups]~~ committees, and staff prior to selecting ~~[and select]~~ the proposals that may ~~shall~~ be approved for funding.

(e) (No change.)

§703.7. Project Approval.

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

(e) The contractor must give assurances that the contractor will abide by the terms of the contract; the Uniform Grant Management Standards (UGMS) adopted by the Governor's Office of Budget and Planning, where applicable, as determined by council staff; and this subchapter ~~[ or the Uniform Grant Management Standards (UGMS) as determined by Council staff; and this subchapter as adopted by the Governor's Office of Budget and Planning]~~.

(f)-(i) (No change.)

§703.8. Publicity and Publications.

(a) A work that is created with funds from the council shall be considered a specially commissioned work and a "work made for hire" as that term is defined in the United States Copyright Law, 17 United States Code §§101-810. As such, the council shall own the copyright for all materials, published and unpublished, that are created with council funds. The council shall be a co-owner of the copyright of a work that is created with more than one source of funding as provided by the United States copyright law.

(1) (No change.)

(2) The executive director shall review the request for a license or transfer of the copyright and make a recommendation to the council. The council's decision to approve or deny the request shall be final. ~~[The council may delegate decision-making authority to the executive director.]~~

(b) A contractor who produces written or audio-visual materials using council funds shall give credit to the council in a manner specified by the council. ~~[The council may delegate decision-making authority to the executive director.]~~

(c) The Board has delegated decision making authority concerning implementation of this section to the Executive Director.

**§703.10. Funding Restrictions.**

Contractors will be subject to the following funding restrictions, unless statute or Council rules require otherwise:

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

(3) Disallowable costs.

(A) The following is a list of [are] the most common types but not a comprehensive list of costs which are disallowed:

(i) bad debts [out-of-state travel unless the travel is essential for the overall success of the project];

(ii) contingencies [payment of fees to professional associations];

(iii) contributions and donations [cost-of-living salary increases that exceed the rate approved by the Legislature for state employees];

(iv) entertainment [merit raises exceeding 5%];

(v) honoraria [liability insurance coverage];

(vi) indirect costs [payment for direct services to patients for screening, diagnosis, or other support services if third-party coverage is currently available].

(vii) interest and other financial costs;

(viii) legislative expenses;

(ix) professional association fees;

(x) merit raises exceeding 3% of an individual's salary which are awarded more frequently than once every 12 months.

(B) Items not listed in paragraph (3) ~~[(4)]~~ of this section are not necessarily allowable.

(4) (No change.)

**§703.12. Amendment of Contract.**

(a) A contractor may transfer up to 10% of total project funds among budgeted line items, pending written approval of the executive director. Budget transfers must be within the scope of the contract and the total project budget, be beneficial to the achievement of project objectives, and be a more effective use of state dollars.

(b) The executive director is authorized to amend a project contract's work plan including performance measures, staffing pattern, or budget as long as the changes are within the total budget and general scope of work of the contract.

(c) (No change.)

**§703.13. Termination of Contract.**

(a) (No change.)

(b) The contractor shall have the opportunity to request that the contract management committee reconsider the proposed termination [a reconsideration of the proposed termination]. The contractor must file a written request for a reconsideration with the Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711-2097, no later than 30 days after the contractor receives notice of the council's intent to terminate. If a contractor does not request a reconsideration in writing within the 30-day period, the contractor will be deemed to have waived the review and the contract will be terminated.

(c) Between the time of the proposed termination and the final decision of the contract management ~~[review]~~ committee, the council may withhold further funding. In the event the contract management ~~[review]~~ committee's decision is favorable to the contractor, the funds shall be promptly distributed to the contractor.

(d) The decision of the contract management committee shall be final and shall not require council approval.

(e) ~~[(d)]~~ The contract shall be subject to automatic termination if the council's funds are reduced or upon mutual agreement of the contractor and the council.

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

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

TRD-9908101

Mickey L. Jacobs, M.S.H.P.

Executive Director

Texas Cancer Council

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-3190

◆ ◆ ◆  
**TITLE 34. PUBLIC FINANCE**

**Part I. COMPTROLLER OF PUBLIC ACCOUNTS**

**Chapter 3. TAX ADMINISTRATION**

**Subchapter JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION**

**34 TAC §3.1201**

The Comptroller of Public Accounts proposes an amendment to §3.1201, concerning fee for outdoor advertising of cigarettes or tobacco products. The Tax Code, §154.1142(b) and §155.0592(b), was amended by Senate Bill 17, 76th Legislature, 1999, effective September 1, 1999. The amendment provides taxpayers have an opportunity for a hearing, rather than requiring a hearing on all tobacco compliance violations.

Mike Reissig, director of revenue estimates, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect, the rule changes would benefit the public by streamlining the disciplinary process for



certain tobacco-related advertising violations of the Health and Safety Code. Disciplinary hearings, which are now set automatically unless the outdoor advertiser moves to dismiss the hearing, would be set only if requested by the outdoor advertiser. Further, if the outdoor advertiser does not respond to a written notice of violation within 15 calendar days, an order finding that a violation has occurred may be entered and the maximum penalty may be imposed. There is no anticipated significant economic cost to the public. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Eleanor Kim, Deputy General Counsel for Legal Services, General Counsel Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §154.1142 and §155.0592.

§3.1201. *Fee for Outdoor Advertising of Cigarettes or Tobacco Products.*

(a)-(g) (No change.)

(h) Administrative remedies.

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

(5) If the permit holder does not respond to the written notice of violation within 15 calendar days, an order finding that a violation has occurred may be entered and the maximum penalty may be imposed. If the permit holder [ø] requests an administrative hearing, a hearing will be set. The notice of the setting of the hearing shall be governed by §§1.1-1.42 of this title. The permit holder will have 15 days in which to respond to the setting of the hearing.

(6)-(9) (No change.)

(i)-(j) (No change.)

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

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

TRD-9908102

Martin Cherry

Special Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-3699



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part 13. TEXAS COMMISSION ON FIRE PROTECTION

## Chapter 421. STANDARDS FOR CERTIFICATION

### 37 TAC §§421.1, 421.5, 421.13

The Texas Commission on Fire Protection proposes amendments to §421.1, §421.5 and proposes new §421.13, concerning standards for certification.

The amendment to §421.1 eliminates language requiring delayed effective dates of commission rule changes except in case of safety or hardship and adds language allowing the commission to specify later effective dates on a case by case basis. The amendment to §421.5 allows hours of instruction in NFA courses used for higher levels of certification to be met by interactive computer-based courses provided they are supervised by a certified instructor. New §421.13 adds language to clarify that an individual may renew his certification regardless of whether he is employed or continues to be employed by a fire department or local authority as allowed by recent statutory changes.

Ms. Marlene Jerred, Interim Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amendments and new section are in effect there will be no fiscal implications for state or local governments.

Ms. Jerred has also determined that for each of the first five years the proposed amendments and new section are in effect the public benefit anticipated as a result of enforcing the amended section will be that it allows departments to have improved access to the National Fire Academy by utilizing interactive computer-based training. There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments and new section.

The commission has determined that the proposed amendments and new section relating to standards for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us).

The amendments and new section are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum requirements for fire protection personnel; Texas Government Code, §419.023, which provides the commission authority to establish a fire fighter advisory committee; and Texas Government Code, §419.0341, which provides the commission authority to establish guidelines for certificate renewal for individual certificate holders.

Texas Government Code, §§419.022, 419.023, 419.0341 are affected by the proposed changes.

§421.1. *Procedures for Meetings.*

(a)-(f) (No change.)

(g) Effective Date. Rules shall become effective no sooner than 20 days after filing with the Texas Register for final adoption. The committee or commission may recommend a later effective date. [All rules recommended by the Fire Fighter Advisory Committee and finally adopted by the commission before May 1st, should go into effect January 1st, of the following year and rules recommended by the Fire Fighter Advisory Committee and finally adopted after May 1st, should go into effect no sooner than one year from January 1st, of the following year, unless the committee recommends a sooner effective date for issues such as health and safety or undue hardship.]

(h) (No change.)

§421.5. *Definitions.*

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

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

(3) Approved training—Any training which will be used toward any level of certification must be submitted to the commission for approval prior to the commencement of the training. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course. The hours of instruction in National Fire Academy courses used towards higher levels of certification may be satisfied by interactive computer-based National Fire Academy courses as long as they are supervised and verified by a certified instructor.

(4)-(33) (No change.)

(34) Years of experience—For purposes of higher levels of certification or fire service instructor certification as provided for in Chapter 425, subchapter A of this title (relating to Fire Service Instructor Certification):

(A) (No change.)

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph [paragraph (34)(A) of this section] on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

§421.13. *Individual Certificate Holders.*

A person may be certified as fire protection personnel and continue to hold and renew the certificate without regard to whether the person is employed or continues to be employed by a local authority or fire department.

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

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

TRD-9908105

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



Chapter 423. FIRE SUPPRESSION

Subchapter A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.13

The Texas Commission on Fire Protection proposes an amendment to §423.13, concerning international fire service accreditation congress certification.

The amendment allows individuals to receive International Fire Service Accreditation Congress seals for Fire Fighter I, Fire Fighter II, First Responder Awareness, and First Responder Operations, all of which are encompassed in the curriculum for basic structure fire protection personnel certification. The amendment also allows individuals who take a portion of the curriculum including many volunteer fire fighters, to apply for the appropriate IFSAC seal.

Ms. Marlene Jerred, Interim Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amendment is in effect there will be no fiscal impact for state government. There may be fiscal implications to local governments if the entity voluntarily chooses to pay the \$5.00 fee for each IFSAC seal.

Ms. Jerred has also determined that for each of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be that it allows fire fighters trained in Texas to document compliance with national professional certification standards established by IFSAC. There are no additional costs of compliance for small or large businesses required to comply with the amendment. Individuals who seek to apply for the IFSAC seal will incur a \$5.00 fee.

The commission has determined that the proposed amendment relates to international fire service accreditation congress will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us).

The amendment is proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 and §419.032 are affected by the proposed amendment.

§423.13. *International Fire Service Accreditation Congress (IFSAC) Certification.*

(a) Individuals holding current commission Structure Fire Protection Personnel Certification may be granted International Fire Service Accreditation Congress (IFSAC) Certifications as a Fire

Fighter I, Fire Fighter II, First Responder Awareness, and First Responder Operations [Certification] by making application to the commission for the IFSAC seals [seal] and paying applicable fees.

(b) Individuals completing the Fire Fighter I portion of a commission approved basic structure fire suppression program; passing the applicable state examination; and holding, as a minimum, current certification by the Texas Department of Health as an Emergency Care Attendant may be granted IFSAC Certifications as Fire Fighter I and First Responder Awareness by making application to the commission for the IFSAC seals and paying applicable fees.

(c) Individuals completing the Fire Fighter II portion of a commission approved basic structure fire suppression program; documenting IFSAC accreditation as a Fire Fighter I and First Responder Awareness; and passing the applicable state examination may be granted IFSAC Certification as Fire Fighter II and First Responder Operations by making application to the commission for the IFSAC seals and paying applicable fees.

(d) Individuals completing a combined Fire Fighter I and Fire Fighter II commission approved basic structure fire suppression program; passing the applicable state examination; and holding, as a minimum, current certification by the Texas Department of Health as an Emergency Care Attendant may be granted IFSAC Certifications as a Fire Fighter I, Fire Fighter II, First Responder Awareness, and First Responder Operations by making application to the commission for the IFSAC seals and paying applicable fees.

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

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



## Subchapter B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

### 37 TAC §423.203, §423.211

The Texas Commission on Fire Protection proposes an amendment to §423.203 and proposed new §423.211, concerning aircraft rescue fire fighting personnel certification.

The amendment to §423.203 allows a person to qualify for the certification examination by submitting documentation of accreditation from the International Fire Service Accreditation Congress. New §423.211 allows persons currently certified aircraft rescue fire protection personnel to apply for an IFSAC seal as well as those who complete the applicable testing and training program.

Ms. Marlene Jerred, Interim Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amended and new sections are in effect there will be no fiscal impact for state government. There may be fiscal implications to local governments if the entity

voluntarily chooses to pay for an IFSAC seal for its employees in the amount of \$5.00 for each seal.

Ms. Jerred has also determined that for each of the first five years the proposed amendment and new section are in effect the public benefit anticipated as a result of enforcing the amended and new sections will be that it allows fire fighters trained in Texas to document the meeting of national standards established by IFSAC. There are no additional costs of compliance for small or large businesses required to comply with the amendment and new section. Individuals who seek to apply for the IFSAC seal will incur a \$5.00 fee.

The commission has determined that the proposed amendment and new section relating to aircraft rescue fire fighting personnel certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us).

The amendment and new section are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with the authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendment and new section.

*§423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.*

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

(f) Individuals from another jurisdiction who possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Airport Fire Fighter, Fire Fighter I, and Fire Fighter II shall be eligible to take the commission examination for basic aircraft rescue fire fighting personnel.

*§423.211. International Fire Service Accreditation Congress (IF-SAC) Certification.*

(a) Individuals holding current commission Aircraft Rescue Fire Protection Personnel Certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission approved basic aircraft rescue fire suppression program; documenting IFSAC accreditation for Fire Fighter I and Fire Fighter II; and passing the applicable state examination may be granted IFSAC Certification as an Airport Fire Fighter by making application to the commission for the IFSAC seal and paying applicable fees.

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

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

TRD-9908107

T.R. Thompson  
General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



## Chapter 431. FIRE INVESTIGATION

### Subchapter A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

#### 37 TAC §431.3

The Texas Commission on Fire Protection proposes an amendment to §431.3, concerning minimum standards for basic arson investigator certification. The amendment adds language to allow individuals to submit military training for evaluation toward the minimum requirements for the Basic Fire Investigator Curriculum.

Ms. Marlene Jerred, Interim Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the amended section is in effect there will be no fiscal impact for state or local governments.

Ms. Jerred has also determined that for each of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the amended section will be that it provides standardization among disciplines for recognition of military training to qualify for the certification examination. There are no additional costs of compliance for small or large businesses required to comply with the amendments. Individuals who choose to seek certification will incur a \$15.00 fee for the examination and a \$20.00 certification fee. The commission has determined that the proposed amendments relating to minimum standards for basic arson investigator certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendment is proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendment.

§431.3. *Minimum Standards for Basic Arson Investigator Certification.*

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;

(2) hold a current commission as a peace officer with the employing entity for which the arson investigations will be done;

(3) complete a commission approved basic fire investigation training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire investigation training program shall consist of one of the following:

(A) completion of the commission approved Basic Fire Investigator Curriculum, as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(B) successful completion of the National Fire Academy Resident Fire Arson Investigator Course; or

(C) successful completion of an out-of-state or military training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Investigator Curriculum as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual"; or

(D) successful completion of the following college courses: Arson Investigator I 3 semester hours Arson Investigator II 3 semester hours Hazardous Materials I 3 semester hours Building Construction 3 semester hours Fire Protection Systems 3 semester hours Total semester hours 15 NOTE: The three semester hour course "Building Codes and Construction" may be substituted for Building Construction.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time arson investigator may be certified as an arson investigator, of the same level of certification, without meeting the applicable examination 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 November 29, 1999.

TRD-9908108

T.R. Thompson  
General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



## Chapter 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

### 37 TAC §453.7

The Texas Commission on Fire Protection proposes new §453.7, concerning international fire service accreditation congress certification for hazardous materials technicians. The new section adds language to allow individuals who are certified by the commission as hazardous materials technicians to apply for an IFSAC seal; as well as individuals who have completed the appropriate training and testing.

Ms. Marlene Jerred, Interim Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the new section is in effect there will be no fiscal impact for state government. There may be fiscal implications to local governments if the entity voluntarily chooses to pay the \$5.00 fee for each IFSAC seal.

Ms. Jerred has also determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be that it allows fire fighters trained in Texas to document the meeting of national standards established by IFSAC. There are no additional costs of compliance for small or large businesses required to comply with the amendments. Individuals who seek to apply for the IFSAC seal will incur a \$5.00 fee. The commission has determined that the proposed new section relating to minimum standards for hazardous materials technician certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us).

The new section is proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum educational and training standards for specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed new section.

#### §453.7. International Fire Service Accreditation Congress (IFSAC) Certification.

(a) Individuals holding current commission Hazardous Materials Technician Certification may be granted International Fire Service Accreditation Congress (IFSAC) Certification as a Hazardous Materials Technician by making application to the commission for the IFSAC seal and paying applicable fees.

(b) Individuals completing a commission approved hazardous materials technician program; documenting IFSAC accreditation for First Responder Awareness and Fire Responder Operations; and passing the applicable state examination may be granted IFSAC Certification as a Hazardous Materials Technician by making application to the commission for the IFSAC seal and paying applicable fees.

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

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

TRD-9908109

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 239-4921



## Chapter 463. APPLICATION CRITERIA

### 37 TAC §§463.2, 463.4, 463.6

The Texas Commission on Fire Protection proposes amendments to §§463.2, 463.4, and 463.6, concerning application criteria for the Fire Department Emergency Program. The amendments to §463.2 prohibit the use of funds awarded by the fire department emergency program to pay previous debts to comply with Government Code, §419.056(b) that requires a fire department to establish that without a loan or other financial assistance, the local fire department would be unable to purchase necessary fire fighting equipment. The amendment to §463.4 concerning competitive needs criteria, clarify requirements for participation in TEXTFIRS and an approved training certification program, including compliance AT THE TIME OF APPLICATION. The change to §463.6 concerning contract information eliminates obsolete language and specifies remedies for default, including disqualification from further awards.

Ms. Barbara Jenkins, Program Administrator for the Fire Department Emergency Program, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state or local governments.

Ms. Jenkins has also determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be a clarification of requirements for eligibility for emergency funding. In addition, requiring participation in TEXTFIRS and a training certification program at the time of application would encourage training of fire departments and simplify administration of the program. There are no additional costs of compliance for small or large businesses or individuals required to comply with the amendments. The commission has determined that the proposed amendments relating to application criteria will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines. The commission has also determined that the proposed rule change will have no local employment impact which requires an impact statement pursuant to the Government Code, §2001.022.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286 or e-mail to [info@tcfp.state.tx.us](mailto:info@tcfp.state.tx.us).

The amendments are proposed under Texas Government Code, §419.008, which provides the commission with authority to propose rules for the administration of its powers and duties; and

Texas Government Code, §419.051-§419.064, which provides the commission with authority to administer the Fire Department Emergency Program.

Texas Government Code, §419.059 and §419.060 are affected by the proposed amendments.

§463.2. *Limitations on Loans, Scholarships, and Grants.*

(a) Applications for loans will be given priority consideration for funding.

(b) Loans of less than or equal to \$15,000 will have terms not to exceed 10 years. Loans greater than \$15,000 will have terms not to exceed 20 years. The interest rate charged on loans will not exceed the prime rate.

(c) Specific loan terms and interest rates within the parameters of subsection (b) of this section will be established at each regularly scheduled meeting of the commission. It is provided, however, that the term and interest rate applicable to an application will be the term and interest rate in effect at the time of receipt of the application unless the most current commission-approved interest rate is lower than that in effect at the time of receipt of the application. In that case, the lower interest rate will be applicable.

(d) Grants and scholarships shall generally be limited to awards for training, education, personal protective clothing, and self-contained breathing apparatus. Grants for equipment and facilities will not be awarded if, in the opinion of the commission, the applicant has the ability to repay a loan for the amount of assistance being requested.

(e) Applications from fire departments and organizations which are submitted collectively in order to request funds for a single project which exceeds the statutory amount of funds allowed to be awarded to any single applicant will not be considered for funding by the commission.

(f) Loans and grants must be approved by the commission prior to the purchase of eligible equipment or facilities.

(g) Loans and grants may not be used to pay previous debts.

§463.4. *Competitive Needs Criteria.*

(a) All applications must meet the following minimum standards.

(1) Applicants must train its members on a regular basis (at least monthly).

(2) Training provided must be approved under §465.3 of this title (relating to Education and Training Standards).

(3) Applicants must have at least 10 volunteer and/or paid personnel active in the organization.

(4) Applicants must provide fire protection services and/or fire fighting education and training.

(5) Applicants must report through the TEXFIRS system for the three months preceding the date of the application [; or agree to report if awarded funding assistance].

(6) Except for applicants for scholarships, all applicants must participate in a training certification program approved by the Texas Commission on Fire Protection at the time of application. Participation in a training certification program means:

(A) participation by a majority of a department's members in an approved training program as identified in §465.3 of this title (relating to Education and Training Standards);

(B) current certification of the department as a commission approved training facility that conducts at least 48 hours of drills each calendar year attended by a majority of members; or

(C) current certification by the commission of at least 10 members with current continuing education.

(b) All applications for assistance will be competitively evaluated based on a comparison of the applications being considered for funding during a given meeting using one or more of the following criteria:

(1) ratio of fire response to fire apparatus. Priority will be given to those with highest ratios;

(2) ratio of matching funds offered by applicant to amount of assistance requested. Priority will be given to those with highest ratios;

(3) ratio of taxing authority contributions for fire service to fire response activity;

(4) ratio of existing debt to income. Priority will be given to those with the highest ratio;

(5) amount of approved protective clothing and equipment compared to number of personnel and fire responses.

§463.6. *Contract Information.*

(a) A loan, grant, or scholarship awarded by the commission shall be issued upon the condition that applicant observes and complies with all Fire Department Emergency Program (FDEP) rules and regulations. ~~[The department or organization must also participate in a training certification program approved by the Texas Commission on Fire Protection.]~~

(b) If FDEP rules and regulations are amended, the loan, grant, or scholarship shall be conditioned upon compliance with the rules and regulations in effect at the time of award or loan. Any violation of commission rules or contract provisions may be considered a default by a recipient. Cases involving default, in the judgment of the commission, will be referred to the executive director of the commission for appropriate action, including, but not limited to, disqualification from any further awards until the default is cured.

(c) All contracts with the commission for assistance under the FDEP will contain the following minimum provisions;

(1) parties to the contract;

(2) contract period

(3) contractor performance requirements, including:

(A) performance statement, including the bidding process which must at least meet the minimum standards required by the state;

(B) budget;

(C) project implementation schedule;

(D) contractor's application for FDEP assistance;

(4) method of payment of funds to contractor

(5) contractor's requirement to retain up-to-date records and make them accessible to commission staff and state auditor;

(6) contractor reporting requirements;

(7) commission monitoring plan;

(8) conveyance provisions;

- (9) limitation of commission liability;
- (10) conflict of interest and nepotism provisions;
- (11) fixing venue for any litigation which may occur regarding FDEP funds in Travis County;
- (12) provisions for changes and amendments to the contract;
- (13) contract suspension provisions;
- (14) contractor assurances and certifications;
- (15) contractor's requirement to provide sufficient insurance on items obtained with FDEP funds;
- (16) signatory page.

(d) In addition to the provisions in subsection (c) of this section, all contracts with the commission for loans will contain the following minimum provisions:

- (1) payback schedule, including provisions for early pay-off;
- (2) provisions for late payment charges;
- (3) collateral, including first or second liens by the commission on facilities, apparatus, and/or equipment being financed, or other security devices considered necessary by the commission to secure the loan;
- (4) provisions for altering terms of contract based upon dire circumstances.

This 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 November 29, 1999.

TRD-9908110

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 239-4921



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part 20. TEXAS WORKFORCE COMMISSION

#### Chapter 809. CHILD CARE AND DEVELOPMENT

##### Subchapter C. REQUIREMENTS TO PROVIDE CHILD CARE

###### 40 TAC §809.46

The Texas Workforce Commission (Commission) proposes an amendment to §809.46 concerning assessing parent fees for child care.

The purpose of the amendment is to provide conformity with federal regulations requiring that a sliding fee scale used to assess parent fees for child care be based on family income and family size, and also allowing other applicable factors to be included. The amendment revises the method of determining the parent fee for child care services. The amount of the parent fee is often a determining factor in a parent's ability to obtain and retain employment. By including family size in the methodology for assessing parent fees, the amendment will help ensure that a low-income working parent can become and remain self-sufficient. The amendment also helps ensure that low-income families have equal access to child care. This amendment does not relieve the local workforce development boards (Boards) from meeting Commission-approved performance targets.

The preamble to the federal regulations makes it clear that state agencies have the flexibility to take elements other than family size and gross monthly income, such as the number of children in care, into consideration when designing their fee scales. The amendment requires that Boards vary the fee based on the number of family members and family gross monthly income, and also allows the Boards to consider the number of children in care. Specifically, the amendment provides that in areas where the Commission administers the program, the parent fee is 9% of the family's gross monthly income if there is one child receiving care, and 11% of the family's gross monthly income if there are two or more children receiving care. For families with seven or more members, the fee is 65% of the amount calculated at either 9% or 11%. Where Boards directly manage the program, they are required to vary the parent fee based on the number of members in the family and the family's gross monthly income, and they are allowed to also consider the number of children the family has in care.

Background. The current rule requires Boards to ensure that parent fees are assessed to all parents or caretakers based on the family's gross monthly income with a few exceptions. A family is required by federal law to share in the cost of subsidized child care, unless the lead agency waives the fee pursuant to the federal regulations. The federal regulations give the states flexibility in deciding the amount of fee to charge parents and whether to waive the fee. The federal regulations also suggest that a parent fee of 10% of family gross monthly income would ensure parent access. The preamble makes it clear that the 10% is offered as a benchmark and not a limit on the state's flexibility in deciding the amount of fee to charge parents.

The Commission intends that the proposed amendment will recognize that high parent fees limit parental choice by encouraging parents to choose less expensive and lower quality child care or to not accept the subsidy. It is the intent of the Commission to ensure that any co-payment or fee paid by the parent is affordable for the family and that the sliding fee scale does not limit parental choice. The Commission intends that this amendment will help prevent disruptions of a child's care that may adversely affect the child's development.

Child care services are provided under Texas Human Resources Code, Chapter 44.

If a Board fails to comply with the provisions contained in the rule, the Board shall be subject to the sanctions as detailed in Chapter 800, Subchapter E of this title relating to Sanctions.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendment 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 amendment;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendment;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the amendment;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the amendment; and

There are no anticipated economic costs to persons required to comply with the amendment.

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 the amendment.

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 the proposed amendment.

Jean Mitchell, Director of Workforce and Development, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to Gary Frederick, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778, (512) 305-9672. Comments may also be submitted via fax to (512) 463-7379 or e-mailed to: Gary.Frederick@twc.state.tx.us. Comments must be received by the Commission within thirty (30) days from the date of the publication in the *Texas Register*.

The amendment to the rule is proposed under Texas Labor Code §§301.061 & 302.002, which provide 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's programs.

The amendment to the rule affects Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

#### §809.46. *Assessing Parent Fees.*

(a) A Board shall assess parent fees to all parents or caretakers based on the family's size and gross monthly income, with the following exceptions.

(1) Parents or caretakers who receive TANF are assessed no fee.

(2) Parents or caretakers who receive Supplemental Security Income (SSI) are assessed no fee.

(3) Parents who participate in the Food Stamp Employment and Training program are assessed no fee. Children of parents or caretakers who receive protective services are assessed no fee unless

the Texas Department of Protective and Regulatory Services assesses a fee to a parent.

(b) In families where the child is the only TANF or SSI recipient, the parent fee is assessed according to subsection (d) of this section.

(c) Teen parents who live with their parents and who are not covered under exceptions outlined under subsection (a) of this section shall be assessed a parent fee. The parent fee is based solely on the teen parent's income.

(d) Parent fees for all parents not covered under exceptions outlined under subsection (a) of this section are assessed using the following formulas:

(1) In areas where the Commission manages child care service delivery contracts, the parent fee shall be 9% of the family's gross monthly income if there is one child receiving Commission paid child care and 11% of the family's gross monthly income if there are two or more children receiving Commission paid child care. For families with 7 or more members, the fee is 65% of the 9% or 11%.

(2) In areas where the Board directly manages child care service delivery contracts, it is recommended that the parent fee should be no less than 9% and no more than 15% of the family's gross monthly income. The Board shall vary the parent fee based on the number of members in the family and the family's gross monthly income and may also vary the fee based on the number of children the family has in care. The Board shall set the actual fee policy in accordance with the requirements set forth in §809.12 of this chapter (relating to Board Policies and Plans for Child Care Services).

(e) The Board's contractor is not permitted to assess a parent fee that exceeds the cost of care.

(f) Parents who receive a child care subsidy from other state or federal programs such as the Workforce Investment [Job Training Partnership] Act shall pay that amount in addition to the assessed parent fee. The Board's contractor shall request documentation of child care subsidies from the parent.

This 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 November 23, 1999.

TRD-9908019

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-8812



## Chapter 809. CHILD CARE AND DEVELOPMENT

The Texas Workforce Commission (Commission) proposes amendments to §809.103, concerning Texas Workforce Commission Applicant Child Care and §809.121, concerning the definition of children living at "very" low incomes for eligibility for child care.

The purpose of the amendment to §809.103 is to conform the cross-reference to the amended title of §809.121.



The purpose of the amendment to §809.121 is to bring the rule into compliance with state plan requirements. Guidelines for the Child Care Development Fund (CCDF) state plan require a definition of "very low income" that is below the state's income limits for CCDF eligibility. This is to ensure that the state does not serve exclusively children of families with very low incomes. The proposed amendment changes the category of Children At Risk in Section 809.121 from "Children Living At Very Low Incomes" to "Children Living At Low Incomes". This change in language retains the intent of the section but also mitigates the conflict between the current language and the state plan requirement related to the definition of "very low income." This amendment continues to ensure that child care assistance is available to low-income working families that may be at risk of becoming dependent on public assistance. This amendment does not relieve the local workforce development boards (Boards) from meeting Commission-approved performance targets.

Background: The federal regulations require that 70% of the CCDF mandatory and matching funds be spent on families who are receiving assistance under Title IV-A of the Social Security Act, are attempting to transition off such assistance, and are at risk of becoming dependent on such assistance.

The Commission intends that the proposed amendment to §809.121, by continuing to include children from families with incomes at or below 85% of State Median Income (SMI) in Subchapter H ("Children of Parents At Risk of Becoming Dependent on Public Assistance"), will ensure that at least 70% of the mandatory and matching funds will be spent on the families cited in the federal regulations. It is also the Commission's intent to ensure that the state does not serve exclusively children of families with very low incomes.

Child care services are provided under Texas Human Resources Code, Chapter 44.

If a Board fails to comply with the provisions contained in the rule, the Board shall be subject to sanctions as detailed in Chapter 800, Subchapter E of this title relating to Sanctions.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments 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 amendments;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the amendments;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the amendments;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the amendments; and

There are no anticipated economic costs to persons required to comply with the amendments.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rules because small businesses are not regulated by or required to do anything by the amendments.

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 the proposed amendments.

Jean Mitchell, Director of Workforce and Development, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the amendments will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Comments on the proposal may be submitted to Gary Frederick, Texas Workforce Commission Building, 101 East 15th Street, Room 434T, Austin, Texas 78778, (512) 305-9672. Comments may also be submitted via fax to (512) 463-7379 or e-mailed to: Gary.Frederick@twc.state.tx.us. Comments must be received by the Commission within thirty (30) days from the date of the publication in the *Texas Register*.

## Subchapter G. CHILD CARE FOR PEOPLE TRANSITIONING OFF PUBLIC ASSISTANCE

### 40 TAC §809.103

The amendments are proposed under Texas Labor Code §§301.061 & 302.002, which provide 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's programs.

The amendments affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.103. *Texas Workforce Commission Applicant Child Care.*

(a) Children are eligible for Applicant Child Care if their parents meet the criteria for eligibility of children living at [very] low incomes, as detailed in §809.121 of this chapter, (relating to Children Living At [Very] Low Incomes), and meet all of the following criteria:

(1) need child care to accept employment;

(2) receive a referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants; and

(3) locate employment prior to TANF certification.

(b) To receive Applicant Child Care, parents shall not have voluntarily terminated paid employment of at least 30 hours a week within 30 days prior to receiving the referral from the Texas Department of Human Services to attend a Workforce Orientation for Applicants, unless the voluntary termination was for good cause connected with the parents' work.

(c) Subject to the availability of funds, Applicant Child Care shall be provided for up to one year.

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

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

TRD-9908145

J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-8812



Subchapter H. CHILDREN OF PARENTS AT  
RISK OF BECOMING DEPENDENT ON PUB-  
LIC ASSISTANCE

**40 TAC §809.121**

The amendments are proposed under Texas Labor Code §§301.061 & 302.002, which provide 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's programs.

The amendments affect Texas Labor Code, Chapter 302, and Texas Human Resources Code, Chapters 31 and 44.

§809.121. *Children Living at [Very] Low Incomes.*

Children living at [very] low incomes are eligible for child care if:

(1) the family income does not exceed 85% of the state median income for a family of the same size; or

(2) the parents of the children are receiving TANF or Supplemental Security Income.

This 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 November 29, 1999.

TRD-9908146

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: January 9, 2000

For further information, please call: (512) 463-8812



# ADOPTED RULES

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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.

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## TITLE 4. AGRICULTURE

### Part 1. TEXAS DEPARTMENT OF AGRICULTURE

#### Chapter 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM

The Texas Department of Agriculture (the department) adopts amendments to §§14.1, 14.10, and 14.13, concerning handling and marketing of perishable commodities, and the payment of claims from the Produce Recovery Fund (Fund) under the Texas Agriculture Code (the Code), Chapters 101, and 103, with changes to the proposed text as published in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8400). Section 14.13 is adopted with changes. Sections 14.1 and 14.10 are adopted without changes and will not be republished. Section 14.13 has been changed to correct the maximum amount allowed to be paid from the Fund against a single licensee in any one calendar year from \$80,000 to \$85,000, the amount established by law.

The amendments are adopted in order to comply with statutory changes made by the 76th Legislature, Regular Session, 1999, in accordance with Senate Bill 992. The amendments are further made to clarify procedures regarding the filing of claims under the Agricultural Protective Act Program and to allow for a greater recovery of losses by claimants awarded payment from the Fund, resulting in a benefit to the Texas agricultural economy.

Amended §14.1 defines words used in these sections and is amended to delete references to the Code, Chapter 102, and to include a definition for the term "perishable commodities". In addition, the terms "citrus fruit and/or vegetables" is replaced by the term "perishable commodities" in this section and throughout Chapter 14. Amended §14.10 identifies requirements for filing a claim against the Fund and is amended to delete references to Chapter 102 and to substitute the term "perishable commodities" for "citrus fruit and/or vegetables". Amended §14.13 sets payment of claims made from the Fund and is amended to increase amounts payable from the Fund.

No comments were received regarding the proposal.

#### Subchapter A. GENERAL PROVISIONS

##### 4 TAC §14.1

The amendments to §14.1, are adopted under the Texas Agriculture Code (the Code), §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules

necessary for the administration of the Code; and the Code, §103.012, which authorize the department to adopt rules for the payment of claims from the Fund.

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 November 23, 1999.

TRD-9908030

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: December 13, 1999

Proposal publication date: October 1, 1999

For further information, please call: (512) 463-7583



#### Subchapter B. PRODUCE RECOVERY FUND CLAIMS

##### 4 TAC §§14.10, 14.13

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

§14.13. *Payment of Claims from the Fund.*

(a) Claims of \$2000 or less may be paid in full.

(b) Claims of more than \$2000 may be paid in the following manner:

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

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

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

(d) Claims Against a Single Licensee. Total payment for claims against a single licensee shall not exceed \$85,000 in any one calendar year. Claims shall be paid in the order that a final determination is made by the department or the Board. In cases when a claim cannot be paid in full due to the restrictions of this paragraph,

the claimant shall be given the option of accepting immediate payment of a lesser amount or accepting full payment from the Fund during the next calendar year.

This agency hereby certifies that the 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 November 23, 1999.

TRD-9908031  
Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Effective date: December 13, 1999  
Proposal publication date: October 1, 1999  
For further information, please call: (512) 463-7583



## TITLE 19. EDUCATION

### Part 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### Chapter 1. AGENCY ADMINISTRATION

##### Subchapter A. GENERAL PROVISIONS

###### 19 TAC §§1.1, 1.5, 1.6, 1.8

The Texas Higher Education Coordinating Board adopts amendments to §§1.1, 1.5, 1.6, and 1.8 concerning Agency Administration (General Provisions) without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4132). The proposed amendments are being made as a result of a rule review in accordance with §167 of the General Appropriations Act. Amendments to §1.1 and §1.5 were made for clarification. Amendments to §1.6 were made to clarify that an advisory committee is automatically abolished on the fourth anniversary of the date of its creation and to provide the Commissioner to report any new committees at each Board meeting rather than provide written statements to the Board. Amendments to §1.8 regarding minority and female-owned businesses have been made to bring it up to date with Chapter 2161 of the Texas Government Code.

No comments were received regarding the proposed amendments to the rules.

The amendments to the rules are adopted under Texas Education Code, §61.027, and Texas Government Code, §2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (General Provisions).

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 November 23, 1999.

TRD-9908001  
James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Effective date: December 13, 1999  
Proposal publication date: June 4, 1999  
For further information, please call: (512) 483-6162



###### 19 TAC §1.10, §1.11

The Texas Higher Education Coordinating Board adopts new §1.10 and §1.11 concerning Agency Administration (General Provisions) without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4133). The new sections of the rules are being made as a result of a rule review in accordance with §167 of the General Appropriations Act. New §1.10 is being proposed to provide policies and procedures for administering the Open Records Act. New §1.11 is being proposed to provide protest procedures for resolving vendor protests relating to purchasing as required by §2155.076 of the Texas Government Code.

No comments were received regarding the new rules.

The new rules are adopted under Texas Education Code, §61.027, and Texas Government Code, §2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (General Provisions).

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 November 23, 1999.

TRD-9908002  
James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board  
Effective date: December 13, 1999  
Proposal publication date: June 4, 1999  
For further information, please call: (512) 483-6162



##### Subchapter B. HEARINGS AND APPEALS

###### 19 TAC §§1.21-1.41

The Texas Higher Education Coordinating Board adopts the repeal of §§1.21 - 1.41 concerning Agency Administration (Hearings and Appeals) without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4135). The rules are being repealed and rewritten as a result of a rule review in accordance with §167 of the General Appropriations Act. The repealed rules will reflect the Board's current procedures, including the use of the State Office of Hearings and Appeals.

No comments were received regarding the proposed repeal of the rules.

The repealed rules are adopted under Texas Education Code, § 61.027, and Texas Government Code, §2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Hearings and Appeals).

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 November 23, 1999.

TRD-9908004

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: December 13, 1999

Proposal publication date: June 4, 1999

For further information, please call: (512) 483-6162



### 19 TAC §§1.21-1.29

The Texas Higher Education Coordinating Board adopts new §§1.21 - 1.29 concerning Agency Administration (Hearings and Appeals) without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4135). The new rules are being proposed as a result of a rule review in accordance with §167 of the General Appropriations Act. The new rules will reflect the Board's current procedures, including the use of the State Office of Hearings and Appeals.

No comments were received regarding the new rules.

The new rules are adopted under Texas Education Code, §Section 61.027, and Texas Government Code, §2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Hearings and Appeals).

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 November 23, 1999.

TRD-9908003

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: December 13, 1999

Proposal publication date: June 4, 1999

For further information, please call: (512) 483-6162



## Subchapter C. ADMINISTRATION OF THE OPEN RECORDS ACT

### 19 TAC §§1.71-1.75

The Texas Higher Education Coordinating Board adopts the repeal of §§1.71 - 1.75 concerning Agency Administration (Administration of the Open Records Act) without changes to the proposed text as published in the June 4, 1999, issue of the *Texas Register* (24 TexReg 4137). The rules are being repealed and rewritten as a result of a rule review in accordance with §167 of the General Appropriations Act. The repealed rules will reflect the Board's current procedures, including the use of the State Office of Hearings and Appeals.

No comments were received regarding the proposed repeal of the rules.

The repealed rules are adopted under Texas Education Code, §61.027, and Texas Government Code, §2001 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Administration of the Open Records Act).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9908005

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Effective date: December 13, 1999

Proposal publication date: June 4, 1999

For further information, please call: (512) 483-6162



## TITLE 22. EXAMINING BOARDS

### Part 14. TEXAS OPTOMETRY BOARD

#### Chapter 280. THERAPEUTIC OPTOMETRY

##### 22 TAC §280.1

The Texas Optometry Board adopts amendments to §280.1 without change to the proposed text published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8683).

The amendments are required in order to implement House Bill 1051, 76th Legislature, 1999, which redefined the classes of medications that therapeutic optometrists may administer and prescribe. The amendments remove restrictions that were deleted by House Bill 1051.

No comments were received.

The amended section is adopted under the provisions of Texas Occupations Code, §351.160 and §351.151. The Texas Optometry Board interprets §351.160 as authorizing the interpretation of the therapeutic optometry requirements. The Board interprets §351.151 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 November 22, 1999.

TRD-9907997

Lois Ewald

Executive Director

Texas Optometry Board

Effective date: December 12, 1999

Proposal publication date: October 8, 1999

For further information, please call: (512) 305-8502



## Part 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

### Chapter 361. ADMINISTRATION

#### Subchapter A. GENERAL PROVISIONS

##### 22 TAC §361.10

The Texas State Board of Plumbing Examiners adopts new §361.10 providing for compliance with House Bill 1, General Appropriations Act, 75th legislature, Article IX, §124.5 (1997), which directs State agencies to adopt the rules of the General Services Commission based on that Commission's State Disparity Study, without changes to the proposed text as published in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8460).

The following is a restatement of the rule's factual basis: The new section is being adopted to comply with House Bill 1, General Appropriations Act, 75th legislature, Article IX, §124.5 (1997), which directs State agencies to adopt the rules of the General Services Commission based on that Commission's State Disparity Study. The proposed rule adopts the Commission's rules by reference.

No comments were received regarding the proposed amendments.

The Board hereby certifies that the rule has been reviewed by legal counsel and found to be a valid exercise of the Board's authority.

This new section is adopted under the authority of House Bill 1, General Appropriations Act, 75th Legislature, Article IX, §124.5 (1997). The Texas State Board of Plumbing Examiners interprets this section as requiring it to adopt the rules of the General Services Commission based on the Commission's State Diversity Study.

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 November 24, 1999.

TRD-9908044

Robert L. Maxwell

Chief Investigator, Field Services

Texas State Board of Plumbing Examiners

Effective date: December 14, 1999

Proposal publication date: October 1, 1999

For further information, please call: (512) 458-2145



## Part 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### Chapter 511. CERTIFICATION AS CPA

#### Subchapter B. CERTIFICATION BY EXAMINATION

##### 22 TAC §511.21

The Texas State Board of Public Accountancy adopts an amendment to §511.21 concerning Examination Application with a change to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8683). The change is the deletion of "all" before "applications" in the last half of the sentence in subsection (d).

The amendment allows the rule to clearly state what is required by examination applications.

The amendment will function by rewriting subsection (a), relocating and rewriting former subsection (c) to new subsection (b), deleting former subsection (b), relocating former §511.22 to new subsection (c), establishing application deadlines, stating that applications must be accompanied by payment for all fees, stating some reasons for the rejection of an application, requiring the applicant to designate an application site, and requiring re-examinees to continue to demonstrate that they are qualified to take the examination.

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 amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

##### §511.21. Examination Application.

(a) All applications to take the Uniform CPA Examination shall be made on forms prescribed by the board and shall also be in compliance with board rules and with all applicable laws.

(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) 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.

(d) Applications for the November examination shall be received in the Board office by September 15 and 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 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 November 24, 1999.

TRD-9908049

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: December 14, 1999

Proposal publication date: October 8, 1999

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



## 22 TAC §511.22

The Texas State Board of Public Accountancy adopts the repeal of §511.22 concerning Liability, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8685).

The repeal allows the language of this rule to be relocated to §511.21, a more logical location.

The repeal will function by relocating the language of this rule to §511.21.

No comments were received regarding adoption of the rule.

The repeal is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal 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.

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

TRD-9908051

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: December 14, 1999

Proposal publication date: October 8, 1999

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



The Texas State Board of Public Accountancy adopts new §511.22 concerning Initial Filing of the Application of Intent, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8686).

The new section allows applicants to have their applications evaluated by the Board and allows the Board to comply with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The new section will function by having applicants request that the Board evaluate their application to determine what, if anything, is needed to complete their application and by requiring proof of an applicant's legal status in the United States.

No comments were received regarding adoption of the rule.

The new section is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the

Act and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requiring proof of legal status in the United States.

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 November 24, 1999.

TRD-9908050

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



## Subchapter D. CPA EXAMINATION

### 22 TAC §511.76

The Texas State Board of Public Accountancy adopts an amendment to §511.76 concerning Refund Policy, with a change to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8687). The change is the addition of "or" between the semicolon and "the applicant."

The amendment allows the Board to continue to offer full or partial refunds under certain conditions.

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

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 amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

#### §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 the board receives notification in writing prior to the deadline for applying for the examination ( March 15 or September 15).

(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; or the applicant withdraws after the filing deadline because of extreme hardship.

(1) Extreme hardship 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) 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.

(c) No examination fee will be transferred to a subsequent examination.

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 November 24, 1999.

TRD-9908052

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



## Chapter 521. FEE SCHEDULE

### 22 TAC §521.3

The Texas State Board of Public Accountancy adopts an amendment to §521.3 concerning Fee for Certification by Reciprocity without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8688).

The amendment allows the Board to clarify the purpose of its fee for certification of reciprocity.

The amendment will function by adding language to subsection (a) and adding subsection (b) concerning the Board's policy on refunds.

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 amend, adopt and repeal 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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TRD-9908053

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



### 22 TAC §521.4

The Texas State Board of Public Accountancy adopts an amendment to §521.4 concerning Registration Fee for Foreign Accountants without changes to the proposed text as published

in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8689).

The amendment allows the Board to refund part of the processing and application fee to foreign accountants seeking certification.

The amendment will function by adding subsection (6) concerning a partial refund.

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 amend, adopt and repeal 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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TRD-9908054

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



### 22 TAC §521.5

The Texas State Board of Public Accountancy adopts an amendment to §521.5 concerning Temporary Permit Fee without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8689).

The amendment allows the rule on the issuance of a temporary permit to be clarified.

The amendment will function by eliminating unnecessary language in the previous 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 amend, adopt and repeal 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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TRD-9908055

William Treacy

Executive Director

Texas State Board of Public Accountancy

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





## 22 TAC §521.7

The Texas State Board of Public Accountancy adopts an amendment to §521.7 concerning Fee for Transfer of Credits, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8690).

The amendment allows the Board to not refund one fee and to increase another fee, which should help the Board recover its expenses.

The amendment will function by making the processing fee for transfer of credits to this state non-refundable and by increasing the processing fee for credits transferred from this state from \$25.00 to \$40.00.

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 amend, adopt and repeal 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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TRD-9908056

William Treacy

Executive Director

Texas State Board of Public Accountancy

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



## 22 TAC §521.8

The Texas State Board of Public Accountancy adopts an amendment to §521.8 concerning Retired or Disabled Status without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8690).

The amendment allows the Board to more clearly state to retired licensees the purpose of their annual fee.

The amendment will function by eliminating unnecessary language in the previous 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 amend, adopt and repeal 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.

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

TRD-9908057

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: December 14, 1999

Proposal publication date: October 8, 1999

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



## 22 TAC §521.9

The Texas State Board of Public Accountancy adopts an amendment to §521.9 concerning Certification Fee, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8691).

The amendment allows the increased fees to help the Board meet the costs of its operations.

The amendment will function by increasing the certification fee from \$30.00 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 amend, adopt and repeal 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.

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

TRD-9908058

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: December 14, 1999

Proposal publication date: October 8, 1999

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



## 22 TAC §521.10

The Texas State Board of Public Accountancy adopts an amendment to §521.10 concerning Out-of-State Proctoring Fee, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8692).

The amendment allows the fee increase to help the Board meet the cost of its operations.

The amendment will function by increasing the fee 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 amend, adopt and repeal 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.

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

TRD-9908059  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848

◆ ◆ ◆  
**22 TAC §521.11**

The Texas State Board of Public Accountancy adopts new §521.11 concerning Fee for a Replacement Certificate without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8692).

The new section allows 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 Statutes.

The new section will function by authorizing the Board to charge \$30 for a replacement certificate.

No comments were received regarding adoption of the rule.

The new section is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and Article 8930 which requires the Board to meet its fiscal obligations.

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 November 24, 1999.

TRD-9908060  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848

◆ ◆ ◆  
**22 TAC §521.12**

The Texas State Board of Public Accountancy adopts new §521.12 concerning Filing Fee, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8693).

The new section allows the Board to continue to charge a \$50.00 filing fee for an Intent to take the Uniform CPA examination. Not every applicant will file an Intent. Filing an intent is not required.

The new section will function by transferring board §521.2(1) to this rule and by continuing to charge a \$50.00 filing fee for an Intent to take the Uniform CPA examination.

No comments were received regarding adoption of the rule.

The new section is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and

repeal 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.

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

TRD-9908061  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848

◆ ◆ ◆  
**Chapter 523. CONTINUING PROFESSIONAL EDUCATION**

The Texas State Board of Public Accountancy adopts the repeals 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 without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8694-8696).

The repeals allow the continuing professional education (CPE) rules to be better organized, better written and easier to comprehend.

The repeals will function by having the Board re-write, renumber and reorganize its rules on CPE.

No comments were received regarding adoption of these repeals.

**Subchapter A. CONTINUING PROFESSIONAL EDUCATION**

**22 TAC §§523.1-523.7**

The repeals are adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal 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.

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

TRD-9908062  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848

◆ ◆ ◆  
**Subchapter B. CONTINUING PROFESSIONAL EDUCATION STANDARDS**

**22 TAC §§523.21-523.32**

The repeals are adopted under the Public Accountancy Act, Texas 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 this adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9908104  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848



**Subchapter C. CONTINUING PROFESSIONAL EDUCATION REPORTING**

**22 TAC §523.41, §523.42**

The repeals are adopted under the Public Accountancy Act, Texas 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 this adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9908063  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848



**Subchapter D. MANDATORY CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAM**

**22 TAC §§523.61-523.65**

The repeals are adopted under the Public Accountancy Act, Texas 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 this adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9908064  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848



**Subchapter E. REGISTERED CONTINUING EDUCATION SPONSORS**

**22 TAC §§523.71-523.74**

The repeals are adopted under the Public Accountancy Act, Texas 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 this adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9908065  
William Treacy  
Executive Director  
Texas State Board of Public Accountancy  
Effective date: December 14, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 305-7848



**Subchapter A. CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS**

**22 TAC §523.1**

The Texas State Board of Public Accountancy adopts new §523.1 concerning Continuing Professional Education Purpose and Definition, with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697). The change to §523.1 is replacing "participate" with "participant" in subsection (b)(1).

The new rule allows the Board to continue its rules on CPE, to state the purpose of CPE, to state some definitions and to describe a sponsors' responsibilities.

The new rule will function by stating the purpose of CPE, by containing some definitions and by describing sponsors' responsibilities.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

§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.

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 November 24, 1999.

TRD-9908066

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: December 14, 1999

Proposal publication date: October 8, 1999

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

◆ ◆ ◆  
**22 TAC §523.2**

The Texas State Board of Public Accountancy adopts new §523.2 concerning Standards for Continuing Professional Education Program Development, with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697). The changes in §523.2 are relocating "advanced courses in foreign languages relating to accounting" to the last in a series, removing "and" before "practice management" and inserting "and" before the relocated phrase in subsection (b)(2).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by rewriting this rule to be clearer and easier to read.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

§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, ethics, behavioral science, practice management and advanced courses in foreign languages relating to accounting, 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).

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-9908067

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 §523.3**

The Texas State Board of Public Accountancy adopts new §523.3 concerning Program Objectives with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697). The change to §523.3 is replacing "exact" with "specific."

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing this rule and by requiring CPE program developers to state the concepts and skills that the course will transfer to the class participants.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

#### §523.3. Program Objectives.

The stated program objectives should clearly communicate the specific concepts and skills the program will transfer to persons completing 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.

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William Treacy

Executive Director

Texas State Board of Public Accountancy

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### 22 TAC §523.4

The Texas State Board of Public Accountancy adopts new §523.4 concerning Education and Experience Prerequisites without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing and continuing the requirement that CPE programs state what the CPE course's education and experience prerequisites are or if there are no prerequisites.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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

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### 22 TAC §523.5

The Texas State Board of Public Accountancy adopts new §523.5 concerning Program Developers without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring CPE program developers to demonstrate their competence at a high quality level.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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### 22 TAC §523.6

The Texas State Board of Public Accountancy adopts new §523.6 concerning Program Content without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697).

The new rule allows the board to rewrite this rule and to continue to have a rule addressing the correctness of CPE program materials.

The new rule will function by re-writing the rule and continuing the requirement that program developers must periodically review course materials for accuracy and consistency and make timely necessary corrections to course materials.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which pro-

vides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.7

The Texas State Board of Public Accountancy adopts new §523.7 concerning Program Review without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring that course materials be reviewed by qualified persons to ensure compliance with the CPE chapter and standards of content and design.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter B. CONTINUING PROFESSIONAL EDUCATION STANDARDS

### 22 TAC §523.21

The Texas State Board of Public Accountancy adopts new §523.21 concerning Program Description Standards without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8697).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring that CPE sponsors inform CPE course participants in advance about certain information about the course.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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### 22 TAC §523.22

The Texas State Board of Public Accountancy adopts new §523.22 concerning Instructors without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring that CPE course instructors be qualified and that CPE course sponsors evaluate instructors at the end of each program.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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**22 TAC §523.23**

The Texas State Board of Public Accountancy adopts new §523.23 concerning Program Sponsors Other Responsibilities without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing this rule to list a CPE course sponsor's other duties or responsibilities.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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◆ ◆ ◆  
**22 TAC §523.24**

The Texas State Board of Public Accountancy adopts new §523.24 concerning Learning Environment without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring that CPE course sponsors pay closer attention to several areas of the learning environment.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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

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◆ ◆ ◆  
**22 TAC §523.25**

The Texas State Board of Public Accountancy adopts new §523.25 concerning Evaluation without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by having a list of items to assist CPE course sponsors in obtaining evaluations from program participants and instructors.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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◆ ◆ ◆  
**22 TAC §523.26**

The Texas State Board of Public Accountancy adopts new §523.26 concerning Program Time Credit Measurement without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing this rule and by allocating specific time credits for classroom programs, continuous conferences and conventions, for university or college credit course and for self-study.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.27

The Texas State Board of Public Accountancy adopts new §523.27 concerning Credits for Instructors and Discussion Leaders without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by granting CPE credit to instructors up to twice the recommended credit hours for the first presentation. Repetitious presentations require a demonstration that additional work was required. The maximum credit is 20 hours during the reporting period.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.28

The Texas State Board of Public Accountancy adopts new §523.28 concerning Credits for Published Articles and Books without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by allowing up to 10 CPE credit hours to authors whose work contributes to the authors' competence.

In exceptional circumstances, an author may apply for additional credit up to a total of 20 hours.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.29

The Texas State Board of Public Accountancy adopts new §523.29 concerning Minimum Hours Required Per CPE Reporting Period as a Participant with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698). The change to §523.29 is the replacement of "per year" in the title and in the first line of text with "per CPE reporting period."

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring licensees to complete at least 20 credit hours of CPE per year as a participant in a qualified live classroom instruction and/or self-study if credit is being requested under §§523.27-523.28.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

*§523.29. Minimum Hours Required Per CPE Reporting Period as a Participant.*

A minimum of 20 credit hours per CPE reporting period 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).

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  
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◆ ◆ ◆  
**22 TAC §523.30**

The Texas State Board of Public Accountancy adopts new §523.30 concerning Limitation for Non-technical Courses without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by rewriting this rule and by allowing licensees to claim credit for non-technical CPE courses but only up to a maximum of 20 credit hours.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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◆ ◆ ◆  
**22 TAC §523.31**

The Texas State Board of Public Accountancy adopts new §523.31 concerning Alternative Sources of Continuing Professional Education without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by rewriting this rule and by allowing licensees to request prior approval for CPE credit for membership in any of the professional societies and committees as listed.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and

§901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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◆ ◆ ◆  
**22 TAC §523.32**

The Texas State Board of Public Accountancy adopts new §523.32 concerning Ethics Course with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698). The changes are in the second sentence of subsection (a) with "and before September 1, 1999" being inserted after "January 1, 1995" and changing the citation of §523.1(c)(a)(5) to §523.1(b)(5) in subsection (b).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by rewriting former rule §523.32 and by requiring licensees to complete a four-hour ethics course within three years and to complete a two-hour ethics course every three years. Retired and disabled licensees are exempt from the Ethics Course requirement. The rule also addresses content of the course, method of instruction, evaluation of course and instructor, precludes Texas residents from taking the course by self-study but allows an interactive computer-based format, and allows non-Texas resident licensees to take the course in any of several ways.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

*§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 and before September 1, 1999, 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(b)(5) of this title (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 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

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## Subchapter C. CONTINUING PROFESSIONAL EDUCATION REPORTING

### 22 TAC §523.41

The Texas State Board of Public Accountancy adopts new §523.41 concerning Standards for Continuing Professional Education Reporting without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8700).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring that CPE program participants must document their participation in certain ways and to retain this documentation for the three most recent license periods.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.42

The Texas State Board of Public Accountancy adopts new §523.42 concerning Sponsor's Record without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8698).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring the CPE sponsor to create certain documentation regarding attendance of participants and to retain this documentation for three years from the date of the program.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter D. MANDATORY CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAM

### 22 TAC §523.61

The Texas State Board of Public Accountancy adopts new §523.61 concerning Establishment of Mandatory Continuing Professional Education Program without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8700).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by containing a list of the Board's rules that contain standards for CPE credit hours.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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### 22 TAC §523.62

The Texas State Board of Public Accountancy adopts new §523.62 concerning Mandatory Continuing Professional Education Reporting with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8700). The changes are in non-substantively re-writing subsection (a).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by requiring licensees to report minimum CPE and ethics credits on their license renewal forms and by making failure to report the minimum CPE hours a disciplinary violation.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

§523.62. *Mandatory Continuing Professional Education Reporting.*

(a) To receive a license, a licensee shall earn and report at least the minimum mandatory CPE credit hours required for the reporting period under §523.32 and §523.63 of this title (relating to Ethics Course and Mandatory Continuing Professional Education Attendance).

(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).

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 §523.63**

The Texas State Board of Public Accountancy adopts new §523.63 concerning Mandatory Continuing Professional Education Attendance with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8700). The changes are three corrections to the punctuation in the rule.

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by continuing to require a minimum of 120 hours of CPE every three years and 20 hours every year and by setting forth the details regarding exemptions and applicability to retired and disabled licensees.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding 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 earn 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 earn continuing professional education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be earned 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 earn 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 earned in 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 earn continuing professional education.

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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## 22 TAC §523.64

The Texas State Board of Public Accountancy adopts new §523.64 concerning Disciplinary Actions Relating to Continuing Professional Education with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8700). In subsection (a) "the Act" replaces "the Public Accountancy Act of 1991, §21, (Texas Civil Statutes, Article 41a -1 )". Another change is in subsection (b) where the only "but" was replaced with "and."

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by making non-compliance with the board's rules on CPE or falsifying CPE information subject to disciplinary action, by requiring licensees to retain CPE documentation, and by authorizing CPE audits of licensees by the board;.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding 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 Act, 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, and 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.

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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## 22 TAC §523.65

The Texas State Board of Public Accountancy adopts new §523.65 concerning Denial of a License with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8700).

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by not issuing a license to anyone who is deficient in CPE hours.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

§523.65. *Denial of a License.*

The board shall not issue or renew a license to an individual who has not earned the required CPE credit hours unless an exemption has been granted by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter E. REGISTERED CONTINUING EDUCATION SPONSORS

### 22 TAC §523.71

The Texas State Board of Public Accountancy adopts new §523.71 concerning Application as a Sponsor without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8702) and will not be republished.

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing this rule and by continuing to require potential CPE sponsors to submit applications for review by board staff.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.72

The Texas State Board of Public Accountancy adopts new §523.72 concerning Renewal Application without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8702) and will not be republished.

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing the rule and by continuing to require current CPE sponsors to submit applications for renewal to board staff for their review.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.73

The Texas State Board of Public Accountancy adopts new §523.73 concerning Obligations of the Sponsor without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8702) and will not be republished.

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing this rule and by continuing to require that CPE sponsors execute the written agreement contained in this rule.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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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## 22 TAC §523.74

The Texas State Board of Public Accountancy adopts new §523.74 concerning National Registry of Continuing Professional Education Sponsors without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8702) and will not be republished.

The new rule allows the board to rewrite this rule and to continue having a rule on this topic.

The new rule will function by re-writing the rule and by continuing to allow the board to accept courses offered by CPE sponsors that are in good standing with NASBA's Registry in addition to those that register directly with this board.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act, Texas Occupations Code, §901.151 (Vernon 1999) which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and

§901.411 which authorizes the board to promulgate rules regarding continuing professional education.

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## Chapter 527. QUALITY REVIEW

### 22 TAC §527.1

The Texas State Board of Public Accountancy adopts an amendment to §527.1 concerning Establishment of Quality Review Program without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8702).

The amendment allows the use of the new citation to the Public Accountancy Act and removes unnecessary language.

The amendment will function by replacing the citation to the old Act and eliminating a parenthetical reference.

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 amend, adopt and repeal 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

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### 22 TAC §527.3

The Texas State Board of Public Accountancy adopts an amendment to §527.3 concerning Definitions with changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8703).

The amendment allows the definitions under the Quality Review Chapter to be expanded and clarified.

The amendment will function by adding the definition of "firm" and revising the definitions of "practice unit," "review program," "review year," and "sponsoring organization."

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 amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act and §901.159 which authorizes the board to promulgate rules regarding Quality Review.

#### §527.3. Definitions.

The following words and terms 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) 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.
- (3) Review or review program - The review conducted under the peer review program.
- (4) 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.
- (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 the standards specified by the board for administering the review. The board shall periodically publish a list of sponsoring organizations, which have been approved by the board.
- (6) 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.

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

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**TITLE 34. PUBLIC FINANCE**

**Part 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**Chapter 1. CENTRAL ADMINISTRATION**

**Subchapter A. PRACTICE AND PROCEDURE**

**Division 1. PRACTICE AND PROCEDURE**

**34 TAC §1.33**

The Comptroller of Public Accounts adopts an amendment to §1.33, concerning discovery in contested cases, without changes to the proposed text as published in the October 1, 1999, issue of the *Texas Register* (24 TexReg 8531).

The section is being amended to reflect changes in the discovery rules set forth in the Texas Rules of Civil Procedure.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §111.009 and §111.105.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**Subchapter C. PUBLIC EDUCATION INTEGRITY TASK FORCE**

**34 TAC §1.300**

The Comptroller of Public Accounts adopts new §1.300, concerning the duties and responsibilities of the Public Education Integrity Task Force, without changes to the proposed text as published in the September 17, 1999, issue of the *Texas Register* (24 TexReg 7374).

The new section is in new Subchapter C, Chapter 1 under Title 34, Part 1.

The new section is adopted pursuant to Government Code, §403.020, which allows the Comptroller to review the effectiveness and efficiency of the operations of school districts.

Section 1.300 states that the purpose of the task force is to compile information and ensure the accuracy of data submitted to the Texas Education Agency. The section also establishes a date on which the task force will automatically be abolished.

No comments were received regarding adoption of the new section.

This new section is adopted under the Government Code, §2110.005 and §2110.008 which requires a state agency to adopt rules regarding the purposes, duties, and duration of advisory committees.

The new section implements the Government Code, §403.020 and §403.011.

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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**Chapter 3. TAX ADMINISTRATION**

**Subchapter HH. MIXED BEVERAGE TAX**

**34 TAC §3.1001**

The Comptroller of Public Accounts adopts an amendment to §3.1001, concerning mixed beverage gross receipts, receipts excluded from tax, records required, and information required, with changes to the proposed text as published in the August 20, 1999, issue of the *Texas Register* (24 TexReg 6440).

Nonsubstantive grammatical changes were made in paragraphs (j)(3), (4), (5), and (6) of the proposed rule to replace the word "which" with "that."

The comptroller requires mixed beverage permit holders to maintain records concerning the sale and service of alcoholic beverages. The records required by the comptroller are similar to the records that the Texas Alcoholic Beverage Commission required before the mixed beverage tax collection and audit functions were transferred to the comptroller. This amendment provides the record keeping guidelines for mixed beverage permit holders.

Subsection (a)(2) of this rule is being amended to clarify the definition of a complimentary alcoholic beverage. Subsections (e)(1) and (e)(3) are being amended to reflect the amended definition of a complimentary beverage.

This amendment also includes non-substantive grammatical and/or stylistic corrections in subsections (a), (b), (c), and (f).



No comments were received regarding adoption of the amended section.

This amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §§183.001, 183.021, and 183.055.

*§3.1001. Mixed Beverage Gross Receipts, Receipts Excluded From Tax, Records Required, and Information Required.*

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

(1) Alcoholic beverage - Alcohol, or any beverage containing more than 0.5% of alcohol by volume, which is capable of use for beverage purposes, either alone or diluted.

(2) Complimentary alcoholic beverage - An alcoholic beverage served without any consideration paid to the permittee.

(3) Gratuities - An amount given voluntarily by a customer or member for the sale or service of alcoholic beverages in addition to the charge for the alcoholic beverages or an amount that is mandatory based on a percentage or other amount established by the permittee in excess of the charge for the sale or service of the alcoholic beverages.

(4) Minibar - A closed container, cabinet, or other device in a hotel guestroom that contains alcoholic beverages for use by guests registered in the hotel.

(5) Mixed beverage - A serving of a beverage composed in whole or in part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, a private club registration permit, a private club exemption certificate permit, and any of the auxiliary permits held by the permit holders.

(6) Permittee - A holder of a mixed beverage permit, a mixed beverage late hours permit, a mixed beverage permit holding a food and beverage certificate, a daily temporary mixed beverage permit, a private club registration permit, a private club exemption certificate permit, a private club late hours permit, a daily temporary private club permit, a private club registration permit holding a food and beverage certificate, or a caterer's permit issued by the Texas Alcoholic Beverage Commission (TABC).

(7) Source record - A dated customer service check or ticket; a dated cash register receipt, if coded to reflect all required information; or the equivalent of a customer service check or cash register receipt in some other form subject to approval by the comptroller.

(8) Temporary membership card - A card printed and sold to a private club by the (TABC). The card is then sold by the private club to an individual and entitles that individual to all the privileges of membership in the private club for a period not to exceed three days. The card also entitles the holder to bring not more than three persons into the club as the holder's guests.

(9) Walked checks or tabs - An industry term that refers to the instance of a customer that on a particular business day consumes alcoholic beverages and leaves the permittee's premises without paying or providing the appropriate consideration for the alcoholic beverages.

(b) Mixed beverage gross receipts tax. A tax at the rate of 14% imposed on the gross receipts of a permittee received from the sale, preparation, or service of alcoholic beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with an alcoholic beverage and consumed on the premises of the permittee.

(1) The mixed beverage gross receipts tax is a tax on gross receipts and is not to be added to the charge for the sale or service of the alcoholic beverage and cannot be considered included in the gross receipts amount.

(2) Each permittee must file a monthly return due on the 20th day of the following month. If no sales or services of alcoholic beverages are made during a month, a report indicating that fact must be filed.

(c) Taxable mixed beverage receipts. The mixed beverage gross receipts tax applies to, but is not limited to, receipts for the following items:

(1) receipts from the sale or service of alcoholic beverages;

(2) receipts from the sale or service of nonalcoholic beverages that are mixed and consumed with alcoholic beverages on the permittee's premises;

(3) receipts from cover charges, door charges, entry fees, or admission fees that are related to reduced prices for alcoholic beverages as described in 16 TAC §45.103 (relating to Regulations of "Happy Hour"). If cover charges are determined to be related to reduced prices for alcoholic beverages, the tax base will be the entire receipts from the cover charge plus the reduced sales or service prices received for the alcoholic beverages;

(4) as an alternative to paragraph (3) of this subsection, a permittee may elect to report the services or sales of alcoholic beverages at the normal service or selling price and exclude the cover charges, door charges, entry fees, or admission fees from the tax base. The normal sales or service price is the price charged for the alcoholic beverage when no cover charge, door charge, entry fee, or admission fee is collected. When the permittee elects to use this option, the cover charges, door charges, entry fees, or admission fees will be subject to sales tax under §3.298 of this title (relating to Amusement Services);

(5) the normal selling price of alcoholic beverages served with meals with no separate charge. If the specific alcoholic beverage is being sold or served at a promotional price at the same time as the meal, the tax base for the alcoholic beverage will be the promotional price. This subsection refers to promotions usually promoted as "free drink(s) with a meal";

(6) mandatory gratuities of 20% or less that are not entirely distributed to qualifying employees. "Qualifying employees" are employees such as, but not limited to, waitpersons, buspersons, bartenders, wine stewards, and maitre d'hotel who customarily and regularly provide the services upon which the charge is based. Nonqualifying employees or recipients include, but are not limited to, owners, club managers with no direct involvement in the particular event, janitorial help, chefs, cashiers, and dishwashers.

(A) If compensation is made to nonqualifying employees or recipients, the entire portion of the gratuity attributable to the sale or service of alcoholic beverages is subject to the mixed beverage gross receipts tax.

(B) If the total direct compensation due all qualifying employees during each reporting period

(month) equals or exceeds the total amount collected as mandatory gratuities and no compensation is paid nonqualifying employees, the mandatory gratuity is exempt from the mixed beverage gross receipts tax.

(7) all mandatory gratuities that exceed 20% of the charge for alcoholic beverages are subject to the mixed beverage gross receipts tax;

(8) miscellaneous charges in conjunction with the sale or service of alcoholic beverages such as bar set-up fees, bartender fees, corkage fees, maitre d'hotel charges, etc., are subject to the mixed beverage gross receipts tax;

(9) all sales or services of alcoholic beverages by caterers;

(10) all sales or services of alcoholic beverages sold or served by the holder of a temporary permit listed in subsection (a)(6) of this section or by the holder of a beer and wine only temporary permit issued to a mixed beverage permit holder;

(11) all sales of coupons, tokens, tickets, etc., that are redeemed or used in any manner to purchase or pay for the service of an alcoholic beverage; and

(12) thefts of money or legal tender received from the sale or service of alcoholic beverages are not deductible from the mixed beverage tax base.

(d) Private clubs, special events, and functions. Mixed beverage gross receipts tax on alcoholic beverages served at special events or functions such as golf or tennis tournaments at private clubs, when a lump-sum charge entitles the member or guest to various items such as green fees, food, alcoholic beverages, golf cart rentals, etc., shall be computed by one of the following methods.

(1) The club shall maintain documentation that shows the normal cost to a member or guest for each of the items provided for the lump-sum charge. The permittee will then compute the percentage of the total of all the charges attributable to the sale or service of the alcoholic beverages. This percentage then will be applied to the actual lump-sum amount paid by the member or guest to derive the tax base for the mixed beverage gross receipts tax. For example, if the total of all the items would normally cost \$300 and the permittee estimates that the portion attributable to the sale or service of alcoholic beverages is \$30, then 10% of the actual lump-sum amount would be reported as subject to the mixed beverage gross receipts tax. If the amount paid by the member or guest is \$200, then \$20 would be the tax base. The documentation used by the permittee is subject to review by the comptroller's personnel and any amounts determined to be inaccurate or unreasonable may be adjusted.

(2) The permittee may choose to use the normal sales or service prices of the alcoholic beverages as the tax base for the mixed beverage gross receipts tax.

(e) Items excluded from the mixed beverage gross receipts tax base.

(1) Complimentary alcoholic beverages served without any consideration paid to the permittee. Use tax as provided by the Tax Code, Chapter 151, is due on the taxable ingredients of the complimentary alcoholic beverages.

(2) Complimentary alcoholic beverages served during promotional periods such as happy hours at hotels or motels. If, however, there is an increase in guest room rates attributable to the

promotional periods, the comptroller will have the option to tax either the increase in the room rate under the Tax Code, Chapter 156, or assess use tax on the taxable ingredients of the complimentary drinks. The comptroller will have the authority to use information such as the room rates at comparable hotels and motels in the area to determine if an increased rate is attributable to the promotional period alcoholic beverages.

(3) Complimentary alcoholic beverages served to holders of free drink cards or free drink tokens, for which no consideration was paid to the permittee.

(4) All voluntary gratuities.

(5) All mandatory gratuities, not to exceed 20% of the charge for the alcoholic beverages, that are distributed to qualifying personnel as outlined in subsection (c)(6) and (c)(6)(B) of this section.

(6) Walked checks or tabs. These differ from bad debts in that no agreement exists to extend credit to the customer or guest.

(7) Receipts from cover charges, door charges, entry fees, or admission fees that are not related to reduced prices for alcoholic beverages and assumed for entertainment, food specials, and other purposes. Sales tax as provided by §3.298 of this title (relating to Amusement Services) is due on these receipts.

(8) Cover charges collected when the permittee elects to use the reporting method described in subsection (c)(4) of this section.

(9) Bad debts. The unpaid portion of the gross receipts on sales or services made on or after August 28, 1995, that have been charged off the books as a bad debt and that are deducted for federal tax purposes during the same or subsequent reporting period.

(f) Alcohol loss, sales tax not due. Although use tax per the Tax Code, Chapter 151, is due on the taxable ingredients of complimentary drinks, no use tax is due on alcoholic beverages destroyed due to spillage or breakage or used in cooking.

(g) Inventory for cooking.

(1) Inventory of alcoholic beverages used in cooking may be stored:

(A) with regular bar stock; or

(B) in a separate storage area.

(2) The withdrawal from inventory of alcoholic beverages used in cooking must be recorded at the time of withdrawal on a:

(A) service check; or

(B) other permanent record.

(h) Record requirement. Records required by the comptroller for mixed beverage permittees, as that term is defined in Tax Code, §183.001, must be kept for a period of four years. Records must be made available upon request within a reasonable time for examination by the comptroller or authorized agents or employees. The records, in general, must reflect the total gross receipts from the sale or service of alcoholic beverages and those associated services that are subject to the gross receipts tax, as provided by subsections (c) and (d) of this section. Records may be written, kept on microfilm, or stored on data processing equipment. Permittees must contact the TABC for information concerning TABC record keeping requirements.

(i) Source records.

(1) The following information is required to be printed on a source record in a manner that makes such information clearly evident or by a system of symbols (codes) if such symbols and

their meaning are printed on the source record or maintained on the licensed premises.

(A) Each individual serving of an alcoholic beverage and the price charged. When using service checks, it is permissible to make one entry on a service check for more than one individual serving if all of the servings are of the same type (e.g., 3 Scotch & Water @ \$2.00 = \$6.00). If all of the servings are not of the same type, a separate entry must be made on the service check for each type of service (e.g., 3 Scotch & Water @ \$2.00 = \$6.00, 2 Rum & Coke @ \$2.00 = \$4.00). When using a cash register only, regardless of the type of service, each individual serving must be rung up separately. When using a combination of service checks and a cash register, it is not necessary to itemize each serving on the cash register tape if all the required information is shown on the service check.

(B) For an alcoholic beverage not served as an individual separate serving, the unit of the serving used and the price charged. When using service checks, units of servings that are more than an individual separate serving shall be recorded as such (e.g., 2 pitchers of beer @ \$3.25 = \$6.50, 1 pitcher of daiquiri @ \$6.00 = \$6.00). When using a cash register only, each unit of serving which is more than an individual separate serving must be rung up separately, with the price list identifying the unit of serving. When using a combination of service checks and a cash register, it is not necessary to itemize each serving on the cash register tape if all the required information is shown on the service check.

(C) Each separate serving or other unit shall be clearly identified as to the kind of drink (i.e., daiquiri, tequila sunrise) or class of beverage (beer, wine, whiskey) as the case may be. If a cash register does not have sufficient keys for the classification, the price list used for identifying the units of servings must also identify the kinds of servings.

(D) The date of the transaction. For this purpose the "date" begins as of 3:00 a.m. one day and continues until 3:00 a.m. the next day.

(E) Complimentary alcoholic beverages shall be recorded on service checks only. A check should be prepared for each individual or party served. The check should be prepared as if it was a normal sale and then clearly marked as being complimentary. The service checks should be grouped daily and filed with the daily summary showing the information on the summary as required by subsection (j) of this section. A serving of an alcoholic beverage shall not be a complimentary alcoholic beverage if it is served under conditions which include, but are not limited to the following: the alcoholic beverage is served in connection with food or any other thing sold to the recipient, or if any entertainment or entry fee is charged. Any alcoholic beverage served under the above or similar conditions is subject to the gross receipts tax, computed on the basis of the normal charge for the sale or service of such alcoholic beverage.

(F) Mandatory gratuities that exceed 20% of the charge for alcoholic beverages must be recorded and identifiable on a source record. A mandatory gratuity that is less than 20% of the charge for the sale or service of alcoholic beverages must be recorded and identifiable on the source record only if the gratuity is disbursed to nonqualifying employees or recipients, which include but are not limited to, owners, club managers with no direct involvement in the particular event, janitorial help, chefs, cashiers, and dishwashers. All voluntary gratuities are not to be recorded on a source ticket.

(2) Source records shall be maintained in sequence by date.

(j) Daily Summaries. Each permittee must maintain a daily summary, including the following information:

(1) all information required to be recorded on source records;

(2) complimentary alcoholic beverages dispensed, showing the number of services, type of service, kind of drink, and normal selling price;

(3) alcoholic beverages that were lost through theft, showing the number of containers lost by size, brand, and class. The theft must be reported to the proper police department and must be substantiated by the report of such police department;

(4) alcoholic beverages that were lost through a disaster, showing the number of containers lost by size, brand, and class. The disaster must be reported to the comptroller;

(5) alcoholic beverages that were lost through breakage or spillage, showing the number of containers lost by size, brand, and class or type of drink and size. A written report must be prepared at the time of the loss;

(6) alcoholic beverages that were lost through the cleaning, servicing, or repair of dispensing equipment lines, showing the amount lost by class or type of drink and supported by:

(A) reports prepared by the permittee at the time of the malfunction; and/or

(B) repair/service invoices prepared by the repair/service company;

(7) alcoholic beverages used in cooking, with purchases documented:

(A) by purchase invoices that have such beverages clearly denoted by either the seller or purchaser; or

(B) by separate purchase invoice;

(8) cover charges, door charges, entry fees, or admission fees. Admission fees related to the reduced price for alcoholic beverages as described in 16 TAC §45.103 (relating to Regulations of "Happy Hour") are subject to the mixed beverage gross receipts tax. Sales tax as provided by 34 TAC §3.298 (relating to Amusement Services) is due on admission fees not related to reduced prices of alcoholic beverages. Permittees should consult the TABC to determine if a cover charge is prohibited under 16 TAC §45.103; and

(9) information pertaining to changes made during the month concerning prices, glass sizes, bulk machine (e.g., margarita machine) recipes, ounces per serving, parties, or promotions.

(k) Purchase invoices.

(1) A record of all alcohol and alcoholic beverages purchased or received showing the date, name and address of the person from whom purchased or received, the point from where shipped, point received, the quantity and kind of beverage (brand and class) received, and the total price paid for each brand and class received.

(2) Alcoholic beverages used in mixing drinks as the secondary ingredient (e.g., vermouth, triple sec) must be supported by purchase invoices which have such beverages clearly denoted by the purchaser.

(l) Bad debts refund or credit.

(1) A mixed beverage permittee may take a credit against taxes to be paid to the comptroller or claim a refund on taxes paid to the comptroller for bad debt on sales made on or after August 28, 1995.

(2) To establish bad debt credit or refund, a permittee's records must show:

- (A) date of sale or service;
- (B) name and address of purchaser;
- (C) source records of sale or service;
- (D) evidence that the gross receipts tax was paid to the comptroller;
- (E) all payments or credits applied to the account of the purchaser;
- (F) a designation that the account is a bad debt; and
- (G) evidence that the account has been or will be claimed as a bad debt deduction for federal income tax purposes.

(3) To determine the amount of bad debt allowance for tax, all payments or credits in reduction of a customer's account must be applied ratably between alcoholic beverages and other goods sold to that customer.

(4) If all or part of the amount claimed as a bad debt is later collected, the amount collected must be reported as a taxable receipt in the reporting period in which the collection was made.

(5) Accounts may not be labeled as a bad debt for the purpose of delaying the payment of the tax.

(m) Audit and examination of tax account.

(1) Determination of tax liability. In examining the tax account of any permittee, the comptroller may compute and determine the amount of gross receipts tax liability based on reports filed with the comptroller, records or information obtained from the permittee, or records or information obtained from any seller who furnished alcoholic beverages to the permittee, or such other information which may come to the attention of the comptroller. The comptroller presumes that the disposition of all alcoholic beverages purchased by the permittee is taxable until established otherwise.

(2) Access to all information. The comptroller may examine all books, records, papers, documents, supplies, and equipment of a mixed beverage permittee. Additional records that may be required to be presented include, but are not limited to, the following:

- (A) all procedure and operation manuals;
- (B) all financial ledgers, journals, and registers;
- (C) all financial statements prepared internally or by an outside bookkeeper, accountant, or C.P.A.;
- (D) all bank statements;
- (E) all federal income tax returns; and
- (F) all state and federal employment tax returns and supporting documents.

(3) Failure to maintain or make records available for audit. In examining the tax account of each permittee, if the comptroller finds that the permittee has failed to maintain or make available the records required by any regulation of the comptroller, the comptroller may compute and determine the amount of the gross receipts tax liability from any available source or records, and estimates of the tax

liability may be made by use of any available records for any period for which the permittee has failed to maintain records or file a report with the comptroller. In the event records are not made available, the comptroller will presume all alcohol purchased was sold. In the absence of records or evidence to the contrary, the comptroller may accept an average pour figure of 1.25 ounces per serving of liquor.

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 November 23, 1999.

TRD-9908016  
Martin Cherry  
Special Counsel  
Comptroller of Public Accounts  
Effective date: December 13, 1999  
Proposal publication date: August 20, 1999  
For further information, please call: (512) 463-3699

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part 20. TEXAS WORKFORCE COMMISSION

#### Chapter 800. GENERAL ADMINISTRATION 40 TAC §800.5

The Texas Workforce Commission (Commission) adopts new §800.5, concerning the Commission's Professional Development Program, without changes to the proposed text as published in the October 8, 1999, issue of the *Texas Register* (24 TexReg 8729).

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.

The Commission received no comments on the proposed rule.

The new rule is adopted 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's programs, and Texas Government Code Chapter 656.

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 November 23, 1999.

TRD-9908018  
J. Randel (Jerry) Hill  
General Counsel  
Texas Workforce Commission

Effective date: December 13, 1999  
Proposal publication date: October 8, 1999  
For further information, please call: (512) 463-8812



# 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.

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## Proposed Rule Review

Texas Department of Health

### Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment, subchapter J. Texas Health Steps Medical Case Management, §§33.501 - 33.507.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. 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. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-9908190  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: December 1, 1999



## Adopted Rule Review

Texas Higher Education Coordinating Board

### Title 19, Part 1

The Texas Higher Education Coordinating Board readopts without changes, the review of Title 25, Texas Administrative Code, Part 1, Chapter 25, Optional Retirement Program.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

No comments were received regarding the readoption of this chapter.

This concludes the review of 19 TAC Chapter 25 in its entirety.

TRD-9908111  
James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board  
Filed: November 29, 1999



# TABLES & GRAPHICS

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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.

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Figure: 1 TAC §355.8065(f)(2)(B)

$$\begin{aligned} & \text{Hospital's Medicaid Days x Weight} \\ & ((1/2 \text{ ~~2/3~~} \text{ x Available Fund) x ----- )} \\ & \text{Weighted Medicaid Days} \\ & + \\ & \text{Hospital's Low Income Days x Weight} \\ & ((1/2 \text{ ~~1/3~~} \text{ x Available Fund) x ----- )} \\ & \text{Weighted Low Income Days} \end{aligned}$$



Figure: 22 TAC §501.54(b)

PREVIOUS RULE	NEW RULE
501.1	501.51
501.2	501.52
501.3	501.53
501.4	501.80
501.11	501.70
501.12	501.73
501.13	501.73
501.14	501.71
501.15	501.72
501.21	501.74
501.22	501.60
501.23	501.61
501.24	501.62
501.25	501.94
501.26	501.73
501.31	501.75
501.32	501.76
501.33	501.76
501.36	501.91
501.37	501.81

501.38	Repealed
501.39	501.92
501.40	501.81
501.41	501.90
501.42	501.77
501.43	501.82
501.45	501.84
501.47	501.83
501.48	501.93
501.49	Repealed
501.50	Moved to Chapter 526

# IN ADDITION

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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.

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## Office of the Attorney General

### Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code §2254.021 *et seq.*

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 1999 ("FY99") (based on actual expenditures) and 2001 ("FY01") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY01.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars (\$49,000.00).

### SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two Indirect Cost Plans in accordance with OMB Circular A-87 one based on FY99 actual expenditures and one based on FY01 budgeted expenditures

- \* Identify the sources of financial information;
- \* Inventory all federal and other programs administered by the OAG;
- \* Classify all OAG divisions;
- \* Determine administrative divisions;
- \* Determine allocation bases for allotting services to benefitting divisions;
- \* Develop allocation data for each allocation base;
- \* Prepare allocation worksheets based upon actual FY99 expenditures and budgeted FY01 expenditures;
- \* Summarize costs by benefitting division;
- \* Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;
- \* Determine indirect cost rates throughout the OAG on an annual basis;
- \* Prepare and present draft Indirect Cost Plans to the OAG by April 3, 2000;
- \* Formalize the Actual FY99 and Budgeted FY01 Indirect Cost Plans and present them to HHS by April 28, 2000; and
- \* Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2000.

2. Develop standardized billing rates for legal services

- \* Review current criteria used by the OAG for charging various agencies;
- \* Determine the types of legal services provided to the agencies;
- \* Compile direct hours for each type of service;
- \* Determine effort reporting requirements;
- \* Re-examine billing rate options;

- \* Determine the actual cost of services;
- \* Analyze and confirm revenues and cost analyses;
- \* Prepare and present a draft Legal Services Billing Schedule for FY 1999 actual costs to the OAG by May 31, 2000;
- \* Prepare and present a draft Legal Services Billing Schedule for FY 2000 budgeted costs to the OAG by June 30, 2000; and
- \* Formalize a Legal Services Billing Schedule by August 15, 2000.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

#### QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;
2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;
3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and
4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;
2. Detailed information on the consultant staff to be assigned to the project; and
3. The proposed fee amount for provision of the desired services.

A signed original and five copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than **3:00 p.m., Central Standard Time, January 10, 2000**. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code §2245.028, the OAG anticipates entering into the resultant contract on or about January 21, 2000.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG."

#### REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

#### DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);
2. the date(s) the employment(s) terminated; and
3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.
2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.
3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

8. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

9. The consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

10. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.

11. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

12. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

13. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in 1 TAC §111.2.

14. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

#### **PAYMENT**

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

#### **PROPOSAL PREPARATION AND CONTRACTING EXPENSES**

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about January 24, 2000.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

**Ms. Julie Geeslin**

**Budget and Purchasing Division**

**Office of the Attorney General of Texas**

**300 W. 15th Street, Third Floor**

**P.O. 12548 Austin, Texas 78711-2548**

**(Phone: 512-475-4495)**

TRD-9908147

Elizabeth Robinson

Assistant Attorney General

Office of the Attorney General

Filed: November 29, 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(s) during the period of November 18, 1999, through November 24, 1999:

#### FEDERAL AGENCY ACTIONS:

Applicant: Sabco Operating Company; Location: The project is located in Corpus Christi Bay in State Tracts 48 and 49 in Nueces County, Texas. CCC Project Number: 99-0410-F1; Description of Proposed Action: The applicant proposes to erect and maintain structures and appurtenances to be used in the drilling of Well Number 7 in State Tract 48. Approximately 5,046 cubic yards of crushed rock, shell, or washed gravel fill would be required to construct an approximately 128-by-238-foot well pad to a height of 5 feet. In addition, the applicant also proposes to install three 3-1/2 inch outside diameter pipelines from Well No. 7 in State Tract 48 to an existing production platform in State Tract 49 in Corpus Christi Bay, Nueces County, Texas.

Type of Application: U.S.A.C.E. permit application #21863 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: Steve DeWolf, P.E.; Location: The project is located on the north shore of the Bayport Ship Channel, off Galveston Bay in Harris County, Texas. CCC Project Number: 99-0411-F1; Description of Proposed Action: The applicant proposes to perform dredging and place fill material to protect the northern bank and shoreline of the Bayport Ship Channel. Construction of the proposed shoreline protection will generate approximately 23,000 cubic yards of material during the initial excavation activities. Of the 23,000 cubic yards of material, approximately 15,000 cubic yards will be excavated below the mean high tide line (MHTL). This fill will be placed above the MHTL. Additionally, approximately 81,500 tons of riprap material and 5,565 tons of granular material will be required for the proposed shoreline protection. Approximately 18,000 cubic yards of riprap and approximately 3,710 cubic yards of granular material will be placed below the MHTL. Type of Application: U.S.A.C.E. permit application #21858 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication

of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-9908169

Larry R. Soward

Chief Clerk

General Land Office

Filed: December 1, 1999



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/06/99 - 12/12/99 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/06/99 - 12/12/99 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009<sup>3</sup> for the period of 01/01/00 - 03/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 01/01/00 - 03/31/00 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/00 - 03/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/00 - 03/31/00 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009 <sup>1</sup> for the period of 01/01/00 - 03/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code<sup>4</sup> for the period of 01/01/00 - 03/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 <sup>4</sup> for the period of 01/01/00 - 03/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/00 - 03/31/00 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009<sup>1</sup> for the period of 01/01/00 - 03/31/00 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/99 - 12/31/99 is 10% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed Sec. 304.003 for the period of 12/01/99 - 12/31/99 is 10% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

<sup>3</sup>For variable rate commercial transactions only.

<sup>4</sup>Only for open-end credit as defined in Sec. 301.002(14), Texas Finance Code.

TRD-9908175

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: December 1, 1999



## Texas Education Agency

### Notice of Correction: Dates of Project in Request for Applications Concerning Texas Ready to Read Grants

The Texas Education Agency (TEA) published Request for Applications (RFA) number 701-00-009, concerning Texas Ready to Read Grants in the November 26, 1999, issue of the *Texas Register* (24 TexReg 10599). The TEA is amending the Dates of Project paragraph in the Texas Register Notice to read, "The Texas Ready to Read grants will be implemented during the 1999-2001 school years. Applicants should plan for a project year 1 starting date of no earlier than April 10, 2000, and a project year 1 ending date of no later than May 31, 2001."

Further Information. For clarifying information about the RFA, contact D.J. Johnson, Office of Statewide Initiatives, TEA, (512) 463-9027.

TRD-9908178

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: December 1, 1999



## Employees Retirement System of Texas

### Request for Application

In accordance with Section 4 of Article 3.50-2, Texas Insurance Code, as amended, the Employees Retirement System of Texas (ERS) is issuing a Request for Application (RFA) from qualified Health Maintenance Organizations (HMOs) to provide services in the Application Area under the Texas Employees Uniform Group Insurance Program (UGIP) during Fiscal Year 2001, beginning September 1, 2000 through August 31, 2001. The counties in Texas for which applications may be made are included in the RFA. HMOs must provide the level of benefits as required in the RFA and meet other requirements.

An HMO wishing to respond to this request must: 1) have a Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the application is made at least since March 1, 1999, and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to UGIP participants. The contract is a separate document from the application and must be taken separately from the ERS' Web site. The contract must be signed by a duly authorized officer and returned with the HMO's response.

The RFA will be available in mid-December from the ERS' Web site. To access the RFA from the Web site, interested HMOs must either fax their request on their company letterhead to the attention of Kim Johnson at (512) 867-7380, or send their request via email to kjohnson@ers.state.tx.us to receive their access code. An email

request must include the name of the HMO, street address, phone number, fax number, and email address (if applicable).

To be eligible for consideration, three (3) copies of the completed application and fully executed contract must be submitted to the ERS by 5:00 p.m. on February 1, 2000.

The ERS will base its evaluation and selection of HMOs within the Application Area on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFA, operating requirements, cost impact on the UGIP, coverage of the Application Area counties, provider networks, quality of networks, administrative capabilities, and prior experience contracting with the ERS.

The ERS reserves the right to select none, one, or more than one HMO in various parts of the Application Area when it is determined that such action would be in the best interest of the UGIP. The ERS is under no legal requirement to execute a contract on the basis of this advertisement.

The RFA will be discussed at an HMO Bidders Conference in the ERS' auditorium on January 6, 2000 beginning at 9:00 a.m. This RFA does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the UGIP.

TRD-9908193  
Sheila W. Beckett  
Executive Director  
Employees Retirement System of Texas  
Filed: December 1, 1999



#### Request for Proposal

In accordance with Section 4 of Article 3.50-2, Texas Insurance Code, as amended, the Employees Retirement System of Texas (ERS) is issuing a Request for Proposal (RFP) from qualified Health Maintenance Organizations (HMOs) to provide services in certain Regional Bidding Areas (RBAs) under the Texas Employees Uniform Group Insurance Program (UGIP) during Fiscal Year 2001, beginning September 1, 2000 through August 31, 2001. The locations in Texas for which proposals may be made are included in the RFP. HMOs must provide the level of benefits required in the RFP and meet other requirements.

An HMO wishing to respond to this request must: 1) have a Certificate of Authority from the Texas Department of Insurance, 2) have been providing managed care services in the service area for which the proposal is made at least since March 1, 1999, and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the proposal, adequate to provide health care to UGIP participants. The contract is a separate document from the proposal and must be taken separately from the ERS' Web site. The contract must be signed by a duly authorized officer and returned with the HMO's response.

The RFP will be available in mid-December from the ERS' Web site. To access the RFP from the Web site, interested HMOs must either fax their request on their company letterhead to the attention of Kim Johnson at (512) 867-7380, or send their request via email to kjohnson@ers.state.tx.us to receive their access code. An email

request must include the name of the HMO, street address, phone number, fax number, and email address (if applicable).

To be eligible for consideration, three (3) copies of the completed proposal and fully executed contract must be submitted to the ERS by 5:00 p.m. on February 1, 2000.

The ERS will base its evaluation and selection of HMOs within the RBAs on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, operating requirements, cost impact on the UGIP, coverage of the RBA counties, provider networks, quality of networks, administrative capabilities, and prior experience contracting with the ERS.

The ERS reserves the right to select none, one, or more than one HMO per RBA when it is determined that such action would be in the best interest of the UGIP. The ERS is under no legal requirement to execute a contract on the basis of this advertisement.

The RFP will be discussed at an HMO Bidders Conference in the ERS' auditorium on January 6, 2000, beginning at 9:00 a.m. This RFP does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the UGIP.

TRD-9908194  
Sheila W. Beckett  
Executive Director  
Employees Retirement System of Texas  
Filed: December 1, 1999



## Texas Health and Human Services Commission

### Cancellation of Joint Public Hearing

The Texas Health and Human Services Commission and the Texas Department of Human Services (TDHS) are cancelling the joint public hearing which was to be held on December 15, 1999 to receive public comment on proposed payment rates for the following programs operated by TDHS: nursing facilities, swing beds, hospice-nursing facilities and Bienvivir Waiver. Notice of the hearing appeared in the November 26, 1999, issue of the *Texas Register* (24 TexReg 10602). If there are any questions concerning this cancellation, contact Mrs. Carolyn Pratt, Texas Department of Human Services, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4057.

TRD-9908174  
Steve Aragón  
Agency Liaison  
Texas Health and Human Services Commission  
Filed: December 1, 1999



### Rescheduled Joint Public Hearing

The Texas Health and Human Services Commission (HHSC) and the Texas Department of Human Services (TDHS) will conduct a joint public hearing to receive public comment on proposed payment rates for the following Medicaid programs and services operated by TDHS: nursing facilities, swing beds, hospice-nursing facilities, and Bienvivir Waiver. The joint hearing will be held in compliance with



1 T.A.C. §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on December 22, 1999, at 9:30 a.m. in Room 460 of the John H. Winters Human Services Building at 701 West 51st Street, Austin, Texas (fourth floor, West Tower). Written comments regarding payment rates set by the Health and Human Services Commission may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be delivered by U.S. mail or express delivery to the attention of Ms. Barbara Tejero, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711. Hand deliveries will be accepted at 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas 78751. Alternatively, written comments may be delivered via facsimile to Ms. Tejero at (512) 424-6586. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates on or after December 8, 1999 by contacting Ms. Debbie Price, TDHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Price, TDHS, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, telephone number (512) 438-4817, by December 15, 1999, so that appropriate arrangements can be made.

TRD-9908173

Steve Aragón

Agency Liaison

Texas Health and Human Services Commission

Filed: December 1, 1999



## Texas Department of Housing and Community Affair

Announcement of the Request for Proposals for Organizations to Provide Training to Nonprofit Organizations in the Principles and Applications of Homebuyer Education, and to Certify Participants as Homebuyer Education Providers.

The Texas Department of Housing and Community Affairs announces Request for Proposals for organizations to provide training to nonprofit organizations in the principles and applications of homebuyer education, and to certify participants as homebuyer education providers.

The Texas Department of Housing and Community Affairs is seeking proposals to provide training to nonprofit organizations throughout the State of Texas. Such nonprofit organizations may include Texas Agricultural Extension Agents, units of local governments, faith-based organizations, Community Housing Development Organizations (CHDOs), Community Development Corporations (CDCs), Community Based Organizations (CBOs), and other organizations with a proven interest in community building. The purpose of the training will be to teach local organizations the principles and applications of comprehensive pre- and post purchase homebuyer education, and to certify participants as providers. TDHCA will contract for, four three-day training classes with a minimum of 25 participants per class. TDHCA will review and select the participants. The four training locations will be determined by TDHCA and will be held in geographically diverse areas of the state. Training topics should include, but are not limited to the following:

pre- and post-purchase counseling (including information related to home equity loans and reverse mortgages)

delinquency and default counseling

delinquency intervention

how to access affordable housing single family mortgage products

how to reach traditionally underserved populations (including lower income persons/households, persons with disabilities, and persons living in colonias)

ethics issues for counselors

track development (e.g. fast, regular)

fair housing/ lending laws

effective training methods

As there will be a wide range of experience among the participants, the successful applicant will need to demonstrate the ability to tailor each class to their individual needs. Specifically the applicant should show that they have the capacity to provide basic, intermediate, and advanced courses on homebuyer education training. In addition, the applicant will need to show the capacity to conduct at least one of the classes entirely in Spanish.

*Proposals must be received by TDHCA no later than 5:00 p.m. on Friday, January 21, 2000.*

*Faxed or emailed applications will not be accepted.*

Proposals will be selected based on criteria outlined in the proposal package.

Awards will be made as grants. The Department's Board reserves the right to change the award amount, or to award less than the requested amount.

For more information or to request a proposal package, please contact the Office of Strategic Planning/Housing Resource Center at (512) 475-3976 or email jreyes@tdhca.state.tx.us/

**Please direct your proposals to:** Texas Department of Housing and Community Affairs, Office of Strategic Planning/Housing Resource Center, Attn: John Garvin, P.O. Box 13941, Austin, Texas 78711-3941.

**Physical Address:** 507 Sabine, Suite 800, Austin, TX 78701.

Questions concerning this Request for Proposal may be directed in writing to TDHCA at the above address, attention John Garvin, Director, Office of Strategic Planning.

Individuals who require auxiliary aids or services should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-9908170

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: December 1, 1999



## Texas Department of Insurance

Insurer Services

The following application has been filed with the Texas Department of Insurance and is under consideration:

Application for admission to the State of Texas by MGIC RESIDENTIAL REINSURANCE CORPORATION, a foreign fire and casualty company. The home office is in Milwaukee, Wisconsin.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701.

TRD-9908181  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: December 1, 1999



#### Notices of Public Hearings

Under Docket Number 2430 the Commissioner of Insurance will hold a public hearing, on December 17, 1999, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. This hearing is concerning proposed amendments to 28 TAC §11.2, concerning definitions, and a new §11.809 relating to financial requirements for health maintenance organizations (HMO).

The proposed amendments and the statutory authority for the amendments were published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10499).

TRD-9908182  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: December 1, 1999



Under Docket Number 2431 the Commissioner of Insurance will hold a public hearing on December 17, 1999, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. This hearing is concerning 28 TAC §§11.801-11.803 and §11.807, relating to proposed amendments concerning financial requirements for health maintenance organizations (HMOs).

The proposed amendments and the statutory authority for the amendments were published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10503).

TRD-9908183  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: December 1, 1999



Under Docket Number 2432 the Commissioner of Insurance will hold a public hearing, on December 17, 1999, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. This hearing is concerning new 28 TAC §11.810 pertains to financial requirements for health maintenance organizations (HMOs).

The proposed section and the statutory authority for the new proposal were published in the November 26, 1999 issue of the *Texas Register* (24 TexReg 10507).

TRD-9908184  
Bernice Ross

Deputy Chief Clerk  
Texas Department of Insurance  
Filed: December 1, 1999



#### Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of Ascendia Healthcare Management, Inc., a foreign third party administrator. The home office is Owings Mills, Maryland.

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-9908165  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: November 30, 1999



#### Legislative Budget Board

##### Fiscal Studies Roundtable 2000-01 Biennium Meeting

The Texas Education Code directs the Legislative Budget Board to study the various school finance allotments and adjustments provided for by Chapter 42 of the code. A "roundtable" discussion of the 2000-01 studies will be held **Thursday, December 16, 1999, at 10 AM, in the Senate Finance Committee** room (located in the Capitol Extension, Room E1.036). The purpose of the roundtable is to lay-out a summary of the studies, and get input from various education and school district associations. Below you will find a meeting agenda and a summary of the studies.

If you cannot attend the meeting, a live video and audio broadcast can be accessed through the Texas Senate website: <http://www.senate.state.tx.us/>

If you have questions about the meeting, please contact Patrick Francis or Robert Norris, at (512) 463-1200.

##### MEETING AGENDA

- \* Welcome and Introductions
- \* Summary of LBB Fiscal Studies
- \* Discussion among roundtable participants
- \* Audience statements
- \* Adjourn

##### FISCAL STUDIES SUMMARY

**Tax Rate Stability-** Section 1.10 of Senate Bill 4 requires the Legislative Budget Board to identify the "projected cost to the state in the next biennium of ensuring the ability of each school district to maintain existing programs without increasing property tax rates."

**Regular Program-** The study will determine whether sufficient revenue is generated under current law parameters to fund the regular program in school districts. A regular program student is one who does not have special educational needs and is being educated in a

school district that meets the standards for an accredited designation, as established by the commissioner of education.

**Fiscal Neutrality-** This study will evaluate the Texas school finance system using the three standard measure (percent of students in the equalized system, percent of revenue in the equalized system, revenue gap). The review will also examine the appropriateness of the measures and whether they reflect the full extent of funding disparities between school districts.

**Career and Technology Programs-** This study will examine the career and technology allotment, as well as career and technology programs administered by the Texas Education Agency and implemented by Texas school districts. The costs and benefits of these programs will be analyzed. The success rate of these programs, in terms of helping students obtain high wage careers, will also be assessed.

TRD-9908416

Robert Norris

Liaison

Legislative Budget Board

Filed: December 6, 1999



## **Texas Lottery Commission**

Instant Game Number 166 "Sunny Money"

### 1.0 Name and Style of Game.

A. The name of Instant Game No. 166 is "Sunny Money". The play style of the game is a "key number match " play style.

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 166 shall be \$1.00 per ticket.

#### 1.2 Definitions in Instant Game No. 166.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and \$3,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1  
 Figure 1:16 TAC GAME NO. 166 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
\$1.00	ONES\$
\$2.00	TWOS\$
\$4.00	FOURS\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$3,000	THR THOU

to verify and validate instant winners. The possible validation codes are:

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use

**Table 2**  
**Figure 2:16 TAC GAME NO. 166 – 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>ONE</b>	<b>\$1.00</b>
<b>TWO</b>	<b>\$2.00</b>
<b>FOR</b>	<b>\$4.00</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of "", which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500

I. High-Tier Prize - A prize of \$3,000

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (166), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 166-000001-000.

L. Pack - A pack of "SUNNY MONEY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Ticket 000 to 004 will be on the top page. Tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUNNY MONEY" Instant Game No. 166 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUNNY MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose a "YOUR NUMBER" that matches the "LUCKY NUMBER." A ticket may contain up to four (4) winners if four (4) "YOUR NUMBER" play spots match the "LUCKY NUMBER" play spot. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no duplicate non-winning "Your Number" play symbols on a ticket.

C. There will be no duplicate non-winning prize symbols on a ticket.

D. Non-winning prize symbols will never be the same as a winning prize symbol on a ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "SUNNY MONEY" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The

Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SUNNY MONEY" Instant Game prize of \$3,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUNNY MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUNNY MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUNNY MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

**Table 3**  
**Figure 3:16 TAC GAME NO. 166 – 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners</b>	<b>Chances of Winning</b>
\$1.00	5,818,560	1:8.62
\$2.00	3,009,600	1:16.67
\$4.00	1,605,120	1:31.25
\$5.00	200,640	1:250.00
\$10.00	200,640	1:250.00
\$20.00	200,640	1:250.00
\$50.00	52,250	1:960.00
\$100	20,482	1:2,448.98
\$500	50	1:1,003,200.00
\$3,000	44	1:1,140,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 166 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 166, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,000,000 tickets in the Instant Game No. 166. The expected number and value of prizes in the game are as follows:

pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9908154  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: November 30, 1999

◆ ◆ ◆

Instant Game Number 167 "Sizzlin' 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 167 is "Sizzlin' 7's". The play style of the game is a "tic-tac-toe" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 167 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 167.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: 7, X and O.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Table 1**

**Figure 1:16 TAC GAME NO. 167 – 1.2D**

PLAY SYMBOL	CAPTION
7	*
X	*
O	*

\* - See game procedures Section 1.2D.

\* The captions for the three play symbols will be as: 1X000, whereas the first digit denotes the play area position (1-6), the next variable denotes the symbol (either X, O or 7) and the last three digits denotes the ticket number (000-249).

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate low-tier instant winning tickets. The possible validation codes are:

**Table 2**

**Figure 2:16 TAC GAME NO. 167 – 1.2E**

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
SVN	\$7.00
SVT	\$17.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of "", which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial

Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$7.00 or \$17.00.

H. Mid-Tier Prize - A prize of \$27.00 or \$70.00.

I. High-Tier Prize - A prize of \$700.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit



pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (167), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 167-0000001-000.

L. Pack - A pack of "Sizzlin' 7's" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Ticket 000 to 004 will be on the top page. Tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Sizzlin' 7's" Instant Game No. 167 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "Sizzlin' 7's" Instant Game is determined once the latex on the ticket is scratched off to expose nine symbols on a tic-tac-toe grid. If a player gets three 7's in any row, column or diagonal, they win the prize shown in the corresponding arrow on the outside of the grid. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. No three X's or O's will ever appear in a row, column, or diagonal.

B. No four or more of a kind on a ticket (all tickets will contain 3 X's, 3 O's and 3 7's).

C. Consecutive non-winning tickets will not have identical play data, spot for spot.

D. A ticket may win only once.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "Sizzlin' 7's" Instant Game prize of \$1.00, \$2.00, \$4.00, \$7.00, \$17.00, \$27.00 or \$70.00, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$27.00 or \$70.00 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the

claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "Sizzlin 7's" Instant Game prize of \$700 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Sizzlin 7's" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "Sizzlin 7's" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "Sizzlin 7's" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,160,000 tickets in the Instant Game No. 167. The expected number and value of prizes in the game are as follows:

Table 3  
Figure 3:16 TAC GAME NO. 167 – 4.0

Prize Amount	Approximate Number of Winners	Chances of Winning
\$1.00	6,019,200	1:8.33
\$2.00	1,920,000	1:15.63
\$4.00	480,000	1:62.50
\$7.00	300,000	1:100.00
\$17.00	180,000	1:166.67
\$27.00	50,625	1:592.59
\$70.00	6,250	1:4,800.00
\$700	250	1:120,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 167 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 167, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9908155  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: November 30, 1999



Instant Game Number 168 "Feather Your Nest"

1.0 Name and Style of Game.

A. The name of Instant Game No. 168 is "Feather Your Nest". The play style of the game is a "match 3 of 9 with doubler" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 168 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 168.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols that appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$6,000 and a Nest symbol.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Table 1**  
**Figure 1: 16 TAC GAME NO. 168-1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$1.00	ONES
\$2.00	TWOS
\$4.00	FOURS
\$5.00	FIVES
\$10.00	TENS
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$6,000	SIX THOU
NEST	DOUBLER

to verify and validate instant winners. The possible validation codes are:

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use

**Table 2**

**Figure 2:16 TAC GAME NO. 168 – 1.2E**

<b>CODE</b>	<b>PRIZE</b>
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of "", which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00

H. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100 or \$500

I. High-Tier Prize - A prize of \$6,000

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (168), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 168-0000001-000.

L. Pack - A pack of "FEATHER YOUR NEST" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Ticket 000 to 004 will be on the top page.

Tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FEATHER YOUR NEST" Instant Game No. 168 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FEATHER YOUR NEST" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If three (3) like prize amounts are revealed the player wins that amount. If two (2) like prize amounts and a Nest symbol are revealed the player wins double the amount shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will not be four or more of a kind on a ticket.

C. The Nest (doubler symbol) will never appear on a ticket which contains three like amounts.

D. There will not be more than one doubler symbol on a ticket.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "FEATHER YOUR NEST" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "FEATHER YOUR NEST" Instant Game prize of \$6,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FEATHER YOUR NEST" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FEATHER YOUR NEST" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FEATHER YOUR NEST" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,000,000 tickets in the Instant Game No. 168. The expected number and value of prizes in the game are as follows:

Table 3  
Figure 3:16 TAC GAME NO. 168 – 4.0

Prize Amount	Approximate Number of Winners	Chances of Winning
\$1.00	4,414,080	1:11.36
\$2.00	4,012,800	1:12.50
\$4.00	1,705,440	1:29.41
\$5.00	401,280	1:125.00
\$10.00	300,960	1:166.67
\$20.00	100,320	1:500.00
\$40.00	26,125	1:1,920.00
\$50.00	14,630	1:3,428.57
\$100	7,315	1:6,857.14
\$500	2,090	1:24,000.00
\$6,000	50	1:1,003,200.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 168 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 168, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9908156  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: November 30, 1999



Instant Game Number 170 "Scratch Happy"

1.0 Name and Style of Game.

A. The name of Instant Game No. 170 is "SCRATCH HAPPY". The play style of the game is a "match 3 of 9 or match 2 plus wild card" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 170 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 170.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols that appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250, \$1,000 and a Happy Face symbol.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Table 1**

**Figure 1:16 TAC GAME NO. 170 – 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$1.00	ONES
\$2.00	TWOS
\$5.00	FIVES
\$10.00	TENS
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$250	TWO FIFTY
\$1,000	ONE THOU
HAPPY FACE	HAPPY

to verify and validate instant winners. The possible validation codes are:

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use

**Table 2**

**Figure 2:16 TAC GAME NO. 170 – 1.2E**

<b>CODE</b>	<b>PRIZE</b>
ONE	\$1.00
TWO	\$2.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of "", which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$5.00, \$10.00 or \$20.00

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$250

I. High-Tier Prize - A prize of \$1,000

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (170), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 170-0000001-000.

L. Pack - A pack of "SCRATCH HAPPY" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Ticket 000 to 004 will be on the top page. Tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SCRATCH HAPPY" Instant Game No. 170 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant



ticket. A prize winner in the "SCRATCH HAPPY" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If a player reveals three (3) like amounts, the player wins that amount. If a player reveals two (2) like amounts and a Happy Face symbol, the player wins that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 9 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will not be four or more of a kind on a ticket.

C. The Happy Face symbol will never appear on a ticket which contains three like amounts.

D. There will not be more than one Happy face symbol on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "SCRATCH HAPPY" Instant Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$250 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "SCRATCH HAPPY" Instant Game prize of \$1,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SCRATCH HAPPY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that

the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the

"SCRATCH HAPPY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SCRATCH HAPPY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,000,000 tickets in the Instant Game No. 170. The expected number and value of prizes in the game are as follows:

**Table 3**  
**Figure 3:16 TAC GAME NO. 170 – 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners</b>	<b>Chances of Winning</b>
\$1.00	6,019,200	1:8.33
\$2.00	3,009,600	1:16.67
\$5.00	1,203,840	1:41.67
\$10.00	401,280	1:125.00
\$20.00	200,640	1:250.00
\$50.00	59,565	1:842.11
\$100	14,630	1:3,428.57
\$250	6,688	1:7,500.00
\$1,000	418	1:120,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 170 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 170, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9908157  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: November 30, 1999



**Instant Game Number 171 "Lucky Duck"**

1.0 Name and Style of Game.

A. The name of Instant Game No. 171 is "LUCKY DUCK". The play style of the game is a "key number match with auto win" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 171 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 171.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$500 and a Lucky Duck symbol.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1  
 Figure 1:16 TAC GAME NO. 171 – 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
Lucky Duck	WIN\$
\$1.00	ONES\$
\$2.00	TWOS\$
\$4.00	FOURS\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$20.00	TWENTY
\$25.00	TWY FIVE
\$500	FIV HUND

to verify and validate instant winners. The possible validation codes are:

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use

Table 2

Figure 2:16 TAC GAME NO. 171 – 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of "", which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500

I. High-Tier Prize - This game does not contain a prize amount greater than \$599 and therefore, does not contain a high-tier prize.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (171), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 171-0000001-000.

L. Pack - A pack of "LUCKY DUCK" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Ticket 000 to 004 will be on the top page. Tickets 005 to 009 will be on the next page and so forth with tickets 245 to 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY DUCK" Instant Game No. 171 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY DUCK" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols. If any of the "YOUR NUMBERS" play symbols match the "LUCKY NUMBER" play symbol the player wins the prize listed below the matching "YOUR NUMBER" play symbol. If a Lucky Duck play symbol is revealed the player automatically wins the prize listed below the Lucky Duck play symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no duplicate non-winning "Your Number" play symbols on a ticket.

C. There will be no duplicate non-winning prize symbols on a ticket.

D. The auto win symbol will never appear more than once on a ticket.

## 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY DUCK" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon

presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "LUCKY DUCK" Instant Game prize the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DUCK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No

liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY DUCK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LUCKY DUCK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,000,000 tickets in the Instant Game No. 171. The expected number and value of prizes in the game are as follows:

**Table 3**  
**Figure 3:16 TAC GAME NO. 171 – 4.0**

<b>Prize Amount</b>	<b>Approximate Number of Winners</b>	<b>Chances of Winning</b>
\$1.00	5,617,920	1:8.93
\$2.00	2,808,960	1:17.86
\$4.00	1,605,120	1:31.25
\$5.00	401,280	1:125.00
\$10.00	300,960	1:166.67
\$20.00	200,640	1:250.00
\$50.00	48,070	1:1,043.48
\$100	10,450	1:4,800.00
\$500	50	1:1,003,200.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 171 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 171, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-9908158  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: November 30, 1999

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**Texas Department of Mental Health and Mental Retardation**

Public Hearing Notice

Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation Notice of Joint Public Hearing

on Rates for Non State-operated Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on proposed reimbursement rates for non state-operated ICFs/MR effective January 1, 2000, through December 31, 2000. The hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Monday, December 20, at 9:00 a.m. in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas, 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas, 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas, 78751. Comments must be received by noon on Monday, December 20, 1999. Interested parties may obtain a copy of the reimbursement briefing package 10 days prior to the hearing by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512) 206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay operator by calling 1-800-735-2988.

TRD-9908179

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: December 1, 1999



## Texas Natural Resource Conservation Commission

### Notice of Availability and Request for Comments

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Natural Resource Conservation Commission (TNRCC) and the Texas General Land Office (GLO) (hereafter, Natural Resource Trustees).

ACTION: Notice of availability of a proposed Settlement Agreement and of a 30-day period for public comment on the Agreement.

SUMMARY: Notice is hereby given that the Natural Resource Trustees propose a Settlement Agreement to compensate for injuries to natural resources resulting from the release of hazardous substances and the resulting remedial activities at the Motco Superfund site. The proposed Agreement provides for the responsible party to pay \$9,806.34 to the Natural Resource Trustees to fund the enhancement of ponds at the City of LaMarque, Highland Bayou Park by establishing a tidal connection to existing emergent wetlands to allow for ingress and egress of aquatic organisms and to pay the Trustees' administrative costs.

The proposed document entitled "Settlement Agreement for Resolution of State Natural Resource Damages Liability at Motco National Priority List Site, LaMarque, Texas" is hereby made available for public review and comment for a period of 30 days.

The opportunity for public review and comment on the proposed Settlement Agreement announced in this notice is required under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code (USC), §9622(i) and parallels the provisions included in 43 Code of Federal Regulations (CFR) §11.32(c) of the Natural Resource Damage Assessment regulations. **To receive a copy of the proposed Settlement Agreement, interested members of the public are invited to contact Paula McCormick of the Texas Natural Resource Conservation Commission, Remediation Division, MC 142, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-2363.**

DATES: Comments must be submitted in writing on or before **January 10, 2000** to Paula McCormick of the Texas Natural Resource Conservation Commission at the address listed in the previous paragraph. The Natural Resource Trustees will consider all written comments prior to finalizing the proposed Settlement Agreement.

SUPPLEMENTARY INFORMATION: The Motco site is located in La Marque, Galveston County, Texas, in the Gulf Coastal Plain. It is two miles south of Texas City, near the junction of Interstate Highway 45 and Texas Highway 3. The Motco Hazardous Waste Disposal facility, consisting of approximately 11.3 acres, operated as a waste recycling facility and storage area. Waste disposal at the Motco site began approximately in 1958 or 1959 and continued until approximately 1976. The site was used for processing and reclamation of discarded residuals from local industries. Historically, unlined waste pits containing surface water, organic liquids, various sludges, tars and other solids have been located at the site. Although the response actions that were carried out by the Motco Trust Group in coordination with EPA resulted in adequately eliminating the sources of contamination and remediating the released hazardous substances, natural resource injuries caused by the remedial actions at the Motco site have not been fully compensated. As a result of the remedial activities, two borrow pits, located southwest of the Motco site, were backfilled with clay to serve as basins for storm surges. The filling of the two pits resulted in a loss of natural resources and their services through the elimination of the aquatic habitat, feeding and nursery services provided by the borrow pits.

The Trustees are designated natural resource trustees under CERCLA §107(f), §311 of the Federal Water Pollution and Control Act (FWPCA) (33 USC, §1321), and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR §§300.600-300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore public resources and services injured or lost as a result of discharges or releases of hazardous substances.

The Natural Resource Trustees have determined that resources subject to their trust authority under these Acts were injured as a result of remedial actions at the site. Consequently, the Trustees are seeking the cash settlement identified in the proposed Settlement Agreement to implement the enhancement of the ponds at Highland Bayou Park in the City of LaMarque by establishing a tidal connection to existing emergent wetlands.

TRD-9908166

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: November 30, 1999



Notice of Public Hearing (Chapter 111)



Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 111, concerning monitoring requirements for certain incinerators.

The proposed amendments to §§111.121, 111.123, 111.125, 111.127, and 111.129 delete the current requirements for continuous emissions monitoring systems (CEMS) for oxygen and carbon monoxide (CO) for incinerators which can meet the permit exemptions found in 30 TAC Chapter 106, concerning Exemptions from Permitting, §106.491 concerning Dual Chamber Incinerators, and §106.494 concerning Pathological Waste Incinerators. The proposed amendments also clarify that all incinerators are restricted to daylight operation unless they have a continuous opacity monitoring system CO CEMS, delete the requirements for medical waste incinerators and state that those requirements are being moved to 30 TAC 113, concerning Hazardous Air Pollutants and Stationary Source Performance Standards, and allow the use of two additional methods (United States Environmental Protection Agency Test Methods 26 and 26A) for the testing of hydrogen chloride emissions.

A public hearing on the proposal will be held January 5, 2000, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., January 7, 2000, and should reference Rule Log Number 99012-111-AI. For further information, please contact Alan Henderson, Policy and Regulations Division, (512) 239-1510.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9908161

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: November 30, 1999



### Notice of Water Quality Applications

The following notices were issued during the period of October 20, 1999-November 29, 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.**

AQUASOURCE UTILITY, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 11332-001, 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 north of Highcrest Drive between Lakecrest Drive and Moss Downs Drive in Burnet County, Texas.

THE BABCOCK & WILCOX COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit No. 00300, which authorizes the discharge of decanted cooling water and storm water at a daily maximum flow not to exceed 800,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit No. TX0000108, issued on March 4, 1988 and TNRCC Permit No. 00300, issued on May 12, 1993. The applicant is authorized to treat and dispose of wastes from an adjoining pipe manufacturer, Turner Piping Systems, Inc. The plant site is located in the northwest quadrant as defined by the intersection of Farm-to-Market Road 137 and the Missouri Pacific Railroad, approximately one mile south of the intersection of Farm-to-Market Road 137 and State Highway 469, on Farm-to-Market Road 137, in the City of Paris, Lamar County, Texas.

CITY OF BANGS has applied for a major amendment to TNRCC Permit No. 10122-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 192,000 gallons per day to a daily average flow not to exceed 300,000 gallons per day. The plant site is located approximately one mile south of the intersection of U.S. Highway 84 and Farm-to-Market Road 586 in Brown County, Texas.

BIG OAKS MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TNRCC Permit Number 13021-001 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 700,000 gallons per day. The plant site is located at 7002 Westmoor Drive, approximately 4,000 feet southwest of the intersection of Farm-to-Market Roads 1464 and 1093 in the City of Richmond in Fort Bend County, Texas.

CITY OF BORGER has applied for a renewal of TNRCC Permit Number 10535-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The plant site is located approximately 9,800 feet northeast of the intersection of State Highway 136 and Ranch Road 1559, southwest of the City of Borger in Hutchinson County, Texas.

CNP UTILITY DISTRICT has applied for a renewal of TNRCC Permit Number 11239-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,500,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The plant site is located on the south bank of Cypress Creek approximately 2,700 feet west of Interstate Highway 45 in Harris County, Texas.

CROCKETT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of Permit Number 10059-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,500 gallons per day via irrigation of 3.6 acres of grassland. The wastewater treatment facility is located 0.4 mile north of Interstate Highway 10 at a point approximately 1.1 mile west of the intersection of Loop 466 and State Highway 163 in the City of Ozona, Crockett County, Texas.

CITY OF GROOM has applied for a renewal of Permit Number 10093-001, which authorizes the disposal of treated domestic wastew-

ater at a daily average flow not to exceed 84,000 gallons per day via evaporation on 85 acre playa lake and/or irrigation on 78.6 acres of pasture land adjacent to playa lake. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located southeast of the intersection of Interstate Highway 40 and Farm-to-Market Road 295 and north of the City of Groom in Carson County, Texas.

GUADALUPE-BLANCO RIVER AUTHORITY has applied for a renewal of Permit Number 11751-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via irrigation of 117 acres at the Northcliffe Country Club golf course. The wastewater treatment facilities and disposal site are located approximately 1200 feet northeast of the intersection of Farm-to-Market Road 1103 and Interstate Highway 35 in Comal County, Texas.

HALLIBURTON ENERGY SERVICES, INC. for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14113-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 3,500 gallons per day. The plant site is located at 1800 Pelican Island, approximately 1.7 miles along Seawolf Parkway from bridge, than south 1800 feet in Galveston County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 208 has applied for a renewal of TNRCC Permit Number 11947-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,700,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,700,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of Hearthstone Country Club Golf Course. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for South Mayde Creek in Addicks Reservoir for incorporation into 30 TAC §307.10, Appendix D. The renewed permit also authorizes a variance to the Texas Surface Water Quality Standards under 30 TAC §307.2(d)(4). The variance authorizes a three-year period in which the Commission will consider a recommended site-specific standard for South Mayde Creek in Addicks Reservoir and determine whether to adopt the standard or require a no discharge of pollutants into waters in the State to be in effect. The plant site is located at 7926 State Highway 6, approximately 3/4 mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 529 (Spencer Road) in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 127 has applied for a major amendment to TNRCC Permit Number 12209-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 330,000 gallons per day to a daily average flow not to exceed 950,000 gallons per day. The applicant has also requested a temporary variance to the existing water quality standards to allow time for the TNRCC to adopt a site specific standard for Bear Creek in Addicks Reservoir for incorporation into 30 TAC §307.2(d)(4). The variance would authorize a three year period in which the Commission will consider a recommended site specific standard for Bear Creek in Addicks Reservoir and determine whether to adopt the standard or require the existing water quality standard to remain in effect. The plant site is located at 19201 Gummert Road, approximately 1.2 miles west of the intersection of Barker-Cypress Road and Gummert Road in Harris County, Texas.

CITY OF LINDEN has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 10429-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The plant site is located approximately 1,600 feet southwest of the intersection of State Highway 155 and Hamilton Street in Cass County, Texas.

CITY OF MILES has applied for a major amendment to Permit Number 10138-001 to authorize an increase in the acreage irrigated from 7.8 acres to 115 acres. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day via irrigation of 7.8 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 at the northeastern corner of the intersection of Farm-to-Market Road 1692 and Paint Rock Road in Runnels County, Texas.

MILLENNIUM PETROCHEMICALS, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 00534 to remove Outfalls 001, 003, 004, 005, 006, 007, and 008 from the existing permit, rename Outfall 002 to new Outfall 001, and reduce the monitoring frequency of methylene chloride. The current permit authorizes the discharge of treated process, utility, domestic, and storm water via Outfall 001 at a daily average flow not to exceed 1,920,00 gallons per day; treated process, utility, sanitary and storm water via Outfall 002 at a daily average flow of effluent not to exceed 800,000 gallons per day; storm water runoff and process wastewaters via Outfall 003 on an intermittent and flow variable basis; treated process, utility, sanitary and storm water via Outfall 004 at a daily average flow not to exceed 1,800,000 gallons per day; storm water runoff, groundwater infiltration and wastewaters from Decene Terminal via Outfall 005 on a flow variable basis; storm water runoff via Outfall 006 on an intermittent and flow variable basis; treated process, utility, sanitary and storm water via Outfall 007 at a daily average flow not to exceed 2,500,000 gallons per day; and storm water runoff via Outfall 008 on an intermittent and flow variable basis. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0002836 issued on December 9, 1994, and TNRCC Permit Number 00534 issued on September 3, 1993. The applicant operates an acetic acid, vinyl acetate monomer, and poly-alpha-olefin manufacturing facility. The plant site is located on Miller Cutoff Road, approximately 3/4 mile north of the intersection of Miller Cutoff Road and State Highway 225, Harris County, Texas.

MILLENNIUM PETROCHEMICALS, INC., AND LINDE GAS, INC. have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit Number 04092, to authorize the discharge of treated process wastewater, utility wastewater, and sanitary wastewater at a daily average flow not to exceed 2,500,000 gallons per day 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 authorization for these discharges included in the existing NPDES Permit Number TX0118389 issued on December 9, 1994, and TNRCC Permit Number 00534 issued on September 3, 1993. The applicants operate methanol, carbon monoxide, and hydrogen manufacturing facilities. The plant site is located on Strang Road, approximately one-half mile east of the intersection of Strang Road and Miller Cut-off Road, Harris County,

CITY OF MORGAN'S POINT RESORT has applied for a major amendment to Permit Number 10918-002 to relocate the irrigation

site and dispose of treated wastewater via irrigation of 10 acres of grassland. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day via irrigation, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located in Abstract 812 of S.P. Terry Survey in the "green way" area of Morgan's Point Subdivision between Blocks 27 and 35 in Bell County, Texas.

OXY VINYLs, LP has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 01539, which authorizes the discharge of treated process wastewater, storm water, and previously monitored effluents at a daily average flow not to exceed 2,150,000 gallons per day via Outfall 001 and storm water 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 TX0008150 issued, on March 10, 1995 and TNRCC Permit Number 01539, issued on December 22, 1995. The applicant operates a chlor-alkali manufacturing plant. The plant site is located on the east side of State Park Road 1836 (Vista Road) approximately 1,000 feet northeast of the intersection with State Highway 134 (Battleground Road) in the City of La Porte, Harris County, Texas.

PIONEER CONCRETE OF TEXAS, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment to TNRCC Permit Number 02502 to authorize the following: the addition of process wastewater at Outfall 001; increase the total suspended solids limitations (TSS) at Outfall 001; and the addition Outfall 002. The current permit authorizes the discharge of treated groundwater and storm water at a daily average flow not to exceed 350,000 gallons per day via Outfall 001. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0087793 issued on January 30, 1987 and TNRCC Permit Number 02502 issued on March 25, 1993. The applicant operates a sand and gravel plant. The plant site is located at 12541 Sleepy Hollow Road, three and one-half miles east of Interstate Highway 45, and approximately seven miles south of the City of Conroe, Montgomery County, Texas.

CITY OF POTH has applied for a renewal of Permit Number 10052-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 220,000 gallons per day via irrigation of 92 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 1 mile due south of the intersection of U.S. Highway 181 and Farm-to-Market Road 541 in Wilson County, Texas.

SOUTHWESTERN ELECTRIC POWER COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a major amendment of TNRCC Permit Number 02496 to authorize the following: reduction in the monitoring frequency for total selenium at Outfall 006; reduction of monitoring frequencies for total suspended solids and oil and grease at Outfall 102; and reduction of monitoring frequency for biochemical oxygen demand (5-day) and total suspended solids at Outfall 302. The current permit authorizes the discharge of commingled water from Brandy Branch Reservoir on an intermittent and flow variable basis via Outfall 001; condenser cooling water and previously monitored effluents at a daily average flow not to exceed 600,000,000 gallons per day via Outfall 002, which will remain the same; stormwater from the lignite storage area runoff pond on an intermittent and flow variable basis via Outfall 003, which will remain the same; stormwater runoff from the flue gas desulfurization (FGD)/fly ash sludge landfill on an intermittent

and flow variable basis via Outfall 004, which will remain the same; stormwater from the limestone storage area runoff pond on an intermittent and flow variable basis via Outfall 005, which will remain the same; and commingled wastewaters from the ash pond on an intermittent and flow variable basis via Outfall 006, which will remain the same. Issuance of this Texas Pollutant Discharge Elimination System (TPDES) permit will replace the existing NPDES Permit Number TX0087726, issued on April 4, 1998 and TNRCC Permit Number 02496, issued on March 25, 1994. The applicant operates the Henry W. Pirkey Power Plant. The plant site is located adjacent to Red Oak Road at a point approximately six miles southeast of the City of Hallsville, Harrison County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a renewal of Permit Number 11500-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day via irrigation and evaporation on 0.17 acres of grassland (burmuda) in 18 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 at the end of a county road at a point approximately three miles northeast of the intersection of Farm-to-Market Roads 1697 and 180 and 16 miles northeast of the City of Giddings in Lee County, Texas.

TEXAS RENAISSANCE FESTIVAL, INC. has applied for a renewal of Permit Number 12799-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day via irrigation of 21.4 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located adjacent to and west of Farm-to-Market Road 1774, approximately 4.2 miles northwest of the City of Magnolia in Grimes County, Texas.

TEXAS WATER SERVICES, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a renewal of TNRCC Permit Number 12587-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,000 gallons per day. The plant site is located approximately 1.3 miles west of the intersection of Huffsmith-Dobbin Road and Hardin-Store Road in Montgomery County, Texas.

#### Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

D. G. C. FEEDERS, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit Number WQ0001527-000 to authorize the applicant to operate an existing beef cattle operation at a maximum capacity of 10,500 head in Hansford County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the south side of a paved county road approximately 0.8 miles east of its intersection with a gravel county road. This intersection is approximately 2 miles south of the intersection of FM 2018, FM 1573, and the gravel county road in Hansford County, Texas. The facility is located in the drainage area of the Hannas Draw of Palo Duro Creek in Segment Number 0100 of the Canadian River Basin.

LONE STAR BEEF PROCESSORS, L.P. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES permit to amend Permit Number 03864 to authorize the applicant to expand an existing beef cattle facility from a maximum capacity

of 5,000 head to a maximum capacity of 15,000 head in Coke County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the west side of State Highway 277 approximately 13.6 miles south of Bronte, Coke County, Texas. The facility is located in the drainage area of Colorado River below E. V. Spence Reservoir in Segment Number 1426 of the Colorado River Basin.

MANUEL AND SANDRA MACHADO have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Permit Number 04124 to authorize the applicants to operate a new dairy at a maximum capacity of 3000 head in Deaf Smith County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The proposed facility will be located on the north side of County Road 12, approximately 0.8 miles west of the intersection of County Road 12 and U.S. Highway 385; said intersection being approximately 6 miles north of the town of Hereford in Deaf Smith County, Texas. The facility will be located in the drainage area of Upper Prairie Dog Town Fork of the Red River in Segment Number 0229 of the Red River River Basin.

DON METSGAR, owner, and STEVE VANDEN BERGE, operator, have applied to the Texas Natural Resource Conservation Commission (TNRCC) for a TPDES amendment to Permit Number 03189 to authorize the applicant to expand an existing dairy operation from a maximum capacity of 600 to 990 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the east side of County Road 428 and one half mile south of Farm-to-Market Road 219, approximately two and one half miles north-west of the intersection of State Highway 108 and Farm-to-Market Road 3025 in Erath County, Texas. The facility is located in the drainage area of the Upper North Bosque River in Segment Number 1255 of the Brazos River Basin.

SCOTT PRICE has applied to the Texas Natural Resource Conservation Commission (TNRCC) for new Permit Number 04094 to authorize the applicant to operate a dairy facility at a maximum capacity of 450 head in Hopkins County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The facility is located on the west side of Farm-to-Market Road 3019 approximately one-half mile south of the intersection of Farm-to-Market Road 3019 and State Highway 900 in Hopkins County, Texas. The facility is located in the drainage area of Sulphur/South Sulphur River in Segment Number 0303 of the Sulphur River Basin.

CLIFF A. SKILES, JR. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Registration Number 04147 to authorize the applicant to operate a new dairy at a maximum capacity of 5000 head in Deaf Smith County, Texas. The application was received on August 6, 1999. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. All waste and wastewater will be beneficially used on agricultural land. The proposed facility will be located approximately 15 miles north of Hereford, Texas; three miles south on U.S. Highway 385 and one mile east on County Road 21 from the intersection of U.S. Highway 385 and Farm-to-Market Road 2587, in Deaf Smith County. The facility will be located in the drainage area of Upper Prairie Dog Town Fork Red River in Segment Number 0229 of the Red River Basin.

PIETER VANDERLAAN has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Permit Number 03350 to amend and replace state permit authorizing the applicant to expand an existing dairy operation from a maximum capacity of 850 head to 2,000 head in Erath County, Texas. No discharge of pollutants into the waters in the state is authorized by this Permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the east side of Farm-to-Market Road 219 at the intersection of Farm-to-Market Road 219 and Gibson Road in Erath County, Texas. The facility is located in the drainage area of the North Bosque River in Segment Number 1226 of the Brazos River Basin.

WALTER LASLEY & SONS, INC. has applied to the Texas Natural Resource Conservation Commission (TNRCC) for TPDES Registration Number 01525 to authorize the applicant to operate an existing beef cattle facility at a maximum capacity of 30,000 head in Sherman County, Texas. The application was received on September 17, 1999. No discharge of pollutants into the waters in the state is authorized by this Registration, except under chronic or catastrophic rainfall conditions. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on a private road approximately one and one-half miles north of the intersection of the private road and Farm-to-Market Road 119 and approximately one mile west of the intersection of State Highway 15 and Farm-to-Market Road 119 and approximately 14 miles east of the city of Stratford in Sherman County, Texas. The facility is located in the drainage area of Palo Duro Creek in Segment Number 0100 of the Canadian River Basin.

DAVID M. WHITAKER has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a new TPDES Registration Number 04157 to authorize the applicant to operate a new beef cattle facility at a maximum capacity of 3,000 head in Potter County, Texas. The application was received August 30, 1999. No discharge of pollutants into the waters in the state is authorized by this registration except under chronic or catastrophic rainfall conditions. All waste and wastewater will be beneficially used on agricultural land. The proposed facility will be located on the east side of Parsley Road approximately one mile north of its intersection with U.S. Highway 60 just east of Amarillo in Potter County, Texas. The facility will be located in the drainage area of the North Fork Red River in Segment Number 0224 of the Red River Basin.

#### Concentrated Animal Feeding Operation

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, WITHIN 10 DAYS OF THE DATE THIS NOTICE IS ISSUED.

BENDORA DAIRY, LLC has applied to the Texas Natural Resource Conservation Commission (TNRCC) for renewal of State Permit Number 03743 to authorize the applicant to operate an existing dairy at a maximum capacity of 600 head in Parker County, Texas. No discharge of pollutants into the waters in the state is authorized by this permit. All waste and wastewater will be beneficially used on agricultural land. The existing facility is located on the west side of Weiland Road, approximately 1.5 miles north of the intersection of Weiland Road and Old Agnes Road, said intersection being approximately 0.25 miles west of the intersection of Old Agnes Road and FM 51, in Parker County, Texas. The facility is located in the drainage area of Clear Fork Trinity River Above Lake Weatherford in Segment Number 0833 of the Trinity River Basin.

TRD-9908164

LaDonna Castañuela  
Chief Clerk



## Public Utility Commission of Texas

### 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 November 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 Callnet Communications, Inc. for a Service Provider Certificate of Operating Authority, **Docket Number 21703** before the Public Utility Commission of Texas.

Applicant intends to provide local services as well as Call Waiting, Caller ID, Caller ID Waiting, Three-Way Calling, Voice Mail, DSL, ISDN, T1-Private Line and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by GTE Southwest, Inc. and Southwestern Bell Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than **December 15, 1999**. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9908143  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 29, 1999



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 24, 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 Western Integrated Networks of Texas Operating, L.P. for a Service Provider Certificate of Operating Authority, **Docket Number 21713** before the Public Utility Commission of Texas.

Applicant intends to provide a wide range of broadband, integrated video, voice, and high-speed data services to residential and business customers.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than **December 15, 1999**. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9908144  
Rhonda Dempsey  
Rules Coordinator



### Notices of Applications to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 19, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 14.051, 14.052, 52.002, 52.003, 54.001, 54.005, 54.052, 54.053, 54.054, and 54.258 of the Public Utility Regulatory Act, (Vernon 1999) (PURA). A summary of the application follows.

Docket Title and Number: Application of Central Telephone Company of Texas doing business as Sprint to Amend Certificate of Convenience and Necessity within Williamson County, **Docket Number 21687**.

Application: Central Telephone Company of Texas doing business as Sprint seeks approval to amend the boundary of its Florence exchange and Southwestern Bell Telephone Company's Liberty Hill exchange, in order to efficiently provide service to a new residential development, Saratoga Springs.

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 **December 29, 1999**. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9908152  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 29, 1999



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 23, 1999, to amend a certificate of convenience and necessity pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Upshur-Rural Electric Cooperative Corporation (URECC) to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line within Wood and Upshur Counties, **Docket Number 21708**, before the Public Utility Commission of Texas.

The Application: URECC's proposed request involves the design and construction of a transmission line from Little Mound to Holly Lake and a Holly Lake Substation. The proposed transmission line will be operated at 69kV and will begin at a point in the existing Little Mound Substation. The proposed project will allow URECC to reduce the length of distribution feeders to the area, which will increase service reliability and voltage levels. Transmission service can be provided from a transmission point-of-delivery that is served by a looped system which provides a more secure source of power. Distribution service can also be provided to the service area from either the substation or transmission line or the existing distribution feeders. Further information regarding the project can be obtained by contacting DeWayne Brown, P.E. at (903) 843-2536 or Mark Davis at (512) 472-1081.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 **within 15 days of this notice**. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9908168  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 30, 1999



#### Public Notices of Amendments to Interconnection Agreements

On November 18, 1999, Southwestern Bell Telephone Company and Amarillo CellTelco, collectively referred to as applicants, 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated **Docket Number 21678**. 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 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 21678. 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 **December 16, 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 21678.

TRD-9908167  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 30, 1999



On November 22, 1999, DSLnet Communications, LLC, and GTE Southwest, Inc., collectively referred to as applicants, 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated **Docket Number 21699**. 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 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 21699. 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 **December 20, 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 21699.

TRD-9908149  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 29, 1999



On November 22, 1999, Southwestern Bell Telephone Company and Omniplex Communications Group, LLC, collectively referred to as applicants, 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated **Docket Number 21702**. 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 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 21702. 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 **December 20, 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 21702.

TRD-9908151  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 29, 1999



### Public Notices of Interconnection Agreements

On November 22, 1999, Alliance Network, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated **Docket Number 21698**. 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 21698. 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 **December 20, 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 21698.

TRD-9908148  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 29, 1999



On November 22, 1999, Southwestern Bell Telephone Company and Alliance Network, Inc., collectively referred to as applicants, filed a joint application for approval of 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, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated **Docket Number 21701**. 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 21701. 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 **December 20, 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 21701.

TRD-9908150  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 29, 1999



## Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities and Rate of Return on Assets and Report of Balance Sheet, Actuarial Valuation and Unfunded Liabilities

Teacher Retirement System of Texas Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets and Report of Balance Sheet, Actuarial Valuation, and Unfunded Liabilities Section 825.108, Government Code requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15th of each year containing the following information: (1) the retirement system's fiscal transactions for the preceding fiscal year; (2) the amount of the system's accumulated cash and securities; and (3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

In addition, §825.108, Government Code, requires TRS to publish a report in the *Texas Register* no later than March 1st of each year containing the balance sheet of the retirement system as of August 31st of the preceding fiscal year, an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following reports as required by statute:



**Teacher Retirement System Of Texas**

**Combined Statement of Plan Net Assets-Defined Benefit Pension Plan  
and Balance Sheet-All Other Fund Types**

August 31, 1999 (With Comparative Memorandum Totals for August 31, 1998)

	<b>FIDUCIARY FUND TYPES</b>	
	<b>Defined Benefit Pension Plan</b>	<b>Other Trust and Agency</b>
<b>ASSETS</b>		
<b>Cash:</b>		
Cash In State Treasury	\$ 521,745,745	\$ 8,877,398
Cash in Bank	383,394	
Cash on Hand	2,144,192	
<b>TOTAL CASH</b>	<b>\$ 524,273,331</b>	<b>\$ 8,877,398</b>
<b>Receivables and Prepaids:</b>		
Accounts Receivable:		
Sale of Investments	\$ 403,829,910	\$
Interest and Dividends	438,582,019	2,509,357
Member and Retiree	41,248,435	10,252,342
Due from State's General Revenue Fund	28,011,543	3,817,069
Reporting Employers	8,388,752	6,670,263
Other	2,079,139	
Prepaids	181,178	
<b>TOTAL RECEIVABLES AND PREPAIDS</b>	<b>\$ 922,320,976</b>	<b>\$ 23,249,031</b>
<b>Investments:</b>		
Short-Term	\$ 347,543,674	134,222,093
Fixed Income	26,797,922,496	15,920,612
Equities	51,178,591,361	
Real Estate Mortgages	684,958,162	
Real Estate Held for Sale	83,204,600	
<b>TOTAL INVESTMENTS</b>	<b>\$ 79,092,220,293</b>	<b>\$ 150,142,705</b>
Invested Securities Lending Collateral	\$ 6,722,002,556	\$ -0-
<b>Other Assets and Debits:</b>		
Land	\$ 1,658,310	\$
Building and Equipment, at Cost, Net of Accumulated Depreciation	31,564,446	75,665
Deferred Assets	1,500	
Resources to be Provided in Future Years		
<b>TOTAL OTHER ASSETS AND DEBITS</b>	<b>\$ 33,224,256</b>	<b>\$ 75,665</b>
<b>TOTAL ASSETS</b>	<b>\$ 87,294,041,412</b>	<b>\$ 182,344,799</b>

**TOTALS**  
**MEMORANDUM ONLY**

1999	1998
\$ 530,623,143	\$ 406,675,675
383,394	444,531
2,144,192	1,347,213
\$ 533,150,729	\$ 408,467,419
\$ 403,829,910	\$ 853,005,702
441,091,376	391,096,870
51,500,777	44,928,741
31,828,612	38,033,173
15,059,015	12,108,324
2,079,139	2,296,779
181,178	126,826
\$ 945,570,007	\$ 1,341,596,415
\$ 481,765,767	\$ 1,389,624,546
26,813,843,108	24,570,261,537
51,178,591,361	38,947,726,382
684,958,162	870,727,000
83,204,600	165,592,220
\$ 79,242,362,998	\$ 65,943,931,685
\$ 6,722,002,556	\$ 6,833,244,406
\$ 1,658,310	\$ 1,658,310
31,640,111	29,565,362
1,500	7,770
	37,039
\$ 33,299,921	\$ 31,268,481
\$ 87,476,386,211	\$ 74,558,508,406

(to next page)

*Teacher Retirement System Of Texas*

**Combined Statement of Plan Net Assets-Defined Benefit Pension Plan  
and Balance Sheet-All Other Fund Types**

August 31, 1999 (With Comparative Memorandum Totals for August 31, 1998)

(concluded)

	<b>FIDUCIARY FUND TYPES</b>	
	<b>Defined Benefit Pension Plan</b>	<b>Other Trust And Agency</b>
<b>LIABILITIES, EQUITY, OTHER CREDITS AND NET ASSETS HELD IN TRUST FOR PENSION BENEFITS</b>		
<b>Liabilities:</b>		
Accounts Payable	\$ 1,967,200	5,269,407
Benefits Payable	227,613,944	48,112,100
Accounts Payable-General Revenue Fund		6,670,263
Accounts Payable-Reporting Employers		
Funds Held for Others		1,232
Investments Purchased Payable	410,968,543	
Reinstatement Installment Receipts	20,935,377	
Securities Lending Collateral	6,722,002,556	
Compensable Absences Payable- not Funded by Current Resources		
<b>TOTAL LIABILITIES</b>	<b>\$ 7,383,487,620</b>	<b>\$ 60,053,002</b>
<b>Equity and Other Credits:</b>		
Investment in General Fixed Assets		\$
Fund Balance Reserved for:		
Future Retention, Claims, and Administrative Expenditures		122,216,132
Fixed Assets		75,665
<b>TOTAL EQUITY AND OTHER CREDITS</b>		<b>\$ 122,291,797</b>
<b>TOTAL LIABILITIES, EQUITY AND OTHER CREDITS</b>		<b>\$ 182,344,799</b>
<b>NET ASSETS HELD IN TRUST FOR PENSION BENEFITS</b>	<b>\$ 79,910,553,792</b>	

**TOTALS**  
**MEMORANDUM ONLY**

1999	1998
\$ 7,236,607	\$ 16,916,621
275,726,044	262,881,726
6,670,263	5,212,481
1,232	2,723
410,968,543	769,740,813
20,935,377	19,811,512
6,722,002,556	6,833,244,406
	37,039
\$ 7,443,540,622	\$ 7,907,847,321
\$	\$ 72,579
122,216,132	193,765,563
75,665	
\$ 122,291,797	\$ 193,838,142
\$ 182,344,799	\$ 245,557,459
\$ 79,910,553,792	\$ 66,456,822,943

**Teacher Retirement System Of Texas**  
**Comparative Statement of Revenues, Expenditures**  
**and Changes in Fund Balance**  
**YEAR ENDED AUGUST 31**

	<b>EXPENDABLE TRUST FUND</b>	
	<b>1999</b>	<b>1998</b>
<b>Revenues:</b>		
<b>Retired Insurance Plan:</b>		
Retiree Premiums	\$ 96,474,107	\$ 91,390,173
State Contributions	76,488,424	72,210,190
Member Contributions	38,244,213	36,105,095
Investment Income:		
Interest	10,890,012	14,394,504
Securities Lending	3,729	4,691
Net Appreciation in Fair Value	(1,131,000)	861,322
<b>Active Insurance Plan:</b>		
Active Premiums	204,257	548,119
Administrative Fees	3,874	10,952
Investment Income:		
Interest	1,108,460	1,126,333
Net Appreciation in Fair Value	(60,630)	91,362
<b>TOTAL REVENUES</b>	<b>\$ 222,225,446</b>	<b>\$ 216,742,741</b>
<b>Expenditures:</b>		
<b>Retired Insurance Plan:</b>		
Claims	\$ 277,858,423	\$ 232,794,071
Claims Processing	13,232,423	12,748,881
Internal Administration	1,708,313	1,867,797
<b>Active Insurance Plan:</b>		
Claims	326,271	1,107,287
Claims Processing	20,045	38,445
Internal Administration	589,277	400,607
<b>TOTAL EXPENDITURES</b>	<b>\$ 293,734,752</b>	<b>\$ 248,957,088</b>
<b>Deficiency of Revenues Over Expenditures</b>	<b>\$ (71,509,306)</b>	<b>\$ (32,214,347)</b>
<b>Fund Balance - Beginning September 1</b>	<b>193,765,563</b>	<b>225,979,910</b>
<b>Reclassification of Account Groups</b>	<b>35,540</b>	
<b>Fund Balance - Beginning September 1 Restated</b>	<b>\$ 193,801,103</b>	<b>\$ 225,979,910</b>
<b>Fund Balance - Ending August 31:</b>		
Retired Insurance Plan	\$ 99,631,646	\$ 171,425,780
Active Insurance Plan	22,660,151	22,339,783
<b>TOTAL FUND BALANCE - ENDING AUGUST 31</b>	<b>\$ 122,291,797</b>	<b>\$ 193,765,563</b>

**Teacher Retirement System Of Texas**  
**Comparative Statement of Changes in Plan Net Assets**  
**YEAR ENDED AUGUST 31**

	<b>PENSION TRUST FUND</b>	
	<b>1999</b>	<b>1998</b>
<b>Additions:</b>		
<b>Contributions:</b>		
Member	\$ 1,158,668,900	\$ 1,090,934,874
State	977,345,552	931,234,586
Reporting Employers	108,892,209	91,478,817
<b>TOTAL CONTRIBUTIONS</b>	<b>\$ 2,244,906,661</b>	<b>\$ 2,113,648,277</b>
<b>Investment Income:</b>		
<b>From Investing Activities:</b>		
Net Appreciation in Fair Value of Investments	\$ 11,441,848,248	\$ 2,333,003,731
Interest	1,862,519,898	1,771,407,185
Dividends	654,766,545	670,438,434
Net Income on Operations of Real Estate Held for Sale	12,210,173	18,748,237
<b>Total Investing Activities Income</b>	<b>\$ 13,971,344,864</b>	<b>\$ 4,793,597,587</b>
Less Investing Activity Expenses	(4,657,228)	(5,110,546)
<b>Net Income from Investing Activities</b>	<b>\$ 13,966,687,636</b>	<b>\$ 4,788,487,041</b>
<b>From Securities Lending Activities:</b>		
Securities Lending Income	\$ 394,032,161	\$ 368,998,641
Securities Lending Expenses:		
Borrower Rebates	(364,828,761)	(347,411,006)
Management Fees	(5,566,406)	(3,146,379)
<b>Net Income from Securities Lending Activities</b>	<b>\$ 23,636,994</b>	<b>\$ 18,441,256</b>
<b>TOTAL NET INVESTMENT INCOME</b>	<b>\$ 13,990,324,630</b>	<b>\$ 4,806,928,297</b>
<b>Other Additions:</b>		
Reinstatement of Withdrawals	\$ 32,812,329	\$ 28,508,589
Reinstatement Fees	29,806,807	28,286,473
Legislative Appropriations for Administrative Expenses On Behalf Fringe Benefits Paid by the State	24,484,057	25,755,306
Membership Fees	2,135,606	1,240,192
Miscellaneous Revenues	201,509	45,753
Transfers from Employees Retirement System of Texas	1,108,401	914,620
Legislative Appropriations for Excess Benefits	52,050	38,595
<b>TOTAL OTHER ADDITIONS</b>	<b>\$ 90,600,759</b>	<b>\$ 84,789,528</b>
<b>TOTAL ADDITIONS</b>	<b>\$ 16,325,832,050</b>	<b>\$ 7,005,366,102</b>
<b>Deductions:</b>		
Benefits	\$ 2,627,741,568	\$ 2,494,175,450
Withdrawal of Member Accounts	206,354,473	183,430,398
Administrative Expenses (Net of Investment Expenses above)	24,691,140	21,738,974
Transfers to Employees Retirement System of Texas	13,261,970	10,087,258
Excess Benefits	52,050	38,595
<b>TOTAL DEDUCTIONS</b>	<b>\$ 2,872,101,201</b>	<b>\$ 2,709,470,675</b>
<b>Net Increase</b>	<b>\$ 13,453,730,849</b>	<b>\$ 4,295,895,427</b>
<b>Net Assets Held in Trust for Pension Benefits Beginning of Year</b>	<b>66,456,822,943</b>	<b>62,160,927,516</b>
<b>Net Assets Held in Trust for Pension Benefits End of Year</b>	<b>\$ 79,910,553,792</b>	<b>\$ 66,456,822,943</b>

**Teacher Retirement System Of Texas**

**Combining Balance Sheet**

**Fiduciary Fund Types - Other than Defined Benefit Pension Plan**

**AUGUST 31, 1999** (With Comparative Combined Totals for August 31, 1998)

	EXPENDABLE TRUST FUND		AGENCY FUNDS		COMBINED TOTALS	
	Texas Public School Employees Group Insurance Program				1999 (Exhibit I)	1998
<b>ASSETS</b>						
<b>Cash:</b>						
Cash In State Treasury	\$	8,876,166	\$	1,232	\$	6,408,482
Cash on Hand						188,739
<b>TOTAL CASH</b>	<b>\$</b>	<b>8,876,166</b>	<b>\$</b>	<b>1,232</b>	<b>\$</b>	<b>6,597,221</b>
<b>Accounts Receivable:</b>						
Investment Sales and Income	\$	2,509,357	\$		\$	4,197,585
Member and Retiree		10,252,342				9,615,175
Due from State's General Revenue Fund		3,817,069				4,007,196
Reporting Employers				6,670,263		5,212,481
Other						81,727
<b>TOTAL ACCOUNTS RECEIVABLE</b>	<b>\$</b>	<b>16,578,768</b>	<b>\$</b>	<b>6,670,263</b>	<b>\$</b>	<b>23,114,164</b>
<b>Investments:</b>						
Short-Term	\$	134,222,093	\$		\$	107,224,546
Fixed Income		15,920,612				108,511,910
<b>TOTAL INVESTMENTS</b>	<b>\$</b>	<b>150,142,705</b>	<b>\$</b>	<b>-0-</b>	<b>\$</b>	<b>215,736,456</b>
<b>Fixed Assets</b>	<b>\$</b>	<b>75,665</b>	<b>\$</b>	<b>-0-</b>	<b>\$</b>	<b>75,665</b>
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>175,673,304</b>	<b>\$</b>	<b>6,671,495</b>	<b>\$</b>	<b>182,344,799</b>
					<b>\$</b>	<b>245,447,841</b>
<b>LIABILITIES AND FUND EQUITY</b>						
<b>Liabilities:</b>						
Accounts Payable	\$	5,269,407	\$		\$	323,383
Benefits Payable		48,112,100				46,143,691
Accounts Payable-General Revenue Fund				6,670,263		5,212,481
Funds Held for Others				1,232		2,723
<b>TOTAL LIABILITIES</b>	<b>\$</b>	<b>53,381,507</b>	<b>\$</b>	<b>6,671,495</b>	<b>\$</b>	<b>51,682,278</b>
<b>Fund Equity:</b>						
Fund Balance Reserved for:						
Future Retention, Claims, and Administrative Expenditures	\$	122,216,132	\$		\$	193,765,563
Fixed Assets		75,665				75,665
<b>TOTAL FUND BALANCE</b>	<b>\$</b>	<b>122,291,797</b>	<b>\$</b>	<b>-0-</b>	<b>\$</b>	<b>193,765,563</b>
<b>TOTAL LIABILITIES AND FUND EQUITY</b>	<b>\$</b>	<b>175,673,304</b>	<b>\$</b>	<b>6,671,495</b>	<b>\$</b>	<b>182,344,799</b>
					<b>\$</b>	<b>245,447,841</b>

**Teacher Retirement System Of Texas**  
**Statement of Changes in Assets and Liabilities**  
**AGENCY FUNDS - YEAR ENDED AUGUST 31, 1999**

	Balances September 1, 1998		Additions	Deductions	Balances August 31, 1999	
<b>UNAPPROPRIATED RECEIPTS</b>						
<b>Collections on Behalf of the State's General Revenue Fund</b>						
Assets:						
Cash in State Treasury	\$		\$ 94,340,334	\$ 94,340,334	\$	-
Accounts Receivable-Reporting Employers		5,212,481	6,670,263	5,212,481		6,670,263
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>5,212,481</b>	<b>\$ 101,010,597</b>	<b>\$ 99,552,815</b>	<b>\$</b>	<b>6,670,263</b>
Liabilities:						
Accounts Payable-General Revenue Fund	\$	5,212,481	\$ 6,670,263	\$ 5,212,481	\$	6,670,263

**OTHER AGENCY FUNDS**

**Employees'  
Savings Bond Account**

Assets:						
Cash in State Treasury	\$	330	\$ 26,495	\$ 26,580	\$	245
Liabilities:						
Funds Held for Others	\$	330	\$ 26,165	\$ 26,250	\$	245

**Direct Deposit  
Correction Account Fund**

Assets:						
Cash in State Treasury	\$	2,393	\$ 1,295,590	\$ 1,296,996	\$	987
Liabilities:						
Funds Held for Others	\$	2,393	\$ 1,293,196	\$ 1,294,602	\$	987

**TOTALS - ALL AGENCY FUNDS**

	(Exhibit A)					
Assets:						
Cash in State Treasury	\$	2,723	\$ 95,662,419	\$ 95,663,910	\$	1,232
Accounts Receivable-Reporting Employers		5,212,481	6,670,263	5,212,481		6,670,263
<b>TOTAL ASSETS</b>	<b>\$</b>	<b>5,215,204</b>	<b>\$ 102,332,682</b>	<b>\$ 100,876,391</b>	<b>\$</b>	<b>6,671,495</b>
Liabilities:						
Accounts Payable-General Revenue Fund	\$	5,212,481	\$ 6,670,263	\$ 5,212,481	\$	6,670,263
Funds Held for Others		2,723	1,319,361	1,320,852		1,232
<b>TOTAL LIABILITIES</b>	<b>\$</b>	<b>5,215,204</b>	<b>\$ 7,989,624</b>	<b>\$ 6,533,333</b>	<b>\$</b>	<b>6,671,495</b>



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*Teacher Retirement System Of Texas*

**Rate of Return on Assets**

**Year Ended August 31, 1999**

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	<b>Pension Trust Fund*</b>	<b>Texas Public School Employees Group Insurance Program</b>
<b>Cash Equivalents:</b>		
Cash in State Treasury	5.2%	9.2%
Short-Term Investments	3.9%	
<b>Total Cash Equivalents</b>	<b>4.4%</b>	<b>9.2%</b>
<b>Long-Term Investments:</b>		
Equities	38.3%	
Fixed Income	-2.2%	5.5%
Real Estate**	7.8%	
<b>Total Long-Term Investments</b>	<b>21.5%</b>	<b>5.5%</b>

\* Rates for Long-Term Investments include appreciation in market values.

\*\* Real Estate returns calculated on period ended June 30, 1999



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November 3, 1999

**BOARD OF TRUSTEES**

Teacher Retirement System of Texas

**Subject: Actuary's Certification of the Actuarial Valuation as of August 31, 1999**

We certify that the information included herein and contained in the 1999 Actuarial Valuation Report is accurate and fairly presents the actuarial position of the Teacher Retirement System of Texas (TRS) as of August 31, 1999.

All calculations have been made in conformity with generally accepted actuarial principles and practices, and with the Actuarial Standards of Practice issued by the Actuarial Standards Board. In our opinion, the results presented comply with the requirements of the Texas statutes and, where applicable, the Internal Revenue Code, ERISA, and the Statements of the Governmental Accounting Standards Board. The undersigned are independent actuaries. All three are members of the American Academy of Actuaries, and are experienced in performing valuations for large public retirement systems. Richard Mallett and Michael Carter are also Enrolled Actuaries.

***Actuarial Valuations***

The primary purpose of the valuation report is to determine the adequacy of the current state contribution rate through measuring the resulting funding period, to describe the current financial condition of the system, and to analyze changes in the system's condition. In addition, the report provides information required by the system in connection with Governmental Accounting Standards Board Statement No. 25 (GASB No. 25), and it provides various summaries of the data.

Valuations are prepared annually, as of August 31 of each year, the last day of the system's plan and fiscal year.

***Financing Objective of the Plan***

Contribution rates are established by law that, over time, are intended to remain level as a percent of payroll. The employee and state contribution rates have been set by law to provide for the normal cost plus the level percentage of payroll required to amortize the unfunded actuarial accrued liability over a period not in excess of 31 years.

***Progress Toward Realization of Financing Objective***

The actuarial accrued liability, the unfunded actuarial accrued liability, and the calculation of the resulting funding period illustrate the progress toward the realization of financing objectives. Based on this actuarial valuation as of August 31, 1999, the system remains in a fully funded status, and therefore the funding period corresponding to the 6.00% state contribution rate is 0.0 years, which is less than the statutory limit of 31 years.

The actuarial valuation report as of August 31, 1999, reveals that the Teacher Retirement System is an actuarially sound system based on current actuarial assumptions. The present actuarial assets (approximately \$69.435 billion) together with the future contributions required by law will be sufficient to provide the payment of benefits to all present active and retired members and beneficiaries, and to amortize the unfunded actuarial accrued liability of \$(2,190) million over a period of 0.0 years. Since the unfunded liability is negative, the system is fully funded and actuarial assets exceed the actuarial accrued liability.

The state and other participating employers contributed the legislated rate for the 1998/1999 fiscal year and are contributing the legislated rate for the 1999/2000 fiscal year. The resulting funding period has remained below 31 years. Therefore all financing objectives are being realized.



### ***Plan Provisions***

The plan provisions used in the actuarial valuation are described in Table 20 of the valuation report. This valuation reflects the changes to plan provision as enacted by the 76th Texas Legislature.

### ***Disclosure of Pension Information***

Effective for the fiscal year ending August 31, 1996, the board of trustees has adopted compliance with the requirements of Governmental Accounting Standards Board (GASB) Statement No. 25.

### ***Actuarial Methods and Assumptions***

The actuarial methods and assumptions have been selected by the board of trustees of the Teacher Retirement System of Texas based upon our analysis and recommendations. These assumptions and methods are detailed in Table 21 of the valuation report. The board of trustees has sole authority to determine the actuarial assumptions used for the plan. With the exception of the inflation assumption, the actuarial methods and assumptions are based on a study of actuarial experience for the plan years 1990 through 1995 and were adopted in October 1996. The inflation assumption was adopted by the board in September 1997.

In our opinion, the actuarial assumptions used are appropriate for purposes of the valuation and are internally consistent and reasonably related to the experience of the system and to reasonable expectations.

### ***Data***

In preparing the August 31, 1999 actuarial valuation, we have relied upon member and asset data provided by the Teacher Retirement System of Texas. We have not subjected this data to any auditing procedures, but have examined the data for reasonableness and for consistency with prior year's data.

The schedules shown in the actuarial section of the annual TRS financial report include selected actuarial information prepared by TRS staff. Six year historical information included in these schedules was based upon our work. For further information please see the full actuarial valuation report.

Respectfully submitted,

John J. Garrett, ASA, MAAA  
Actuary

Richard B. Mallett, FSA, EA, MAAA  
Actuary

W. Michael Carter, FSA, EA, MAAA  
Vice President

## Actuarial Present Value of Future Benefits

ACTUARIAL VALUATION - AUGUST 31, 1999

	August 31,	
	1999	1998
<b>Present Value of Benefits Presently Being Paid:</b>		
Service Retirement Benefits	\$ 25,813,155,392	\$ 21,207,465,749
Disability Retirement Benefits	743,936,000	635,545,000
Death Benefits	649,314,000	554,242,000
Present Survivor Benefits	159,122,000	160,059,000
<b>TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID</b>	<b>\$ 27,365,527,392</b>	<b>\$ 22,557,311,749</b>
<b>Present Value of Benefits Payable in the Future to Present Active Members:</b>		
Service Retirement Benefits	\$ 59,016,872,567	\$ 52,347,738,462
Disability Retirement Benefits		
Disability Prior to Vesting	\$ 15,375,909	\$ 14,580,679
Disability After Vesting	947,021,851	813,902,702
<b>TOTAL DISABILITY BENEFITS</b>	<b>\$ 962,397,760</b>	<b>\$ 828,483,381</b>
Refunds of Contributions on Withdrawal	\$ 2,040,757,943	\$ 1,990,226,932
Death and Survivor Benefits		
Two Times Pay	\$ 396,730,997	\$ 376,464,697
Refund of Contributions	4,692,899	4,427,975
Five Year Annuity	80,786,429	69,884,483
Life Annuity	440,770,985	379,808,624
Survivor Benefit	44,395,304	42,596,586
<b>TOTAL DEATH BENEFITS</b>	<b>\$ 967,376,614</b>	<b>\$ 873,182,365</b>
<b>TOTAL ACTIVE MEMBER LIABILITIES</b>	<b>\$ 62,987,404,884</b>	<b>\$ 56,039,631,140</b>
<b>Present Value of Benefits Payable in the Future to Present Inactive Members:</b>		
Terminated Vested Participants		
Retirement Benefits	\$ 709,703,000	\$ 526,682,000
Death Benefits	12,834,000	10,774,000
<b>TOTAL TERMINATED VESTED BENEFITS</b>	<b>\$ 722,537,000</b>	<b>\$ 537,456,000</b>
Refunds of Contributions to Terminated Non-vested Members	\$ 7,811,965	\$ 6,762,255
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 479,771,000	\$ 461,771,000
<b>TOTAL INACTIVE LIABILITIES</b>	<b>\$ 1,210,119,965</b>	<b>\$ 1,005,989,255</b>
<b>TOTAL ACTUARIAL PRESENT VALUE OF FUTURE BENEFITS</b>	<b>\$ 91,563,052,241</b>	<b>\$ 79,602,932,144</b>

### Summary of Cost Items

Actuarial Present Value of Future Benefits	\$ 91,563,052,241	\$ 79,602,932,144
Present Value of Future Normal Costs	(24,318,418,259)	(21,709,671,460)
Actuarial Accrued Liability	67,244,633,982	57,893,260,684
Actuarial Value of Assets	(69,434,850,512)	(60,356,672,334)
<b>UNFUNDED ACTUARIAL ACCRUED LIABILITY</b>	<b>\$ (2,190,216,530)</b>	<b>\$ (2,463,411,650)</b>

Teacher Retirement System of Texas 63

Filed: December 1, 1999

◆ ◆ ◆

**Texas Department of Transportation**

Notice of Intent

TRD-9908191  
Charles Dunlap  
Executive Director  
Teacher Retirement System of Texas

Pursuant to 43 TAC §2.43(e)(3), the Texas Department of Transportation (TxDOT) is issuing a Notice of Intent (NOI) to advise the public that an environmental impact statement will be prepared for a proposed project to improve State Highway 87 (SH 87) from Sabine Pass to High Island, a distance of approximately 17 miles, in Jefferson, Chambers and Galveston Counties, Texas. Improvements were determined to be necessary after the highway was closed to through traffic due to extensive damage caused by Hurricane Jerry in October 1989. The proposed project would restore the roadway connection between the communities of Sabine Pass and High Island, as well as provide improved access to area beaches and wildlife refuges.

In accordance with Minute Order 101356, adopted by the Texas Transportation Commission on August 25, 1992, Jefferson County is responsible for preparing the EIS and obtaining environmental clearance in compliance with the requirements of 23 C.F.R. Part 771 and 43 TAC §2.43. Jefferson County initiated environmental studies while applying for a Section 404 permit for a roadway easement through the McFaddin National Wildlife Refuge in 1997. This resulted in a determination by the U.S. Army Corps of Engineers that an EIS should be prepared.

Alternatives under consideration include taking no action (the no-build alternative), or constructing a roadway on one of several proposed new alignments at more inland locations. Potential impacts to the proposed project area resulting from the several build alternatives include impacts to wetlands (including wetlands within the McFaddin National Wildlife Refuge), impacts to coastal habitat, impacts to archeological and historical sites, and impacts to Sea Rim State Park. These alternatives and the no-build alternative, along with any other reasonable alternatives identified during the public involvement process, will be analyzed in further detail during the EIS review process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. In addition, a public hearing will be held. Public notice will be given of the time and place of the public hearing as well as any future public meetings. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact: Comments or questions concerning the proposed action and the EIS should be directed to John Cannatella, P.E., Jefferson County Engineer, 1149 Pearl, 5th Floor, Beaumont, Texas, 77700 or by telephone at (409) 835-8584.

TRD-9908176  
Richard Monroe  
General Counsel  
Texas Department of Transportation  
Filed: December 1, 1999



#### Request for Proposal

The Airport Sponsor listed below, through their agent, the Texas Department of Transportation (TxDOT), intends to engage Aviation Professional Services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional services as described in the project scope for project listed below:

Airport Sponsor: City of Bonham, Jones Field; TxDOT CSJ Number: 0001BONHM. Project Scope: Prepare Environmental Assessment. HUB Goal: 0%. Project Manager: Sandra Gaither; Number of copies to submit: 5

#### The Proposal Shall Include:

1. Firm name, address, phone number and person to contact regarding the proposal.
2. Proposed project management structure identifying key personnel and subconsultants (if any).
3. Qualifications and recent, relevant experience (past five years) of the firm, key personnel and subconsultants relative to the performance of similar services for aviation planning projects.
4. Proposed project schedule, including major tasks and target completion dates.
5. Technical approach—a detailed discussion of the tasks or steps to accomplish the project.
6. List of in-state references including the name, address and phone number of the person most closely associated with the firm's prior performance of similar airport planning projects.
7. Statement regarding an Affirmative Action Program.
8. Proposed Historically Underutilized Business (HUB) or Disadvantaged Business Enterprise (DBE) participation for each project above if appropriate.

Those interested consultants should submit the specified number of copies of brief proposals for each project consisting of the minimum number of pages sufficient to provide the above information the project. Proposals must be postmarked by U. S. Mail midnight January 5, 2000 (CDT). Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas, 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on January 6, 2000; overnight address: TxDOT, Aviation Division, 200 East Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. January 6, 2000 (CDT); hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas, 78704.

The airport sponsor's duly appointed committee will review all proposals and may select three to five firms for interviews. The final consultant selection by the sponsor's committee will be made following the completion of the review of proposals and/or interviews.

The airport sponsor reserves the right to reject any or all proposals, and to re-open the consultant selection process.

If there are any questions, please contact Linda Howard, Director, Planning and Programming or the designated project manager at the Aviation Division, Texas Department of Transportation, (512) 416-4500 or 1-800-68-PILOT.

TRD-9908177  
Richard Monroe  
General Counsel  
Texas Department of Transportation  
Filed: December 1, 1999



### **Texas Turnpike Authority Division of the Texas Department of Transportation**

Notices of Intent

Pursuant to the authority granted under Chapter 361 of the Texas Transportation Code, the Texas Turnpike Authority Division of the Texas Department of Transportation ("TTA") has promulgated and adopted rules located at 43 Texas Administrative Code, §54.1, et seq., under the caption of "Policy, Rules and Procedures for Private Involvement in Authority Projects" (the "Rules"). These Rules generally address private involvement in TTA projects and the solicitation of proposals for such projects. Section 54.4 of the Rules governs the submission and processing of solicited proposals, and provides for publication of notice that the TTA is seeking proposals for development of a turnpike project with private involvement.

This notice represents the first step in the process of soliciting private involvement in the development of the US 183-A Turnpike Project (the "Project"). Through this notice the TTA is seeking Letters of Request ("LOR") from parties interested in receiving a request for qualifications ("RFQ"). The TTA anticipates issuing the RFQ, receiving and analyzing RFQ responses, developing a short-list of proposing consortia, and issuing a request for proposals ("RFP") to that short-listed group. After review and a best value evaluation of the RFP responses, the TTA may negotiate and enter into an exclusive development agreement for development of the Project.

**Description of the Project.** The Project is a prospective turnpike to be constructed and operated in Williamson County in central Texas. The southern terminus of the Project begins at RM 620 and extends in a northwesterly direction east of, and generally parallel with, US 183 for approximately 12 miles, to a northern terminus with US 183 immediately south of the South Fork of the San Gabriel River. The scope of work on the Project will likely include the design, development and construction of the northern connector of the proposed turnpike to US 183. The scope of work may include the construction of the southern connector (Davis Springs Road to RM 620) of the proposed turnpike to US 183. The scope of work will not include design of the southern connector.

**Release of RFQ and Presubmittal Workshop.** The TTA currently anticipates that the RFQ will be available on or about December 27, 1999. Copies of the RFQ will be mailed or provided to those parties who have submitted a LOR by the deadline stated herein. Appendices and exhibits to the RFQ will be contained in a separate volume which will be available for review at the TTA offices or which can be purchased by a requestor at the TTA's cost of reproduction. Responses to the RFQ will be due on a date to be specified within the RFQ. A presubmittal/workshop will be held on January 13, 2000, which will be prior to the RFQ response deadline. Additional details will be contained in the RFQ.

**Deadline for Letters of Request.** A LOR notifying the TTA of a party's request for a copy of the RFQ will be accepted by fax at (512) 936-0970 (Attention: Crystal Hansen) or, by mail, hand-delivery or overnight courier at: Texas Turnpike Authority Division of the Texas Department of Transportation, 125 East 11th Street, 5th Floor, Austin, Texas, 78701 Attention: Crystal Hansen. LORs must identify a contact person and an address to which the RFQ should be sent. LORs will be received until 4:45 p.m. C.S.T. on January 10, 2000.

TRD-9908197  
Phillip Russell  
Director  
Texas Turnpike Authority Division of the Texas Department of Transportation  
Filed: December 1, 1999



Pursuant to the authority granted under Chapter 361 of the Texas Transportation Code, the Texas Turnpike Authority Division of the Texas Department of Transportation ("TTA") is issuing this notice of intent to issue a request for qualifications ("RFQ") from qualified firms interested in providing underwriting services for the TTA. The underwriting services the TTA seeks will relate to potential revenue bond issuances for the financing of the proposed Loop 1, SH 45, and US 183-A turnpike projects in central Texas.

Through this notice the TTA is seeking letters of request ("LOR") from firms interested in receiving a RFQ. The TTA anticipates issuing the RFQ, receiving and analyzing the RFQ responses, conducting interviews with a short-listed group of proposers, and selecting a qualified underwriter to provide the services through a contractual arrangement with the TTA.

**Release of RFQ and Response Deadline.** The TTA currently anticipates that the RFQ will be available on or about December 20, 1999. Copies of the RFQ will be mailed or provided to those parties which have submitted a LOR by the deadline stated herein. Responses to the RFQ will be due on February 1, 2000. Additional details concerning this process will be contained within the RFQ.

**Deadline for Letters of Request.** A LOR notifying the TTA of a firm's request for a copy of the RFQ will be accepted by fax at (512) 936-0970 (Attention: Teresa Lemons) or by mail, hand-delivery, or overnight courier at: Texas Turnpike Authority Division of the Texas Department of Transportation, 125 East 11th Street, 5th Floor, Austin, Texas 78701, Attention: Teresa Lemons. LORs must identify contact person and an address to which the RFQ should be sent. LORs will be received until 4:45 p.m. C.S.T. on January 10, 2000.

TRD-9908196  
Phillip Russell  
Director  
Texas Turnpike Authority Division of the Texas Department of Transportation  
Filed: December 1, 1999



## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Sandy Land Underground Water Conservation District, P.O. Box 130, Plains, Texas, 79355, received November 4, 1999, application for financial assistance in the amount of \$500,000 from the Agricultural Water Conservation Loan Program.

City of Del Rio, 109 West Broadway, Del Rio, Texas, 78840, received November 1, 1999, application for financial assistance in the amount of \$25,583,000 from the Drinking Water State Revolving Fund--Disadvantaged Communities Program and the Texas Water Development Funds.

City of Portland, P.O. Drawer 1285, 900 Moore Avenue, Portland, Texas, 78374-1285, received September 9, 1999, application for grant assistance in the amount of \$567,885 from the Economically Distressed Areas Program.

Jonah Water Special Utility District, 40 County Road 126, Georgetown, Texas, 78626-9797, received August 9, 1999, application for financial assistance in the amount of \$1,930,000 from the Texas Water Development Funds.

San Antonio Water System, on behalf of City of San Antonio, 1001 East Market Street, P.O. Box 2449, San Antonio, Texas, 78298-2449, received November 1, 1999, application for financial assistance in the amount of \$70,000,000 from the Clean Water State Revolving Fund.

TRD-9908180  
Gail L. Allan

Director of Project-Related Legal Services  
Texas Water Development Board  
Filed: December 1, 1999



## How to Use the Texas Register

**Information Available:** The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following a 30-day public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Open Meetings** - notices of open meetings.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).



# *Texas Register*

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