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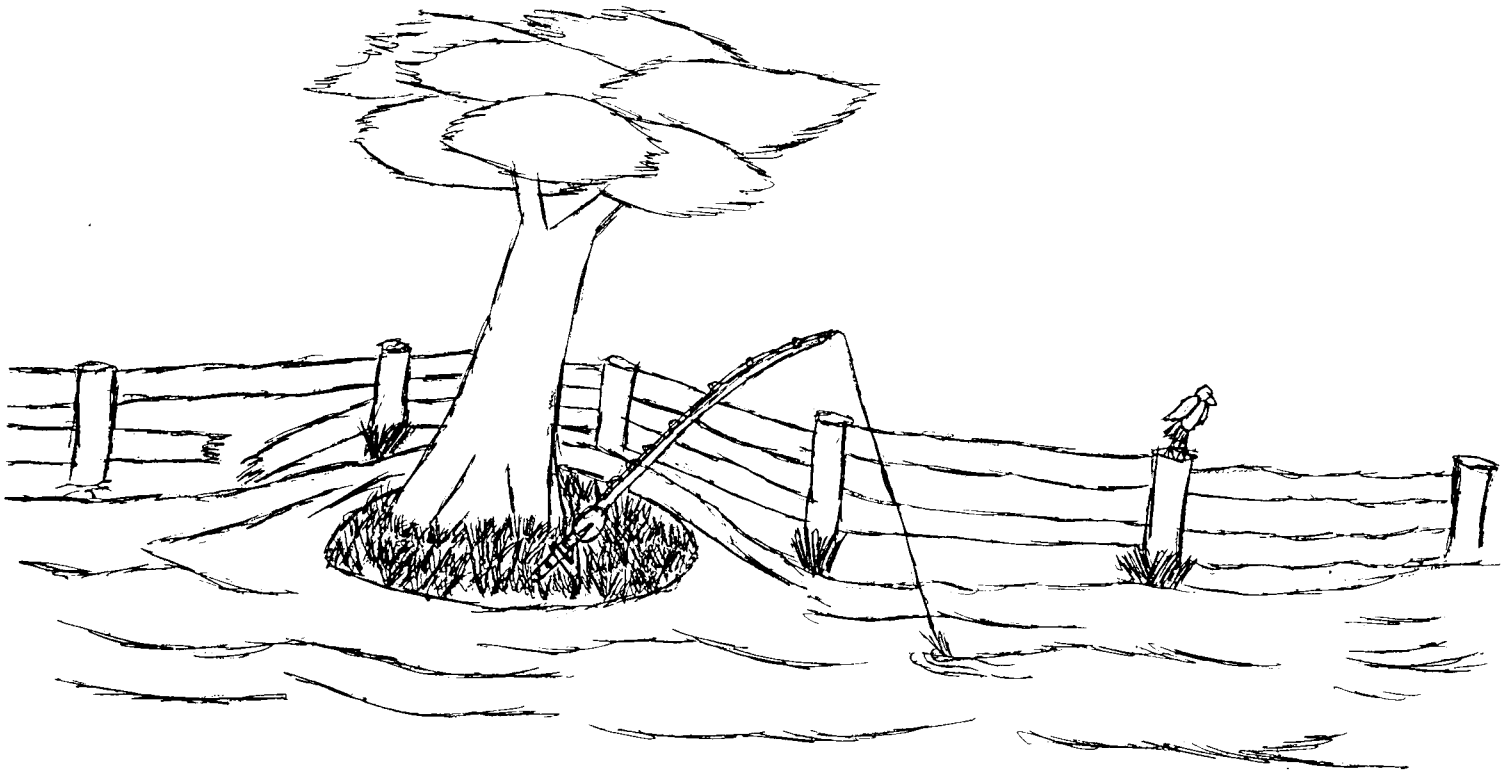

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6th grade
Luling Junior High

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0227

The Honorable Michael G. Mask, Jack County Attorney, Courthouse, Third Floor, Jacksboro, Texas 76458

Re: Whether a county may pay the employer's share of employment taxes on state supplemental salary compensation paid to a county attorney pursuant to section 46.0031 of the Government Code from the state-provided funds (RQ-0166-JC)

S U M M A R Y

Section 46.0031 of the Government Code does not permit a county to pay the employer's share of employment taxes on state supplemental salary compensation for a county attorney from the state-provided funds. The legislature is authorized under the Texas Constitution to require a county to pay the county's share of employment taxes on the state salary supplement from county funds. See Tex. Const. art. V, §21 (The Legislature may . . . make provision for the compensation of . . . County Attorneys.).

Opinion No. JC-0228

The Honorable William C. Sowder, Lubbock County, Criminal District Attorney, P.O. Box 10536, Lubbock, Texas 79408-3536

Re: Whether a county or a surviving relative must provide for the disposition of a deceased pauper's remains, and related questions (RQ-0167-JC)

S U M M A R Y

Section 694.002 of the Health and Safety Code requires a county to provide for disposition of a deceased pauper's remains, even though the decedent is survived by a person listed in section 711.002(a) of the same code, in accordance with county rules. Neither a county commissioners court nor an agency with powers delegated by the county commissioners court may seize assets of a deceased pauper's estate to pay expenses associated with the disposition of the pauper's remains. To the extent Letter Opinion 96-037 suggests that a county is responsible for a deceased pauper's remains only if there are no surviving persons listed under section 711.002(a) of the Health and Safety Code, it is incorrect.

A county may accept contributions toward the expenses of disposing of a particular pauper's remains. See Tex. Loc. Gov't Code Ann. §81.032 (Vernon Supp. 2000). Any donations the General Assistance Agency receives must be deposited with the county treasurer. See id. §§ 113.021(a), .022 (Vernon 1999). Whether the treasurer deposits the money into the county's general fund or into a special account in the county depository is a matter for the commissioners court to determine. See id. §§ 113.004(b)(3), (c), .021(b).

Opinion No. JC-0229

The Honorable Florence Shapiro, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, Texas 78711

Re: Whether law enforcement officers are authorized to take a seventeen-year-old into custody simply because he or she has been reported as a missing child under chapter 63 of the Code of Criminal Procedure, and related questions (RQ-0169-JC)

S U M M A R Y

Article 63.009(g) of the Code of Criminal Procedure requires a law enforcement officer who locates a seventeen-year-old who has been reported as a missing child to take possession of the child and to deliver the child to the person entitled to his or her possession or to the Department of Protective and Regulatory Services. The detention of an unemancipated seventeen-year-old against his or her wishes for the purpose of returning the child to his or her parent or guardian does not violate the child's constitutional rights. An officer may use force to take possession of a missing child, but only to the degree the officer reasonably believes is necessary to safeguard or promote

the child's welfare consistent with the protective purpose of article 63.009(g).

Opinion No. JC-0230

The Honorable David Swinford, Chair, House Committee on Agriculture and Livestock, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the repeal of a federal cooperative purchasing program affects authority given to Texas agencies and political subdivisions under Texas law (RQ-0172-JC)

S U M M A R Y

To the extent federal law no longer makes federal supply schedules of the United States General Services Administration available to local governments, section 271.103 of the Local Government Code is without effect. As no other state statute relies on or makes specific reference to the former federal cooperative purchasing program, however, the change in federal law does not appear to affect the purchasing authority of Texas agencies and political subdivisions under other state statutes. Whether a federal agency is authorized to provide particular goods to a state agency or local government will depend upon federal law.

For further information, please call (512) 463-2110

TRD-200004138
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 13, 2000

♦ ♦ ♦

Request for Opinions

RQ-0235-JC. The Honorable James A. Farren, Randall County Criminal District Attorney, 501 16th Street, Canyon, Texas 79015, regarding authority of a county to repair roads that are within a municipality and that belong to a property owners association (Request No. 0235-JC).

Briefs requested by July 9, 2000.

RQ-0236-JC. The Honorable Juan J. Hinojosa, Chair, Committee on Criminal Jurisprudence, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a candidate who receives only a plurality of the votes in a municipal election, but thereby is elected under the terms of the city charter, holds over in light of Estrada v. Adame, 951 S.W.2d 165 (Corpus Christi 1997) (Request No. 0236-JC).

Briefs requested by July 6, 2000.

TRD-200004165
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 14, 2000

♦ ♦ ♦

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the ***Texas Register*** at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 1. ADMINISTRATION

Part 5. GENERAL SERVICES COMMISSION

Chapter 117. SUPPORT SERVICES DIVISION

Subchapter D. PRINTING

1 TAC §117.61

The General Services Commission proposes new rule §117.61, regarding Printing. The new rule will implement §2172.003 of the Texas Government Code, Title 10, Subtitle D, which provides for the General Services Commission to assist state agencies with their printing activities and to assess and evaluate those printing activities.

Mr. Paul Adkins, Staff Services Program Director, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of implementing and enforcing this rule.

Mr. Adkins also has determined that for each year of the first five years the new rule is in effect, the public will benefit from the assessment and coordination of printing activities between state agency printing shops. There is no anticipated economic cost to persons required to comply with the rule as proposed. There will be no effect on small or large businesses and/or persons.

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

The new rule is proposed under the authority of Texas Government Code, Title 10, Subtitle D, §§2152.003 and 2172.003 which provides the General Services Commission with the authority to promulgate rules necessary to implement the section.

The following statute is affected by these rules: Texas Government Code, Title 10, Subtitle D, §2172.003.

§117.61. Printing.

(a) Pursuant to Texas Government Code, Title 10, Subtitle D, §2172.003, the commission may provide assistance to any state agency regarding their printing activities. Assistance can be provided by telephone, fax, letter, e-mail or in person.

(b) The commission assesses and evaluates printing activities to ensure the best interests of the State of Texas are met. The commission may make recommendations to state agencies that will increase the productivity and cost-effectiveness of their printing operations. The assessment may include but is not limited to an appraisal of equipment, customer base, sales, printing volume, costs, and personnel.

(c) The commission adopted the Council on Competitive Government's (CCG) Cost Methodology as a baseline for evaluating and comparing cost of state agency printing operations. All state agency printing shops in Travis County (except higher education) operate under a Franchise Agreement ("Agreement") with the commission, which allows state agencies currently operating a printing shop to maintain direct control with general oversight provided by the commission through Franchise Agreements. Failure to sign the Agreement will eliminate the authority for an agency to operate a printing shop. The Agreement requires each printing shop to utilize the CCG Cost Methodology in determining the cost of printing. The commission requires that each printing shop provide quarterly data to the commission. The commission summarizes this information in quarterly and annual reports.

(d) The commission reviews state agency requisitions for new printing shop equipment, including copiers/duplicators and other printing devices used in quick copy operations. To complete the review, the state agency must provide written documentation to the commission. This documentation may include but is not limited to:

(1) A summary narrative justifying the proposed purchase, rent or lease of equipment;

(2) A description of the method of finance;

(3) A detailing of the model(s) of printing equipment the agency currently has that it plans to replace (if applicable);

(4) A detailing of the model(s) of printing equipment the agency plans to acquire;

(5) A detailing of current annual costs for equipment to be replaced (if applicable);

(6) A detailing of the estimated annual cost for the proposed equipment;

(7) The cost benefit of proposed equipment;

(8) The estimated volume of work which may be processed through the proposed equipment;

(9) A summary of the equipment(s) enhanced features;

(10) The number of hours per day the proposed equipment will run;

(11) The number of shifts the proposed equipment will be operated on a daily basis; and

(12) Miscellaneous information that may be pertinent as a consequence of other information supplied by the agency.

(e) The commission shall assist state agencies with expediting the production of printing and graphic arts by serving as a source of information, facilitating disputes, hosting meetings or performing other services.

(f) A roster of franchised printing shops is maintained by the commission. This roster includes printing shop equipment, facilities, special capabilities and staffing. The roster will be provided to requesting entities.

(g) The commission will work with state agencies to ensure that printing services and supplies are purchased in the most economical manner possible. A vendor listing by commodity and services is maintained to maximize information regarding private sector suppliers. A summary vendor listing will be provided to requesting entities.

(h) The commission will work with state agencies to coordinate the consolidation of printing shops when the agencies involved determine a consolidation is appropriate.

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

Filed with the Office of the Secretary of State, on June 8, 2000.

TRD-200004037
Ann Dillon
General Counsel
General Services Commission
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 463-3960

♦ ♦ ♦

Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Chapter 355. MEDICAID REIMBURSEMENT RATES

Subchapter G. OTHER COMMUNITY-BASED SERVICES AND TELEMEDICINE SERVICES

1 TAC §355.7001

The Health and Human Services Commission submits a proposed amendment to §355.7001 concerning the reimbursement for telemedicine services for the Medicaid Program. House Bill 1398, 76th Legislature, amended the statute that addresses telemedicine services in the Medicaid program. To be consistent with the new law, the Health and Human Services Commission is amending the rule, particularly to amend the definition of "rural," to include a definition of "rural health facility," and to allow rural health facilities to serve as hub site providers.

Mr. Don Green, Chief Financial Officer, has determined that for the first five-year period the amended rule is in effect, there will be no net fiscal implications as a result of administering §355.7001. The use of telemedicine will result in an increase in expenditures due to the reimbursement for attending providers but will also result in a decrease in expenditures for medical transportation costs. Savings may also result because of earlier interventions that telemedicine may effectively provide by allowing clients in rural and medically underserved areas to access services more quickly and conveniently. The use of telemedicine to date has been minimal; telemedicine networks are only beginning to be developed in the state. Providers must also cover hardware, software, and transmission costs. There will be no fiscal impact for local governments.

Mr. Green has also determined that for the first five-year period the section is in effect, the public benefit anticipated as a result of enforcing the section will be improved access to health care services for eligible recipients. There will be no costs to small businesses or persons complying with the section as proposed. There will be no impact on local employment.

Comments may be submitted to Kay Ghahremani, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78751, (512) 424-6518. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amended rule is proposed under the Texas Government Code, Chapter 531, §531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Health and Human Services Commissioner's duties under Chapter 531; and under Texas Government Code, §531.021, which provides the commission with the authority to administer federal medical assistance funds.

The amended rule implements Government Code, §531.021 and Human Resources Code, §§32.001-32.047.

§355.7001. Telemedicine Services.

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

(1) Telemedicine - a method of health care service delivery used to facilitate medical consultations by physicians to health care providers in rural or underserved areas for purposes of patient diagnosis or treatment that requires advanced telecommunications technologies, including interactive video consultation, teleradiology, and telepathology.

(2) Rural - area defined as a county with a population of [~~less than~~] 50,000 or less or a county that was not designated as a metropolitan area by the United States Bureau of the Census according to the 1990 federal census and does not have within the boundaries of the county a hospital, licensed under chapter 241, Health and Safety Code, with more than 100 beds.

(3) Underserved - area that meets the definition of Medically Underserved Area (MUA) or Medically Underserved Population (MUP) by the U.S. Department of Health and Human Services.

(4) Rural Health Facility - a health facility that is located in a rural county and is at least 30 miles from any accredited medical school or any teaching hospital affiliated through a written contract or agreement with an accredited medical school and that is:

(A) a licensed, non-profit hospital;

(B) a health clinic that is affiliated through a written contract or agreement with an accredited medical school;

(C) a health clinic that is affiliated through a written contract or agreement with a teaching hospital that is affiliated through a written contract or agreement with an accredited medical school;

(D) a health clinic that is affiliated through a written contract or agreement with a federally qualified health center;

(E) a hospital that is licensed under chapter 241, Health and Safety Code, and is owned or operated by a municipality, county, hospital district, or hospital authority, and provides inpatient or outpatient services; or

(F) a health clinic that is affiliated through a written contract or agreement with a hospital that is licensed under chapter 241, Health and Safety Code, and is owned or operated by a municipality, county, hospital district, or hospital authority, and provides inpatient or outpatient services.

(5) [~~(4)~~] Hub Site Provider - a physician at a rural health facility or an accredited medical or osteopathic school located in Texas, or a physician at one of the following entities affiliated through a written contract or agreement with an accredited medical or osteopathic school located in Texas: hospitals, teaching hospitals, tertiary centers, or health clinics. The hub site physician will provide consultation and diagnosis, and may develop the patient's plan of care and treatment.

(6) [~~(5)~~] Remote Site Provider - a health professional, such as a physician or advanced practice nurse, that is able to independently bill the Medicaid Program for a visit, or a Federally Qualified Health Center or Rural Health Clinic. Remote site providers must be located in rural or underserved areas. The remote site provider is responsible for carrying out or coordinating the plan of care and treatment after consulting with the hub site provider.

(b) Reimbursement for Services Performed Using Telemedicine.

(1) Using telemedicine, hub site providers can bill only for the following services:

(A) consultation using interactive video;

(B) consultation or interpretation using telemedicine as defined by Medicaid telemedicine medical policy and as currently reimbursed under the Medicaid program; and

(C) teleradiology and telepathology as they are currently reimbursed under the Medicaid program pursuant to medical policy.

(2) Using telemedicine, remote site providers can bill only for a visit or encounter using interactive video as described in Medicaid telemedicine medical policy.

(3) Telemedicine services are reimbursed in accordance with the existing Medicaid reimbursement methodology.

(4) Providers seeking reimbursement for telemedicine services must provide and bill for the service in the manner prescribed by the Texas Department of Health.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

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Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) proposes amendments to §§20.1 and 20.22, new §20.23, all concerning cotton pest control, and the repeal §20.4, concerning an expiration provision for Chapter 20. The proposed amendments to §20.1 and new §20.23 are proposed to assist no-till cotton farmers in complying with the stalk destruction requirements under the Texas Agriculture Code (the Code) Chapter 74; subchapter A. The current regulations do not allow for the use of a no-till farming approach toward meeting the cotton stalk destruction requirements. Section 20.1 defines terms used in Chapter 20 and is amended to include definitions of the terms "no- till fields" and "non-hostable cotton."

New §20.23 provides exceptions for no-till cotton in meeting cotton stalk destruction requirements. Growers will be required to provide advance notification of no-till cotton fields to the department prior to destruction deadlines and comply with the department requirements by rendering cotton plants non-hostable to boll weevils.

Amended §20.22 will provide greater flexibility for the Cotton Producers Advisory Committee in a zone to request a blanket extension of the cotton stalk destruction deadlines.

The department also proposes the repeal of §20.4, concerning an expiration date for Chapter 20. The repeal of §20.4 is proposed because the establishment of an expiration date for Chapter 20 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §20.4 eliminates the expiration date of Chapter 20.

Ed Gage, coordinator for pest management, has determined that for the first five-year period the proposed amendments, new section and proposed repeal are in effect there is no anticipated fiscal impact on state or local government as a result of administration and enforcement of the section.

Mr. Gage has also determined that for each year of the first five years the proposed amendments, new section and proposed repeal are in effect the public benefit anticipated as a result of administrating the amended and new section will be

an opportunity for cotton producers to practice no-till farming on a voluntary basis while complying with the department's stalk destruction requirements. The advantages of no-till farming include improved soil and water conservation. Allowing the chairman of a Cotton Producers Advisory Committee to request an extension to a cotton stalk destruction deadline will facilitate and improve the process of granting extensions. The public benefit of the repeal of §20.4 will be the elimination of unnecessary rules. There is no anticipated additional economic cost to micro-businesses, small businesses or growers required to comply with the amended and new sections.

Comments on the proposal may be submitted to Ed Gage, coordinator for pest management, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register.*

Subchapter A. GENERAL PROVISIONS

4 TAC §20.1

The amendments to §20.1 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter A.

§20.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code and in the Texas Administrative Code the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

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

(17) Non-hostable cotton - Cotton that is free of fruiting structures such as buds, squares, flowers or bolls.

(18) No-till cotton field - A field in which the soil is left undisturbed from the time the cotton crop is harvested until the new crop is planted in narrow slots and weed control is accomplished using herbicides.

(19) [~~(17)~~] Oil mill waste–Waste products, including linters, derived from the milling of cotton seed.

(20) [~~(18)~~] Plow–To dislodge or sever the roots of plants in a manner which prevents further growth. Equipment used to accomplish this could include a stalk puller, any type of plow, or similar implement.

(21) [~~(19)~~] Quarantined area–Any portion of the State of Texas which has been placed under quarantine by the department due to cotton pest(s) infestation.

(22) [~~(20)~~] Quarantined articles–The following articles are quarantined: boll weevil; pink bollworm; cotton; cotton products; any means of transportation which have been used in conveying cotton products and any other item contaminated with cotton or cotton pests, including any equipment used in harvesting cotton. Baled cotton and manufactured cotton products are not quarantined articles.

(23) [~~(21)~~] Regrowth cotton–Cotton that has not been completely destroyed in such a way as to absolutely prevent further growth.

(24) [~~(22)~~] Seed cotton–All forms of unginned cotton from which the seed has not been separated.

(25) [~~(23)~~] Stalk puller–An implement which dislodges the roots of cotton plants by pulling up the stalks.

(26) [~~(24)~~] Standing stalks–Original, undestroyed cotton plants growing in a field before or after harvesting.

(27) [~~(25)~~] Suppressed area–An area declared by the commissioner of agriculture in which the movement of quarantined articles presents a threat to the success of eradication of either pink bollworm or boll weevil. The commissioner may grant such a designation after a written recommendation is submitted to the department from the Texas Boll Weevil Eradication Foundation, the Director of the Texas Agricultural Extension Service, the Director of the Texas Agricultural Experiment Station, or the United States Department of Agriculture (USDA) which includes competent scientific documentation indicating that movement of quarantined articles into the area presents a threat to the success of eradication in an eradication area.

(28) [~~(26)~~] Treatment–The act of eliminating possible cotton pest infestation(s) by means of cleaning, or fumigation in instances in which normal cleaning will not eliminate the infestation.

(29) [~~(27)~~] Volunteer cotton–Cotton developing after the growing season from incidental seeds.

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

Filed with the Office of the Secretary of State, on June 9, 2000.

TRD-200004067
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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4 TAC §20.4

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

The repeal of §20.4 is proposed in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 12 and Chapter 74, Subchapter A.

§20.4. Expiration Provision.

This 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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Dolores Alvarado Hibbs
Deputy General Counsel

Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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Subchapter C. STALK DESTRUCTION PROGRAM

4 TAC §20.22, §20.23

The amendments to §20.22 and new §20.23 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter A.

§20.22. Stalk Destruction Requirements.

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

(c) Deadline extension requests.

(1) (No change.)

(2) The department may grant a blanket extension of the destruction deadline covering an entire cotton stalk destruction zone or a portion of an entire zone in any one of the following circumstances: [~~. A written request for an extension of the destruction deadline must be submitted on a form prescribed by the department.~~]

(A) in response to a written request by the cotton producer advisory committee, in a given zone authorized and signed by a majority of the committee members;

(B) in response to a written request by the chairman of the cotton producer advisory committee, or his designee, on behalf of the committee; or

(C) in response to a significant number of individual written requests for individual extensions from cotton producers in a given zone as the result of an extreme weather event such as prolonged periods of heavy rain, prolonged periods of drought, a tropical storm, a hurricane, or other such extreme weather event.

(3)-(5) (No Change.)

§20.23. Exceptions For No-Till Cotton.

(a) Exceptions for no-till cotton are not allowed in Zones 9 and 10.

(b) The location and acreage of no-till cotton fields in any pest management Zone, except Zones 9 and 10, shall be reported to the department at least 14 days before the applicable cotton stalk destruction deadline on a notification form prescribed by the department.

(c) Cotton shall be rendered non-hostable by the stalk destruction date indicated for the zone by shredding standing stalks and/or plowing depending on the zone.

(d) If fruiting structures are present after the destruction deadline, the cotton shall be immediately shredded and plowed in Zones 1-4 and shredded and/or plowed in Zones 5-8. Once a field has been destroyed mechanically due to the presence of fruiting structures after the destruction deadlines, the field is not eligible for the no-till exceptions until the following growing season.

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

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Deputy General Counsel
Texas Department of Agriculture
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Chapter 25. TEXAS AGRICULTURAL FINANCE AUTHORITY: RURAL DEVELOPMENT FINANCE PROGRAM RULES

4 TAC §§25.1 - 25.12

The Board of Directors of the Texas Agricultural Finance Authority (TAFA), a public authority within the Texas Department of Agriculture, proposes new §§25.1-25.12, concerning the Rural Development Finance Program. The new sections are proposed for the implementation and administration of the Rural Development Finance Program pursuant to Texas Agriculture Code, Chapter 58. New §§25.1-25.5 state the authority and purpose of the program, provide definitions, describe the procedure for public information requests, and provide an address for communications with TAFA. New §§25.6-25.7 describes the Texas Agricultural Fund and identifies the project eligibility requirements and the eligible and ineligible uses of loan proceeds. New §25.8 describes the requirements for filing an application and the application review process by TAFA. New §25.9 describes the contents of an application to the program. New §25.10 describes the general terms and conditions of TAFA's commitment, including minimum and maximum commitments, terms, interest rate, and maturity. New §25.11 describes the criteria for approval of a commitment by TAFA. New §25.12 provides authority for TAFA staff to act as necessary for the collection, settlement and enforcement of financing approved under the program.

Robert Kennedy, deputy assistant commissioner for finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state government as a result of enforcing or administering the sections, because any cost of administering the program will be offset by the program revenues.

Mr. Kennedy also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections, will be the provision of financial assistance to borrowers for the enhancement of rural economic development in the state. The anticipated economic cost to applicants will be an application fee to be determined by TAFA. There may be additional costs to applicants who are required to comply with the rules, to the extent that expenses are incurred in preparing an application to the program. However, these costs are expected to be minimal.

Comments on the proposed new sections may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance,

Texas Department of Agriculture, P. O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposed rules in the *Texas Register*.

The new sections are proposed under the authority of the Texas Agriculture Code (the Code), §58.023, which provides that TAFA has the power to adopt rules and procedures as necessary to carry out Chapter 58; and Texas Government Code, §2001.004, which requires that state agencies adopt rules of practice stating the nature and requirement of all available formal and informal procedures.

Texas Agriculture Code, Chapter 58, is effected by the proposal.

§25.1. Authority.

Through action of the Texas Legislature and the approval of the Texas voters, the Texas Agricultural Finance Authority (the Authority) is authorized by §58.021(d) of the Texas Agriculture Code and by Article III, §49-f of the Texas Constitution to design and implement programs to further rural economic development and to issue general obligation bonds in the maximum principal amount of $200 million outstanding at any one time for such programs. The proceeds of such bonds are required to be deposited in the Texas agricultural fund, to be administered in the same manner that proceeds of bonds issued under Article III, § 49-i of the Texas Constitution are administered.

§25.2. Purpose.

The purpose of the Authority is to provide financial assistance to eligible agricultural businesses and to other rural economic development projects that the board of the Authority considers to present a reasonable risk and have a sufficient likelihood of repayment. The Authority is mandated to support the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products and to support rural economic development projects. These rules establish standards of eligibility and the application procedures for the Authority's rural development finance program.

§25.3. Definitions.

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

(1) Act - The Texas Agricultural Finance Act, Texas Agriculture Code, Chapter 58, as amended.

(2) Applicant - Any rural person, corporation, partnership, cooperative, joint venture, sole proprietorship, city, county, state agency, institution of higher education, economic development corporation, or other unit of public government filing an application with the Authority for a financial commitment.

(3) Application - An application, including supporting documentation and schedules as required by the Authority, for participation in the program.

(4) Authority - The Texas Agricultural Finance Authority.

(5) Board - The board of directors of the Authority.

(6) Bond - Any type of obligation issued under the Act, including without limitation, any bond, note, draft, bill, warrant, debenture, interim certificate, revenue of bond anticipation note, grant, or any other evidence of indebtedness.

(7) Business day - A day on which the department is open for business. The term shall not include Saturday, Sunday, or a traditional holiday officially observed by the state. The department's normal business hours are 8 a.m. to 5 p.m. each business day.

(8) Commitment - Any form of financial assistance provided to an applicant as approved by the board, including a guaranty, a direct loan, a participation commitment, or a conduit issuance for a political subdivision or any other entity providing economic development to a rural area of the state.

(9) Department - The Texas Department of Agriculture.

(10) Direct loan - A loan made by the Authority to an eligible applicant as identified in the application and the loan documents.

(11) Fund - The Texas Agricultural Fund.

(12) Guarantied loan amount - With respect to loans made by a lender and guarantied by the Authority, a sum measured in terms of U.S. dollars that the Authority pays to a lender to acquire an undivided interest in any loan, or in the case of default by borrower, the Authority agrees to pay a lender, not to exceed up to 90 percent of the loan amount or $5 million, whichever is less. The guaranty percentage approved by the board will be that stated in the guaranty agreement negotiated between the Authority and the lender. The lender is required to negotiate an agreement to sell the Authority a participation in the guarantied loan in an amount of no more than 80 percent of the guarantied amount. The Authority will pay the lender a servicing fee as approved by the board.

(13) Interest rate - The interest rate charged on a commitment approved by the Authority board for an eligible applicant.

(14) Lender - A lending institution, including a bank, trust company, banking association, savings bank, mortgage company, investment banker, credit union, underwriter, life insurance company, or any affiliate of those entities, and also including any other financial institution or governmental agency that customarily provides financing for rural economic development loans or mortgages, or any affiliate of such institution or agency.

(15) Project - An enterprise or project, which would further economic development of a rural area.

(16) Qualified application - A completed application, including all documents and information required by the Authority and submitted by the lender or applicant for a project, that is consistent with the purpose of rural economic development.

(17) Rural area - A rural area means an area which is predominately rural in character, and the board defines and considers to be a rural area.

(18) Staff - The staff of the Authority or staff of the department performing work for the Authority.

(19) State - The State of Texas.

§25.4. Examination of Records.

Any party requesting the examination of records pursuant to the Texas Public Information Act, Texas Government Code, Chapter 552, shall indicate in writing the specific nature of the document to be viewed, and if copies are desired.

§25.5. Written Communication with the Authority.

Applications and other written communications to the Authority should be addressed to the attention of the Texas Agricultural Finance Authority, in care of the Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711.

§25.6. Texas Agricultural Fund.

The fund, established in the office of the state comptroller, shall include a rural economic development program account consisting of

general obligation bond proceeds, appropriations or transfers made to the account, guaranty fees, monies received from the operation of the rural economic development program, interest paid on money in the account from the operation of the program, interest paid on money in the account and any other monies received from other sources for the account. The board may provide for the establishment and maintenance of separate subaccounts within the account, including, but not limited to, loan guaranty subaccounts, direct loan subaccounts, participation purchase subaccounts, project accounts, reserve accounts and interest and sinking subaccounts as prescribed by the board.

§25.7. Project Eligibility Requirements.

(a) Projects. An applicant is eligible for a commitment from the Authority if the proposed project meets the following criteria:

(1) the project provides significant benefits for the maintenance, expansion or development of rural economic development activity;

(2) the project will create or retain employment, directly or indirectly;

(3) the applicant provides a reasonable level of equity for the project as defined in the credit policy and procedures;

(4) the applicant is a legal entity under the laws of the United States of America and the State of Texas;

(5) the applicant has a principal place of business in the state; and

(6) if the applicant is a corporation, partnership, cooperative or joint venture, the applicant's principal owner or owners provide personal guarantees satisfactory to the Authority.

(b) Project costs. The proceeds of the commitment provided by the Authority may be used only to finance expenditures incurred in connection with the development of the project as identified in the budget filed with the application and approved by the board.

(c) Ineligible project costs. Any expenditure that is not identified in the approved budget filed with the application, or is otherwise prevented by regulation or statute, is not eligible for financing hereunder, unless the applicant provides evidence that such expenditure is necessary for completion of the project and will not increase the commitment approved.

§25.8. Filing Requirements and Consideration of Applications.

(a) Application forms. An applicant or lender seeking a commitment from the Authority may use the application forms provided by the Authority.

(b) Submission of a qualified application. Applicants are required to submit the application material to the Authority staff for presentation to the board of the Authority. Staff will be available prior to submission of the qualified application to discuss project eligibility.

(c) Staff review. Staff will review the qualified application for completeness and will notify the applicant of any additional information required. When all required information has been received, staff will conduct a credit review, evaluate the technical and market feasibility of the project, and examine the benefits of the project for economic growth in the state.

(d) Board review. Staff will submit a report on each qualified application to the board containing a recommendation by staff. The board may, in its discretion, recommend the imposition of additional conditions and requirements in the approval of a qualified application. Approval of a qualified application will be by a majority of a quorum of the board, except for commitments over $2 million which must be approved by a positive vote of two-thirds of the board.

(e) Notification of approval. Upon conditional approval of the qualified application by the board, the Authority will notify the applicant in writing identifying the terms and conditions of the commitment provided. The applicant must accept the conditions of the board within 30 days to accept the commitment and 90 days to close the commitment, provided that the board may approve one additional extension of the commitment for a period of no more than 60 days. The Authority will prepare the closing documents in cooperation with the Authority's legal counsel and notify borrower of the closing date established.

(f) Denial of qualified application. If the qualified application is denied by the board, the Authority will notify the applicant in writing identifying the reasons for denial. Applicants who have been denied may re-apply to the program.

(g) Reporting to the board. Staff shall report to the board at each board meeting the status of loans and current commitments of the Authority.

(h) Providing false information. An applicant who knowingly provides false information in an application is liable to the Authority for any expense incurred by the Authority that would not have been incurred if the applicant had not provided the false information. Any commitment provided by the Authority under false pretenses will be subject to termination with a full repayment of any and all proceeds disbursed to the applicant by the Authority. In addition, the Authority may pursue any other remedies provided by law.

(i) Historically Underutilized Businesses. The Authority shall make a good faith effort to make available commitments to historically underutilized businesses. For purposes of this subsection, the term "Historically Underutilized Business" is defined as provided in the Texas Government Code, Chapter 2161, §2161.001(2).

§25.9. Contents of Qualified Application.

(a) Required information. The qualified application must set forth the information necessary for the determination of eligibility and will include the following, if applicable:

(1) applicant's name, address and telephone numbers;

(2) names, addresses, resumes, and references of owners, principal investors, board members, and/or management, including percentage of ownership of the business, if applicable;

(3) articles of incorporation and bylaws, a certificate of good standing with the secretary of state, or other instruments that establish or describe the legal operation or structure of the applicant and/or the business;

(4) a business plan which includes the following:

(A) information describing the products, services, or public works to be offered;

(B) a statement of how such products or services will help to expand, develop, or diversify the rural economy of the state;

(C) an estimate of the number of jobs created or retained by the project; and

(D) a statement of what percentage of Texas products and suppliers will be used by the project.

(5) three years of historical balance sheets, cash flow statements, income statements, and federal and/or state tax returns;

(6) a pro forma balance sheet, which incorporates the new financing, to be provided by the applicant and/or the lender;

(7) pro forma cash flows, income statements and balance sheets for at least three years, including the underlying assumptions used, to be provided by the applicant and/or the lender;

(8) a statement of the interest rate used in the pro forma statements;

(9) a statement of any licensing requirements;

(10) a statement that addresses the effect of the business on the tax base of the area and any other positive and negative effects of the project on the area;

(11) assurance of compliance with local zoning laws and building codes, and that the necessary public utilities are available or will be available when needed by the project;

(12) for construction projects, the approximate date construction will commence, completion date, and date by which the project will be fully operational; including copies of cost estimates for construction;

(13) documentation that the preliminary design stage has been completed;

(14) disclosure of any and all business and familial affiliations of the applicant, or its owners, principal investors, board members, and management with members of the board, employees of the department, staff, and/or the lender which could present a conflict of interest; and

(15) if applicable, a personal history questionnaire and acknowledgment form for all guarantors and/or owners with more than 20% ownership.

(b) Other matters. The applicant must submit any other information as requested by staff or the Authority.

§25.10. General Terms and Conditions of the Authority's Commitment.

(a) Permissible use of commitment. The Authority's commitment is to be used to finance the project identified in the qualified application.

(b) Minimum amount commitment. The Authority shall not provide a commitment to an applicant where the amount of the commitment is less than $100,000.00.

(c) Maximum amount commitment. The Authority shall provide a commitment to an applicant in an amount approved by the board of the Authority.

(d) Interest. The interest rate on the commitment shall be the rate approved by the Authority.

(e) Maturity. The maturity of the commitment must not exceed the useful life of the collateral and may be negotiated between the Authority and the applicant.

(f) Security. Loans must be secured by collateral of a type, amount, and value which, when considered with other criteria, affords reasonable assurance of repayment.

(g) Fees. The Authority may approve fees, as it deems appropriate on a case-by-case basis. A nonrefundable application fee will be required with the qualified application. Any and all legal fees incurred by the board in issuing a commitment will be an obligation of the applicant.

(h) Closing the commitment provided. The applicant and the commissioner of agriculture or commissioner's designee may attend the verification and signing of the closing documents as prepared by staff.

(i) Reporting requirements for a commitment provided by the Authority. The applicant shall provide to the Authority or lender, whichever is applicable, annual financial statements including a balance sheet, income statement and a cash flow statement; payment receipts of personal property taxes; and a statement of the annual employment of the applicant's business to the Authority. Annual employment shall be expressed in terms of annual full-time equivalent positions. If necessary, the Authority may request other reports or documentation reasonably necessary for an assessment of the applicant's compliance with the program.

§25.11. Criteria for Approval of a Commitment.

(a) Need for a commitment. The Authority shall consider whether the desired project financing appears to be available to the applicant on reasonable terms from other lenders. The Authority may direct the applicant to other sources for co- participation in the commitment.

(b) Reasonable risks. There must be reasonable assurance, in the judgment of the Authority, that the commitment provided can and will be repaid according to its terms. In making this judgment the Authority may consider the following:

(1) evidence of the manner, means, and security of payment by the applicant;

(2) projected cash flow earnings of the applicant;

(3) firm commitments from other independent and responsible financial sources for all other funds in excess of the commitment provided;

(4) collateral and other sources of guaranties or insurance securing the commitment provided;

(5) credit history and financial condition of the applicant; and

(6) historical financial information of applicant.

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the review and application approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from Finance and Agribusiness Development Division, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711, (512) 475-1619.

§25.12. Collateral Administration.

(a) Except as otherwise provided by state law, by these rules or by resolution of the board, the staff, with the approval of the commissioner of agriculture, the deputy commissioner of agriculture or the official of the department designated by the commissioner of agriculture as being responsible for the department's program, shall have the authority to act on behalf of the Authority, without specific board approval, in regard to the collection, settlement and enforcement of each and every commitment under the program. Such authority shall include, without limitation, the actions required to be taken by the Authority under any loan agreement, any participation agreement and any other agreement entered into by the Authority concerning commitments provided by the Authority.

(b) Nothing in this section shall prevent the staff or the commissioner of agriculture, the deputy commissioner, or official of

the department designated by the commissioner of agriculture from submitting any matter to the board for its consideration and 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.

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 22. PRACTICE AND PROCEDURE

The Public Utility Commission of Texas (commission) proposes an amendment to §22.33 relating to Tariff Filings and §22.305 relating to Compulsory Arbitration. The proposed amendments will replace references to repealed sections in Chapter 23 with the correct references in Chapter 25 and/or Chapter 26. Project Number 22470 is assigned to this proceeding.

Ms. Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Dempsey has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be correct citations to other commission rules. There will be no effect on small businesses or micro-businesses as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 22470.

Subchapter C. CLASSIFICATION OF APPLICATIONS OR OTHER DOCUMENTS INITIATING A PROCEEDING

16 TAC §22.33

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.33. Tariff Filings.

(a) Applicability and classification. This section shall apply to undocketed applications by utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff filings," "regular telephone tariff filings," or "special telephone tariff filings." Electric tariff filings shall be those applications filed pursuant to §25.241 of this title (relating to Form and Filing of Tariffs).[~~and~~] Regular[~~regular~~] telephone tariff filings shall be those applications filed pursuant to §26.207[~~§23.24~~] of this title (relating to Form and Filing of Tariffs) and §26.208 of this title (relating to General Tariff Provisions). Special telephone tariff filings shall be those applications filed by telecommunications utilities pursuant to §26.212 of this title (relating to Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs))[~~§23.25 of this title (relating to Procedures Applicable to PURA Chapter 58 Electing Incumbent Local Exchange Carriers)~~], §26.209[~~§23.26~~] of this title (relating to New and Experimental Services), §26.211[~~§23.27~~] of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges, and §26.210 of this title (relating to Promotional Rates for Local Exchange Company Services)[~~§23.28 of this title (relating to Promotional Rates for LEC Services)~~] or PURA, §§53.251, 53.252, 53.301 - 53.308 or 55.004. This section shall apply unless it is inconsistent with Chapters[~~23,~~] 25 or 26 of this title, or PURA.

(b) - (f) (No change.)

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

Filed with the Office of the Secretary of State, on June 6, 2000.

TRD-200003967
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 936-7308

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Subchapter P. DISPUTE RESOLUTION

16 TAC §22.305

§22.305. Compulsory Arbitration.

(a) Request for arbitration. Any party to negotiations concerning a request for interconnection, services or network elements pursuant to §251 of the FTA96 may request arbitration by the commission by filing with the commission's filing clerk 13 copies of a request for arbitration. The request must be received by the commission during the period from the 135th to the 160th day (inclusive) after the date the LEC received the request for negotiation from the other negotiating party. The request for arbitration shall include:

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

(5) if the request concerns a request for interconnection under §26.272[~~§23.97~~] of this title (relating to Interconnection), the material required by §26.272(g) [~~§23.97(g)~~] of this title; and

(6) (No change.)

(b) - (t) (No change.)

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

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Public Utility Commission of Texas
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Part 8. TEXAS RACING COMMISSION

Chapter 303. GENERAL PROVISIONS

Subchapter D. TEXAS-BRED INCENTIVE PROGRAMS

Division 2. PROGRAMS FOR HORSES

16 TAC §303.92

The Texas Racing Commission proposes an amendment to §303.92 concerning the rules of the Texas Thoroughbred Association regarding the Texas Bred Incentive Programs. The amendment was presented to the Commission as a rulemaking petition under 16 Tex. Admin. Code §307.33 by the Texas Thoroughbred Association, the official breed registry for Thoroughbred horses in Texas. According to the petition, the amendment provides permits the breed registry to use award money generated from multiple two and multiple three wagers under §6.08(f) of the Texas Racing Act to supplement purses for special events or days that are restricted to accredited Texas-bred thoroughbreds.

Paula C. Flowerday for the Texas Racing Commission, has determined, based on the petition, that for the first five-year period the amendment is in effect there is no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Flowerday has also determined, based on the petition, that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the proposal will be that the funds dedicated to the Texas Bred Incentive Programs may be used in a variety of ways to enhance the Texas breeding programs. There will be no fiscal implications for small or micro businesses. There is no anticipated economic cost to an individual required to comply with the amendment as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before July 29, 2000, to Paula C. Flowerday, Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.08(g), which authorizes the Commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program; and §9.01, which authorizes the state breed registries to adopt reasonable rules to establish the qualifications of accredited Texas-bred horses to promote, develop, and improve the breeding of horses in Texas, subject to the approval of the Commission.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.92. Thoroughbred Rules.

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

(1) Horse Owner–A person who is owner of record of an accredited Texas-bred horse at the time of a race.

(2) Breeder–The owner of the dam at the time of foaling as stated on the foal's Jockey Club certificate of registration.

(3) Stallion Owner–A person who is the owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(4) Accredited Texas-bred Thoroughbred - a horse registered with the Jockey Club, accredited with the breed registry and conceived and foaled in Texas, out of a mare accredited with the breed registry that is permanently domiciled in Texas, and sired by a stallion accredited with the breed registry and standing in Texas at the time of conception of said foal. Also, any horse foaled in Texas may be eligible to be accredited if the mare becomes an accredited mare permanently domiciled in Texas and is next bred, within two seasons, to any Thoroughbred stallion accredited with the breed registry and standing in Texas at the time said mare is covered. If this breed-back is not accomplished the year said foal is born, it must then take place during the breeding season of the foal's yearling year if the foal in question is to be eligible for accreditation.

(5) Accredited Texas-bred Thoroughbred Mare–A mare registered with the Jockey Club, accredited with the breed registry, and permanently domiciled in Texas except for racing and breeding privileges. Annual reproductive activity of the mare may be required to be reported to the breed registry in writing via photocopy of the Live Foal Report/No Foal Report submitted annually to the Jockey Club.

(6) Accredited Texas Thoroughbred Stallion - A stallion registered with the Jockey Club, accredited with the breed registry, and standing in Texas. If an Accredited Texas Thoroughbred Stallion services any mare outside the State of Texas within that breeding season, those foals conceived outside the state of Texas will be subject to the Breed- Back Rule. The breed registry must be notified in writing within 10 calendar days each time the stallion leaves or enters the State of Texas. A photocopy of the annual Report of Mares Bred may be required to be submitted to the breed registry office on or before the date required by the Jockey Club (August 1). Stallion owners are eligible to receive stallion awards only from offspring sired in Texas after the stallion has become accredited with the breed registry and applicable administrative fees have been paid.

(7) Breed Registry–The Texas Thoroughbred Association, the official breed registry for thoroughbred horses as designated in the Act.

(b) Organizational Structure. The breed registry shall comply with the provisions of the Act and Rules and shall further maintain substantially the following:

(1) Records of the breed registry shall be kept so as to identify separately the activities of the accredited Texas-bred program.

(2) Management of the accredited Texas-bred program shall be under the control of the board of directors of the breed registry and may be exercised through a committee or other governing body appointed by and accountable to the board of directors. The committee shall keep records or minutes of its proceedings and shall establish its operational procedures. The committee's records must be available for inspection at any time by the commission at the office of the breed registry. The committee is authorized to reasonably interpret the definitions and standards of this section, subject to approval by the board of directors, whose decision in such matters shall be final.

(3) The committee shall prepare and implement a budget on an annual basis, subject to prior approval of the board of directors. The budget may contain provisions for reserves for contingencies deemed appropriate. The breed registry may develop and implement a fair system for sharing and allocating expenses and operational costs between breed registry activities and accredited Texas-bred program activities, taking into consideration the promotion and improvement of thoroughbred horses in Texas. In no event may funds that are dedicated by law to fund the incentive awards program be used for any other purpose. Any funds or services advanced or provided by the breed registry to the accredited Texas-bred program may be offset or otherwise recouped upon proper accounting. The committee is authorized to set and collect application and administration fees.

(4) Eligibility for awards under the accredited Texas-bred program may not be conditioned upon membership in an organization.

(c) Procedure for Payment of Awards.

(1) Conditions precedent for payment of awards are:

(A) If a horse is leased, there must be on file with the breed registry a lease agreement specifying which party shall receive award money.

(B) Breeder's Awards will be paid only on an accredited Texas-bred Thoroughbred whose dam was accredited with the breed registry prior to foaling the subject horse.

(C) Accreditation fees are non-refundable after a work order has been assigned to an eligible entry. If a horse is ineligible, the fee will be refunded to the applicant.

(D) When any accredited Texas-bred horse becomes breeding stock, it must be converted, with the breed registry, to an accredited mare or stallion.

(E) All applicable fees set by the breed registry must have been paid.

(F) All participants in the accredited Texas-bred program must provide the breed registry in writing the identity of the authorized payee and the address to which awards are to be sent. Any change in ownership, payment entitlement, or address shall not be effective unless and until it is provided to the breed registry in writing. The breed registry may rely on the information so provided to it.

(2) Any accredited Texas-bred Thoroughbred that finishes first, second, or third in any race in Texas (with the exception of a stakes race restricted to accredited Texas-breds) shall receive an owner's incentive award. All owner's incentive awards shall be noted in each association's condition book and race program so as to identify the availability of the accredited Texas-bred program owner incentive awards.

(3) Award funds derived by the breed registry pursuant to §6.08(f) of the Act may be allocated and disbursed by the breed registry to purses at Texas associations for races restricted to accredited Texas-bred thoroughbred horses for special event races or days.

(d) Procedure for hearings. The following provisions shall apply to hearings on matters pertaining to administration of the accredited Texas-bred program.

(1) Right to hearing. If the breed registry proposes to deny an application for accreditation, revoke an accreditation previously granted, or withhold payment of an award, the person(s) affected shall be entitled to a hearing before the board of directors of the breed registry. The board of directors, in its sole discretion, may grant or conduct a hearing on any other matter or issue raised by the administration of the accredited Texas-bred program.

(2) Notice of hearing. The board of directors shall send written notice of the hearing to all affected parties. The notice must be mailed at least 30 days prior to the date of hearing, must specify the time and place of hearing, must contain a statement of the matters to be considered and possible action to be taken, and must advise the recipient(s) of the right to appear and present evidence.

(3) Conduct of hearing. The breed registry shall have the burden of proof in any proceeding for denial or revocation of accreditation. In all other matters, the burden of proof is on the party seeking action by the breed registry. Each party shall be entitled to representation by legal counsel. The board of directors may determine the order and length of the proceeding and shall allow each party the opportunity to submit sworn testimony, documents, and argument as the party may desire, but formal rules of evidence shall not apply. All witnesses are subject to cross- examination and to questions from the members of the board of directors. A record of the proceedings shall be made and kept, and a transcript shall be provided to any party who requests and pays in advance for same.

(4) Decision. At any time after the closing of the hearing, the board of directors may issue its decision, which shall be in writing and which shall state the findings and reasons for the action taken. In addition to ruling on the issues presented, the decision may require any party to reimburse the breed registry for its expense and attorneys fees incurred in the preparation for and conduct of the hearing and may require repayment with lawful interest to the breed registry of any funds found to have been wrongfully or improperly received. The decision of the board of directors is final and not subject to review. A copy of the decision shall be filed with the Commission and shall be published in the next issue of the Texas Thoroughbred, and thereafter all persons shall have constructive notice of the decision and its contents.

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

Filed with the Office of the Secretary of State, on June 6, 2000.

TRD-200003984
Paula C. Flowerday
Executive Secretary
Texas Racing Commission
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

Part 2. TEXAS EDUCATION AGENCY

Chapter 105. FOUNDATION SCHOOL PROGRAM

Subchapter BB. COMMISSIONER'S RULES CONCERNING STATE AID ENTITLEMENTS

19 TAC §105.1014

The Texas Education Agency (TEA) proposes new §105.1014, concerning state aid entitlements. The new section describes the actions that will be taken by the TEA to provide supplemental state assistance to school districts that have a decline in taxable property values resulting from electric utility restructuring. Under Texas Utilities Code, §39.901, school districts would be held harmless for the effects that electric utility restructuring might have on the ability of the districts to generate local revenue.

Senate Bill 7, 76th Texas Legislature, 1999, enacted major changes to the marketplace of electric power that, in turn, will impact the taxable value of electric generating facilities. The bill authorized fees to be collected from utilities and created a fund that would receive those fees. The fee receipts would be used to offset additional state expenses in the Foundation School Program that can be attributed to declines in property values from a prior year to the current year. The state expenses would result from higher state aid requirements under Texas Education Code, Chapters 42 and 46, or reduced recapture receipts under Texas Education Code, Chapter 41. In addition, any loss of revenue incurred by school districts that would not be made up by additional state aid or reduced recapture requirements would be paid to the districts from funds transferred to the TEA.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state government as a result of enforcing or administering the new section. There will be fiscal implications for local government. However, the impact of property value declines cannot be accurately estimated without detailed value information that is currently not available. Early estimates of impact indicate $50-$70 million per year in additional state cost or lost revenue from recapture.

The treatment of state aid calculations is directed by statutes added by Senate Bill 7, 76th Texas Legislature, 1999. The adjustments enacted by statute would increase state aid to school districts that have property value declines from one year to the next, but would fund the increases from the fees levied by the Public Utility Commission that are to be deposited to the System Benefit Fund. The adjustments would also reduce the amount of funds recaptured from property wealthy school districts under Texas Education Code, Chapter 41, and would transfer funds from the System Benefit Fund to the Foundation School Fund to offset the loss of revenue to the state. The proposed new section describes the calculations that will be made to determine increased assistance from the state or reduced revenue owed to the state. Until an exact amount of property value change is determined, the precise fiscal impact cannot be determined for either the state or local school districts. From a local school district perspective, the revenues available after adjustment from the state should be the same as would have been available had there never been a change in the taxable value of property. From the state's perspective, additional revenue from the System Benefit Fund should completely fund the necessary adjustments.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a uniform methodology for determining the benefits that school districts can obtain from the structure established by Senate Bill 7, designed to implement adjustments to school district funding related to electric utility restructuring. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

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

The new section is proposed under the Texas Utilities Code, §39.901, as added by Senate Bill 7, 76th Texas Legislature, 1999, which authorizes the commissioner of education to adopt rules necessary for the implementation of a school funding loss mechanism.

The new section implements the Texas Utilities Code, §39.901, as added by Senate Bill 7, 76th Texas Legislature, 1999.

§105.1014. Additional Assistance for Effects of Electric Utility Restructuring.

(a) Each year, the commissioner of education shall determine the effects on recaptured property taxes and local revenues from property value reductions caused by electric utility restructuring, as authorized under Texas Utilities Code, §39.901. The commissioner shall base the determination of the effects on the difference in property values as determined by the comptroller of public accounts for the current or preceding school year, as appropriate. The commissioner shall provide the determination to the Public Utility Commission no later than May 1 of each year.

(b) For purposes of computing the effects of electric utility restructuring on state aid under Texas Education Code Chapter 42, the commissioner shall first compute the amount of state aid by using the prior year property value as determined by the comptroller under Texas Government Code, §403.302, using the budgeted maintenance tax collections for the current year as reported through the Public Education Information Management System (PEIMS). The commissioner shall also compute the amount of state aid using the prior year property value adjusted to reflect the higher taxable value of property that would have been available had there been no electric utility restructuring and the amount of local maintenance taxes that would have been available with proportionately higher property values. To determine the local taxes that would have been available, the commissioner shall proportionately adjust the budgeted tax collections reported through PEIMS for the current year by the ratio of the adjusted prior year property values to the unadjusted prior year property values. To determine whether the district is entitled to any supplemental payment, the sum of state aid and local maintenance taxes shall be compared

between the scenario using prior year property values and budgeted PEIMS tax collections and the scenario using the adjusted property values and adjusted tax collections. If the scenario using adjusted property values and tax collections produces more total revenue, the difference shall be paid in addition to any other state aid.

(c) For purposes of computing the effects of electric utility restructuring on recaptured property taxes and local revenue under Texas Education Code, Chapter 41, the commissioner shall compute the amount of recaptured property taxes by first using the prior year property value as determined by the comptroller under Texas Government Code, §403.302, using the budgeted maintenance tax collections for the current year as reported through PEIMS. The commissioner shall also compute the amount of recaptured property taxes by using the prior year property value adjusted to reflect the higher taxable value of property that would have been available had there been no electric utility restructuring and the amount of local maintenance taxes that would have been available with proportionately higher property values. To determine the local taxes that would have been available, the commissioner shall proportionately adjust the budgeted tax collections reported through PEIMS for the current year by the ratio of the adjusted prior year property values to the unadjusted prior year property values. To determine the reduction in recaptured property taxes, the commissioner shall compare the amount of recapture, net of any credits or discounts, in the two scenarios. To determine whether the district is entitled to any supplemental payment for lost local revenue, the local maintenance taxes remaining after net recapture shall be compared between the scenario using prior year property values and budgeted PEIMS tax collections and the scenario using the adjusted property values and adjusted tax collections.

(d) For purposes of computing the effects of electric utility restructuring on state aid under Texas Education Code, Chapter 46, the commissioner shall first compute the amount of state aid by using the prior year property value as determined by the comptroller under Texas Government Code, §403.302, using the budgeted debt service tax collections for the current year as reported through PEIMS. The commissioner shall also compute the amount of state aid using the prior year property value adjusted to reflect the higher taxable value of property that would have been available had there been no electric utility restructuring and the amount of local debt service taxes that would have been available with proportionately higher property values, up to the limits of allotments for debt service in Texas Education Code, Chapter 46. To determine the local taxes that would have been available, the commissioner shall proportionately adjust the budgeted tax collections reported through PEIMS for the current year proportionate to the ratio of the adjusted prior year property values to the unadjusted prior year property values. To determine whether the district is entitled to any supplemental payment, the sum of state aid and local debt service taxes shall be compared between the scenario using prior year property values and budgeted PEIMS tax collections and the scenario using the adjusted property values and adjusted tax collections. If the scenario using adjusted property values and tax collections produces more total revenue, the difference shall be paid in addition to any other state aid.

(e) If for any year the decline for a school district from prior year property values to current year is greater than 4.0%, and the comptroller certifies that there is a decline in property values due to electric utility restructuring, the commissioner shall separately compute the additional state aid under Texas Education Code, Chapters 42 and 46, and the reduction in recapture under Texas Education Code, Chapter 41, that is related to restructuring in order to award relief under Texas Education Code, §42.2521. For this purpose, the commissioner shall also compute the amount of local taxes in the current year that would have been available had there been no restructuring. To determine the local taxes that would have been available, the commissioner shall adjust the budgeted tax collections reported through PEIMS for the current year proportionate to the ratio of the adjusted current year property values to the unadjusted prior year property values. To determine whether the district is entitled to any supplemental payment for the decline in current year property values due to restructuring, the sum of state aid (or recapture as appropriate) and local taxes shall be compared between the scenario using prior year property values and budgeted PEIMS tax collections and the scenario using the adjusted property values and adjusted tax collections. If the scenario using adjusted property values and tax collections produces more total revenue, the difference shall be paid in addition to any other state aid.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004106
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
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For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

Chapter 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas State Board of Medical Examiners proposes an amendment to §166.2, regarding administrative penalties relating to continuing medical education. The amendment will make Chapter 166 consistent with §187.39(f)(5) relating to administrative penalties.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be an estimated revenue generated for state and local government of $1,500 per year.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency of Chapter 166 with §187.39(f)(5) relating to administrative penalties. There will be no effect on small businesses. There will be a minimum of $500 in administrative penalty to those individuals required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary

to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, §165.001 is affected by the amendment.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the annual registration of a physician's license, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) At least one-half of the hours are to be from formal courses that are:

(A) designated for AMA/PRA Category 1 credit by a CME sponsor accredited by the Accreditation Council for Continuing Medical Education or a state medical society recognized by the Committee for Review and Recognition of the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the American Academy of Family Physicians;

(C) designated for AOA Category 1-A credit required for osteopathic physicians by an accredited CME sponsor approved by the American Osteopathic Association; or

(D) approved by the Texas Medical Association based on standards established by the AMA for its Physician's Recognition Award.

(2) Beginning with annual registrations in 1999, at least one of the formal hours of CME which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraphs (1) of this subsection as part of their course planning.

(3) The remaining hours may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CME, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A physician must report on the annual registration form if she or he has completed the required continuing medical education during the previous year. A licensee may carry forward CME credit hours earned prior to an annual registration report which are in excess of the 24-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 48 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CME credit hours of any type may not be carried forward or applied to an annual report of CME more than two years beyond the date of the annual registration following the period during which the hours were earned.

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified in a medical specialty and the medical specialty program meets the standards of the American Board of Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association. This provision exempts the physician from all CME requirements, including the requirement for one hour involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section, and this exemption is valid for one annual renewal period only.

(d) A physician may request in writing an exemption for the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year's duration outside the state;

(3) medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown on written application of the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing medical education.

(e) Exemptions are subject to the approval of the executive director/medical director and must be requested in writing at least 30 days prior to the expiration date of the license.

(f) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed annually, subject to the approval of the board.

(g) Subsection (a) of this section does not apply to a licensee who is retired and has been exempted from paying the annual registration fee under section 166.3 of this title (relating to Retired Physician Exception).

(h) This section does not prevent the board from taking disciplinary action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.

(i) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(j) Physicians in residency/fellowship training or who have completed such training within six months prior to their renewal application will satisfy the requirements of subsections (a)(1) and (2) of this section by their residency or fellowship program.

(k) Unless exempted under the terms of this section, a physician licensee's apparent failure to obtain and timely report the 24 hours of CME as required and provided for in this section shall result in nonrenewal of the license until such time as the physician obtains and reports the required CME hours; however, the executive director of the board may issue to such a physician a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the physician's CME hours and to allow the physician who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(l) The fee for issuance of a temporary license pursuant to the provisions of this section shall be in the amount specified for temporary licenses under § 175.1 of this title (relating to Fees); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(m) CME hours which are obtained to comply with the CME requirements for the preceding year as a prerequisite for licensure renewal, shall first be credited to meet the CME requirements for the previous year. Once the previous year's CME requirement is

satisfied, any additional hours obtained shall be credited to meet the CME requirements for the current year.

(n) An intentionally false report or intentionally false statement to the board by a licensee regarding CME hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, § 3.08(1), (4), (5), 4.01, and 4.12. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500 [~~$100~~] and a public reprimand.

(o) Administrative penalties for failure to timely obtain and report required CME hours may be determined by the Disciplinary Process Review Committee of the board as provided for in § 187.39 of this title (relating to Administrative Penalties).

(p) Failure to obtain and timely report the CME hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in § 175.2 of this title (relating to Penalties). Any temporary licensure fee and any administrative penalty imposed for failure to obtain and timely report the 24 hours of CME required for renewal of a license shall be in addition to the applicable penalties for late registration or renewal as set forth in § 175.2 of this title (relating to Penalties).

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004109
Bruce A. Levy
Executive Director
Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

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Chapter 171. INSTITUTIONAL PERMITS

22 TAC §171.3

The Texas State Board of Medical Examiners proposes an amendment to §171.3(b), concerning institutional permits. The amendment will expand board rule to enable the board to issue permits to accredited Canadian training programs.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be an expanded board rule to enable the board to issue permits to accredited Canadian training programs. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, §155.105 is affected by the amendment.

§171.3. Institutional Permits.

(a) This section shall apply to all postgraduate physicians in training whose postgraduate training program was issued an institutional permit on the physician's behalf on or before June 1, 2000.

(b) Institutional permits may be issued to postgraduate training programs approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior to 1994), the Royal College of Physicians and Surgeons of Canada, the College of Family Physicians of Canada, or the Texas State Board of Medical Examiners for interns, residents, and postresidency fellows.

(1) An intern is a physician who is in a clearly defined and delineated first postgraduate year program.

(2) A resident is a physician who is in a specialized, clearly defined, and delineated postgraduate program.

(3) A postresidency fellow is a physician who is in a specialized, clearly defined, and delineated program, following completion of a delineated residency program, for additional training in a medical specialty or subspecialty delivered in a program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or in a program approved by the Texas State Board of Medical Examiners.

(c) The executive director may in his/her discretion, upon written request, approve training programs as referenced in §§171.2(b)(2) of this title (relating to Postgraduate Resident Permits). Said training programs shall be limited to postgraduate subspecialty programs. If the executive director does not recommend approval, the program director may appeal to the board for its discretionary consideration of the request.

(d) Approval of training programs shall include but not be limited to the following considerations:

(1) the goals and objectives of the program;

(2) the process by which the program selects fellows;

(3) whether prior residency training in a related specialty is required of fellows in the program;

(4) the duties and responsibilities required of fellows in the program;

(5) the formal educational experiences required of fellows in the program, including grand rounds, seminars and journal club;

(6) the scholarly research required of fellows in the program, including participation in peer reviewed and funded research which may result in publications or presentations at regional and national scientific meetings;

(7) the type of supervision provided for fellows by the program;

(8) the curriculum vitae, including academic appointments, of all supervising staff;

(9) the academic affiliation of the program;

(10) the methods for evaluation of fellows by the program; and

(11) whether a specialty Board gives credit for the program.

(e) All postgraduate training programs approved by the board may be re-evaluated every three years to assure compliance with the above considerations and consideration of continuation of the program. Said re-evaluation shall not be conducted without six months prior notice by board staff to the postgraduate subspecialty training program. Permit holders shall be allowed to complete their training program regardless of continuing program re-evaluation. Training programs approved by the board before June 1, 2000, may be re-evaluated after January 1, 2001.

(f) Applicants who have graduated from a medical school approved by the Liaison Committee on Medical Education, or the American Osteopathic Association must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program; and

(2) certification by the director of medical education of the program that the internship, residency, or fellowship meets the appropriate definition on a form provided by the board.

(g) Applicants who have graduated from a medical school outside the United States or Canada must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program;

(2) a notarized copy of medical school diploma or Fifth Pathway Certificate;

(A) copies should be notarized as being a "true copy" of the original document and the Notary Public must sign, date, and affix his/her notary seal to the document;

(B) if the document is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a Government Official, Official Translation Agency, or a College or University Official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate;" he/she must sign the translation with his/her signature notarized by a Notary Public and the translator's name and title must be typed/printed under the signature;

(3) a notarized copy of a valid ECFMG document, or:

(A) proof of an unrestricted license from another state or territory in the United States or Canada; or

(B) proof of citizenship in the United States and residency of the State of Texas prior to entering medical school as provided in Texas Health and Safety Code (§311.001;

(4) certification by the director of medical education that the internship, residency, or fellowship program meets the appropriate definition on a form provided by the board; and

(5) certification by the director of medical education, on a form provided by the board that the original medical school diploma, certified medical school transcript from each medical school, valid ECFMG document, and an original Dean's certification has been inspected.

(h) The board's executive director may, on a case by case basis and in his/her discretion, allow substitute documents where exhaustive efforts have been made to secure the required documents.

(i) Initial institutional permits are issued for 14 months; the permit may be renewed for a one-year period up to seven times, depending upon the requirements of the physician's specialty training program.

(j) Physicians holding an institutional permit must confine their practice of medicine to the designated teaching program. The permit may be cancelled if (§3.08 or any other provision of the Medical Practice Act is violated, or if the permit is used to practice medicine outside the teaching program.

(k) If the training is terminated for any reason other than illness or other reasons acceptable to the board, the permit is void and no additional permit will be issued.

(l) Denial of a permanent Texas license is grounds for revoking or not issuing an institutional permit.

(m) Failure of any hospital or medical institution to comply with these provisions shall be grounds for the denial of the institutional permit and any future permits for persons wishing to serve at that institution.

This 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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Bruce A. Levy
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Chapter 183. ACUPUNCTURE

The Texas State Board of Medical Examiners proposes amendments to §§183.1-183.5, repeal of §§183.6-183.23 and new §§183.6-183.21, concerning acupuncture. The sections are being updated due to the agency rule review, which is being proposed elsewhere in this issue of the *Texas Register*, and numerous amendments and clarification to various sections in order to be in compliance with Senate Bill 1233.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated sections due to the agency rule review, which is being proposed elsewhere in this issue of the *Texas Register*, and numerous amendments and clarification to various sections in order to be in compliance with Senate Bill 1233. There will be no effect on small businesses. There is no anticipated economic

costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

22 TAC §§183.1-183.5

The amendments are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, Chapter 205 is affected by the amendments.

§183.1. Purpose.

These rules are promulgated under the authority of the Medical Practice Act, [~~Texas Civil Statutes~~] Article 4495b, to establish procedures and standards for the training, education, licensing, and discipline of persons performing acupuncture in this state so as to establish an orderly system of regulating the practice of acupuncture in a manner which protects the health, safety, and welfare of the public.

§183.2. Definitions.

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

(1) (No change.)

(2) Acceptable approved acupuncture school–Effective January 1, 1996, with the exception of the provisions outlined in §183.4(h) of this title (relating to Exceptions), [~~:~~]

(A)-(D) (No change.)

(3)-(8) (No change.)

(9) Application–An application is all documents and information necessary to complete an applicant's request for licensure including the following:

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

(C) all documents required under §183.4(c) [~~(f)~~] of this title (relating to Licensure Documentation); and

(D) (No change.)

(10)-(15) (No change.)

(16) Eligible for legal practice and/or licensure in country of graduation–An applicant who has completed all requirements for legal practice of acupuncture and/or licensure in the country in which the school is located except for any citizenship requirements.

[~~(17) Equivalent registration–An applicant for licensure by endorsement must apply for licensure based upon another state or provincial license that requires as part of its registration:~~]

[~~(A) the full NCCAOM examination;~~]

[~~(B) an English competency test, if the NCCAOM examination was taken in a language other than English;~~]

[~~(C) the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) CNT (Clean Needle Technique) course and practical examination;~~]

[~~(D) a fee; and~~]

[~~(E) periodic renewal of an acupuncturist's license.~~]

(17) [~~(18)~~] Executive Director–The executive director of the Texas State Board of Medical Examiners.

(18) [~~(19)~~] Full force–Applicants for licensure who possess a license in another jurisdiction must have it in full force and not restricted for cause, canceled for cause, suspended for cause or revoked. An acupuncturist with a license in full force may include an acupuncturist who does not have a current, active, valid annual permit in another jurisdiction because that jurisdiction requires the acupuncturist to practice in the jurisdiction before the annual permit is current. [~~Applicants for licensure by endorsement must possess a license in another jurisdiction which is in full force and not restricted, canceled, suspended, or revoked.~~]

(19) [~~(20)~~] Full NCCAOM examination–The National Certification Commission for Acupuncture and Oriental Medicine examination, consisting of the Comprehensive Written Exam (CWE), the Clean Needle Technique Portion (CNTP), and the Practical Examination of Point Location Skills (PEPLS), and, effective January 1, 1998, the Chinese Herbology Exam.

(20) [~~(21)~~] Good professional character–An applicant for licensure must not be in violation of or have committed any act described in the Act, § 6.11.

(21) [~~(22)~~] Hearings examiner, examiner, administrative law judge, or ALJ–An administrative law judge, duly employed by the State Office of Administrative Hearings.

(22) [~~(23)~~] License–Includes the whole or part of any board permit, certificate, approval, registration, or similar form of permission required by law; specifically, a license and a registration.

(23) [~~(24)~~] Licensing–Includes the medical board's and acupuncture board's process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(24) [~~(25)~~] Medical board–The Texas State Board of Medical Examiners.

(25) [~~(26)~~] Misdemeanors involving moral turpitude–Any misdemeanor of which fraud, dishonesty, or deceit is an essential element, any criminal violation of the Medical Practice Act, burglary, robbery, sexual offense, theft, child molesting, and substance diversion or substance abuse, or an offense involving baseness, vileness, or depravity in the private social duties one owes to others or to society in general, or an offense committed with knowing disregard for justice or honesty.

(26) [~~(27)~~] Party–Each person named or admitted as a party whether an applicant, protestant, petitioner, complainant, respondent or intervenor, and the board.

(27) [~~(28)~~] Person–Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(28) [~~(29)~~] Physician–A licensee of the Texas State Board of Medical Examiners.

(29) [~~(30)~~] Pleading–Written documents filed by parties concerning their respective claims.

(30) [~~(31)~~] Presiding officer–The member of the acupuncture board appointed by the governor to preside over acupuncture board proceedings or the presiding officer's duly qualified successor in accordance with Robert's Rules of Order Newly Revised or board

rules, a hearings examiner, administrative law judge, or other person presiding over the board.

(31) [~~(32)~~] Register–The Texas Register.

~~[(33) Requisite qualifications–An endorsement applicant who is a graduate of an unapproved acceptable acupuncture school who:]~~

~~[(A) has for the preceding five years been a licensee of another state or a Canadian province;]~~

~~[(B) is not the subject of a sanction imposed by or disciplinary matter pending in any state or Canadian province in which the applicant is licensed to practice acupuncture.]~~

(32) [~~(34)~~] Rule–Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. This definition includes substantive regulations.

(33) [~~(35)~~] Secretary–The secretary-treasurer of the Texas State Board of Acupuncture Examiners.

(34) [~~(36)~~] Substantially equivalent to a Texas acupuncture school–A school or college of acupuncture located outside the United States or Canada must be an institution of higher learning designed to select and educate acupuncture students; provide students with the opportunity to acquire a sound basic acupuncture education through training; to develop programs of acupuncture education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual and practical environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The school of acupuncture shall contribute to the advancement of knowledge and to the intellectual growth of its students and faculty through scholarly activity, including research. The school of acupuncture shall include, but not be limited to, the following characteristics:

(A) the facilities for didactic and clinical training (i.e., laboratories, hospitals, library, etc.) shall be adequate to ensure opportunity for proper education;

(B) the admissions standards shall be substantially equivalent to a Texas school of acupuncture;

(C) the basic curriculum shall include courses substantially equivalent to those delineated in the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) core curriculum at the time of applicant's graduation;

(D) the curriculum shall be of at least 1800 hours in duration.

(35) [~~(37)~~] The Act–The Medical Practice Act, Article 4495b and its amendments.

§183.3. Meetings.

(a)-(f) (No change.)

(g) The following are standing and permanent committees of the acupuncture board. Each committee, with the exception of the Executive Committee, shall consist of at least one board member who is a licensed physician, one board member who is a licensed acupuncturist, and one public board member. In the event that a committee does not have a representative of one or more of these groups, the Presiding Officer shall appoint additional members as necessary to maintain this composition. The Executive Committee shall include the Presiding Officer, the Assistant Presiding Officer, and the Secretary-Treasurer, plus additional members so that the committee consists of a minimum of two board members who are licensed acupuncturists, one board member who is a licensed physician, and one public board member. The responsibilities and authority of these committees shall include those duties and powers as set forth below and such other responsibilities and authority which the acupuncture board may from time to time delegate to these committees.

(1) Licensure Committee:

(A) draft and review proposed rules regarding licensure [~~by reciprocal endorsement~~], and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(B) draft and review proposed application forms for licensure [~~by endorsement~~], and make recommendations to the acupuncture board regarding changes or implementation of such rules;

(C) oversee the application process for licensure [~~by endorsement~~];

(D) receive and review applications for licensure [~~by endorsement~~] in the event the eligibility for licensure of an applicant is in question;

(E) present the results of reviews of applications for licensure [~~by endorsement~~] and make recommendations to the acupuncture board regarding licensure of applicants whose eligibility is in question;

~~[(F) draft and review proposed rules regarding licensure by examination, and make recommendations to the acupuncture board regarding changes or implementation of such rules;]~~

~~[(G) draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the acupuncture board regarding changes or implementation of such rules;]~~

(F) [~~(H)~~] oversee and make recommendations to the acupuncture board regarding any aspect of the examination process including the approval of an appropriate licensure examination and the administration of such an examination;

(G) [~~(I)~~] draft and review proposed rules regarding any aspect of the examination;

~~[(J) receive and review applications for licensure by examination in the event the eligibility for licensure of an applicant is in question;]~~

~~[(K) present the results of reviews of applications for licensure by examination, and make recommendations to the acupuncture board regarding licensure of applicants whose eligibility is in question; and]~~

(H) [~~(L)~~] make recommendations to the acupuncture board regarding matters brought to the attention of the Licensure Committee.

(2) (No change.)

(3) Education Committee:

(A)-(K) (No change.)

(L) offer assistance to the Licensure [~~Examination and Endorsement~~]Committees in determining eligibility of graduates of foreign acupuncture schools for licensure [~~by endorsement or examination~~];

(M) (No change.)

(N) make recommendations to the acupuncture board regarding matters brought to the attention of the Education Committee ; [~~.~~]

(4) Executive Committee:

(A) review agendum for board meetings;

(B) ensure records are maintained of all committee actions;

(C) review requests from the public to appear before the board and to speak regarding issues relating to acupuncture;

(D) review inquiries regarding policy or administrative procedures;

(E) delegate tasks to other committees;

(F) take action on matters of urgency that may arise between board meetings;

(G) assist the medical board in the organization, preparation, and delivery of information and testimony to the Legislature and committees of the Legislature;

(H) formulate and make recommendations to the board concerning future board goals and objectives and the establishment of priorities and methods for their accomplishment;

(I) study and make recommendations to the board regarding the role and responsibility of the board offices and committees;

(J) study and make recommendations to the board regarding ways to improve the efficiency and effectiveness of the administration of the board pursuant to the Occupations Code, §205.102(b);

(K) make recommendations to the board regarding matters brought to the attention of the executive committee.

(h) Meetings of the acupuncture board and of its committees are open to the public unless such meetings are conducted in executive session pursuant to the Open Meetings Act and the Act. In order that board meetings may be conducted safely, efficiently, and with decorum, members of the public shall refrain at all times from smoking or using tobacco products, eating, or reading newspapers and magazines. Members of the public may not engage in disruptive activity that interferes with board proceedings, including, but not limited to, excessive movement within the meeting room, noise or loud talking, and resting of feet on tables and chairs. The public shall remain within those areas of the board's offices designated as open to the public. Members of the public shall not address or question board members during meetings unless recognized by the board's presiding officer pursuant to a published agenda item.

(i)-(m) (No change.)

§183.4. Licensure.

(a) Qualifications. An applicant must present satisfactory proof to the acupuncture board that the applicant:

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

(4) is a graduate of a reputable [~~an acceptable~~] acupuncture school that was a candidate for accreditation or had accreditation through the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) at the time of applicant's graduation, or received and completed training which, in the opinion of the acupuncture board, was substantially equivalent to training provided by such a school;

(5)-(6) (No change.)

(7) is able to communicate in English as demonstrated by one of the following:

(A) (No change.)

(B) passage of the TOEFL (Test of English as a Foreign Language) with a score of 550 or higher on the paper based test or with a score of 213 or higher on the computer based test; or

(C)-(F) (No change.)

(b) Procedural rules for licensure applicants. The following provisions shall apply to all licensure applicants.

(1) (No change.)

(2) Applicants for licensure [~~by examination~~] who wish to request reasonable accommodation due to a disability must submit the request at the time of filing the application.

(3) Applicants who have been licensed in any other state, province, or country shall complete a notarized oath or other verified sworn statement in regard to the following:

(A) whether the license, certificate, or authority has been the subject of proceedings against the applicant for the restriction for cause, cancellation for cause, suspension for cause, or revocation of the license, certificate, or authority to practice in the state, province, or country, and if so, the status of such proceedings and any resulting action; and,

(B) (No change.)

(4) An applicant for a license to practice acupuncture may not be required to appear before the acupuncture board or any of its committees unless the application raises questions about the applicant's:

(A) physical or mental impairment;

(B) criminal conviction; or

(C) revocation of a professional license.

(c) Licensure documentation.

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

(3) Additional documentation. Applicants may be required to submit other documentation, including but not limited to the following:

(A)-(H) (No change.)

(I) False documentation. Falsification of any affidavit or submission of false information to obtain a license may [~~by examination or endorsement shall~~] subject an acupuncturist to denial of a license or to discipline pursuant to the Act, § 6.11.

(4) (No change.)

(d) Temporary license.

(1) Issuance. The Texas State Board of Acupuncture Examiners may, through the executive director of the Texas State

Board of Medical Examiners, issue a temporary license to a licensure applicant who appears to meet all the qualifications for an acupuncture license under the Act, but is waiting for the next scheduled meeting of the Texas State Board of Acupuncture Examiners for review and for the license to be issued.

(2) (No change.)

(e)-(g) (No change.)

(h) Exceptions. Before January 1, 2004, the acupuncture board may not adopt a rule under the Medical Practice Act, § 6.07(d), Article 4495b, Texas Civil Statutes, that requires a school of acupuncture operating in Texas on or before September 1, 1993, be accredited by, or a candidate for accreditation by, the Accreditation Commission for Acupuncture and Oriental Medicine.

§183.5. Annual Renewal of License.

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

(c) If the renewal fee and completed application form are not received on or before November 30 of each year, penalty fees will be imposed as outlined in §175.2 of this title (relating to Fees, Penalties, and Applications). [~~the following penalties will be imposed:~~]

[~~(1) one to 90 days late \$50 plus the required annual registration fee;~~]

[~~(2) 90 days to one year late \$100 plus the required annual registration fee;~~]

[~~(3) over one year late license will automatically be canceled.~~]

This 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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Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

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22 TAC §§183.6-183.23

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

The repeals are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, Chapter 205 is affected by the repeals.

§183.6. Schedule of Fees.

§183.7. Denial of License; Discipline of Licensee.

§183.8. Investigations.

§183.9. Procedure–General.

§183.10. Procedure–Prehearing.

§183.11. Procedure–Hearing.

§183.12. Procedure–Posthearing.

§183.13. Patient Records.

§183.14. Complaint Procedure Notification.

§183.15. Medical Board Review and Approval.

§183.16. Construction.

§183.17. Acudetox Specialist.

§183.18. Automatic Licensure.

§183.19. Use of Professional Titles.

§183.20. Texas Acupuncture Schools.

§183.21. Acupuncture Advertising.

§183.22. Continuing Acupuncture Education.

§183.23. Continuing Auricular Acupuncture Education for Acudetox Specialists.

This 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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Bruce A. Levy, M.D., J.D.
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For further information, please call: (512) 305-7016

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22 TAC §§183.6-183.21

The new sections are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, Chapter 205 is affected by the new sections.

§183.6. Denial of License; Discipline of Licensee.

(a) An applicant for a license under the Act shall be subject to denial of the application pursuant to the provisions of §6.11 of the Act.

(b) An acupuncturist who holds a license issued under authority of the Act shall be subject to discipline, including revocation of license, pursuant to the provisions of §6.11 of the Act.

(c) The imposition of disciplinary action by the acupuncture board pursuant to §6.11 of the Act shall be in accordance with the Act, the procedures set forth in §183.8 of this title (relating to Procedure–General), the Administrative Procedure Act, and the rules of the State Office of Administrative Hearings.

(d) Disciplinary Guidelines.

(1) Purpose. This subsection will:

(A) provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested licensure and disciplinary matters;

(B) promote consistency in the exercise of sound discretion by board members in the imposition of sanctions in disciplinary matters; and,

(C) provide guidance for board members for the resolution of potentially contested matters.

(2) Limitations. This subsection shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Medical Practice Act (the "Act"), §6.11 (relating to Denial of License; Discipline of License Holder). This subsection shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(3) Aggravation. The following subparagraphs (A)-(O) of this paragraph may be considered as aggravating factors so as to merit more severe or more restrictive action by the board.

(A) patient harm and the severity of patient harm;

(B) economic harm to any individual or entity and the severity of such harm;

(C) environmental harm and severity of such harm;

(D) increased potential for harm to the public;

(E) attempted concealment of misconduct;

(F) premeditated misconduct;

(G) intentional misconduct;

(H) motive;

(I) prior misconduct of a similar or related nature;

(J) disciplinary history;

(K) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(L) violation of a board order;

(M) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(N) lack of rehabilitative potential or likelihood for future misconduct of a similar nature; and,

(O) relevant circumstances increasing the seriousness of the misconduct.

(4) Extenuation and Mitigation. The following subparagraphs (A)-(O) of this paragraph may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive action by the board.

(A) absence of patient harm;

(B) absence of economic harm to any individual or entity;

(C) absence of environmental harm;

(D) absence of potential harm to the public;

(E) self-reported and voluntary admissions of misconduct;

(F) absence of premeditation to commit misconduct;

(G) absence of intent to commit misconduct;

(H) motive;

(I) absence of prior misconduct of a similar or related nature;

(J) absence of a disciplinary history;

(K) implementation of remedial measures to correct or mitigate harm from the misconduct;

(L) rehabilitative potential;

(M) prior community service and present value to the community;

(N) relevant circumstances reducing the seriousness of the misconduct; and,

(O) relevant circumstances lessening responsibility for the misconduct.

(e) Scope of Practice.

(1) Except as provided by paragraph (2) of this subsection, a license to practice acupuncture shall be denied or, after notice and hearing, revoked if the holder of a license has performed acupuncture on a person who was not evaluated by a physician or dentist, as appropriate, for the condition being treated within twelve months before the date acupuncture was performed.

(2) The holder of a license may perform acupuncture on a person who was referred by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners if the licensee commences the treatment within 30 days of the date of the referral. The licensee shall refer the person to a physician after performing acupuncture 30 times or for 120 days, whichever occurs first, if no substantial improvement occurs in the person's condition for which the referral was made.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, an acupuncturist holding a current and valid license may without a referral from a physician, dentist, or chiropractor perform acupuncture on a person for smoking addiction, weight loss, or, as established by the medical board with advice from the acupuncture board by rule, substance abuse.

§183.7. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received, or gathered by the board shall be confidential as provided by the Act, and no employee, agent, or member of the board may disclose information contained in such files except in the following circumstances:

(1) to the appropriate licensing authorities in other states, the District of Columbia, or a territory or country in which the acupuncturist is licensed;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed;

(3) to a health care entity upon receipt of written request. Disclosures by the board to a health care entity shall include only information about a complaint filed against an acupuncturist that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis of and current status of any complaint under active investigation; and

(4) to other persons if required during the conduct of the investigation.

(b) Request for Information and Records.

(1) Patient records. Upon the request of the board or board representatives, a licensee shall furnish to the board legible copies of patient records in English or the original records within 14 days of the date of the request.

(2) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the medical board or acupuncture board. This explanation shall include all details as the medical board or acupuncture board may request and shall be furnished within 14 days of the date of the medical or acupuncture board's request.

(c) Professional Liability Suits and Claims. Following receipt of a notice of claim letter or a complaint filed in court against a licensee that is reported to the acupuncture board, the licensee shall furnish to the medical or acupuncture board the following information within 14 days of the date of receipt of the medical or acupuncture board's request for said information:

(1) a completed questionnaire to provide summary information concerning the suit or claim;

(2) a completed questionnaire to provide information deemed necessary in assessing the licensee's competency;

(3) true, legible, and complete copies of the licensee's office patient records and hospital records, if applicable, concerning the patient on whose behalf damages are sought; and

(4) current information on the status of any suit or claim previously reported to either board.

(d) Impaired Acupuncturists.

(1) The board shall require a licensee to submit to a mental and/or physical examination by physician or physicians designated by the medical or acupuncture board if either board has probable cause to believe that the licensee is impaired. Impairment is present if one is unable to practice acupuncture with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, that a certain licensee is impaired;

(B) a sworn statement from a representative of the Texas Acupuncture Association or the Texas Association of Acupuncturists stating that the representative is willing to testify before the board that a certain licensee is impaired;

(C) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(D) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(E) evidence of repeated arrests of a licensee for intoxication;

(F) evidence of recurring temporary commitments to a mental institution of a licensee; or

(G) medical records showing that a licensee has an illness or condition which results in the inability to function properly in his or her practice.

(e) Investigation of Professional Review Actions. A written report of a professional review action taken by a peer review committee or a health care entity provided to the acupuncture board must contain the results and circumstances of the professional review action. Such results and circumstances shall include:

(1) the specific basis for the professional review action, whether or not such action was directly related to care of individual patients; and

(2) the specific limitations imposed upon the acupuncturist's clinical privileges, upon membership in the professional society or association, and the duration of such limitations.

(f) Other Reports.

(1) Relevant information shall be reported to the acupuncture board indicating that an acupuncturist's practice poses a continuing threat to the public welfare shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that an acupuncturist's practice constitutes a continuing threat to the public welfare shall be made to the acupuncture board as soon as possible after the peer review committee, licensed acupuncturist or acupuncture student involved reaches that conclusion and is able to assemble the relevant information.

(g) Reporting Professional Liability Claims.

(1) Reporting responsibilities. The reporting form must be completed and forwarded to the Texas State Board of Acupuncture Examiners for each defendant acupuncturist against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for an acupuncturist. If a nonadmitted insurance carrier does not report or if the acupuncturist has no insurance carrier, reporting shall be the responsibility of the acupuncturist.

(2) Separate reports required and identifying information. One separate report shall be filed for each defendant acupuncturist insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

(3) Timeframes and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(4) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(A) If the reporter elects to use a reporting format other than the acupuncture board's form for data required in Part II, there must be enough identification data available to board staff to match the closure report to the original file. The data required to accomplish this include:

(i) name and license number of defendant acupuncturist(s); and

(ii) name of plaintiff.

(B) A court order or settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(5) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance.

Sanctions under the Insurance Code, Article 1.10, § 7, may be imposed for failure to report.

(6) Definition. For the purposes of this subsection a professional liability claim or complaint shall be defined as a cause of action against an acupuncturist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) product liability claims (i.e. where an acupuncturist invented a device which may have injured a patient but the acupuncturist has had no personal acupuncturist-patient relationship with the specific patient claiming injury by the device);

(B) antitrust allegations;

(C) allegations involving improper peer review activities;

(D) civil rights violations; or

(E) allegations of liability for injuries occurring on an acupuncturist's property, but not involving a breach of duty to the patient (i.e. slip and fall accidents).

(8) Claims that are not required to be reported under this chapter may, however, be voluntarily reported.

(9) The reporting form shall be as follows:
Figure: 22 TAC §183.7(g)(9)

§183.8. Procedure–General.

(a) Applicability. These rules shall govern the procedures for the institution, conduct, and determination of all causes and proceedings before the acupuncture board. The purpose of these sections is to provide for a simple and efficient system of procedure before the board; to ensure uniform standards of practice and procedure, public participation, and notice of acupuncture board actions; and a fair and expeditious determination of causes.

(b) Construction. These rules shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers, or authority of the acupuncture board or the substantive rights of any party. They shall be liberally construed, with a view towards the purpose for which they were adopted.

(c) Computation of Time.

(1) Computing time. In computing any period of time prescribed or allowed by these sections, Order of the acupuncture board, or any applicable statute, the period shall begin on the day after the act, event, or default in controversy and end on the last day of such computed period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

(2) Extensions. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties or order of the secretary, hearings examiner, or administrative law judge upon written verified motion duly filed prior to the expiration of the applicable time period, showing good cause for an extension of time and stating that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

(d) Agreement to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the acupuncture board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an Order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

(e) Expiration of Licenses. When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, or unless it has been terminated according to statute and rule, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(f) Pleadings.

(1) Form. Pleadings shall be typewritten or printed upon paper 8 1/2 inches wide and 11 inches long with left and right margins at least one inch wide. Exhibits annexed thereto shall be folded to the same size and conform to §183.10(f) of this title (relating to Procedure–Hearing). Reproductions are acceptable, provided all copies are clear and permanently legible.

(2) Content. Pleadings shall state their purpose, contain a concise statement of the facts in support thereof, and a prayer for the desired relief.

(3) Signature and address. The original of every pleading shall be signed in ink by the party filing the paper, his or her attorney, or by his or her authorized representative. Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the representative.

(4) Certificate of service. A certificate of service by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that I have this _____ day of _____, 20___, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service). Signature." Service of pleadings on and by parties shall be as specified in subsection (k) of this section.

(5) Numbering and Heading. In a contested case the complaint and each pleading shall be numbered with the licensee's license number, centered and underscored six lines down from the top of the first page. In each matter heard before the State Office of Administrative Hearings ("SOAH"), the SOAH docket number shall be centered above the licensee's license number. If a SOAH docket number is not available when the complaint or pleading is filed, a space will be provided for its entry at a later date. Double spaced below the number shall be the heading, as follows:
Figure: 22 TAC §183.8(f)(5)

(6) Other pleadings. All pleadings for which no official form is prescribed shall contain:

(A) the name of the party seeking to bring about or prevent action by the board;

(B) the names of all other known parties in interest;

(C) a concise statement of the facts relied upon by the pleader;

(D) a prayer stating the type of relief, action, or order desired by the pleader;

(E) any other matter required by statute; and

(F) a certificate of service, if required by subsection (k) of this section.

(7) Amendments. Any pleading may be amended at any time upon motion or the filing of an amended application, complaint, or petition for which notice, if required, shall be issued pursuant to subsection (g) of this section.

(8) Incorporation by reference of agency records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency. This section shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

(9) Classification. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(10) Docketing. Upon receipt of a complaint, an application, or other pleading which is intended to institute a proceeding before the acupuncture board, the secretary, executive director, designee, or board staff shall docket the same as a pending proceeding and serve notice thereon as specified in subsection (k) of this section.

(11) Filing of documents. All documents relating to any proceeding pending or to be instituted before the acupuncture board shall be filed with the secretary of the acupuncture board, the executive director, or Director of Hearings for the medical board. Documents shall be deemed filed only when actually marked with the official stamp of the medical board, accompanied by the filing fee, if any, required by statute or board rules.

(g) Notice of Adjudicative Hearing Proceedings.

(1) Notice. Before revoking or suspending any license or registration, or denying an application for a license or registration, or reprimanding any licensee or registrant, the acupuncture board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days.

(2) Content. Such notice of adjudicative hearing shall include:

(A) a statement of time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of the statutes and rules involved; and

(D) a short and plain statement of the matters asserted.

(3) More definite statement. If the acupuncture board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on a timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; however, the board shall not be required to plead its evidence in its complaint.

(4) Service. The notice of adjudicative hearing shall be served as specified in subsection (k) of this section.

(h) Conduct and Decorum. Each person, party, witness, attorney, or other representative shall comport himself or herself in all proceedings with proper dignity, courtesy, and respect for the board, the secretary, the executive director, the examiner, and all other parties. Disorderly or disruptive conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

(i) Classification of Parties. Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

(j) Parties in Interest. Any party in interest may appear in any proceeding before the board. All appearances shall be subject to a motion to strike upon a showing that the party has no justifiable or administratively cognizable interest in the proceeding.

(k) Service in Nonrulemaking Proceedings.

(1) Personal service. Where personal service of notice by the acupuncture board is required, the acupuncture board shall serve in person or by mailing the notice of adjudicative hearing, certified or registered mail, return receipt requested, to the last address filed with the board by the person entitled to receive such notice.

(2) Service by publication. Where personal service cannot be made as contemplated in paragraph (1) of this subsection, then service of notice shall be by publication of the notice of adjudicative hearing in a newspaper of general circulation in the county in which the licensee was last known to have his or her other practice once each week for two consecutive weeks, the last publication to be at least ten days prior to the date of the hearing. When the licensee's whereabouts are unknown or his or her last known place of practice is outside the State of Texas, notice by publication is to be made by having published once a week for two consecutive weeks in a newspaper of general circulation published in the county of the last known place of practice in Texas if known, the last publication to be at least ten days prior to the date of the hearing. Return of the service of notice by publication shall be by publisher's affidavit together with a copy of the published notice which shall be introduced into the record at the hearing.

(3) Service of pleadings. A copy of any document filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered to other party of record by the filing party. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the presiding officer or hearings examiner striking the document from the record.

(l) Appearances Personally or by Representative. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state. This right may be waived. Any person may appear on his own behalf or by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

(m) Filing Fees. Each application, petition, or complaint which is intended to institute a proceeding before the acupuncture board shall be accompanied by the filing fee, if any, prescribed by law and these sections.

(n) Forms. Official forms for use in certain board proceedings are incorporated in the appendix to these sections. The previously-mentioned official forms shall be printed, when appropriate, under the supervision of the secretary or executive director who shall furnish copies thereof to any person upon request.

(o) Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, members or employees of the acupuncture board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative except on notice and opportunity for all parties to participate.

§183.9. Procedure–Prehearing.

(a) Discovery. After the initiation and filing of a formal complaint, or upon the filing of the acupuncture board's initial pleading in any other contested matter, the following discovery rules shall apply.

(1) Preliminary Discovery. Not later than 30 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the following:

(A) a preliminary list of the names and last known addresses of potential witnesses which the responding party reasonably anticipates may testify in its case-in-chief;

(B) a list or copy of all documents, records, photographs, moving pictures, films, videotapes, audio recordings, and other such material in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect and copy such items;

(C) a list identifying all tangible items in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect such items; and

(D) a list of the names and last known addresses of any experts the responding party anticipates calling to testify in its case-in-chief.

(2) Experts. Upon written request, a list identifying all of the following documents and tangible items pertaining to the responding party's experts, or copies of such documents and tangible items, shall be provided to the requesting party before the initial deposition of such an expert, or no later than five days prior to the hearing on the case if no deposition of the expert has been taken:

(A) documents and tangible items which have been provided to any expert who is expected to testify in the case;

(B) documents and tangible items which have been made or prepared by any expert used for consultation if such documents and tangible items form the basis, either in whole or in part, of the opinion of an expert who is expected to testify in the case; and

(C) a report from each expert who is anticipated to testify in the case which generally synopsizes the expected testimony of the expert.

(3) Inspection and Copying. Documents and tangible items which are identified in a discovery response, but not provided, shall be made available for inspection and copying at a reasonable time and place upon the written request of an opposing party.

(4) Depositions. The taking and use of depositions shall be governed by the Administrative Procedure Act or by an agreement between the parties either on the record or in a writing signed by the parties or their representatives. Except by an agreement between the parties either on the record or in a writing signed by the parties or their representatives, depositions shall be conducted and completed no later than five days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in a writing signed by the parties or their representatives, may result in the imposition of the sanctions and remedies set forth in subsection (e) of this section.

(5) Remedies and Sanctions. A failure to comply with a discovery request to the extent required by board rule, the Act, or as agreed between the parties in a discovery agreement, may be remedied and sanctioned by ordering any or all of the following:

(A) granting of a continuance;

(B) limitations or restrictions on the admissibility and use of the evidence, to include exclusion of the evidence;

(C) payment by a party of the actual travel, lodging, and court reporter costs, but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements under board rule;

(D) imposition of a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements under board rules; and

(E) remedies and sanctions agreed to by the parties in writing or on the record.

(6) Good Cause. Good cause for failure to comply with a discovery request to the extent required by law, board rule, or as agreed between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:

(A) lack of knowledge of the existence of the information or material;

(B) lack of access to or control of the information or material; and

(C) an act of God or providence.

(7) Calculation of Deadlines and Time Limits.

(A) For purposes of discovery under board rules, deadlines and time limits shall be based on calendar days; however, when a deadline falls on a Saturday, Sunday, or legal holiday, the deadline shall be extended to the next calendar day which is not a Saturday, Sunday, or legal holiday.

(B) Discovery requests promulgated less than seven days prior to the scheduled hearing date shall not require a response unless agreed to by the parties on the record or in a writing signed by the parties or their representatives; however, other discovery requests promulgated at a time prior to the scheduled hearing date which by their timing allow less than the applicable deadline period for a response, shall not require a response until submitted for approval by motion of the requesting party to the administrative law judge and approved in whole or in part by order of the administrative law judge. Any such approval shall provide for one or more of the following:

(i) modified response deadlines;

(ii) a continuance of the hearing date charged to the party requesting discovery; or

(iii) such reasonable requirements which are necessary to minimize any anticipated burden or inconvenience to the responding party as a result of the lateness of the discovery request.

(8) Discovery Agreements. Discovery requirements governing board proceedings may be modified by agreement of the parties either on the record or in a writing signed by the parties or their representatives.

(9) Ordered Modification of Discovery. Modification of discovery requirements under board rules may be ordered by an administrative law judge pursuant to an agreement of the parties or the discovery provisions under board rules pertaining to remedies and sanctions.

(10) Official Notice. No later than three days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing.

(11) Final Witness List. No later than five days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses of the witnesses each party intends to call to testify in its case-in-chief.

(12) Waiver of Privilege/Confidentiality. The provision of any information or material in response to a discovery request which may be the subject of a privilege or confidentiality requirement under the Act or other applicable law shall not constitute a waiver of any such privilege or confidentiality requirement with respect to other such information or material not provided.

(13) Supplementation. Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable.

(b) Subpoenas.

(1) Authority. Pursuant to the Act, §2.09(I), the acupuncture board has the authority through the medical board to issue subpoenas to compel the attendance of witnesses and subpoena duces tecum to compel the production of books, records, or documents when requested by a party or on the board's own motion.

(2) Request. A party may request at any time during the pendency of a proceeding, including a contested case, that the acupuncture board through the medical board issue a subpoena or subpoena duces tecum upon a showing of good cause, the relevancy, and necessity of the testimony or documents, lack of undue inconvenience, imposition, or harassment of the party required to produce the testimony or documents and the deposit of sums sufficient to insure payment of expenses incident to the subpoenas.

(A) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(B) The party requesting a subpoena duces tecum shall describe and recite with great clarity, specificity, and particularity the books, records, or documents to be produced.

(3) Ministerial Act. When requested by a party to issue a subpoena or subpoena duces tecum the board is performing a ministerial act and shall do so in accordance with the law; however, the board shall not be responsible for inadequacies, insufficiencies, or lack of pleading by the requesting parties or the consequences thereof.

(4) Service and Expenses. A subpoena issued at the request of the board's staff may be served either by a board investigator or by certified mail, return receipt requested. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the board's staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(5) Fees and Travel. A witness called at the request of the board shall be paid a fee of $25 per day and reimbursed for travel in like manner as board employees. An expert witness called at the request of the board shall be paid a fee of $300 per day and reimbursed for travel in like manner as board members.

(c) Show Compliance Proceeding. Pursuant to the Medical Practice Act, §4.02, and the Administrative Procedure Act, §2001.054, the following rules shall apply to show compliance proceedings.

(1) Prior to institution of acupuncture board proceedings to revoke, suspend, or take disciplinary action relating to a license or to involuntarily modify restrictions on a license, the licensed acupuncturist shall be given an opportunity to show compliance with all requirements of law for the retention of an unrestricted license either in writing or through a personal appearance at an informal meeting with one or more representatives of the board at the option of the licensee.

(2) The opportunity to show compliance under this section shall be extended to a licensee in writing by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(3) Prior to a show compliance proceeding under this section, the licensee shall be provided with a brief written statement of the nature of the allegations to be addressed at the show compliance proceeding along with a brief written statement of the provisions of the Act which may be grounds for board disciplinary action. These statements shall be provided to the licensee by certified mail, return receipt requested, overnight or express mail, or registered mail to the last mailing address of the licensee or the licensee's attorney on file with the board. The licensee shall also be provided with written notice of the time, date, and location of the show compliance proceeding and the rules governing the proceeding by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(4) A licensee shall be afforded an opportunity to show compliance with the law as provided for under this section; however, a licensee's refusal or failure to take such an opportunity when offered, or when scheduled with proper notice to the licensee, shall not require that an additional show compliance opportunity be made available. In the discretion of the board's representative(s) an additional show compliance opportunity may be afforded to a licensee who refused a previous opportunity or failed to attend a scheduled show compliance proceeding.

(5) One or more members of the acupuncture board shall conduct the show compliance proceeding as the board's representative(s). The representative who has seniority on the board shall chair the proceeding. In the event a public member of the board serves as the only board representative in such a proceeding, a board consultant

or the medical board's executive director, if the executive director is a physician, may serve as an advisor to the representative.

(6) The show compliance proceeding shall allow:

(A) the board staff to present a synopsis of the allegations and the facts which the board staff reasonably believes could be proven by competent evidence at a hearing;

(B) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the acupuncture board's representative(s) are relevant to the proceeding;

(D) representation of the licensee by counsel;

(E) presentation of oral or written statements by the licensee or the licensee's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and,

(G) questioning of witnesses.

(7) The acupuncture board's representative(s) shall exclude from the show compliance proceeding all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, board members, and board staff.

(8) During the show compliance proceeding, the acupuncture board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the board's representative(s) or the board's employees.

(9) Except with the agreement of the licensee, during the deliberations of the acupuncture board's representative(s) at a show compliance proceeding, the acupuncture board representative(s) shall exclude the board staff who presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, witnesses, and the general public. The board's legal counsel or a representative of the Office of the Attorney General shall be available to assist the representative(s) in deliberations.

(10) After a show compliance proceeding has been held, the acupuncture board staff and the acupuncture board's representative(s) shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with acupuncture board members and administrative law judges concerning the case.

(11) To the extent possible, acupuncture board members are required to serve as representatives at show compliance proceedings an equal number of times during a calendar year. In the event an acupuncture board member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the Director of Enforcement for the medical board who shall then bring the complaint to the attention of the presiding officer of the acupuncture board for submission to the acupuncture board for a resolution by a majority vote.

(12) The show compliance proceeding may be held in conjunction with, and simultaneously with, an informal settlement conference held pursuant to subsection (h) of this section.

(13) The acupuncture board's representative(s) may call upon board staff at any time for assistance in conducting the show compliance proceeding.

(14) The acupuncture board's representative(s) shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Act, §4.05(c).

(15) At the conclusion of the show compliance proceeding, the acupuncture board's representative(s) shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representative(s) shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases.

(16) The licensee may have the show compliance proceeding recorded and reduced to writing at the licensee's expense after providing written notice to the Director of Enforcement for the medical board at least one day in advance of the show compliance proceeding. Recording and transcribing equipment shall be provided by the licensee. Efforts to mediate the disputed matters or discussions concerning possible settlement options shall not be recorded.

(d) Prehearing Conferences.

(1) Appearance. In any contested case the hearings examiner or administrative law judge on his or her own motion or on the motion of a party, may direct the parties, their attorneys or representatives to appear before him or her at a specified time and place for a conference prior to the hearing for the purpose of:

(A) formulating issues;

(B) simplifying issues;

(C) discussing matters to be officially noticed;

(D) discussing the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as official records of the acupuncture board or medical board, to the end of avoiding the unnecessary introduction of proof;

(E) ruling on any previously filed motions;

(F) discussing the procedure at a hearing;

(G) discussing the limitation, where possible, of the number of witnesses; and

(H) discussing such other matters as may aid in the simplification of the proceedings.

(2) Order. Action taken at the conference shall be recorded in an appropriate Order by the hearings examiner or administrative law judge.

(e) Motions.

(1) Any motion filed in a pending proceeding shall, unless made during a hearing:

(A) be in writing;

(B) set forth the specific grounds and reasons therefor, and the relief sought;

(C) be distributed to all parties of record over a certificate of service as outlined in §183.8(h) and (k) of this title (relating to Procedure–General);

(D) be filed with the hearings examiner not less than five days prior to the hearing date;

(E) if based on facts or matters which are not of record, be supported by an affidavit; and

(F) be ruled on by the hearings examiner at the prehearing conference or at the hearing.

(2) Motions for continuance or for dismissal of complaint shall:

(A) comply with subsection (a)(1)-(6) of this section;

(B) make reference to all prior motions of the same nature filed in the same proceeding.

(3) When a complaint has proceeded to its hearing date, pursuant to the notice issued therein, no continuance or dismissal shall be granted by the hearings examiner or administrative law judge without the consent of all parties involved.

(f) Consolidated Hearings. A motion for consolidation of two or more complaints, applications, petitions, or other proceedings shall comply with subsection (e) of this section. Proceedings shall not be consolidated unless the board shall find that:

(1) the proceedings involve common questions of law and fact; and,

(2) separate hearings would result in unwarranted expense, delay, or substantial injustice.

(g) Place and Nature of Hearings. All hearings conducted in any proceedings shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the board shall designate another place of hearing in the interest of the public.

(h) Informal Disposition. Pursuant to the Act, §4.02 and §4.025, and the Administrative Procedure Act, §2001.056, the following rules shall apply to informal dispositions of any complaint or matter relating to the Act or of any contested case.

(1) The acupuncture board may make an informal disposition of any complaint or matter relating to the Act or of any contested case by stipulation, agreed order, agreed settlement, consent order, or default.

(2) In the event the acupuncture board makes such a disposition of a complaint, contested case, or other matter, the disposition shall be in writing and, if appropriate, the writing shall be signed by the licensee.

(3) To facilitate the expeditious disposition of complaints or contested cases, the acupuncture board may provide a licensee with an opportunity to attend an informal settlement conference. The informal settlement conference may be held in conjunction with and simultaneously with a show compliance proceeding held pursuant to subsection (c) of this section.

(4) If the opportunity for an informal settlement conference is provided to a licensee, the licensee shall be provided with a brief statement of the nature of the allegations to be addressed at the conference along with a brief statement of the provisions of the Act which may be grounds for board disciplinary action. These statements shall be provided to the licensee by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board. The licensee shall also be provided with written notice of the time, date, and location of the conference and the rules governing the proceeding by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(5) One or more members of the acupuncture board shall conduct the informal settlement conference as the board's representative(s). The representative who has seniority on the board shall chair the conference. In the event a public member of the acupuncture board serves as the only acupuncture board representative in such a conference, a board consultant or the medical board's executive director, if the executive director is a physician, may serve as an advisor to the representative.

(6) The informal settlement conference shall allow:

(A) board staff to present a synopsis of the allegations and the facts which staff reasonably believes could be proven by competent evidence at a hearing;

(B) the licensee to reply to the acupuncture board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representative(s) are relevant to the proceeding;

(D) representation of the licensee by counsel;

(E) presentation of oral or written statements by the licensee or the licensee's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and,

(G) questioning of witnesses.

(7) The acupuncture board's representative(s) shall exclude from the informal settlement conference all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, board members, and board staff.

(8) During the informal settlement conference, the acupuncture board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the acupuncture board's representative(s) or the board's employees.

(9) Except with the agreement of the licensee, during the deliberations of an appropriate settlement, the acupuncture board's representative(s) at an informal settlement conference shall exclude the board staff which presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, witnesses, and the general public. A board legal counsel or representative of the Office of the Attorney General shall be available to assist the representative(s) in their deliberations.

(10) After an informal settlement conference has been held, the staff of the board and the acupuncture board's representative(s) shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.

(11) To the extent possible, acupuncture board members are required to serve as representatives at informal settlement

conferences an equal number of times during a calendar year. In the event an acupuncture board member has a complaint regarding the frequency or infrequency of service as a representative required for any member, the complaint may be routed in writing to the Director of Enforcement for the medical board who shall then bring the complaint to the attention of the presiding officer of the acupuncture board for submission to the acupuncture board for a resolution by a majority vote.

(12) At the informal settlement conference, the acupuncture board's representative(s) will attempt to mediate disputed matters, and the acupuncture board's representative(s) may call upon the board staff at any time for assistance in conducting the informal settlement conference.

(13) The acupuncture board's representative(s) shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Act, § 4.05(c).

(14) Although notes may be made by the participants, mechanical or electronic recordings shall not be made of settlement discussions, mediation efforts, or the informal settlement conference.

(15) The settlement conference shall be informal and shall not follow the procedures established under this title for contested cases.

(16) At the conclusion of the informal settlement conference, the acupuncture board's representative(s) shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representative(s) shall make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases. The acupuncture board's representative(s) may make recommendations to the licensee for resolution of the issues. Such recommendations may include any disciplinary actions authorized by the Act and such other reasonable restrictions or remedial actions that are in the public interest. These recommendations may be subsequently modified by the acupuncture board's representative(s) or staff based on new information, a change of circumstance, or to expedite a resolution in the interest of protecting the public. The board's representative(s) may also conclude that the acupuncture board lacks jurisdiction or that a violation of the Act or the acupuncture board's rules has not been established, and may recommend that the investigation be closed or referred for further investigation. These recommendations may be adopted, modified, or rejected by the duly convened acupuncture board or through the duly authorized actions of the acupuncture board's Discipline and Ethics Committee.

(17) The licensee may either accept or reject the settlement recommendations proposed by the board's representative(s). If the licensee accepts the recommendations, the licensee shall execute the settlement agreement in the form of an Agreed Order or affidavit as soon thereafter as is practicable. If the licensee rejects the proposed agreement, the matter shall be referred to the board's staff for appropriate disposition as directed by the acupuncture board's representative(s) or the Discipline and Ethics Committee. The acupuncture board through board staff may also schedule the matter for a hearing as described in §183.10 of this title (relating to Procedure–Hearing).

(18) Following acceptance and execution by the licensee of the settlement agreement, the agreement shall be submitted to the acupuncture board for approval.

(19) The following relate to consideration of an agreed disposition by the acupuncture board.

(A) Upon an affirmative majority vote, the acupuncture board shall enter an order approving the proposed settlement agreement. The Order shall bear the signature of the presiding officer of the board at such meeting and shall be referenced in the minutes of the board.

(B) If the acupuncture board does not approve a proposed settlement agreement, the licensee shall be so informed and the matter shall be referred to the board staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an additional informal settlement conference, or a hearing.

(C) To promote the expeditious resolution of any complaint or matter relating to the Act or of any contested case, with the approval of the executive director of the medical board, or the Discipline and Ethics Committee of the acupuncture board, board staff may present a proposed settlement agreement to the acupuncture board for consideration and acceptance without conducting an informal settlement conference. If the acupuncture board does not approve such a proposed settlement agreement, the licensee shall be so informed and the matter shall be referred to board staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an informal settlement conference, or a hearing.

§183.10. Procedure–Hearing.

(a) Presiding Officer. When the board en banc, or a committee or panel of the board, conducts a hearing pursuant to the Act, the following apply:

(1) The hearing will be presided over by the presiding officer.

(2) The presiding officer shall have the authority to:

(A) administer oaths;

(B) examine witnesses;

(C) rule on the admissibility of evidence;

(D) rule on motions;

(E) rule on amendments to pleadings;

(F) recess the hearing from day to day; and

(G) refer the hearing to an administrative law judge at the State Office of Administrative Hearings.

(b) Administrative Law Judges/Hearings Examiners.

(1) Authority. When the board utilizes an administrative law judge or hearings examiner pursuant to the Act, §4.05(a), such hearings shall be conducted in accordance with the Administrative Procedure Act, the Act, the rules of this board, and all other applicable law.

(2) Duties. Except for accepting or rejecting proposed findings of fact or conclusions of law, issuing final orders on the merits, dismissing complaints, and making recommendations as to a licensee's discipline, the administrative law judge or hearings examiner shall have all the authority which the board has regarding the conduct of hearings including, without limitation, the following:

(A) to hold hearings and issue notices;

(B) to administer oaths and affirmations;

(C) to direct all parties to enter their appearance on the record;

(D) to subpoena and examine witnesses;

(E) to subpoena documents and other physical evidence;

(F) to hold conferences, including prehearing conferences, before or during the hearing, to consider the matters specified in §183.9(d) of this title (relating to Procedure–Prehearing);

(G) to regulate the course and conduct of the hearing including, without limitation, setting the time and place of the hearing and/or continued hearings; fixing the time for filing of briefs and other documents; receiving relevant evidence; excluding evidence which is irrelevant, immaterial, repetitious, or cumulative; ruling upon offers of proof; regulating the manner of examination to prevent needless and unreasonable harassment, intimidation, expense, inconvenience, or embarrassment of any witness or party at a hearing; removing disruptive individuals; and ruling on motions;

(H) to submit in writing to the parties, a proposal for decision containing the elements specified in §183.11(a) of this title (relating to Procedure–Posthearing);

(I) to present and explain in person his or her proposal for decision to the acupuncture board for its consideration and final action; and

(J) to dispose of any other matter that arises in the course of a hearing and to take any action authorized by the rules of the acupuncture board, the Act, the Administrative Procedure Act, and all other applicable law.

(c) Order of Proceeding.

(1) Hearings. In all proceedings, the petitioner, applicant, or complainant, respectively, shall be entitled to open and close. Where several proceedings are heard on a consolidated record, the hearings examiner or administrative law judge shall designate who shall open and close. The examiner in all cases shall determine whether and at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, the examiner may call upon any party or the acupuncture board staff for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record.

(2) Before the acupuncture board. During proceedings before the board, en banc, the order of proceeding shall be the following.

(A) The hearings examiner or administrative law judge shall present his or her proposal for decision and recommended order, explaining them as specified in subsection (b) of this section.

(B) The party adversely affected shall briefly state their reasons for being so affected, supported by the evidence of record.

(C) The other party or parties shall be given the opportunity to respond.

(D) The acupuncture board as complainant shall have the right to close.

(E) The presiding officer or a member of the acupuncture board may question any party as to any matter relevant to the proceeding.

(F) At the end of any argument by the parties, the acupuncture board shall deliberate the matter in executive session and announce its final decision in open meeting.

(3) Limitation. A party shall not inquire into the mental processes used by the acupuncture board in arriving at its decision, nor be disruptive of the orderly procedure of the acupuncture board's routine.

(d) Reporter and Transcripts.

(1) Option. A party has the option of furnishing his or her own stenographic reporter at his or her own expense or using the reporter on the staff of the board. If a party elects to provide his or her own reporter, the party shall notify the acupuncture board prior to the commencement of the hearing.

(2) Original. The original transcript shall be delivered to the acupuncture board as soon as practicable. A stenographic reporter may sell copies of a transcript. If the respondent in the proceedings requests the original record (statement of fact) of the testimony and evidence of a disciplinary hearing, the costs for the original record (transcript) shall be borne by the respondent (appellant) acupuncturist. Any subsequent copies of the record (transcript) shall be borne by any person requesting same.

(3) Corrections. Suggested corrections to the transcript of the record may be offered within ten days after the transcript is filed in the proceeding, unless the acupuncture board shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the acupuncture board. If suggested corrections are not objected to, the acupuncture board will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the acupuncture board which shall then determine the manner in which the record shall be changed, if at all.

(e) Dismissal Without Hearing.

(1) The acupuncture board may entertain motions for dismissal for the following reasons:

(A) failure to prosecute;

(B) unnecessary duplication of proceedings or res judicata;

(C) withdrawal;

(D) moot questions or stale petitions; or

(E) lack of jurisdiction.

(2) Such motions must meet the criteria of §183.9(e) of this title (relating to Procedure–Prehearing).

(3) These motions may be argued prior to the board ruling thereon.

(f) Evidence.

(1) Rules. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The acupuncture board shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved.

(2) Objections. Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings

of the hearings examiner or administrative law judge during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearings examiner or administrative law judge the action which he or she desires.

(3) Offer of proof. If evidence is excluded from the record by an exclusionary ruling of the hearings examiner or administrative law judge, the evidence may be included in the record by an offer of proof by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence. An offer of proof shall be sufficient to preserve the evidence for review.

(4) Acupuncturist's office records. When subpoenaed by the acupuncture board, the office records of each patient shall have stapled thereto an affidavit in the form approved and furnished by the board which contains the requisite elements to comply with the Texas Rules of Evidence, 902 (10)b, relating to the form of affidavits.

(5) Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(A) Copies. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearings examiner or administrative law judge may limit those admitted to a number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement the examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(B) Prepared testimony. In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the hearings examiner or administrative law judge, the prepared testimony of witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness' being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

(6) Official notice. Official notice may be taken of all facts judicially cognizable and of records of the acupuncture board or medical board. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the acupuncture board and its staff may be utilized in evaluating the evidence.

(7) Limitations on number of witnesses. The hearings examiner or administrative law judge shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

(8) Exhibits.

(A) Form: Documentary exhibits shall be 8 1/2 inches by 11 inches in length, so as to not unduly encumber the files and records of the board. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to fact material and relevant to the issues involved in a particular proceeding.

(B) Marking and service: The original of each exhibit offered shall be marked sequentially for identification and tendered for inclusion in the evidentiary record. One copy shall be furnished to the hearings examiner or administrative law judge and one copy to each party of record or his or her attorney or representative.

(9) After hearing. No exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing unless specifically directed by the hearings examiner, administrative law judge, presiding officer, or by the board with copies of the late-filed exhibit served on all parties of record.

§183.11. Procedure–Posthearing.

(a) Proposals for Decision.

(1) Elements. In addition to any other requirement of the Act or the Administrative Procedure Act, the administrative law judge shall serve on the parties a proposal for decision which shall contain:

(A) a summary of the evidence adduced by each party;

(B) a statement of the hearings examiner's or administrative law judge's reasons for the proposed decision;

(C) findings of fact expressed in clear, concise factual terms, neither summarizing nor reciting the evidence. Findings of fact must be based explicitly on the evidence and on matters officially noticed;

(D) conclusions of law necessary to the proposed decision;

(E) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board; and

(F) recommended disposition or discipline.

(2) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the administrative law judge on each party, his or her attorney of record or representative, and the board. Service of the proposal for decision shall be in accordance with §183.8(f) and (k) of this title (relating to Procedure–General).

(3) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.

(4) Proposed findings. Only when the hearings examiner or administrative law judge requests a party or parties to submit findings of fact will it be necessary for the administrative law judge to rule on each proposed finding in the recommended order.

(b) Exceptions and Replies.

(1) Entitlement. Any party of record who is aggrieved by the administrative law judge's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within ten days of the filing of the exceptions. Exceptions and replies shall be filed with the administrative law judge. Any extensions of time shall be as provided by §183.8(c) of this title (relating to Procedure–General).

(2) Form. The form of exceptions and replies are as specified in §183.8(f) of this title (relating to Procedure–General).

(3) Content. Each exception or reply to a finding of fact shall be stated concisely and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(4) Briefs. Briefs shall be filed only when requested or permitted by the acupuncture board, presiding officer, or administrative law judge.

(5) Service. Exceptions and replies shall be served upon every party of record by the filing party pursuant to §183.8(k) of this title (relating to Procedure–General).

(c) Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the board. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.

(d) Final Decisions and Orders.

(1) Board action. The proposal for decision may be acted on by the board upon the expiration of ten days after the filing of replies to exceptions to the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his or her attorney of record.

(2) Recorded. All final decisions and orders of the board shall be in writing or stated in the record and shall be signed by the presiding officer of the board. A final order shall include findings of fact and conclusions of law, separately stated.

(3) Imminent peril. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(4) Changes to Recommendation. To protect the public interest and ensure that sound principles govern the decisions of the acupuncture board, it shall hereafter be the policy of the acupuncture board to change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge when the proposed order is:

(A) erroneous;

(B) against the weight of the evidence;

(C) based on unsound medical principles;

(D) based on an insufficient review of the evidence;

(E) not sufficient to protect the public interest; or

(F) not sufficient to adequately allow rehabilitation of the acupuncturist.

(5) Amended order. If the acupuncture board modifies, amends, or changes the administrative law judge's recommended order, an order shall be prepared reflecting the acupuncture board's changes as stated in the record.

(6) Administrative finality. A final order or acupuncture board decision is administratively final:

(A) upon a finding of imminent peril to the public health, safety, or welfare, as outlined in paragraph (3) of this subsection;

(B) when absent the filing of a timely motion for rehearing upon the expiration of 20 days from the date the final order or acupuncture board decision is entered; or

(C) when a timely motion for rehearing is filed and the motion for rehearing is overruled by board order or operation of law as outlined in subsection (e) of this section.

(7) Rendering of final decision or order. The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by an administrative law judge, an extension of time for the issuing of a proposal for decision may be announced at the conclusion of the hearing.

(e) Motions for Rehearing.

(1) Filing Times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by mail, of the final decision or order of the acupuncture board.

(2) Board Action. Action by the acupuncture board on the motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The acupuncture board may, by written order, extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may, by agreement, with the approval of the acupuncture board, provide for a modification of the times provided in this section.

(f) The Record. The record in a contested case shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings of fact, conclusions of law, exceptions, and replies;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda, correspondence from parties, or other data submitted to or considered by the administrative law judge or members of the agency who are involved in making the decision.

(g) Costs of Appeal. A party appealing a final decision of the acupuncture board in a contested case may be ordered by the acupuncture board to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

§183.12. Patient Records.

(a) Acupuncturists licensed under the act shall keep and maintain adequate records of all patient visits or consultations which shall, at a minimum, include:

(1) the patient's name and address;

(2) vital signs;

(3) the chief complaint of the patient;

(4) a patient history;

(5) a treatment plan for each patient visit or consultation;

(6) a notation of any herbal medications, including amounts and forms, and other modalities used in the course of treatment with corresponding dates for such treatment;

(7) a system of billing records which accurately reflect patient names, services rendered, the date of the services rendered, and the amount charged or billed for each service rendered;

(8) a written record regarding whether or not a patient was evaluated by a physician or dentist, as appropriate, for the condition being treated within 12 months before the date acupuncture was performed as required by §183.6(e) of this title (relating to Denial of License; Discipline of Licensee);

(9) a written record regarding whether or not a patient was referred to a physician after the acupuncturist performed acupuncture 30 times or for 120 days, whichever occurs first, as required by §183.6(e) of this title in regard to treatment of patients upon referral by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners;

(10) in the case of referrals to the acupuncturist of a patient by a doctor licensed to practice chiropractic by the Texas Board of Chiropractic Examiners, the acupuncturist shall record the date of the referral and the most recent date of chiropractic treatment prior to acupuncture treatment; and,

(11) reasonable documentation that the evaluation required by §183.6(e) of this title was performed or, in the event that the licensee is unable to determine that the evaluation took place, a written statement signed by the patient stating that the patient has been evaluated by a physician within the required time frame on a copy of the following form:
Figure: 22 TAC §183.12(a)(11)

(b) Pursuant to subsection 6.11(g) of the Act, an acupuncturist shall not be required to keep and maintain the documentation set forth in subsection (a)(11) of this section when performing acupuncture on a patient only for smoking addiction or weight loss.

(c) Acupuncturists licensed under the Act shall keep copies of patient treatment records indefinitely and billing records for a period of five years from the time of the last treatment rendered to the patient by the acupuncturist.

(d) Consent for the release of confidential information must be in writing and signed by the patient, or a parent or legal guardian if the patient is a minor, or a legal guardian if the patient has been adjudicated incompetent to manage his personal affairs, or an attorney ad litem appointed for the patient, as authorized by the Texas Mental Health Code (Texas Civil Statutes, Article 5547-1 et seq.); the Mentally Retarded Persons Act of 1977 (Texas Civil Statutes, Article 5547-300); §9, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Texas Civil Statutes, Article 5561c); §2, Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Texas Civil Statutes, Article 5561c-1); Chapter 5, Texas Probate Code; and Chapter 11, Family Code; or a personal representative if the patient is deceased, provided that the written consent specifies the following:

(1) the information or records to be covered by the release;

(2) the reason or purposes for the release; and

(3) the person to whom the information is to be released.

(e) The patient, or other person authorized to consent, has the right to withdraw his consent to the release of any information. Withdrawal of consent does not affect any information disclosed prior to the written notice of the withdrawal.

(f) Any person who receives information made confidential by this act may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

(g) An acupuncturist shall furnish legible copies of patient records requested, or a summary or narrative of the records in English, pursuant to a written consent for release of the information as provided by subsection (d) of this section, except if the acupuncturist determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, and the acupuncturist may delete confidential information about another person who has not consented to the release. The information shall be furnished by the acupuncturist within 30 days after the date of receipt of the request. Reasonable fees for furnishing the information shall be paid by the patient or someone on his behalf. If the acupuncturist denies the request, in whole or in part, the acupuncturist shall furnish the patient a written statement, signed and dated, stating the reason for denial. A copy of the statement denying the request shall be placed in the patient's records. In this subsection, "patient records" means any records pertaining to the history, diagnosis, treatment, or prognosis of the patient.

§183.13. Complaint Procedure Notification.

(a) Methods of Notification. Pursuant to the Act, §2.09(s)(2), for the purpose of directing complaints to the acupuncture board, the acupuncture board and its licensees shall provide notification to the public of the name, mailing address, and telephone number of the acupuncture board by one or more of the following methods:

(1) displaying in a prominent location at their place or places of business, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed in black on a white background in type no smaller than standard 24-point Times Roman print; or

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each bill for services; or

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services.

(b) Approved English Notification Statement. The following notification statement in English is approved by the acupuncture board for purposes of these rules and the Act, §2.09(s)(2), and is a sample of the type print reference in subsection (a) of this section.
Figure: 22 TAC §183.13(b)

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the acupuncture board for purposes of these rules and the Act, §2.09(s)(2), and is a sample of the type print reference in subsection (a) of this section.
Figure: 22 TAC §183.13(c)

§183.14. Medical Board Review and Approval.

(a) Pursuant to §6.10 of the Act, after consulting the acupuncture board, the medical board shall issue a license to practice acupuncture in this state to a person who meets the requirements of the Act and the rules adopted pursuant to the Act.

(b) The issuance, renewal, surrender, or cancellation of a license to practice acupuncture in this state shall be subject to final approval by the medical board after consultation with the acupuncture board.

(c) The acupuncture board recommendations of the revocation, suspension, restriction, probation, cancellation, or surrender of a license to practice acupuncture, as well as all recommended disciplinary actions, dismissals of allegations of violations of the Act, and agreed dispositions, shall be subject to medical board review and final approval by the medical board.

(d) Medical board approval of acupuncture board actions under this section shall be memorialized in the minutes of the medical board, the minutes of a committee of the medical board, or in a writing signed by the medical board's presiding officer, secretary-treasurer, or authorized committee chairman after consideration of the recommendations of the acupuncture board.

§183.15. Construction.

The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Act. In the event of a conflict between this chapter and the provisions of the Act, the provisions of the Act shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Act shall remain in effect.

§183.16. Acudetox Specialist.

(a) For purposes of this chapter, an "acudetox specialist" shall be defined as a person who is certified to practice auricular acupuncture for the limited purpose of treating alcoholism, substance abuse, and chemical dependency.

(b) Any person who does not possess a Texas acupuncture license or is not otherwise authorized to practice acupuncture under the Medical Practice Act (Act), Texas Civil Statutes, Article 4495b, may practice as an acudetox specialist for the sole purpose of the treatment of alcoholism, substance abuse, or chemical dependency upon obtaining certification as an acudetox specialist only under the following conditions listed in paragraphs (1)-(4) of this subsection:

(1) after issuance of certification by the Medical Board, payment of any required fee and receipt of written confirmation of certification from the Medical Board;

(2) after successful completion of a training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency, which has been approved by the Medical Board. Such program in auricular acupuncture shall be 70 hours in length, and shall include a clean needle technique course or equivalent universal infection control precaution procedures course approved by the Medical Board;

(3) if the individual holds an unrestricted and current license, registration, or certification issued by the appropriate Texas regulatory agency authorizing practice as a social worker, a licensed professional counselor, a licensed psychologist, a licensed chemical dependency counselor, a licensed vocational nurse, or a licensed registered nurse; provided, however, that such practice of acudetox is not prohibited by the regulatory agency authorizing such practice as a social worker, professional counselor, psychologist, chemical dependency counselor, licensed vocational nurse, or registered nurse; and,

(4) if the individual works under protocol and has access to a licensed Texas physician or a licensed Texas acupuncturist readily available by telephonic means or other methods of communication.

(c) For purposes of this chapter, auricular acupuncture shall be defined as acupuncture treatment limited to the insertion of needles into five acupuncture points in the ear. These points being the liver, kidney, lung, sympathetic and shen men.

(d) Certification as an acudetox specialist shall be subject to suspension, revocation, or cancellation on any grounds substantially similar to those set forth in the Act, §6.11 or for practicing acupuncture in violation of this chapter.

(e) Practitioners certified as acudetox specialists shall keep records of patient care which at a minimum shall include the dates of treatment, the purpose for the treatment, the name of the patient, the points used, and the name, signature, and title of the certificate-holder.

(f) The fee for certification as an acudetox specialist for the treatment of alcoholism, substance abuse, or chemical dependency shall be set in such an amount as to cover the reasonable cost of administering and enforcing this chapter without recourse to any other funds generated by the Medical or the Acupuncture Board. Such fee shall be $50 for the initial application for certification and $25 per renewal.

(g) Certificate-holders under this chapter shall keep a current mailing and practice address on file with the Medical Board and shall notify the Medical Board in writing of any address change within ten days of the change of address.

(h) Individuals practicing as an acudetox specialist under the provisions of this chapter shall ensure that any patient receiving such treatment is notified in writing of the qualifications of the individual providing the acudetox treatment and the process for filing complaints with the Medical Board, and shall ensure that a copy of the notification is retained in the patient's record.

(i) Applications for certification as an acudetox specialist shall be submitted in writing on a form approved by the Medical Board which contains the information set forth in subsection (b) of this section and any supporting documentation necessary to confirm such information.

(j) Each individual who is certified as an acudetox specialist may annually renew certification by completing and submitting to the Medical Board an approved renewal form together with the following as listed in paragraphs (1)-(3) of this subsection:

(1) documentation that the certification or license as required by subsection (b)(3) of this section is still valid;

(2) proof of any Continuing Auricular Acupuncture Education (CAAE) obtained as provided for in §183.21 of this title (relating to Continuing Auricular Acupuncture Education for Acudetox Specialists); and,

(3) payment of a certification renewal fee in the amount of $25.

(k) Each individual who obtains certification as an acudetox specialist under this section may only use the titles "Certified Acudetox Specialist" or "C.A.S." to denote his or her specialized training.

§183.17. Use of Professional Titles.

(a) A licensee shall use the title "Licensed Acupuncturist," "Lic. Ac.," or "L. Ac.," alongside his/her name on any advertising or other materials visible to the public which pertain to the licensee's practice of acupuncture. Only persons licensed as an acupuncturist may use these titles.

(b) If a licensee uses any additional title or designation, it shall be the responsibility of the licensee to comply with the provisions of the Healing Art Identification Act, Texas Civil Statutes, Article 4590e.

§183.18. Texas Acupuncture Schools.

(a) A licensed Texas acupuncturist operating an acupuncture school in Texas which has not yet been accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or reached candidate status for accreditation by ACAOM, a licensed Texas acupuncturist with any ownership interest in such a school, or a licensed Texas acupuncturist who teaches in or operates such a school, shall ensure that students of the school and applicants to the school are made aware of the provisions of the Medical Practice Act governing acupuncture practice, the rules and regulations adopted by the Texas State Board of Acupuncture Examiners, and the educational requirements for obtaining a Texas acupuncture license to include the rules and regulations establishing the criteria for an approved acupuncture school for purposes of licensure as an acupuncturist by the Texas State Board of Acupuncture Examiners as set forth in subsection (b) of this section.

(b) Compliance with the provisions of subsection (a) of this section shall be accomplished by providing students and applicants with a copy of Subchapter F of the Medical Practice Act, a copy of Chapter 183 (Acupuncture) contained in the Rules of the Texas State Board of Medical Examiners, and the following typed statement:
Figure: 22 TAC §183.18(b)

(c) A licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by ACAOM or is not a candidate for ACAOM accreditation shall not state directly or indirectly, explicitly or by implication, orally or in writing, either personally or through an agent of the acupuncturist or the school, that the school is endorsed, accredited, registered with, affiliated with, or otherwise approved by the Texas State Board of Acupuncture Examiners for any purpose.

(d) Failure to comply with the requirements or abide by the prohibitions of this section shall be grounds for disciplinary action against a licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by ACAOM or is not a candidate for ACAOM accreditation. Such disciplinary action shall be based on the violation of a rule of the Texas State Board of Acupuncture Examiners as provided for in the Medical Practice Act, §6.11(a)(5).

(e) For purposes of licensure and regulation of acupuncturists practicing in Texas, ACAOM approved acupuncture schools in Texas meeting the criteria set forth in §183.2 of this title (relating to Definitions) may issue masters of science in oriental medicine degrees in a manner consistent with the laws of the State of Texas. The Texas State Board of Acupuncture Examiners shall recognize any such lawfully issued degrees. For purposes of licensure and regulation of acupuncturists practicing in Texas, acupuncture schools in Texas which are ACAOM candidates for masters level programs in acupuncture and oriental medicine and who have issued diplomas or degrees during the period of candidacy, may upgrade such degrees to masters degrees upon obtaining full ACAOM accreditation. The Texas State Board of Acupuncture Examiners shall recognize any such lawfully upgraded degrees.

§183.19. Acupuncture Advertising.

(a) License number on print advertising. Except as provided for in subsection (b) of this section, all written advertising communicated by any means or medium which is authorized, procured, promulgated, or used by any acupuncturist shall reflect the current Texas acupuncture license number of the acupuncturist who authorized, procured, promulgated, or used the advertisement and/or is the subject of the advertising. In the event that more than one acupuncturist authorizes, procures, promulgates, uses, and/or is the subject of the advertising, each such acupuncturist shall ensure that any such print medium reflects the current Texas acupuncture license number of the acupuncturist.

(b) Exceptions. The following forms of advertising shall be exempt from the provisions of subsection (a) of this section:

(1) business cards;

(2) office, clinic, or facility signs at the office, clinic, or facility location;

(3) single line telephone listings; and,

(4) billboard advertising.

(c) Misleading or deceptive advertising. Acupuncturists shall not authorize or use false, misleading, or deceptive advertising, and, in addition, shall not engage in any of the following:

(1) hold themselves out as a physician or surgeon or any combination or derivative of those terms unless also licensed by the medical board as a physician or surgeon as defined under the Medical Practice Act, §1.03 (relating to Definitions);

(2) use the terms "board certified" unless the advertising also discloses the complete name of the board which conferred the referenced certification; or,

(3) use the terms "board certified" or any similar words or phrases calculated to convey the same meaning if the advertised board certification has expired and has not been renewed at the time the advertising in question was published, broadcast, or otherwise promulgated.

§183.20. Continuing Acupuncture Education.

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing acupuncture education (CAE) for licensed Texas acupuncturists so as to further enhance their professional skills and knowledge.

(b) Minimum Continuing Acupuncture Education. As a prerequisite to the annual registration of the license of an acupuncturist, the acupuncturist shall complete 17 hours of continuing acupuncture education (CAE) each year in the following categories:

(1) The required hours shall be from courses that are designated or otherwise approved for credit by the Texas State Board of Acupuncture Examiners at the time the course was taken based on a review and recommendation of the Education Committee of the Board.

(2) At least five of the required hours from courses shall be herbology.

(3) At least two hours of the required hours from courses shall be ethics.

(c) Reporting Continuing Acupuncture Education. An acupuncturist must report on the licensee's annual registration form the number of hours and type of continuing acupuncture education completed during the previous year.

(d) Grounds for Exemption from Continuing Acupuncture Education. An acupuncturist may request in writing and may be exempt from the annual minimum continuing acupuncture education requirements for one or more of the following reasons:

(1) catastrophic illness;

(2) military service of longer than one year in duration;

(3) acupuncture practice and residence of longer than one year in duration outside the United States; and/or

(4) good cause shown on written application of the licensee which gives satisfactory evidence to the board that the licensee is unable to comply with the requirements of continuing acupuncture education.

(e) Exemption Requests. Exemption requests shall be subject to the approval of the executive director of the board, and shall be submitted in writing at least 30 days prior to the expiration of the license.

(f) Exemption Duration and Renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed annually upon written request submitted at least 30 days prior to the expiration of the current exemption.

(g) Verification of Credits. The board may require written verification of both formal and informal continuing acupuncture education hours from any licensee and the licensee shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the Board.

(h) Approval of Continuing Acupuncture Education. Continuing Acupuncture Education (CAE) credit hours shall be approved by the Texas State Board of Acupuncture Examiners based on the recommendation of the Education Committee of the Board in regard to courses, programs, and activities submitted by licensees to satisfy the CAE requirements of this section. Approval shall be based on a showing by the education provider that:

(1) the content of the course, program, or activity is related to the practice of acupuncture or oriental medicine, and is not a course on practice enhancement, business, or office administration;

(2) the method of instruction is adequate to teach the content of the course, program, or activity;

(3) the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;

(4) the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity;

(5) each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training;

(6) the course, program, or activity is provided by a knowledgeable health care provider or reputable school, state, or professional organization;

(7) the course description provides adequate information so that each participant understands the basis for the program and the goals and objectives to be met; and,

(8) the education provider obtain written evaluations at the end of each program, collate the evaluations in a statistical summary, and make the summary available to the board upon request.

(i) Continuing Acupuncture Education Approval Requests. All requests for approval of courses, programs, or activities for purposes of satisfying Continuing Acupuncture Education (CAE) credit requirements shall be submitted in writing to the Education Committee of the Board on a form approved by the Board, along with any required fee, and accompanied by information, documents, and materials accurately describing the course, program, or activity, and necessary for verifying compliance with the requirements set forth in subsection (h) of this section. At the discretion of the Board or the Education Committee, supplemental information, documents, and materials may be requested as needed to obtain an adequate description of the course, program, or activity and to verify compliance with the requirements set forth in subsection (h) of this section. At the discretion of the Board or the Education Committee, inspection of original supporting documents may be required for a determination on an approval request. The Acupuncture Board shall have the authority to conduct random and periodic checks of courses, programs, or activities to ensure that criteria for education approval as set forth in subsection (h) of this section have been met and continue to be met by the education provider. Upon requesting approval of a course, program, or activity, the education provider shall agree to such checks by the Acupuncture Board or its designees, and shall further agree to provide supplemental information, documents, and material describing the course, program, or activity which, in the discretion of the Acupuncture Board, may be needed for approval or continued approval of the course, program, or activity. Failure of an education provider to provide the necessary information, documents, and materials to show compliance with the standards set forth in subsection (h) of this section shall be grounds for denial of CAE approval or recision of prior approval in regard to the course, program, or activity.

(j) Reconsideration of Denials of Approval Requests. Determinations to deny approval of a CAE course, program, or activity may be reconsidered by the Education Committee or the Board based on additional information concerning the course, program, or activity, or upon a showing of good cause for reconsideration. A decision to reconsider a denial determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration shall be made in writing by the education provider, and may be made orally or in writing by Board staff or a committee of the Board.

(k) Reconsideration of Approvals. Determinations to approve a CAE course, program, or activity may be reconsidered by the Education Committee or the Board based on additional information concerning the course, program, or activity, or upon a showing of good cause. A decision to reconsider an approval determination shall be a discretionary decision based on consideration of the additional information or the good cause showing. Requests for reconsideration may be made in writing by a member of the public or may be made orally or in writing by Board staff or a committee of the Board.

(l) Nonrenewal for Insufficient Continuing Acupuncture Education. Unless exempted under the terms of this section, the apparent failure of an acupuncturist to obtain and timely report the 17 hours of continuing education hours as required and provided for in this section shall result in nonrenewal of the license until such time as the acupuncturist obtains and reports the required hours; however, the executive director of the board may issue to such an acupuncturist a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license issued pursuant to this subsection may be issued to allow the board to verify the accuracy of information related to the continuing acupuncture education hours of the acupuncturist and to allow the acupuncturist who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(m) Fee for Issuance of Temporary License. The fee for issuance of a temporary license pursuant to the provisions of this

section shall be in the amount specified under §175.1 of this title (relating to Fees, Penalties, and Applications); however, the fee need not be paid prior to the issuance of the temporary license, but shall be paid prior to the renewal of a permanent license.

(n) Application of Additional Hours. Continuing acupuncture education hours which are obtained to comply with the requirements for the preceding year as a prerequisite for licensure renewal, shall first be credited to meet the requirements for that previous year. Once the requirements of the previous year are satisfied, any additional hours obtained shall be credited to meet the continuing acupuncture education requirements of the current year.

(o) False Reports/Statements. An intentionally false report or intentionally false statement to the board by a licensee regarding continuing acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Act, §§6.11(a)(2), 6.11(a)(4), and 6.11(a)(5).

(p) Monetary Penalty. Failure to obtain and timely report the continuing acupuncture education hours for renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Fees, Penalties, and Applications).

(q) Disciplinary Action, Conditional Licensure, and Construction. This section shall be construed to allow the board to impose requirements for completion of additional continuing acupuncture education hours for purposes of disciplinary action and conditional licensure.

§183.21. Continuing Auricular Acupuncture Education for Acudetox Specialists.

(a) Purpose. This section is promulgated to promote the health, safety, and welfare of the people of Texas through the establishment of minimum requirements for continuing auricular acupuncture education (CAAE) for certified acudetox specialists so as to further enhance their professional skills and knowledge.

(b) Minimum continuing auricular acupuncture education. As a prerequisite to the re-certification of an acudetox specialist, the acudetox specialist shall provide documentation to the Medical Board that the individual has successfully met the continuing education requirements established by the board which includes the following listed in paragraphs (1)-(2) of this subsection:

(1) At least six hours of CAAE each year shall be in the practice of auricular acupuncture;

(2) The required hours shall be from courses that are designated or otherwise approved for credit by the Medical Board at the time the course was taken.

(c) Reporting continuing auricular acupuncture education. An acudetox specialist must report on the certificate-holder's re-certification form the number of hours and type of continuing auricular acupuncture education completed during the previous year.

(d) Grounds for exemption from continuing auricular acupuncture education. An acudetox specialist may request in writing and may be exempt from the annual minimum continuing auricular acupuncture education requirements for one or more of the following reasons listed in paragraphs (1)-(2) of this subsection:

(1) catastrophic illness; and/or

(2) military service of longer than one year in duration;

(e) Exemption requests. Exemption requests shall be subject to the approval of the executive director of the Medical Board, and shall be submitted in writing at least 30 days prior to the expiration of the certificate.

(f) Exemption duration and renewal. An exemption granted under subsections (d) and (e) of this section may not exceed one year, but may be renewed annually upon written request submitted at least 30 days prior to the expiration of the current exemption.

(g) Verification of credits. The board may require written verification of continuing auricular acupuncture education hours from any certified acudetox specialist and the certificate-holder shall provide the requested verification within 30 calendar days of the date of the request. Failure to timely provide the requested verification may result in disciplinary action by the board.

(h) Approval of continuing auricular acupuncture education. Continuing Auricular Acupuncture Education (CAAE) credit hours shall be approved by the Medical Board and shall include education by a ACAOM accredited school or other nationally recognized institution, organization, or training program approved by the Medical Board. Approval of courses shall be by January 1, 1999. The first reporting of CAE shall be required for certification renewal in 2000. Approval shall be based on a showing by the education provider that:

(1) the content of the course, program, or activity is related to the practice of acudetox, and is not a course on practice enhancement, business, or office administration;

(2) the method of instruction is adequate to teach the content of the course, program, or activity;

(3) the credentials of the instructor(s) indicate competency and sufficient training, education, and experience to teach the specific course, program, or activity;

(4) the education provider maintains an accurate attendance/participation record on individuals completing the course, program, or activity; and,

(5) each credit hour for the course, program, or activity is equal to no less than 50 minutes of actual instruction or training.

(i) False reports/statements. An intentionally false or misleading report or statement to the board by a certificate-holder regarding continuing auricular acupuncture education hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (Act), §6.11(a)(2), (4), and (5).

(j) Monetary penalty. Failure to obtain and timely report the continuing auricular acupuncture education hours for renewal of a certificate shall subject the certificate-holder to a monetary penalty for late registration in the amount set forth in §175.2 of this title (relating to Fees, Penalties, and Applications).

(k) Disciplinary action, conditional licensure, and construction. This section shall be construed to allow the board to impose requirements for completion of additional continuing auricular acupuncture education hours for purposes of disciplinary action and conditional licensure.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004113
Bruce A. Levy
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 23, 2000

For further information, please call: (512) 305-7016

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Chapter 185. PHYSICIAN ASSISTANTS

22 TAC §§185.2, 185.4 - 185.7, 185.14, 185.16, 185.17

The Texas State Board of Medical Examiners proposes amendments to §§185.2, 185.4-185.7, 185.14, 185.16, 185.17, repeal of §§185.18-185.29 and new §§185.18-185.28, concerning physician assistants. The sections are being updated due to the agency rule review, which is being proposed elsewhere in this issue of the *Texas Register*, and numerous amendments to streamline application processing and allow expansion of the number of physicians assistants that may be supervised by a physician. This will allow greater access to healthcare for the citizens of Texas.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated sections due to the agency rule review, which is being proposed elsewhere in this issue of the *Texas Register*, and numerous amendments to streamline application processing and allow expansion of the number of physicians assistants that may be supervised by a physician. This will allow greater access to healthcare for the citizens of Texas. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, Chapter 204 is affected by the amendments.

§185.2. Definitions.

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

(1) Alternate physician - A physician providing appropriate supervision on a temporary basis not to exceed fourteen consecutive days. [~~That physician designated by the supervising physician to act in his or her stead.~~]

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

§185.4. Procedural Rules for Licensure Applicants.

(a) (No change.)

(b) The following documentation shall be submitted as a part of the licensure process:

(1) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the board for inspection.

(2) Certification. Each applicant for licensure must submit:

(A) a valid and current certificate from the National Commission on Certification of Physician Assistants ("NCCPA") directly from NCCPA on a form provided by the board, and

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the board.

(3)-(8) (No change.)

(c)-(e) (No change.)

§185.5. Relicensure.

If a physician assistant's license has been expired for one year, it is considered to have been canceled, unless an investigation is pending [~~and the physician assistant may not renew the license~~]. The physician assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license.

§185.6. Annual Renewal of License.

(a) (No change.)

(b) The following documentation shall be submitted as part of the renewal process:

(1) (No change.)

(2) A physician assistant must report on the annual registration form if she or he has completed the required [~~the number of hours and type of~~] continuing medical education [~~completed~~] during the previous year. A licensee may carry forward CME credit hours earned prior to annual registration which are in excess of the 40 hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 80 total excess credit hours may be carried forward and shall be reported according to whether the hours are Category I and/or Category II. Excess CME credit hours of any type may not be carried forward or applied to an annual report of CME more than two years beyond the date of the annual registration following the period during which the hours were earned.

(3)-(8) (No change.)

(c) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a physician assistant to denial of the renewal and/or to discipline pursuant to the Physician Assistant Licensing Act, § 19.

(d) If the renewal fee and completed application form are not received on or before the expiration date of the permit, the following penalties will be imposed:

(1) one to 90 days late - $50.00 plus the required annual registration fee;

(2) 91 days to one year late - $100.00 plus the required annual registration fee;

(3) over one year late - unless an investigation is pending, license will automatically be canceled.

(e) The board shall not waive fees or penalties.

(f) The board shall stagger annual registration of physician assistants proportionally on a periodic basis.

(g) Practicing as a physician assistant as defined in the Physician Assistant Licensing Act without an annual registration permit for the current year as provided for in the board rules has the same force and effect as and is subject to all penalties of practicing as a physician assistant without a license.

(h) Physician Assistants shall inform the Board of address changes within two weeks of the effective date of the address change.

§185.7. Temporary License.

(a) (No change.)

(b) A temporary license is valid for 100 days from the date issued and may be extended [~~only~~] for not more than an additional [~~another~~] 30 days after the date [~~of~~] the initial temporary license [~~expires. A total of two additional temporary licenses, for a total of 100 days each, may be issued at the discretion of the executive director for a maximum allowable total of 330 days~~].

§185.14. Notification of Intent to Practice and Supervise.

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

(d) If a supervising physician will be unavailable to supervise the physician assistant as required by this section, arrangements shall be made for an alternate physician to provide that supervision. The alternate physician providing that supervision shall affirm in writing and document through a log where the physician assistant is located that he or she is familiar with the protocols or standing delegation orders in use and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders. The log shall be kept with the protocols or standing orders. The log shall contain dates of the alternate physician supervision and signed by the alternate physician that they acknowledge this responsibility. The physician assistant is responsible for determining that the alternate physician is a licensed Texas physician holding an unrestricted and active license.

§185.16. Supervising Physician.

(a) To be authorized to supervise a physician assistant, a physician must:

(1) be currently licensed as a physician in this state by the medical board. The license must be unrestricted and active;

(2) notify the board of the physician's intent to supervise a physician assistant; and

(3) submit a statement to the board that the physician will:

(A) supervise the physician assistant according to rules adopted by the board; and

(B) retain professional and legal responsibility for the care rendered by the physician assistant. [~~; and~~]

(4) submit the name, Texas license number, and signature of any alternate supervising physician(s).

(b) [~~(A)~~] A physician assistant may be supervised by an alternate supervising physician in the absence of the supervising physician consistent with this chapter, Texas Medical Practice Act, Physician Assistant Licensing Act, board rules, medical board rules, and any standing orders or protocols established in accordance with these statutes and rules.

[~~(B) Any alternate supervising physician engaged in the supervision of a physician assistant shall be approved by and registered with the board on a form provided by the board.~~]

[~~(C) The board shall require any alternate supervising physician to provide the board with the same information as required of supervising physicians and such alternate supervising physician engaged in the supervision of a physician assistant shall comply with all laws, regulations, statutes, and rules governing the supervision of physician assistants during any period of supervision.~~]

§185.17. Employment Guidelines.

(a) Except as otherwise provided in this section, a physician may supervise up to five physician assistants, or their full-time equivalents of five physician assistants. [~~Except as otherwise provided in this section, the equivalent of three full-time physician assistant positions shall be allowed for each supervising physician. A supervising physician may utilize more than three physician assistants to allow part-time employment or the employment of a substitute during the temporary absence of a supervising physician's primary physician assistant.~~]

(b) The physician assistant may not independently bill patients for their services except where provided by law.

(c) Except at a site serving medically underserved populations, a physician assistant shall not be maintained in an office practice setting separate from that of his or her supervising physician.

(d) A physician who provides medical services in preventive medicine, disease management, health and wellness education, or similar services in an accredited academic/teaching institution listed in paragraphs (1)-(10) of this subsection, or its affiliates, may be denoted as the supervising physician for more than five physician assistants in that institution or its affiliates, provided the supervising physician determines that the physician assistants are properly trained to deliver the services, that the services are of such a nature that they may be safely and competently delivered by the supervised physician assistants, and the proper paperwork has been filed with the Texas State Board of Medical Examiners. The supervision of physician assistants must comply with all institutional rules and there must be accurate and timely internal institutional records, which are available upon request within 24 hours to the Texas State Board of Medical Examiners, which list the name and license number of the physician who is specifically assigned to actively supervise each physician assistant:

(1) University of Texas Medical Branch at Galveston;

(2) University of Texas Southwestern Medical Center at Dallas;

(3) University of Texas Health Science Center at Houston;

(4) University of Texas Health Science Center at San Antonio;

(5) University of Texas Health Center at Tyler;

(6) University of Texas M.D. Anderson Cancer Center;

(7) Texas A&M University College of Medicine;

(8) Texas Tech University School of Medicine;

(9) Baylor College of Medicine; or

(10) University of North Texas Health Science Center at Fort Worth.

(e) The provisions of subsections (a) and (d) of this section relating to the number of physician assistants authorized to be supervised shall not be interpreted to change or modify rules or statutes relating to the number of physician assistants to whom prescriptive authority may be delegated.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004114
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§185.18 - 185.29

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

The repeals are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, Chapter 204 is affected by the repeals.

§185.18. Exceptions.

§185.19. Grounds for Denial of Licensure and for Disciplinary Action.

§185.20. Discipline of Physician Assistants.

§185.21. Administrative Penalty.

§185.22. Complaint Procedure Notification.

§185.23. Investigations.

§185.24. Procedure–General.

§185.25. Procedure–Prehearing.

§185.26. Procedure–Hearing.

§185.27. Procedure–Posthearing.

§185.28. Medical Board Review and Approval.

§185.29. Construction.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

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Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 305-7016

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22 TAC §§185.18 - 185.28

The new sections are proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, Chapter 204 is affected by the new sections.

§185.18. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing and a hearing as provided for in the Administrative Procedure Act, take disciplinary action against any physician assistant who:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) violates the Physician Assistant Licensing Act, or any rules relating to the practice of a physician assistant;

(4) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;

(5) habitually uses drugs or intoxicating liqueurs to the extent that, in the opinion of the board, the person cannot safely perform as a physician assistant;

(6) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a physician assistant;

(7) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;

(8) represents that the person is a physician;

(9) has acted in an unprofessional or dishonorable manner which is likely to deceive, defraud, or injure any member of the public;

(10) has failed to practice as a physician assistant in an acceptable manner consistent with public health and welfare;

(11) has committed any act that is in violation of the laws of the State of Texas if the act is connected with practice as a physician assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision; proof of the commission of the act while in practice as a physician assistant or under the guise of practice as a physician assistant is sufficient for action by the board under this section;

(12) has had the person's license or other authorization to practice as a physician assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a physician assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) fails to keep complete and accurate records of purchases and disposal of drugs listed in Chapter 483, Health and Safety Code, as required by Chapter 483, Health and Safety Code, or any subsequent rules. A failure to keep the records for a reasonable time is grounds for disciplinary action against the license of a physician assistant. The board or its representative may enter and inspect a physician assistant's place of practice during reasonable

business hours for the purpose of verifying the correctness of these records and of taking inventory of the drugs on hand;

(14) writes a false or fictitious prescription or a dangerous drug as defined by Chapter 483, Health and Safety Code;

(15) unlawfully advertises in a false, misleading, or deceptive manner. Advertisements shall be defined as false, misleading, or deceptive consistent with §4, Article 4512p, Revised Statutes;

(16) alters, with fraudulent intent, any physician assistant license, certificate, or diploma;

(17) uses any physician assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(18) aids or abets, directly or indirectly, the practice as a physician assistant by any person not duly licensed to practice as a physician assistant by the board;

(19) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society is local, regional, state, or national in scope, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(20) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(21) through his practice as a physician assistant sexually abuses or exploits another person.

§185.19. Discipline of Physician Assistants.

(a) The board, upon finding a physician assistant has committed any of the acts set forth in §185.18 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), shall enter an order imposing one or more of the following:

(1) deny the person's application for a license or other authorization to practice as a physician assistant;

(2) administer a public reprimand;

(3) order revocation, suspension, limitations, or restrictions of a physician assistant's license, or other authorization to practice as a physician assistant, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a physician assistant or stipulating periodic board review;

(4) require a physician assistant to submit to care, counseling, or treatment by a health care practitioner designated by the board;

(5) stay enforcement of its order and place the physician assistant on probation with the board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measures or sanctions authorized by this section;

(6) restore or reissue, at its discretion, a license or remove any disciplinary or corrective measure that the board may have imposed;

(7) order the physician assistant to perform public service;

(8) require the physician assistant to complete additional training; or

(9) assess an administrative penalty against the physician assistant.

(b) Disciplinary Guidelines.

(1) Purpose. This subsection will:

(A) provide guidance and a framework of analysis for administrative law judges in the making of recommendations in contested licensure and disciplinary matters;

(B) promote consistency in the exercise of sound discretion by board members in the imposition of sanctions in disciplinary matters; and,

(C) provide guidance for board members for the resolution of potentially contested matters.

(2) Limitations. This subsection shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Physician Assistant Licensing Act, sections 18 (related to Disciplinary Proceedings) and 19 (related to Additional Disciplinary Authority). This subsection shall be further construed and applied so as to be consistent with the Physician Assistant Licensing Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(3) Aggravation. The following may be considered as aggravating factors so as to merit more severe or more restrictive action by the board.

(A) patient harm and the severity of patient harm;

(B) economic harm to any individual or entity and the severity of such harm;

(C) environmental harm and the severity of such harm;

(D) increased potential for harm to the public;

(E) attempted concealment of misconduct;

(F) premeditated misconduct;

(G) intentional misconduct;

(H) motive;

(I) prior misconduct of a similar or related nature;

(J) disciplinary history;

(K) prior written warnings or written admonishments from any governmental agency or official regarding statutes or regulations pertaining to the misconduct;

(L) violation of a board order;

(M) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(N) lack of rehabilitative potential or likelihood for future misconduct of a similar nature; and,

(O) relevant circumstances increasing the seriousness of the misconduct.

(4) Extenuation and Mitigation. The following may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive action by the board.

(A) absence of patient harm;

(B) absence of economic harm;

(C) absence of environmental harm;

(D) absence of potential harm to the public;

(E) self-reported and voluntary admissions of misconduct;

(F) absence of premeditation to commit misconduct;

(G) absence of intent to commit misconduct;

(H) motive;

(I) absence of prior misconduct of a similar or related nature;

(J) absence of a disciplinary history;

(K) implementation of remedial measures to correct or mitigate harm from the misconduct;

(L) rehabilitative potential;

(M) prior community service and present value to the community;

(N) relevant circumstances reducing the seriousness of the misconduct; and,

(O) relevant circumstances lessening responsibility for the misconduct.

§185.20. Administrative Penalty.

(a) The board by order may impose an administrative penalty, subject to the provisions of the Administrative Procedure Act, against a person licensed or regulated under the Physician Assistant Licensing Act who violates the Act or a rule or order adopted under the Act.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) patient harm and the severity of patient harm;

(2) economic harm to any individual or entity and the severity of such harm;

(3) environmental harm and severity of such harm;

(4) increased potential for harm to the public;

(5) attempted concealment of misconduct;

(6) premeditated misconduct;

(7) intentional misconduct;

(8) motive;

(9) prior misconduct of a similar or related nature;

(10) disciplinary history;

(11) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(12) violation of a board order;

(13) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(14) lack of rehabilitative potential or likelihood of future misconduct of a similar nature;

(15) relevant circumstances increasing the seriousness of the misconduct; and

(16) any other matter that justice may require.

(d) If the board by order finds that a violation has occurred and imposes an administrative penalty, the board shall give notice to the person of the board's order. The notice must include a statement of the right of the person to judicial review of the order.

§185.21. Complaint Procedure Notification.

(a) Methods of Notification. Pursuant to the Medical Practice Act, §2.09(s)(2), for the purpose of directing complaints to the Texas State Board of Medical Examiners, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number for filing complaints by one or more of the following methods:

(1) displaying in a prominent location at their place or places of business, signs in English and Spanish of no less than 8 and 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on a white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement; or

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each bill for services with no alterations, deletions, or additions to the language of the board-approved statement; or

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules and the Medical Practice Act, §2.09(s)(2) and is a sample of the type print referenced in subsection (a) of this section.
Figure: 22 TAC §185.21(b)

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules and the Medical Practice Act, §2.09(s)(2), and is a sample of the type print referenced in subsection (a) of this section.
Figure: 22 TAC §185.21(c)

§185.22. Investigations.

(a) Confidentiality. All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, or received, or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceeding are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline. Investigative information in the possession of the board or its employees or agents which relates to licensee discipline and information contained in such files may not be disclosed except in the following circumstances:

(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia or a territory or country where the physician assistant is licensed, registered, or certified or has applied for a license or to a peer review committee reviewing an application for privileges or the qualifications of the licensee with respect to retaining privileges;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed and the board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of licensees by providing information relevant to the criminal investigation to the investigating agency and any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation;

(3) to a health-care entity upon receipt of written request. Disclosures by the board to a health-care entity shall include only information about a complaint filed against a physician assistant that was resolved after investigation by a disciplinary order of the board or by an agreed settlement, and the basis and current status of any complaint under active investigation; and

(4) to other persons if required during the investigation.

(b) Renewal of licenses. A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(c) Impaired Physician Assistants.

(1) The board may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the board if the board has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition.

(2) Probable cause may include, but is not limited to, any one of the following:

(A) sworn statements from two people, willing to testify before the board, medical board, or the State Office of Administrative Hearings that a certain licensee is impaired;

(B) a sworn statement from an official representative of the Texas Academy of Physician Assistants stating that the representative is willing to testify before the board that a certain licensee is impaired;

(C) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program;

(D) evidence that a licensee is guilty of intemperate use of drugs or alcohol;

(E) evidence of repeated arrests of a licensee for intoxication;

(F) evidence of recurring temporary commitments of a licensee to a mental institution; or

(G) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice.

(3) Rehabilitation Order.

(A) The board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on any licensee or, as a prerequisite for issuing a license, on any licensure applicant based on one or more of the following:

(i) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician. The determination as to whether intemperate use of drugs or alcohol was a direct result of habituation or addiction caused by medical care or treatment by another physician shall be made by the board based on medical records and/or credible testimony from health-care practitioners. In the event that medical records and credible testimony are unavailable or are inconclusive regarding whether intemperate use of alcohol or drugs was a direct result of habituation or addiction caused by medical care or treatment by another physician, the board shall exercise sound discretion in making a determination based on available evidence and may conclude that intemperate use of alcohol or drugs was not caused by such medical care or treatment;

(ii) self-reported intemperate use of drugs or alcohol during the last five years immediately preceding the report which could adversely affect the reporter's ability to safely practice as a physician assistant, but only if the reporting individual has not previously been the subject of a substance abuse related order of the board. A self-report of intemperate use of drugs or alcohol shall at a minimum contain the approximate dates of intemperate use, the extent of intemperate use, the substance or substances used, the method or methods of ingestion, and any history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received. Self-reports of intemperate use of drugs or alcohol by licensees or licensure applicants shall be made through one or more of the following methods prior to the board opening an investigation in regard to the individual for alleged intemperate use of drugs or alcohol:

(I) a hand-written or typed statement submitted to the board or board staff by mail, messenger, facsimile transmission, or hand-delivery which has been signed by the licensee or licensure applicant and may include responses provided as part of an application for a license or a writing submitted for purposes of licensure renewal; or

(II) a hand-written or typed statement submitted to the board or board staff by mail, messenger, facsimile transmission, or hand-delivery which has been signed by an authorized agent of the licensee or licensure applicant with prior approval of the licensee or licensure applicant;

(iii) judgment by a court of competent jurisdiction that the individual is of unsound mind; or

(iv) results from a mental or physical examination, or admissions by the individual, indicating that the licensee or applicant suffers from a potentially dangerous limitation or an inability to safely practice as a physician assistant with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(B) The determination as to whether a mental or physical condition predated and caused intemperate use of alcohol or drugs shall be made by the board based on medical records and/or credible testimony from health-care practitioners. In the event that medical records and credible testimony are unavailable or are inconclusive regarding whether a mental or physical condition predated and caused intemperate use of alcohol or drugs, the board shall exercise sound discretion in making a determination based on available evidence and may conclude that intemperate use of alcohol or drugs was not caused by a preexisting mental or physical condition.

(C) A rehabilitation order entered pursuant to this section shall be a nondisciplinary private order and shall contain

findings of fact and conclusions of law. A rehabilitation order, if entered by agreement, shall be an agreed disposition or settlement agreement for purposes of civil litigation and shall be exempt from the open records law, Chapter 552, Government Code. Confidentiality may be preserved through one or more of the following:

(i) privileged and confidential informal settlement conferences/show compliance proceedings;

(ii) privileged and confidential modification and termination requests and proceedings;

(iii) executive sessions by the board and board committees; and/or,

(iv) redaction of identifying information when such orders are considered in open session.

(D) A rehabilitation order entered pursuant to this section may impose a revocation, cancellation, suspension, period of probation or restriction, or any other terms and conditions authorized under this Act or as otherwise agreed to by the board and the individual subject to the order.

(E) Violation of a rehabilitation order entered pursuant to this section may result in disciplinary action under the provisions of this Act for contested matters or pursuant to the terms of the agreed order. A violation of a rehabilitation order may be grounds for disciplinary action based on unprofessional or dishonorable conduct or on any of the provisions of this Act which may apply to the misconduct which resulted in violation of the rehabilitation order.

(F) The rehabilitation orders entered pursuant to this section shall be kept in a confidential file which shall be subject to an independent audit by state auditors or private auditors contracted with by the board to perform such an audit. Audits may be performed at any time at the direction of the board but shall be performed at least once every three years. The audit results shall be reported in a manner that maintains the confidentiality of all licensees who are subject to rehabilitation orders and shall be a public record. The audit shall be for the purposes of ensuring that only qualified licensees are subject to rehabilitation orders.

(d) Investigation of Professional Review Actions. A written report of a professional review action taken by a peer review committee or a health-care entity provided to the board must contain the results and circumstances of the professional review action. Such results and circumstances shall include:

(1) the specific basis for the professional review action, whether or not such action was directly related to the care of individual patients; and

(2) the specific limitations imposed upon the physician assistant's clinical privileges, upon membership in the professional society or association, and the duration of such limitations.

(e) Other Reports.

(1) Relevant information shall be reported to the board indicating that a physician assistant's practice poses a continuing threat to the public welfare and shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that a physician assistant's practice constitutes a continuing threat to the public welfare shall be made to the board as soon as possible after the peer review committee or the physician involved reaches that conclusion and is able to assemble the relevant information.

(f) Reporting Professional Liability Claims.

(1) Reporting responsibilities. The reporting form must be completed and forwarded to the board for each defendant physician assistant against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for a physician assistant. If a nonadmitted insurance carrier does not report or if the physician assistant has no insurance carrier, reporting shall be the responsibility of the physician assistant.

(2) Separate reports required and identifying information. One separate report shall be filed for each defendant physician assistant insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

(3) Time frames and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(4) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(A) If the reporter elects to use a reporting format other than the board's form for data required in Part II, there must be enough identification data available to staff to match the closure report to the original file. The data required to accomplish this include:

(i) name and license number of defendant physician assistant(s); and

(ii) name of plaintiff.

(B) A court order or a copy of the settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(5) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance.

(6) Definition. For the purposes of this subsection a professional liability claim or complaint shall be defined as a cause of action against a physician assistant for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) Claims not required to be reported. Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) product liability claims (i.e. where a physician assistant invented a device which may have injured a patient but the physician assistant has had no personal physician assistant-patient relationship with the specific patient claiming injury by the device);

(B) antitrust allegations;

(C) allegations involving improper peer review activities;

(D) civil rights violations; or

(8) Voluntary Reporting. Claims that are not required to be reported under this chapter may, however, be voluntarily reported.

(9) Reporting Form. The reporting form shall be as follows:
Figure: 22 TAC §185.22(f)(9)

(10) Professional Liability Suits and Claims. Following receipt of a notice of claim letter or a complaint filed in court against a licensee that is reported to the board, the licensee shall furnish to the board the following information within 14 days of the date of receipt of the board's request for said information:

(A) a completed questionnaire to provide summary information concerning the suit or claim;

(B) a completed questionnaire to provide information deemed necessary in assessing the licensee's competency;

(C) information on the status of any suit or claim previously reported to either the board or the medical board.

(g) Complaints. The board shall keep information on file about each complaint filed with the board, consistent with the Act. If a written complaint is filed with the board that the board has the authority to resolve relating to a person licensed by the board, the board, at least as frequently as quarterly and until final determination of the action to be taken relative to the complaint, shall notify in a manner consistent with the Act, the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

(h) Patient identity. In any disciplinary investigation or proceeding regarding a physician assistant conducted under or pursuant to the Act, the board shall protect the identity of any patient whose medical records are examined and utilized in a public proceeding except for those patients who testify in the public proceeding or who submit a written release in regard to their records or identity.

(i) Immunity and Reporting Requirements.

(1) A person, health care entity, medical peer review committee, or other entity that without malice furnishes records, information, or assistance to the board is immune from any civil liability arising from such act.

(2) Any medical peer review committee in this state, any physician assistant licensed to practice in this state, any physician assistant student, or any physician licensed to practice medicine or otherwise lawfully practicing medicine in this state shall report relevant information to the board related to the acts of any physician assistant in this state if, in the opinion of the medical peer review committee, physician assistant, physician assistant student, or a physician, a physician assistant poses a continuing threat to the public welfare through his practice as a physician assistant. The duty to report under this section shall not be nullified through contract.

§185.23. Procedure - General.

(a) Applicability. These rules shall govern the procedures for the institution, conduct, and determination of all causes and proceedings before the board. The purpose of these sections is to provide for a simple and efficient system of procedure before the board; to ensure uniform standards of practice and procedure, public participation, and notice of board actions; and a fair and expeditious determination of causes.

(b) Construction. These rules shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers, or authority of the board or the substantive rights of any party. They shall be liberally construed with a view towards the purpose for which they were adopted.

(c) Computation of Time.

(1) Computing time. In computing any period of time prescribed or allowed by these sections, Order of the board, or any applicable statute, the period shall begin on the day after the act, event, or default in controversy and end on the last day of such computed period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

(2) Extensions. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties or order of the secretary, hearings examiner, or administrative law judge upon written verified motion duly filed prior to the expiration of the applicable time period, showing good cause for an extension of time and stating that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

(d) Agreement to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an Order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

(e) Expiration of Licenses. When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, or unless it has been terminated according to statute and rule, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board order or a later date fixed by order of the reviewing court.

(f) Pleadings.

(1) Form. Pleadings shall be typewritten or printed upon paper 8 and 1/2 inches wide and 11 inches long with left and right margins at least one inch wide. Exhibits annexed thereto shall be folded to the same size and conform to §185.25(f) of this title (relating to Procedure - Hearing). Reproductions are acceptable, provided all copies are clear and permanently legible.

(2) Content. Pleadings shall state their purpose, contain a concise statement of the facts in support thereof, and state a prayer for the desired relief.

(3) Signature and address. The original of every pleading shall be signed in ink by the party filing the paper, his or her attorney, or by his or her authorized representative. Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the representative.

(4) Certificate of service. A certificate of service by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that I have this _____ day of _____, 20 ___, served copies of the foregoing pleading upon

all other parties to this proceeding, by (here state the manner of service). Signature." Service of pleadings on and by parties shall be as specified in subsection (k) of this section.

(5) Numbering and Heading. In a contested case the complaint and each pleading shall be numbered with the licensee's license number, centered and underscored six lines down from the top of the first page. In each matter heard before the State Office of Administrative Hearings ("SOAH"), the SOAH docket number shall be centered above the licensee's license number. If a SOAH docket number is not available when the complaint or pleading is filed, a space will be provided for its entry at a later date. Double spaced below the number shall be the heading, as follows:
Figure: 22 TAC §185.23(f)(5)

(6) Other pleadings. All pleadings for which no official form is prescribed shall contain:

(A) the name of the party seeking to bring about or prevent action by the board;

(B) the names of all other known parties in interest;

(C) a concise statement of the facts relied upon by the pleader;

(D) a prayer stating the type of relief, action, or order desired by the pleader;

(E) any other matter required by statute; and

(F) a certificate of service, if required by subsection (k) of this section.

(7) Amendments. Any pleading may be amended at any time upon motion or the filing of an amended application, complaint, or petition for which notice, if required, shall be issued pursuant to subsection (g) of this section.

(8) Incorporation by reference of agency records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency. This section shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his or her burden of proof imposed by law.

(9) Classification. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(10) Docketing. Upon receipt of a complaint, an application, or other pleading which is intended to institute a proceeding before the board, the secretary, executive director of the medical board, designee, or board staff shall docket the same as a pending proceeding and serve notice thereon as specified in subsection (k) of this section.

(11) Filing of documents. All documents relating to any proceeding pending or to be instituted before the board shall be filed with the secretary of the board, the executive director, or Director of Enforcement for the medical board. Documents shall be deemed filed only when actually marked with the official stamp of the medical board, accompanied by the filing fee, if any, required by statute or board rules.

(g) Notice of Adjudicative Hearing Proceedings.

(1) Notice. Before revoking or suspending any license or registration, or denying an application for a license or registration, or reprimanding any licensee or registrant, the board shall afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days.

(2) Content. Such notice of adjudicative hearing shall include:

(A) a statement of time, place, and nature of the hearing;

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of the statutes and rules involved; and

(D) a short and plain statement of the matters asserted.

(3) More definite statement. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on a timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; however, the board shall not be required to plead its evidence in its complaint.

(4) Service. The notice of adjudicative hearing shall be served as specified in subsection (k) of this section.

(h) Conduct and Decorum. Each person, party, witness, attorney, or other representative shall comport himself or herself in all proceedings with proper dignity, courtesy, and respect for the board, the medical board, the secretary, the executive director, the examiner, and all other parties. Disorderly or disruptive conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

(i) Classification of Parties. Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

(j) Parties in Interest. Any party in interest may appear in any proceeding before the board or the medical board. All appearances shall be subject to a motion to strike upon a showing that the party has no justifiable or administratively cognizable interest in the proceeding.

(k) Service in Nonrulemaking Proceedings.

(1) Personal service. Where personal service of notice by the board is required, the board shall serve in person or by mailing the notice of adjudicative hearing, certified or registered mail, return receipt requested, to the last address filed with the board by the person entitled to receive such notice.

(2) Service by publication. Where personal service cannot be made as contemplated in paragraph (1) of this subsection, then service of notice shall be by publication of the notice of adjudicative hearing in a newspaper of general circulation once each week for two consecutive weeks in the county in which the licensee was last known to have practiced; the last publication to be at least ten days prior to the date of the hearing. When the licensee's whereabouts are unknown or his or her last known place of practice is outside the State of Texas, notice by publication is to be made by having published once a week for two consecutive weeks in a newspaper of general circulation published in Travis County, the last publication to be at least ten days prior to the date of the hearing. Proof of publication may be accomplished by publisher's affidavit together with a copy of the published notice which shall be introduced into the record at the hearing or by introduction and admission into evidence

of reasonably reliable copies of the required notices published for purposes of service.

(3) Service of pleadings. A copy of any document filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered to all other parties of record by the filing party. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the presiding officer or hearings examiner striking the document from the record.

(l) Appearances Personally or by Representative. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state. This right may be waived. Any person may appear on his or her own behalf or by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

(m) Filing Fees. Each application, petition, or complaint which is intended to institute a proceeding before the board shall be accompanied by the filing fee, if any, prescribed by law and these sections.

(n) Forms. Official forms for use in certain board proceedings are incorporated in the appendix to these sections. The previously-mentioned official forms shall be printed, when appropriate, under the supervision of the secretary or executive director who shall furnish copies thereof to any person upon request.

(o) Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, members or employees of the board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative except on notice and opportunity for all parties to participate.

§185.24. Procedure - Prehearing.

(a) Discovery. After the initiation and filing of a formal complaint, or upon the filing of the board's initial pleading in any other contested matter, the following discovery rules shall apply:

(1) Preliminary Discovery. Not later than 30 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the following:

(A) a preliminary list of the names and last known addresses of potential witnesses which the responding party reasonably anticipates may testify in its case-in-chief;

(B) a list or copy of all documents, records, photographs, moving pictures, films, videotapes, audio recordings, and other such material in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect and copy such items;

(C) a list identifying all tangible items in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect such items; and

(D) a list of the names and last known addresses of any experts the responding party anticipates calling to testify in its case-in-chief.

(2) Experts. Upon written request, a list identifying all of the following documents and tangible items pertaining to the responding party's experts, or copies of such documents and tangible items, shall be provided to the requesting party before the initial deposition of such an expert, or no later than five days prior to the hearing on the case if no deposition of the expert has been taken:

(A) documents and tangible items which have been provided to any expert who is expected to testify in the case;

(B) documents and tangible items which have been made or prepared by any expert used for consultation if such documents and tangible items form the basis, either in whole or in part, of the opinion of an expert who is expected to testify in the case; and

(C) a report from each expert who is anticipated to testify in the case which generally synopsizes the expected testimony of the expert.

(3) Inspection and Copying. Documents and tangible items which are identified in a discovery response, but not provided, shall be made available for inspection and copying at a reasonable time and place upon the written request of an opposing party.

(4) Depositions. The taking and use of depositions shall be governed by the Administrative Procedure Act or by an agreement between the parties either on the record or in a writing signed by the parties or their representatives. Except by an agreement between the parties either on the record or in a writing signed by the parties or their representatives, or upon an order by the Administrative Law Judge, depositions shall be conducted and completed no later than five days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in a writing signed by the parties or their representatives, may result in the imposition of the sanctions and remedies set forth in paragraph (5) of this subsection.

(5) Remedies and Sanctions. A failure to comply with a discovery request to the extent required by board rule, medical board rule, the Physician Assistant Licensing Act, the Medical Practice Act, or as agreed between the parties in a discovery agreement, may be remedied and sanctioned by ordering any or all of the following:

(A) granting of a continuance;

(B) limitations or restrictions on the admissibility and use of the evidence, to include exclusion of the evidence;

(C) payment by a party of the actual travel, lodging, and court reporter costs, but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements under board rule;

(D) imposition of a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements under board rules; and

(E) remedies and sanctions agreed to by the parties in writing or on the record.

(6) Good Cause. Good cause for failure to comply with a discovery request to the extent required by law, board rule, medical board rule, or as agreed between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following:

(A) lack of knowledge of the existence of the information or material;

(B) lack of access to or control of the information or material; and

(C) an act of God or providence.

(7) Calculation of Deadlines and Time Limits.

(A) For purposes of discovery under board rules, medical board rules, deadlines and time limits shall be based on calendar days; however, when a deadline falls on a Saturday, Sunday, or legal holiday, the deadline shall be extended to the next calendar day which is not a Saturday, Sunday, or legal holiday.

(B) Discovery requests promulgated less than seven days prior to the scheduled hearing date shall not require a response unless agreed to by the parties on the record or in a writing signed by the parties or their representatives; however, other discovery requests promulgated at a time prior to the scheduled hearing date which by their timing allow less than the applicable deadline period for a response, shall not require a response until submitted for approval by motion of the requesting party to the administrative law judge and approved in whole or in part by order of the administrative law judge. Any such approval shall provide for one or more of the following:

(i) modified response deadlines;

(ii) a continuance of the hearing date charged to the party requesting discovery; or

(iii) such reasonable requirements which are necessary to minimize any anticipated burden or inconvenience to the responding party as a result of the lateness of the discovery request.

(8) Discovery Agreements. Discovery requirements governing board proceedings may be modified by agreement of the parties either on the record or in a writing signed by the parties or their representatives.

(9) Ordered Modification of Discovery. Modification of discovery requirements under board rules may be ordered by an administrative law judge pursuant to an agreement of the parties or the discovery provisions under board rules pertaining to remedies and sanctions.

(10) Official Notice. No later than three days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing.

(11) Final Witness List. No later than five days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses of the witnesses each party intends to call to testify in its case-in-chief.

(12) Waiver of Privilege/Confidentiality. The provision of any information or material in response to a discovery request which may be the subject of a privilege or confidentiality requirement under the Medical Practice Act or other applicable law shall not constitute a waiver of any such privilege or confidentiality requirement with respect to other such information or material not provided.

(13) Supplementation. Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable.

(b) Subpoenas.

(1) Authority. Pursuant to the Physician Assistant Licensing Act, §27, on behalf of the board the executive director or the secretary-treasurer of the medical board may issue subpoenas and subpoenas duces tecum for purposes of investigations or contested proceedings related to alleged misconduct by physician assistants or alleged violations of the Act or other laws related to practice as a physician assistant or to the provision of health care under authority of the Act; for purposes of issuing, suspending, restricting, revoking, or canceling any license, permit, or certification authorized by the Act; and for purposes of denying or granting applications for such license, permits, or certifications.

(2) Request. A party may request at any time during the pendency of a proceeding, including a contested case, that the board, through the medical board, issue a subpoena or subpoena duces tecum upon a showing of good cause; the relevancy, and necessity of the testimony or documents; lack of undue inconvenience, imposition, or harassment of the party required to produce the testimony or documents; and the deposit of sums sufficient to ensure payment of expenses incident to the subpoenas.

(A) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(B) The party requesting a subpoena duces tecum shall describe and recite with great clarity, specificity, and particularity the books, records, or documents to be produced.

(C) Failure to timely comply with a subpoena issued pursuant to the Act shall be grounds for disciplinary action by the board or other licensing or regulatory agencies with jurisdiction over the individual or entity subject to such a subpoena and grounds for denial or an application for a license, permit, or certification.

(3) Ministerial Act. When requested by a party to issue a subpoena or subpoena duces tecum, the board is performing a ministerial act and shall do so in accordance with the law; however, the board shall not be responsible for inadequacies, insufficiencies, or lack of pleading by the requesting parties or the consequences thereof.

(4) Service and Expenses. A subpoena issued at the request of the staff may be served either by a board or medical board investigator or by certified mail, return receipt requested. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(5) Fees and Travel. A witness called at the request of the board shall be paid a fee of $25 per day and reimbursed for travel in like manner as board staff. An expert witness called at the request of the board shall be paid a fee of $300 per day and shall be reimbursed for travel in like manner as board members.

(c) Show Compliance Proceeding. Pursuant to the Administrative Procedure Act, §2001.054, the following rules shall apply to show compliance proceedings:

(1) Prior to institution of board proceedings to revoke, suspend, or take disciplinary action relating to a license or to involuntarily modify restrictions on a license, the physician assistant shall be given an opportunity to show compliance with all requirements of law for the retention of an unrestricted license either in writing, or through a personal appearance at a privileged and confidential informal meeting with one or more representatives of the board, at the option of the licensee.

(2) The opportunity to show compliance under this section shall be extended to a licensee in writing by certified mail, return receipt requested, overnight or express mail, or registered mail, to the

last mailing address of the licensee or the licensee's attorney on file with the board.

(3) Prior to a show compliance proceeding under this section, the licensee shall be provided with a brief written statement of the nature of the allegations to be addressed at the show compliance proceeding along with a brief written statement of the provisions of the Physician Assistant Licensing Act which may be grounds for disciplinary action. These statements shall be provided to the licensee by certified mail, return receipt requested, overnight or express mail, or registered mail to the last mailing address of the licensee or the licensee's attorney on file with the board. The licensee shall also be provided with written notice of the time, date, and location of the show compliance proceeding and the rules governing the proceeding by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(4) A licensee shall be afforded an opportunity to show compliance with the law as provided for under this section; however, a licensee's refusal or failure to take such an opportunity when offered, or when scheduled with proper notice to the licensee, shall not require that an additional show compliance opportunity be made available. In the discretion of the board's representatives an additional show compliance opportunity may be afforded to a licensee who refused a previous opportunity or failed to attend a scheduled show compliance proceeding.

(5) One or more members of the board, consisting of at least one physician assistant or one physician shall conduct the show compliance proceeding as the board's representatives. The representative who has seniority on the board shall chair the proceeding.

(6) The show compliance proceeding shall allow:

(A) the board staff to present a synopsis of the allegations and the facts which the staff reasonably believes could be proven by competent evidence at a hearing;

(B) the licensee to reply to the staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representatives are relevant to the proceeding;

(D) representation of the licensee by counsel;

(E) presentation of oral or written statements by the licensee or the licensee's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and,

(G) questioning of witnesses.

(7) During the show compliance proceeding, the board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the board's representatives and the board's staff.

(8) Except with the agreement of the licensee, during the deliberations of the board's representatives at a show compliance proceeding, the board representatives shall exclude the board staff who presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, any witnesses, and the general public. The board's legal counsel or a representative of the Office of the Attorney General shall be available to assist the representatives in deliberations.

(9) After a show compliance proceeding has been held, the board staff and the board's representatives shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.

(10) In the event a board member has a complaint regarding the frequency or infrequency of service as a representative, the complaint may be routed in writing to the Director of Enforcement for the medical board who shall then bring the complaint to the attention of the presiding officer of the board for submission to the board for a resolution by a majority vote.

(11) The show compliance proceeding may be held in conjunction with, and simultaneously with, an informal settlement conference held pursuant to subsection (h) of this section.

(12) The council's representatives may call upon board staff at any time for assistance in conducting the show compliance proceeding.

(13) The board's representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Medical Practice Act, §4.05(c) and §185.22 of this title (relating to Investigations).

(14) At the conclusion of the show compliance proceeding, the board's representatives shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representatives shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases.

(d) Prehearing Conferences.

(1) Appearance. In any contested case the hearings examiner or administrative law judge on his or her own motion or on the motion of a party, may direct the parties, their attorneys, or representatives to appear before him or her at a specified time and place for a conference prior to the hearing for the purpose of:

(A) formulating issues;

(B) simplifying issues;

(C) discussing matters to be officially noticed;

(D) discussing the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as official records of the board or medical board, to the end of avoiding the unnecessary introduction of proof;

(E) ruling on any previously filed motions;

(F) discussing the procedure at a hearing;

(G) discussing the limitation, where possible, of the number of witnesses; and

(H) discussing such other matters as may aid in the simplification of the proceedings.

(2) Order. Action taken at the conference shall be recorded in an appropriate Order by the hearings examiner or administrative law judge.

(e) Motions.

(1) Any motion filed in a pending proceeding shall, unless made during a hearing:

(A) be in writing;

(B) set forth the specific grounds and reasons therefore, and the relief sought;

(C) be distributed to all parties of record over a certificate of service as outlined in §185.23 (g) and (k) of this title (relating to Procedure - General);

(D) be filed with the hearings examiner not less than five days prior to the hearing date;

(E) if based on facts or matters which are not of record, be supported by an affidavit; and

(F) be ruled on by the hearings examiner at the prehearing conference or at the hearing.

(2) Motions for continuance or for dismissal of a complaint shall:

(A) comply with subsectio (a)(1)-(6) of this section;

(B) make reference to all prior motions of the same nature filed in the same proceeding.

(3) When a complaint has proceeded to its hearing date, pursuant to the notice issued therein, no continuance or dismissal shall be granted by the hearings examiner or administrative law judge without the consent of all parties involved.

(f) Consolidated Hearings. A motion for consolidation of two or more complaints, applications, petitions, or other proceedings shall comply with subsection (e) of this section. Proceedings shall not be consolidated unless the board shall find that:

(1) the proceedings involve common questions of law and fact; and,

(2) separate hearings would result in unwarranted expense, delay, or substantial injustice.

(g) Place and Nature of Hearings. All hearings conducted in any proceedings shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the board shall designate another place of hearing in the interest of the public.

(h) Informal Disposition. Pursuant to the Administrative Procedure Act, §2001.056, the following rules shall apply to informal dispositions of any complaint or matter relating to the Physician Assistant Licensing Act or of any contested case.

(1) The board may make an informal disposition of any complaint or matter relating to the Act or of any contested case by stipulation, agreed order, agreed settlement, consent order, or default.

(2) In the event the board makes such a disposition of a complaint, contested case, or other matter, the disposition shall be in writing and, if appropriate, the writing shall be signed by the licensee.

(3) To facilitate the expeditious disposition of complaints or contested cases, the board may provide a licensee with an opportunity to attend a privileged and confidential informal settlement conference. The informal settlement conference may be held in conjunction with, and simultaneously with, a show compliance proceeding held pursuant to subsection (c) of this section.

(4) If the opportunity for an informal settlement conference is provided to a licensee, the licensee shall be provided with a brief statement of the nature of the allegations to be addressed at the conference along with a brief statement of the provisions of the Act which may be grounds for disciplinary action. These statements shall be provided to the licensee by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board. The licensee shall also be provided with written notice of the time, date, and location of the conference and the rules governing the proceeding by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the board.

(5) One or more members of the board, consisting of at least one physician assistant or one physician, shall conduct the informal settlement conference as the board's representatives. The representative who has seniority on the board shall chair the conference.

(6) The informal settlement conference shall allow:

(A) board staff to present a synopsis of the allegations and the facts which staff reasonably believes could be proven by competent evidence at a hearing;

(B) the licensee to reply to the board staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing;

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the board's representatives are relevant to the proceeding;

(D) representation of the licensee by counsel;

(E) presentation of oral or written statements by the licensee or the licensee's counsel;

(F) presentation of oral or written statements or testimony by witnesses; and,

(G) questioning of witnesses.

(7) The board's representatives shall exclude from the informal settlement conference all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, board members, and board staff.

(8) During the informal settlement conference, the board's legal counsel or a representative of the Office of the Attorney General shall be present to advise the board's representatives or the board's staff.

(9) Except with the agreement of the licensee, during the deliberations of an appropriate settlement, the board's representatives at an informal settlement conference shall exclude the board staff which presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, witnesses, and the general public. Legal counsel for the board or a representative of the Office of the Attorney General shall be available to assist the representatives in their deliberations.

(10) After an informal settlement conference has been held, the staff of the board and the board's representatives shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with board members and administrative law judges concerning the case.

(11) In the event a board member has a complaint regarding the frequency or infrequency of service as a representative, the complaint may be routed in writing to the Director of Enforcement for the medical board who shall then bring the complaint to the attention of the presiding officer of the board for submission to the board for a resolution by a majority vote.

(12) At the informal settlement conference, the board's representatives will attempt to mediate disputed matters, and the board's representatives may call upon the staff at any time for assistance in conducting the informal settlement conference.

(13) The board's representatives shall prohibit or limit access to the board's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Medical Practice Act, §4.05(c).

(14) Although notes may be made by the participants, mechanical or electronic recordings shall not be made of settlement discussions, mediation efforts, or the informal settlement conference.

(15) The settlement conference shall be informal and shall not follow the procedures established under this title for contested cases.

(16) The licensee may either accept or reject the settlement recommendations proposed by the board's representatives. If the licensee accepts the recommendations, the licensee shall execute the settlement agreement in the form of an Agreed Order or affidavit as soon thereafter as is practicable. If the licensee rejects the proposed agreement, the matter shall be referred to the board's staff for appropriate disposition as directed by the board's representatives or the Disciplinary and Ethics Committee. The board through staff may also schedule the matter for a hearing as described in §185.25 of this title (relating to Procedure - Hearing).

(17) Following acceptance and execution by the licensee of the settlement agreement, the agreement shall be submitted to the board for approval.

(18) The following relate to consideration of an agreed disposition by the board:

(A) Upon an affirmative majority vote, the board shall enter an Order approving the proposed settlement agreement. The Order shall bear the signature of the presiding officer of the board at such meeting and shall be referenced in the minutes of the board.

(B) If the board does not approve a proposed settlement agreement, the licensee shall be so informed and the matter shall be referred to the staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an additional informal settlement conference, or a hearing.

(C) To promote the expeditious resolution of any complaint or matter relating to the Physician Assistant Licensing Act or of any contested case, with the approval of the executive director of the medical board, or the Disciplinary and Ethics Committee of the board, board staff may present a proposed settlement agreement to the board for consideration and acceptance without conducting an informal settlement conference. If the board does not approve such a proposed settlement agreement, the licensee shall be so informed and the matter shall be referred to board staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an informal settlement conference, or a hearing.

§185.25. Procedure - Hearing.

(a) Presiding Officer. When the board en banc, or a committee or panel of the board, conducts a hearing pursuant to the Physician Assistant Licensing Act or the Medical Practice Act, the following apply:

(1) The hearing will be presided over by the presiding officer of the board.

(2) The presiding officer shall have the authority to:

(A) administer oaths;

(B) examine witnesses;

(C) rule on the admissibility of evidence;

(D) rule on motions;

(E) rule on amendments to pleadings;

(F) recess the hearing from day to day; and

(G) refer the hearing to an administrative law judge at the State Office of Administrative Hearings.

(b) Administrative Law Judges/Hearings Examiners. Authority. When the board utilizes an administrative law judge or hearings examiner such hearings shall be conducted in accordance with the Administrative Procedure Act, the Physician Assistant Licensing Act, the Medical Practice Act, the rules of this board, and all other applicable law.

(1) to hold hearings and issue notices;

(2) to administer oaths and affirmations;

(3) to direct all parties to enter their appearance on the record;

(4) to subpoena and examine witnesses;

(5) to subpoena documents and other physical evidence;

(6) to hold conferences before, during, or after the hearing, to consider the matters specified in §185.24 (d) of this title (relating to Procedure - Prehearing);

(7) to regulate the course and conduct of the hearing including, without limitation, setting the time and place of the hearing and/or continued hearings; fixing the time for filing of briefs and other documents; receiving relevant evidence; excluding evidence which is irrelevant, immaterial, repetitious, or cumulative; ruling upon offers of proof; regulating the manner of examination to prevent needless and unreasonable harassment, intimidation, expense, inconvenience, or embarrassment of any witness or party at a hearing; removing disruptive individuals; and ruling on motions;

(8) to submit in writing to the parties, a proposal for decision containing the elements specified in §185.26 (a) of this title (relating to Procedure - Posthearing);

(9) to present and explain in person his or her proposal for decision to the board for its consideration and final action; and

(10) to dispose of any other matter that arises in the course of a hearing and to take any action authorized by the rules of the board, the Physician Assistant Licensing Act, the Medical Practice Act, the Administrative Procedure Act, and all other applicable law.

(c) Order of Proceeding.

(1) Hearings. In all proceedings, the petitioner, applicant, or complainant, respectively, shall be entitled to open and close. Where several proceedings are heard on a consolidated record, the hearings examiner or administrative law judge shall designate who shall open and close. The hearings examiner or the Administrative Law Judge in all cases shall determine whether and at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, the hearings examiner or the Administrative Law Judge may call upon any party or the board staff for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record.

(2) Before the board. During proceedings before the board, en banc, the order of proceeding shall be the following:

(A) The hearings examiner or administrative law judge shall present his or her proposal for decision and recommended order, explaining the items as specified in subsection (b) of this section.

(B) The party adversely affected shall briefly state their reasons for being so affected, supported by the evidence of record.

(C) The other party or parties shall be given the opportunity to respond.

(D) The board as complainant shall have the right to close.

(E) The presiding officer or a member of the board may question any party as to any matter relevant to the proceeding.

(F) At the end of any argument by the parties, the board may deliberate the matter in executive session, but shall vote and announce its final decision in open meeting.

(3) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board's routine.

(d) Reporter and Transcripts.

(1) Option. A party has the option of furnishing his or her own stenographic reporter at his or her own expense or using the reporter by the board. If a party elects to provide his or her own reporter, the party shall notify the board prior to the commencement of the hearing.

(2) Corrections. Suggested corrections to the transcript of the record may be offered within ten days after the transcript is filed in the proceeding, unless the board shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the board. If suggested corrections are not objected to, the board will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the board which shall then determine the manner in which the record shall be changed, if at all.

(e) Dismissal Without Hearing.

(1) The board may entertain motions for dismissal for the following reasons:

(A) failure to prosecute;

(B) unnecessary duplication of proceedings or res judicata;

(C) withdrawal;

(D) moot questions or stale petitions; or

(E) lack of jurisdiction.

(2) Such motions must meet the criteria of §185.24(e) of this title (relating to Procedure - Prehearing).

(3) These motions may be argued prior to the board ruling thereon.

(f) Evidence.

(1) Rules. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved.

(2) Objections. Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings of the hearings examiner or administrative law judge during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearings examiner or administrative law judge the action which he or she desires.

(3) Offer of proof. If evidence is excluded from the record by an exclusionary ruling of the hearings examiner or administrative law judge, the evidence may be included in the record by an offer of proof by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence. An offer of proof shall be sufficient to preserve the evidence for review.

(4) Office records. When subpoenaed by the board, the office records of each patient shall have stapled thereto an affidavit in the form approved and furnished by the board which contains the requisite elements to comply with the Texas Rules of Civil Evidence, 902(10)b, relating to the form of affidavits.

(5) Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(A) Copies. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearings examiner or administrative law judge may limit those admitted to a number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement the hearings examiner or the Administrative Law Judge shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(B) Prepared testimony. In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the hearings examiner or administrative law judge, the prepared testimony of any witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness' being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

(6) Official notice. Official notice may be taken of all facts judicially cognizable and of records of the board or medical board. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the board and its staff may be utilized in evaluating the evidence.

(7) Limitations on number of witnesses. The hearings examiner or administrative law judge shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

(8) Exhibits.

(A) Form: Documentary exhibits shall be 8 1/2 inches by 11 inches in length, so as to not unduly encumber the files and records of the board. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to fact material and relevant to the issues involved in a particular proceeding.

(B) Marking and service: The original of each exhibit offered shall be marked sequentially for identification and tendered for inclusion in the evidentiary record. One copy shall be furnished to the hearings examiner or administrative law judge and one copy to each party of record or his or her attorney or representative.

(9) After hearing. No exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing unless specifically directed by the hearings examiner, administrative law judge, presiding officer, or by the board with copies of the late-filed exhibit served on all parties of record.

(g) Default. If the respondent (applicant) fails to appear in person or by legal representation on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the administrative law judge, upon motion by board staff shall enter a default judgment in the matter adverse to the respondent (applicant) who failed to attend the hearing, provided that accompanying the motion will be an affidavit of board staff averring that in the opinion of board staff, there is legally admissible credible evidence reasonably available to support the factual allegations against the respondent (applicant).

§185.26. Procedure - Posthearing.

(a) Proposals for Decision.

(1) Elements. In addition to any other requirement of the Physician Assistant Licensing Act or the Administrative Procedure Act, the administrative law judge shall serve on the parties a proposal for decision which shall contain:

(A) a summary of the evidence adduced by each party;

(B) a statement of the hearings examiner's or administrative law judge's reasons for the proposed decision;

(C) findings of fact expressed in clear, concise factual terms, neither summarizing nor reciting the evidence. Findings of fact must be based explicitly on the evidence and on matters officially noticed;

(D) conclusions of law necessary to the proposed decision;

(E) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board; and

(F) recommended disposition or discipline.

(2) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the hearings examiner or the administrative law judge on each party, his or her attorney of record or representative, and the board. Service of the proposal for decision shall be in accordance with §185.23 (f) and (k) of this title (relating to Procedure - General).

(3) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.

(4) Proposed findings. Only when the hearings examiner or administrative law judge requests a party or parties to submit findings of fact will it be necessary for the administrative law judge to rule on each proposed finding in the recommended order.

(b) Exceptions and Replies.

(1) Entitlement. Any party of record who is aggrieved by the hearings examiner's or the administrative law judge's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within ten days of the filing of the exceptions. Exceptions and replies shall be filed with the hearings examiner or the administrative law judge. Any extensions of time shall be as provided by §185.23 (c) of this title (relating to Procedure - General).

(2) Form. The form of exceptions and replies are as specified in §185.23 (f) of this title (relating to Procedure - General).

(3) Content. Each exception or reply to a finding of fact shall be stated concisely and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(4) Briefs. Briefs shall be filed only when requested or permitted by the board, presiding officer, hearings examiner, or administrative law judge.

(5) Service. Exceptions and replies shall be served upon every party of record by the filing party pursuant to §185.23 (k) of this title (relating to Procedure - General).

(c) Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the board. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.

(d) Final Decisions and Orders.

(1) Board action. The proposal for decision may be acted on by the board upon the expiration of ten days after the filing of replies to exceptions to the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his or her attorney of record.

(2) Recorded. All final decisions and orders of the board shall be in writing or stated in the record and shall be signed by the presiding officer of the board. A final order shall include findings of fact and conclusions of law, separately stated.

(3) Imminent peril. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite that finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(4) Changes to Recommendation. To protect the public interest and ensure that sound principles govern the decisions of the board, it shall hereafter be the policy of the board to change a finding of fact or conclusion of law or to vacate or modify the proposed order of a hearings examiner or an administrative law judge when the proposed order is:

(A) erroneous;

(B) against the weight of the evidence;

(C) based on unsound medical principles;

(D) based on an insufficient review of the evidence;

(E) not sufficient to protect the public interest; or

(F) not sufficient to adequately allow rehabilitation of the physician assistant.

(5) Amended order. If the board modifies, amends, or changes the hearing examiner's or the administrative law judge's recommended order, an order shall be prepared reflecting the board's changes as stated in the record.

(6) Administrative finality. A final order or board decision is administratively final:

(A) upon a finding of imminent peril to the public health, safety, or welfare as outlined in paragraph (3) of this subsection;

(B) when absent the filing of a timely motion for rehearing upon the expiration of 20 days from the date the final order or board decision is entered; or

(C) when a timely motion for rehearing is filed and the motion for rehearing is overruled by board order or operation of law as outlined in subsection (e) of this section.

(7) Rendering of final decision or order. The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by an administrative law judge, an extension of time for the issuing of a proposal for decision may be announced at the conclusion of the hearing.

(e) Motions for Rehearing.

(1) Filing Times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by mail, of the final decision or order of the board.

(2) Board Action. Action by the board on the motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The board may, by written order, extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may, by agreement, with the approval of the board, provide for a modification of the times provided in this section.

(f) The Record. The record in a contested case shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings of fact, conclusions of law, exceptions, and replies;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda, correspondence from parties, or other data submitted to or considered by the hearings examiner or the administrative law judge or members of the agency who are involved in making the decision.

(g) Costs of Appeal. A party appealing a final decision of the board in a contested case may be ordered by the board to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

(h) Modification/Termination of Agreed Orders and Disciplinary Orders.

(1) Unless the board order specifies that the order shall or will be modified or terminated upon the fulfillment of certain conditions or the occurrence of certain events, the decision to modify or terminate a board order shall be a matter for the exercise of sound discretion by the board.

(2) Modification or termination requests shall not be contested matters but instead shall be matters to be ruled upon through the exercise of sound discretion by the board.

(3) If a board order sets out certain conditions or events for granting modification or termination of an order, the petitioner shall have the burden of establishing that such conditions or events have taken place or been met.

(4) If by the terms of the order no specific conditions or events trigger the requirement that the petition be granted, the following factors may be considered for purposes of analyzing the merits of the petition and exercising sound discretion:

(A) has there been a significant change in circumstances which indicates that it is in the best interest of the public and the physician assistant to modify or terminate the order;

(B) has there been an unanticipated unique or undue hardship on the physician assistant as a result of the board order which goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems);

(C) has the physician assistant engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate;

(D) has the physician assistant fulfilled the requirements of his order in a timely manner and cooperated with the board and board staff during the period of probation or restriction; and

(E) has the physician assistant served a significant portion of the required period of restriction of probation.

(5) Unless the terms of the board order specify otherwise, petitions for modification or termination shall be in writing and filed with the Director of Enforcement for the board.

(6) Modification or termination requests may be made only once a year unless a board order specifies; however, upon an assertion in writing under oath by a petitioner indicating that a circumstance exists such as described in paragraph (4)(A) of this subsection, a petitioner may seek permission to petition for early modification of terms which cause unanticipated unique or undue hardship or are otherwise impossible to meet as set forth in the order.

(7) For purposes of administrative convenience, modification or termination requests may be heard by the full board or by representatives of the board. In the event such a request is heard by board representatives, the representatives of the board shall not be authorized to bind the board, but shall only make recommendations to the board regarding an appropriate disposition. The recommendation of such representatives shall be submitted to the full board for adoption or rejection in the form of an order drafted by board staff.

§185.27. Medical Board Review and Approval.
Medical board approval of board rules under this section shall be memorialized in the minutes of the medical board, the minutes of a committee of the medical board, or in a writing signed by the medical board's presiding officer, secretary-treasurer, or authorized committee chair after consideration of the rules recommended by the board.

§185.28. Construction.
The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Physician Assistant Licensing Act and the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Act(s), the provisions of the Act(s) shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Act(s) shall remain in effect.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004116
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 305-7016

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Chapter 187. PROCEDURE

Subchapter D. POSTHEARING

22 TAC §187.33

The Texas State Board of Medical Examiners proposes an amendment to §187.33, concerning procedure and posthearings. Oral argument in proposals for decision is being amended.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification regarding oral argument in proposals for decision. There will be no effect on small businesses. There is no anticipated economic costs for persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, §164.007 is affected by the amendment.

§187.33. Oral Argument.

Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the board. Should the board grant a request for oral argument, parties may present their arguments in person or by an authorized representative. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing or in separate pleadings.

This 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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Bruce A. Levy, M.D., J.D.
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Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

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Chapter 193. STANDING DELEGATION ORDERS

22 TAC §193.10

The Texas State Board of Medical Examiners proposes new §193.10, concerning pronouncement of death and collaborative management of glaucoma. New §193.10 is proposed to implement the mandate of the 76th Legislature as it relates to the Optometry Act, Article 4552, § 1.03, Vernon's Texas Civil Statutes, regarding the minimum standards for the collaborative management of glaucoma. This section was previously proposed in the April 21, 2000, issue of the *Texas Register* (25 TexReg 3359). However, the section is being withdrawn elsewhere in this issue of the *Texas Register* so that it may be reproposed.

Michele Shackelford, Assistant General Counsel, Texas State Board of Medical Examiners, has determined that for the first five-year period the new section is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the new section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the new section as proposed is in effect the public benefit anticipated as a result of enforcing the new section will be the placement of a new rule in regards to the mandate

of the 76th Legislature as it relates to the Optometry Act, Article 4552, § 1.03, Vernon's Texas Civil Statutes, regarding the minimum standards for the collaborative management of glaucoma. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the new section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new section is proposed under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

The Occupations Code, §157.001 is affected by the proposed new section.

§193.10. Collaborative management of glaucoma.

(a) Purpose. The purpose of this section is to implement the mandate of the 76th Legislature as it relates to the Optometry Act, Article 4552, § 1.02, Vernon's Texas Civil Statutes, regarding the minimum standards for the collaborative management of glaucoma.

(b) Minimum requirements. At a minimum, the treating ophthalmologist should follow the guidelines outlined in paragraphs (1)-(10) of this section.

(1) The ophthalmologist will confirm the diagnosis within 30 days of the diagnosis of glaucoma made by the optometrist. While the ophthalmologist may, in his or her discretion, require that the patient visit the ophthalmologist for a face-to-face visit, such a face-to-face visit is not mandated. The ophthalmologist may, at the ophthalmologist's discretion, rely upon the results of diagnostic tests performed originally by the optometrist, unless reaffirmation is needed.

(2) The ophthalmologist must communicate in written form the confirmation of the diagnosis within 30 days, as well as the refinement of the treatment plan as recommended by the optometrist.

(3) A proper medical record must be generated for each patient by the ophthalmologist and shall include all correspondence and testing results. The medical record must also include a written note made in the record by the ophthalmologist or a copy of the written informed consent demonstrating that the patient understands that he or she is participating in a co-management of primary open angle glaucoma.

(4) The necessity for follow-up visits will be at the discretion of the ophthalmologist based on the communication of the patient's progress by the optometrist.

(5) The ophthalmologist must report any irregular behavior of the optometrist to the Texas State Board of Medical Examiners for referral to the Texas Optometry Board.

(6) The ophthalmologist must enter into the patient's written medical records that the ophthalmologist has elected to enter into a co-management agreement with an optometrist.

(7) It is at the discretion of the ophthalmologist to complete a clinical skills assessment with each optometrist in which a co-management arrangement exists. The ophthalmologist will, however, receive written confirmation and documentation that the co-managing optometrist has completed all of the requirements of the Optometric Health Care Advisory Committee to obtain the designation of "optometric glaucoma specialist."

(8) A physician may charge a reasonable consultation fee for a consultation given when a patient is referred with a diagnosis of primary open angle glaucoma.

(9) When a physician examines a patient involved in a co-management consultation with a therapeutic optometrist for treatment of primary open angle glaucoma, the physician shall forward to the therapeutic optometrist, not later than the 30th day following the examination, a written report on the results of the examination. A physician who, for a medically appropriate reason, does not return a patient to the therapeutic optometrist, shall state in the physician's report to the therapeutic optometrist the specific medical reason for failing to return the patient.

(10) In order to enter into a co-management agreement with an optometrist, there must be an agreement between the two professionals that, following each visit, specified information, previously agreed upon by both the ophthalmologist and the optometrist, about the patient examined will be forwarded to the other practitioner.

This 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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Bruce A. Levy, M.D., J.D.
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Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 29. PURCHASED HEALTH SERVICES

Subchapter J. AMBULANCE SERVICES

25 TAC §29.903

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes an amendment to §29.903 concerning authorized ambulance services for nonemergency transport.

The department has determined the need to amend the rule to comply with Human Resource Code ?§32.024 as amended by Senate Bill 374, 76th Legislative Session, 1999, which will allow non-emergency ambulance services to be immediately granted upon receipt of a Texas Department of Health approved request for authorization signed by a physician.

Joe Moritz, Health Care Financing Budget Director, has determined that for each year of the first five years the section is in effect, there will be fiscal implications as a result of enforcing or administering the section as proposed. The impact on state government is a projected additional state cost of $2,078,423 for Fiscal Year 2001, and $2,081,899 for Fiscal Year 2002, $2,081,899 for Fiscal Year 2003, $2,081,899 for Fiscal Year 2004, and $2,081,899 for Fiscal Year 2005, with an associated increase in the federal Medicaid matching funds received by the state. The amendment does have foreseeable implications re-

lating to cost or revenues of local governments. It is anticipated that the amendment will result in increased expenditures paid to ambulance companies.

Mr. Moritz has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be to provide increased access for Texas Medical Assistance Program recipients to nonemergency ambulance transportation services. There will be no effect on small business or micro-businesses to comply with this section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the rule as proposed. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no impact on local employment.

A public hearing on the proposed amendments will be held at 9:00 a.m. on July 10, 2000, in the Public Hearing Room, Texas Department of Health, 12555 Riata Vista Circle, Austin, Texas, to accept comments on the proposal.

Comments on the proposed amendments may be submitted to Kathy Will, Program Specialist, Policy Initiatives, Texas Department of Health, Mail Code Y-927, 1100 West 49th Street, Austin, Texas, 78756-3199, within 30 days of publication in the *Texas Register*. In order 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 Human Resources Code, §32.021 and the Texas Government Code, §531.021, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program. Rules are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized by Acts of the 72nd Legislature, First Called Session, Chapter 15, §1.07, (1991).

The proposed amendment affects Chapter 32 of the Human Resources Code and Chapter 531 of the Government Code.

§29.903. Authorized Ambulance Services.

These requirements are in addition to the requirements as stated in §29.1 of this title (relating to Claim Information Requirements), and §29.902 of this title (relating to Additional Claim Information Requirements).

(1) (No change.)

(2) Nonemergency Ambulance Transportation. The department or its designee reimburses a Medicaid-enrolled provider for the nonemergency transportation of a Medicaid recipient under the following conditions:

(A) (No change.)

(B) the severely disabled recipient can not be transported by any means other than an ambulance without endangering the health or safety of the recipient; and

(C) the nonemergency ambulance transportation of the severely disabled Medicaid recipient is to or from a scheduled medical appointment and authorization has been received from the department or its designee.

(i) The ~~[the]~~ prior authorization for nonemergency ambulance transportation will be based upon the following:

(I) the recipient's medical needs and disability; and

(II) duration of time if regular transportation will be required as a result of the recipient's medical needs and disability.

(ii) The ~~[the]~~ prior authorization request must be approved or denied by the department or its designee not later than 48 hours after receipt of a request unless clause (iii) of this subparagraph applies.

(iii) A request for authorization must be immediately granted and must be effective for a period of 180 days from the date of issuance if the request includes a written statement from a physician that:

(I) states that alternative means of transporting the recipient are contraindicated;

(II) is dated not earlier than the 60th day before the date on which the request for authorization is made; and

(III) is submitted on the Texas Department of Health approved Physician Certification Form.

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

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004098
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 458-7236

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Chapter 33. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes amendments to §§33.134, 33.301 and 33.316 concerning the accompaniment by a parent, guardian or authorized adult at THSteps/EPSDT medical and dental checkups for children who are younger than age 15. The EPSDT program is also known as Texas Health Steps. Specifically the sections cover the primary responsibilities of EPSDT medical and dental screening providers and standards of care.

The amendment to §33.134(a)(2) corrects grammar concerning conjunctions.

The amendment to §33.134(a)(3) clarifies to whom medical screening providers can interpret medical screening results.

The other amendments to §§33.134, 33.301 and 33.316 implement Acts 1999, 76th Legislature, Chapter 766 (House Bill 1285), which amends the Human Resources Code, §32.024(s). The amendments add as a condition for eligibility for provider reimbursement the accompaniment of a parent, guardian, or

other authorized adult at EPSDT well-child (medical) and dental checkups of children who are younger than age 15.

The amendments to §§33.134(a)(5), 33.301 and 33.316 do not apply to services provided by a school health clinic, Head Start program, or child-care facility if these facilities or programs (1) obtain written consent to the services from the child's parent or guardian within the one-year period preceding the date on which the services are provided, and that consent has not been revoked; and (2) encourage parental involvement in and management of the health care of children receiving services from the clinic, program, or facility.

These rules do not conflict with or supersede the Family Code, Chapters 151, 153, and 32 relating to who may consent for medical and dental services for a child.

Roy Middleton, Director, Division of Financial Management, Associateship for Community Health and Resources Development, has determined that, for the first five years the amended sections are in effect, there will no fiscal implications to state or local governments as a result of enforcing or administering the proposed amendments.

Margaret Drummond-Borg, M.D. , Director, Genetic Screening and Case Management Division, has determined that for the first five years the amended sections are in effect, the anticipated benefit is an increase of parental involvement in and management of the health care of EPSDT children. There will be no adverse economic effect on small businesses or micro businesses. This was determined by assessing any new demand for additional services that were not previously required and for which no additional reimbursement was provided. It was determined that no additional services are being required and there is no economic impact of this policy change. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated impact on local employment.

Comments on the proposed rules may be sent to Rosemary G. Morris, MSW, Bureau of Children's Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/458-7745. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

Subchapter E. MEDICAL PHASE

25 TAC §33.134

The amendment is proposed under the Human Resources Code, §32.024(s) which allows the department to establish rules governing the EPSDT program; the Human Resources Code, §32.021 and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The amendment affects the Human Resources Code, Chapter 32.

§33.134. Primary Responsibilities of Medical Screening Providers.

(a) The primary responsibilities of medical screening providers are:

(1) to conduct medical screening according to policies and procedures established by the Texas Department of Health;

(2) to provide clinic surroundings which will establish a good relationship between clinic personnel, [~~and~~] the recipient,and the[~~his~~] recipient's family;

(3) to interpret medical screening results to the recipient or the recipient's parent, conservator, or responsible adult, and/or recipient during the exit interview;

(4) to make referrals for needed follow-up diagnosis and treatment services; and

(5) to ensure a parent, guardian or authorized adult presents a recipient under age 15 at an EPSDT medical checkup and continues to wait for the child while the checkup takes place unless:

(A) the services are provided by a school health clinic, Head Start program, or child-care facility (as defined in the Human Resources Code, §42.002(3));

(B) written consent to the services, which has not been revoked, was provided by the child's parent or guardian within the one-year period prior to the date the services are provided; and

(C) the provider encourages parental involvement in and management of the health care of the children receiving services from the clinic, program, or facility.

(b) The term "authorized adult" means a person, including an adult related to the child, who is authorized by a child's parent or guardian to accompany a child to a Texas Health Steps medical checkup.

(c) The term "parental involvement" means encouraging the accompaniment by a parent or guardian of a child at an EPSDT medical checkup by notifying the parent of the appointment date in writing at least one week in advance of the scheduled appointment and providing the parent the option to attend the appointment.

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

Filed with the Office of the Secretary of State, on June 8, 2000.

TRD-200004060
Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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Subchapter G. DENTAL SERVICES

25 TAC §33.301, §33.316

The amendments are proposed under the Human Resources Code, §32.024(s) which allows the department to establish rules governing the EPSDT program; the Human Resources Code, §32.021 and the Government Code, §531.021, which provides the Health and Human Services Commission with the authority to administer the state's medical assistance program and are submitted by the department under its agreement with the Health and Human Services Commission to operate the purchased health services program as authorized under Acts 1991, 72nd Legislature, First Called Session, Chapter 15, §1.07.

The amendments affect the Human Resources Code, Chapter 32.

§33.301. Definitions

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

(1) Accompanied - A parent, guardian or authorized adult presents a recipient under age 15 at an EPSDT dental checkup and continues to wait for the child while the checkup takes place.

(2) Authorized adult - A person, including an adult related to the child, who is authorized by a child's parent or guardian to accompany a child to a Texas Health Steps dental checkup.

(3) [~~(1)~~] Department–The Texas Department of Health.

(4) [~~(2)~~] Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)-A component of the Medicaid program, also known as Texas Health Steps (THSteps), which provides medical check-up and dental services to Medicaid and Texas Health Steps clients under age 21 years.

(5) [~~(3)~~] HHSC–Health and Human Services Commission.

(6) [~~(4)~~] Manual–The Texas Medicaid Provider Procedures Manual, including all updates published in the Texas Medicaid Bulletin.

(7) [~~(5)~~] Medicaid–A medical and dental program provided under Title XIX of the federal Social Security Act and the Human Resources Code, Chapter 32.

(8) [~~(6)~~] OIE–The Office of Investigations and Enforcement at the Health and Human Services Commission.

(9) Parental involvement - Encourages the accompaniment by a parent or guardian of a child at an EPSDT dental checkup by notifying the parent of the appointment date in writing and at least one week in advance of the scheduled appointment and providing the parent the option to attend the appointment.

(10) [~~(7)~~] Recipient–A Medicaid-enrolled client.

(11) [~~(8)~~] SBDE–State Board of Dental Examiners.

§33.316. Standards of Care.

(a) Texas Health Steps recipients or their parents or guardians who can give informed consent shall:

(1) receive information following an oral evaluation regarding:

(A) the dental diagnosis;

(B) scope of proposed treatment, including alternatives and risks;

(C) anticipated results;

(D) need for administration of sedation or anesthesia, including risks; and

(2) receive a full explanation of the treatment plan and give informed consent prior to its implementation.

(b) Texas Health Steps recipients shall:

(1) receive dental services specified in the treatment plan which meet the standards of care established by the laws relating to the practice of dentistry and the rules and regulations of the SBDE;

(2) receive dental services free from abuse or harm from the provider or the provider's staff; and

(3) receive only that treatment required to address documented medical necessity and which meets professionally recognized standards of health care as recognized by the SBDE.

(c) A Texas Health Steps dental provider shall require that a recipient be accompanied by a parent, guardian, or authorized adult at a Texas Health Steps dental appointment if the recipient is younger than 15 years of age unless:

(1) the services are provided by a school health clinic, Head Start program, or child care facility (as defined in the Human Resources Code, §42.002(3));

(2) written consent to the services, which has not been revoked, was provided by the child's parent or guardian within the one-year period prior to the date the services are provided; and

(3) the provider encourages parental involvement in and management of the oral health care of the children receiving services from the clinic, program, or facility.

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

Filed with the Office of the Secretary of State, on June 8, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Chapter 97. COMMUNICABLE DISEASES

Subchapter A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.1 - 97.4, 97.6 - 97.8, 97.10 - 97.11, 97.13

The Texas Department of Health (department) proposes amendments to §§97.1-97.4, 97.6-97.8, 97.10-97.11, and 97.13 concerning reporting requirements for infectious diseases. The proposed amendments involve minor revisions in the content of the sections. The proposed sections will enable the reporting sources to more clearly identify the conditions and diseases that must be reported, define the minimal reportable information on these conditions and diseases, and describe the procedures for reporting to the local health authority or the department. Amendments to §§97.1, 97.2, 97.7, 97.8, 97.10, 97.11, and 97.13 involve minor editorial changes and the change of the term "reportable disease" to "notifiable condition". Substantive changes occur in §§97.3, 97.4, and 97.6.

Specifically, the amendments to §§97.3, 97.4, and 97.6 add to or change the rules concerning the following diseases: anthrax, chickenpox, cholera, cyclosporiasis, *Escherichia coli* infection, hepatitis, Q fever, smallpox, tularemia, and *Vibrio* infection. Proposed amendments to §97.3 add cyclosporiasis, Q fever, smallpox, and tularemia to the notifiable condition list. Cyclosporiasis has been added because there have been large *Cyclospora* outbreaks in recent years associated with imported berries. Although previously removed from the notifiable condition list because of low (or no) incidence, Q fever, smallpox, and tularemia have been added because of

their possible use in acts of bioterrorism. The proposed change to hepatitis C reporting reflects the fact that the majority of hepatitis C infections are asymptomatic. Also proposed is an expansion to the types of *Escherichia coli* that are notifiable. The proposed rule recognizes the fact that O157:H is not the only enterohemorrhagic subtype of concern. It is proposed that cholera be removed as a separate disease and grouped with all *Vibrio* infections. In order to simplify reporting, invasive streptococcal disease is proposed to be limited to groups A and B. Also proposed in §97.3 (and §97.6) is the move of chicken pox from notifiable by number and age group only to fully notifiable. This would allow for the investigation of chicken pox as any other vaccine preventable disease. Proposed amendments to §97.4 add anthrax and smallpox to the list of public health emergencies immediately notifiable to the department because of their potential for use in acts of bioterrorism. Also proposed is the addition of brucellosis, hepatitis A (acute), Q fever, tularemia, and *Vibrio* infection to the list of diseases notifiable within one working day. The proposed move for brucellosis, Q fever, and tularemia is due to their potential use as agents of bioterrorism. It is proposed that hepatitis A (acute) be moved because of the potential for meaningful public health response in an outbreak situation. The proposed move of *Vibrio* infections to notifiable in one day would allow compliance with Food and Drug Administration guidelines for investigation of illnesses potentially due to the consumption of molluscan shellfish.

Kate Hendricks, M.D., M.P.H. & T.M., Director, Infectious Disease Epidemiology and Surveillance Division, has determined that, because the expected incidence of the four diseases being added to the notifiable condition list is extremely low, for the first five year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the sections.

Dr. Hendricks has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved reporting of these diseases, leading to better and more timely treatment of these serious health conditions. In addition, improved reporting of these diseases will produce data which will be more uniform, accurate, reliable, and complete and will enable improved planning for and targeting of disease prevention activities and the provision of clinical and social services. Because the proposed changes do not involve major adaptation from current practice, there is no anticipated additional cost to small businesses or microbusinesses nor to persons who may be required to comply with the sections as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Kate Hendricks, M.D., Director, Infectious Disease Surveillance and Epidemiology Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7676, kate.hendricks@tdh.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Communicable Disease Prevention and Control Act, Health and Safety Code, §81.004, which provides the Board of Health with the authority to adopt rules concerning communicable diseases; §81.041 which requires the board to identify reportable diseases; §81.044 which requires the board to prescribe the form and method of reporting communicable diseases; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect Health and Safety Code Chapter 81

§97.1. Definitions.

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

(1) (No change.)

(2) Carrier - An infected person or animal that harbors a specific infectious agent in the absence of discernible clinical disease and serves as a potential source or reservoir of [~~for the~~] infection [~~of man~~].

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

(8) Disinfection - Destruction of infectious agents outside the body directly applied by chemical or physical means [~~directly applied~~].

(9) *Enterococcus* Species - Any *Enterococcus* bacteria isolated in a laboratory.

(10) [~~(9)~~] Epidemic [~~or outbreak~~] - The occurrence in a community or region of a group of illnesses of similar nature, clearly in excess of normal expectancy, and derived from a common or a propagated source.

(11) [~~(10)~~] Exposure–A situation or circumstance in which there is significant risk of becoming infected with the etiologic agent for the disease involved.

(12) [~~(11)~~] Health authority - A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be:

(A) a local health authority:

(i) director of a local health department; or

(ii) physician as appointed by the Commissioner of Health if there is no director of a local health department.

(B) a regional director of the Texas Department of Health if no physician has been appointed by the Commissioner of Health as a local health authority.

(13) [~~(12)~~] Hospital laboratory - Any laboratory that performs laboratory test procedures for a patient of a hospital either as a part of the hospital or through contract with the hospital.

(14) Notifiable condition - Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What Condition To Report and What Isolates To Report or Submit). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "notifiable condition".

(15) [~~(13)~~] Outbreak - See definition of epidemic in this section.

(16) [~~(14)~~] Penicillin resistant *Streptococcus pneumoniae* - *Streptococcus pneumoniae* with a penicillin minimum inhibitory concentration (MIC) of 2 μg/mL or greater (high level), and/or [~~and~~] an intermediate level resistance of 0.1- 1 μg/mL.

(17) [~~(15)~~] Physician - A person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.

(18) [~~(16)~~] Regional director - The physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121.

(19) [~~(17)~~] Report - Information that is required to be provided to the department.

(20) [~~(18)~~] Report of a disease - The notification to the appropriate authority of the occurrence of a specific communicable disease in man or animals, including all information required by the procedures established by the department.

(21) School Administrator - The city or county superintendant of schools or the principal of any school not under the jurisdiction of a city or county board of education.

[~~(19) Reportable disease - Any disease or condition that is required to be reported under the Act or by these sections. See §97.3 of this title (relating to What Condition To Report and What Isolates To Report or Submit). Any outbreak, exotic disease, or unusual group expression of illness which may be of public health concern, whether or not the disease involved is listed in §97.3 of this title, shall be considered a "reportable disease."~~]

(22) [~~(20)~~] Significant risk - A determination relating to a human exposure to an etiologic agent for a particular disease, based on reasonable medical judgements given the state of medical knowledge, relating to the following:

(A) nature of the risk (how the disease is transmitted);

(B) duration of the risk (how long an infected person may be infectious);

(C) severity of the risk (what is the potential harm to others); and

(D) probability the disease will be transmitted and will cause varying degrees of harm.

[~~(21) School administrator - The city or county superintendent of schools, or the principal of any school not under the jurisdiction of a city or county board of education.~~]

(23) [~~(22)~~] Specimen Submission Form G-1 - A multipurpose laboratory specimen submission form available from the Texas Department of Health, Bureau of Laboratories, 1100 West 49th Street, Austin, Texas, 78756-3199.

(24) [~~(23)~~] Vancomycin resistant *Enterococcus* species - *Enterococcus* species with a vancomycin MIC greater than 16 micrograms per milliliter (μg/mL) or a disk diffusion zone of 14 millimeters or less. Vancomycin intermediate *Enterococcus* (e.g.[~~eg~~], *Enterococcus casseliflavis* and *Enterococcus gallinarum*) with a vancomycin MIC of 8 μg/mL - 16 μg/mL do not need to be reported.

(25) [~~(24)~~] Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species - [~~For the purposes of reporting,~~] *Staphylococcus aureus* or a coagulase negative *Staphylococcus* species with a vancomycin MIC of 8 μg/mL or greater.

§97.2. Who Shall Report

(a) A physician, dentist, veterinarian, chiropractor, of other person permitted by law to attend a pregnant woman during gestation or at the delivery of an infant shall report, as required by these sections, each patient or animal he or she shall examine and who has or is suspected of having any notifiable condition [~~reportable disease or health condition~~], and shall report any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communicable or reportable. An employee from the clinic or office staff may be designated to serve as the reporting officer. A physician, dentist, veterinarian, or chiropractor who can assure that a designated or appointed person from the clinic or office is regularly reporting every occurrence of these diseases or health conditions in their clinic or office does not have to submit a duplicate report.

(b) The chief administrative officer of a hospital shall appoint one reporting officer who shall be responsible for reporting each patient who is medically attended at the facility and who has or is suspected of having any notifiable condition. [~~reportable disease or health condition.~~] Hospital laboratories may report through the reporting officer or independently in accordance with the hospital's policies and procedures.

(c) Except as provided in subsection (b) of this section, any person who is in charge of a clinical laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, bacteriologic, virologic, parasitologic, [~~culture,~~] serologic, or other evidence of a notifiable condition, [~~reportable disease, health condition,~~] or bacterial organism shall report as required by this section.

(d) School authorities, including a superintendent, principal, teacher, school health official, or counselor of a public or private school and the administrator or health official of a public or private institution of higher learning should report as required by these sections those students attending school who are suspected of having a notifiable condition [~~reportable disease~~]. School administrators who are not medical directors meeting the criteria described in §97.132 of this title (relating to Who Shall Report Sexually Transmitted Diseases) [~~authorities~~] are exempt from reporting sexually transmitted diseases. [~~diseases, including acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection, in accordance with §97.132(5) (relating to Who Shall Report Sexually Transmitted Diseases.)~~]

(e) Any person having knowledge that a person is suspected of having a notifiable condition [~~reportable disease or health condition~~] should notify the local health authority or the department and provide all information known to them concerning the illness and physical condition of such person or persons.

(f) Sexually transmitted diseases including HIV and AIDS shall be reported in accordance with §97.132 of this title.

(g) Failure to report a notifiable condition [~~reportable disease~~] is a Class B misdemeanor under the Texas Health and Safety Code, §81.049.

§97.3. What Condition To Report and What Isolates To Report or Submit

(a) Identification of notifiable [~~reportable~~] conditions.

(1) The most current edition of the Texas Department of Health's (department) publication titled "Identification, Confirmation, and Reporting of Notifiable Conditions" should [~~Texas Department of Health's (department) publication titled Identification and Confirmation of Reportable Diseases is a guideline to~~] be used to determine when a notifiable condition [~~reportable disease~~] shall be reported under these sections based on a specific diagnosis, test procedure, and/or confirmatory test. Copies are available upon request to the Materials Acquisition and Management Division, Texas Department of

Health, 1100 West 49th Street, Austin, Texas 78756. Copies are filed in the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

(2) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(b) Notifiable [~~Reportable~~] conditions or isolates.

(1) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; anthrax; botulism-adult and infant; brucellosis; campylobacteriosis; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; [~~cholera;~~] Creutzfeldt-Jakob disease (CJD); cryptosporidiosis; cyclosporiasis; dengue; diphtheria; ehrlichiosis; encephalitis (specify etiology); *Escherichia coli*, enterohemorrhagic [~~O157:H7~~] infection; gonorrhea; Hansen's disease (leprosy); *Haemophilus influenzae* type b infection, invasive; hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, B, D, E, and unspecified (acute); hepatitis C (newly diagnosed infection, effective 1/1/00); [~~hepatitis, acute viral (specify type);~~] hepatitis B, (chronic) identified prenatally or at delivery as described in §97.135 of this title (relating to Serologic Testing during Pregnancy and Delivery; human immunodeficiency virus (HIV) infection; legionellosis; listeriosis; Lyme disease; malaria; measles (rubeola); meningitis (specify type); meningococcal infection, invasive; mumps; pertussis; plague; poliomyelitis, acute paralytic; Q fever; rabies in man; relapsing fever; rubella (including congenital); salmonellosis, including typhoid fever; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease, invasive (group A or B); syphilis; tetanus; trichinosis; tuberculosis; tularemia; typhus; *Vibrio* infection, including cholera (specify species); viral hemorrhagic fevers; yellow fever; and yersiniosis.

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

(c) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

[~~(1) for chickenpox-numeric totals by age group;~~]

(1) [~~(2)~~] AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with §§97.132-97.135 of this title (relating to Sexually Transmitted Diseases, including AIDS and HIV infection);

(2) [~~(3)~~] for tuberculosis - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, antibiotic susceptibility results, initial antibiotic therapy, and any change in antibiotic therapy;

(3) [~~(4)~~] for hepatitis B, (chronic and acute) identified prenatally or at delivery - name, present address, present telephone number, age, date of birth, sex, race and ethnicity, estimated delivery date (for prenatal diagnoses), name of baby and location of delivery (for diagnoses made at delivery), physician or other person in attendance, disease, type of diagnosis, date of onset, address, telephone number;

(4) [~~(5)~~] for all other notifiable [~~reportable~~] conditions listed in subsection (b)(1) of this section -name, present address, present telephone number, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number;

(5) [~~(6)~~] for all isolates of *Enterococcus* species and all isolates of *Streptococcus pneumoniae* regardless of resistance patterns - numeric totals at least quarterly; and

(6) [~~(7)~~] for vancomycin resistant *Enterococcus* species; penicillin resistant *Streptococcus pneumoniae*; vancomycin resistant *Staphylococcus aureus*; vancomycin resistant coagulase negative *Staphylococcus* species, - name, city of submitter, date of birth or age, sex, anatomic site of culture, and date of culture.

(d) (No change.)

§97.4. When To Report a Condition or Isolate; When To Submit an Isolate

(a) The following notifiable conditions [~~reportable diseases~~] are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the regional director of the Texas Department of Health (department): anthrax; botulism, foodborne; [~~cholera;~~] diphtheria; *Haemophilus influenzae* type b infection, invasive; measles (rubeola); meningococcal infection, invasive; pertussis; poliomyelitis, acute paralytic; plague; rabies in man; smallpox; viral hemorrhagic fevers; yellow fever. Vancomycin resistant *Staphylococcus aureus* and vancomycin resistant coagulase negative *Staphylococcus* species shall be reported immediately by phone [~~or fax~~] to the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, Austin at (800) 252-8239.

(b) The following notifiable conditions [~~reportable diseases~~] shall be reported within one working day of identification as a suspected case: brucellosis, hepatitis A (acute), Q fever, rubella (including congenital), tularemia, tuberculosis, and *Vibrio* infection (including cholera). [~~and tuberculosis disease.~~]

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

(e) For all other notifiable conditions [~~reportable diseases~~] not listed in subsections (a)-(c) of this section, reports of disease shall be made no later than one week after a case or suspected case is identified.

(f) For *Enterococcus* species; vancomycin resistant *Enterococcus* species; *Streptococcus pneumoniae*; and penicillin-resistant [~~penicillin - resistant~~] *Streptococcus pneumoniae* - reports shall be made no later than the last working day of March, June, September, and December.

(g) (No change.)

§97.6. Reporting and Other Duties of Local Health Authorities and Regional Directors

(a) (No change.)

(b) Those notifiable [~~reportable~~] conditions identified as public health emergencies in §97.4(a) of this title (relating to When to Report a Condition or Isolate; When to Submit an Isolate) shall be reported immediately to the department by telephone.

(c) (No change.)

(d) For notifiable conditions not listed in subsection (c) of this section, the [~~The~~] local health authority or the department's regional director shall collect reports of disease and transmit the following information at weekly intervals as directed by the department: name, city, age, date of birth, sex, race and ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number.

[~~(1) for chickenpox - numerical totals by age group; and~~]

[~~(2) for reportable diseases not listed in subsection (c) or (d)(1) of this section - by name, city, age, date of birth, sex, race and~~

ethnicity, physician, disease, type of diagnosis, date of onset, address, and telephone number.]

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

§97.7. Diseases Requiring Exclusion from Child-care Facilities and Schools

(a) The Texas Department of Health (department) publication titled "Recommendations for the Prevention and Control of Communicable Diseases in a Group-Care Setting" ["Communicable Disease Chart for Schools and Child Care Centers"] may be used to determine the incubation period, early signs of illness, and prevention/treatment measures of communicable conditions. Copies are available from the Infectious Disease Epidemiology and Surveillance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 upon [on] request.

(b) (No change.)

(c) [(b)] The owner or operator of a child-care facility, or the school administrator, shall exclude from attendance any child having or suspected of having a communicable disease designated by the commissioner of health (commissioner) as cause for exclusion until one of the criteria listed in subsection (d) [(c)] of this section is fulfilled.

(d) [(c)] Any child excluded for reason of communicable disease may be readmitted, as determined by the health authority, by submitting:

(1) a certificate of the attending physician attesting that the child does not currently have signs or symptoms of a communicable disease or to the disease's non-communicability in a child-care or school setting;

(2) a permit for readmission issued by a local health authority; or

(3) readmission criteria as established by the commissioner.

§97.8. General Control Measures for Notifiable Conditions [Reportable Diseases]

Except for diseases for which equivalent measures of investigation and control are specifically provided in other sections in this chapter, the commissioner of health (commissioner), a health authority, or a duly authorized representative of the commissioner or a health authority may proceed as follows.

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

(3) Control techniques, including disinfection, environmental sanitation, immunization, chemoprophylaxis, isolation, preventive therapy, quarantine, education, prevention, and other accepted measures shall be instituted as necessary to reduce morbidity and mortality. In establishing quarantine or isolation, the health authority shall designate and define the limits of the areas in which the persons are quarantined or isolated. [No person may be quarantined or isolated by a health authority without his or her consent unless the person is subject to court orders under the Communicable Disease Prevention and Control Act, Article 8.]

(4) - (5) (No change.)

§97.10. Confidential Nature of Case Reporting and Records

(a) (No change.)

(b) To implement disease control measures authorized in these sections, it may be necessary for the health authority or the department to investigate public or private health records including patient medical records pertinent to the notifiable condition [reportable disease]. On request, a person shall provide the department with records, data, and other information according to the written instruction of the department. The health authority and the department shall keep this information confidential.

(c) (No change.)

§97.11. Notification of Emergency Medical Service Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease

(a) (No change.)

(b) Disease and criteria which constitute exposure. The following diseases and conditions constitute a possible exposure to the disease for the purposes of the Act, §81.048:

(1) (No change.)

(2) Haemophilus influenzae type b infection, invasive; meningitis (specify type); meningococcal infections, invasive; mumps; poliomyelitis; [psittacosis;] Q fever (pneumonia); rabies; and rubella, if there has been an examination of the throat, oral or tracheal intubation or suctioning, or mouth-to-mouth resuscitation;

(3) acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; dengue; ehrlichiosis; hepatitis, viral; human immunodeficiency virus (HIV) infection; malaria; plague; syphilis; tularemia; typhus; any viral hemorrhagic fever; and yellow fever, if there has been a needlestick or other penetrating puncture of the skin with a used needle or other contaminated item; [or either] a splatter or aerosol into the eye, nose, or mouth; or any significant contamination of an open wound or non-intact skin with blood or body fluids; and

(4) (No change.)

(c) Notification processes. The following notification processes shall apply when possible exposures to notifiable conditions [reportable diseases] occur.

(1) If the hospital has knowledge that, on admission to the hospital, the person transported has any of the notifiable conditions [reportable diseases] listed in subsection (b)(1) of this section, then notice of a possible exposure of an emergency medical service employee, peace officer, or fire fighter to the disease shall be given to the health authority for the jurisdiction where the hospital is located.

(2) For possible exposures to any of the diseases listed in subsection (b)(2)-(4) of this section, the emergency medical service employee, peace officer, or fire fighter shall provide a medical professional at the hospital with notice, preferably written, of [or] the circumstances of the possible exposure. Once the hospital has knowledge of a possible exposure, then notice shall be given as follows.

(A) - (D) (No change.)

(d) (No change.)

§97.13. Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Notifiable Conditions [Reportable Diseases], and Workers' Compensation Issues Relevant to Postexposure Management of Emergency Responders

(a) Purpose. The Communicable Disease Prevention and Control Act, Health and Safety Code, §81.050, provides a mechanism by which an emergency medical service employee, paramedic, fire fighter, correctional officer, or law enforcement officer, who receives a bona fide exposure to a notifiable condition [reportable disease] in the course of employment or volunteer service may request the Texas Department of Health (department) or the department's designee to order testing of the person who may have exposed the worker.

(b) Definitions. For the purposes of this section, the following words and/or terms will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Requestor–An emergency responder who presents a sworn affidavit to a health authority to request testing of a person who may have exposed him/her to a notifiable condition [~~reportable disease~~] in the course of his/her duties.

(4) Source–The person who may have exposed an emergency responder to a notifiable condition [~~reportable disease~~] during the emergency responder's course of duties.

(c) Diseases and criteria that constitute exposure. The notifiable conditions [~~reportable diseases~~] and the criteria that constitute exposure to such diseases are as outlined in §97.11(b)(1)-(4) of this title (relating to Notification of Emergency Medical Service Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease).

(d) The department's designee. For the purposes of implementing the Health and Safety Code, §81.050(d), (e), and (h), the following physicians have been delegated by the department to be the department's designee who will determine if a risk of exposure to a notifiable condition [~~reportable disease~~] has occurred:

(1) the health authority for the jurisdiction in which the emergency responder is employed;

(A) if the health authority does not choose to make a determination of the risk of exposure, a licensed physician employed by the local health department who has responsibility for the control of notifiable conditions [~~reportable diseases~~] in the jurisdiction served by the health department; or

(B) if the health authority does not choose to make a determination of the risk of exposure and there is not a separate physician employed by the county or municipal health department with responsibility for the control of notifiable condition [~~reportable disease~~], or for counties which do not have an appointed health authority, the regional director of the department of which the county or municipality is a part; and

(2) (No change.)

(e) Criteria under which a request for mandatory testing can be made. A request under this section may be made only if the emergency responder:

(1) (No change.)

(2) believes that the exposure places him or her at risk of a notifiable condition [~~reportable disease~~]; and

(3) (No change.)

(f) Initial actions required of the department's designee. Upon receiving a request for mandatory testing in accordance with subsection (e) of this section, the department's designee shall:

(1) review the emergency responder's request and inform him or her whether the request meets the criteria establishing risk of infection with a notifiable condition [~~reportable disease~~];

(2) determine which diagnostic tests may be indicated to verify exposure to certain notifiable conditions [~~reportable diseases~~];

(3) give the source who is subject to the order prompt and confidential written notice of the order which must include the following items:

(A) (No change.)

(B) a referral to appropriate health care facilities where the source can be tested for certain notifiable conditions [~~reportable diseases~~];

(C) - (D) (No change.)

(4) (No change.)

(g) (No change.)

(h) Court proceedings. The district court proceedings include:

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

(3) at the conclusion of the hearing, taking appropriate action being either:

(A) an order requiring counseling and testing of the person for certain notifiable conditions [~~reportable diseases~~]; or

(B) (No change.)

(4) (No change.)

(i) Additional actions required of the department's designee. The department's designee shall be responsible for the following actions with respect to testing:

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

(3) inform both the requestor and the source of the need for medical followup and counseling services in the event that the source is found to have a notifiable condition [~~reportable disease~~]; and

(4) (No change.)

(j) (No change.)

(k) Workers' compensation issues. For the purposes of qualifying for workers' compensation or any other similar benefits for compensation, the following shall apply:

(1) An emergency responder who claims a possible work-related exposure to a notifiable condition [~~reportable disease~~] must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the tenth day after the date of the exposure, the emergency responder had a test result that indicated an absence of the notifiable condition [~~reportable disease~~].

(2) An emergency responder exposed to a notifiable condition [~~reportable disease~~] during the course of employment shall be entitled to the benefits described in the Texas Government Code, Chapter 607.

(3) - (5) (No change.)

(l) Testing of the exposed person. An emergency responder who may have been exposed to a notifiable condition [~~reportable disease~~], may not be required to be tested.

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

Filed with the Office of the Secretary of State, on June 9, 2000.

TRD-200004069
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

Chapter 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.6

The Texas State Soil and Water Conservation Board (TSSWCB) proposes amendments to 31 TAC §523.6(f)(2)(F) and §523.6(g)(4) to improve the efficiency of the water quality management plan cost-share program and allow for restoration of failed practices under specific conditions. The amendments are proposed under Chapter 201.020 Agriculture Code, which provides the Texas State Soil and Water Conservation Board with the authority to adopt rules as necessary for the performance of its functions under the Agriculture Code.

The proposed amendment adds language to §523.6(f)(2)(F) requiring the obligation of cost share funds by soil and water conservation districts to cooperators by the last day of February of the fiscal year in which the funds are allocated and reverting un-obligated funds back to the TSSWCB by March 1st of that fiscal year for reallocation.

The proposed amendment also adds language to §523.6(g)(4) to allow for restoration of failed practices under conditions which are beyond the control of the soil and water conservation district cooperator.

These changes are needed to improve the efficiency of the water quality management plan cost share program and allow the necessary flexibility in the program.

James Moore, Assistant Executive Director, Conservation Programs, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the section.

James Moore, Assistant Executive Director, Conservation Programs, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be more effective implementation of the water quality management plan program. There is no anticipated cost to small businesses or individuals resulting from this proposed amendment.

Comments on the proposal may be submitted in writing to Robert G. Buckley, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, TX 76503, (254) 773-2250.

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

§523.6. Cost-Share Assistance for Soil and Water Conservation Land Improvement Measures.

(a)-(e) (No Change.)

(f) Cost-Share Assistance Processing Procedures.

(1) (No Change.)

(2) Responsibilities of SWCDs. SWCDs shall:

(A)-(E) (No Change.)

(F) Obligate funds for the approved conservation land treatment measures that can be funded and notify the applicants that his/her conservation land treatment measure(s) has/have been approved for cost-share and to proceed with installation. Allocated funds must be obligated by the last day of February of the fiscal year allocated. All unobligated allocations shall revert back as of March 1st of that fiscal year.

(G) (No Change.)

(3)-(10) (No Change.)

(g) Maintenance of Practices.

(1)-(3) (No Change.)

(4) Failed Practice Restoration.

(A) When conservation land treatment measures that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant; the applicant may apply for and district may allocate additional cost-share funds to restore them to their original design standards and specifications. These funds cannot exceed the amount of the original cost-share practice and must come from the district's current program year allocation.

(B) When conservation land treatment measures that have been successfully completed and which later fails as the result of error or omission on the part of the State Board staff, the SWCD staff, or the Natural Resources Conservation Service staff while assisting the SWCD, and not the fault of the applicant; the State Board may approve additional cost-share funds to restore the measure(s) to the correct design standards and specifications, where an investigation approved by the Executive Director or his designee shows good cause. These funds cannot exceed the amount of the original cost-share practice and must come from the district's current program year allocation. [~~Conservation land treatment measures that have been successfully completed and which later fail as the result of floods, drought, or other natural disasters, and not the fault of the applicant, may apply for additional cost-share funds to restore them to their original design standards and specifications.~~]

(5) (No Change.)

(h)-(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 June 8, 2000.

TRD-200004042
Robert G. Buckley
Executive Director
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: July 23, 2000
For further information, please call: (254) 773-2250

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TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 3. TAX ADMINISTRATION

Subchapter O. STATE SALES AND USE TAX

34 TAC §3.330

The Comptroller of Public Accounts proposes an amendment to §3.330, concerning data processing services. The amendment redefines data processing services reflecting changes made in Senate Bill 441, 76th Legislature, 1999, effective October 1, 1999, regarding Internet access service and reduces the taxable sales price to 80% of the amount billed for data processing services. The amendment also adds subsections (a)(2) and (a)(3) defining the terms Internet and Internet access.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amended rule will be in effect there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. The amendment would have no significant fiscal impact on 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 Bryant K. Lomax, Manager, Tax Policy 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, §151.00393 and §151.00394.

§3.330. Data Processing Services.

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

(1) [~~(a)~~]Data processing services - [~~Services. Data processing services means~~] the processing of information for the purpose of compiling and producing records of transactions, maintaining information, and entering and retrieving information. It specifically includes word processing, payroll and business accounting, and computerized data and information storage or manipulation. The charge for data processing services is taxable regardless of the ownership of the computer. Examples of data processing services [~~would~~] include entering [~~the entry of all~~] inventory control data for a company, maintaining [~~maintenance of~~] records of employee work time, filing payroll tax returns, preparing W-2 forms, and computing and preparing payroll checks. Data processing does not include the use of a computer by a provider of other services when the computer is used to facilitate the performance of the service or the application of the knowledge of the physical sciences, accounting principles, and tax laws, e.g., the use of a computer to provide interpretive or enhancement geophysical services or the use of a computer by a CPA firm, enrolled agent, or bookkeeping firm to produce a financial report, prepare federal income tax, state franchise or sales tax returns, or charges for temporary secretarial personnel who as part of their function use word processing equipment. Data processing services does not include Internet access services or data processing services provided in conjunction with and incidental to the provision of Internet access service when billed as a single charge.

(2) Internet - collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(3) Internet access service - a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Internet access service does not include any other taxable service, unless the taxable service is provided in conjunction with and is merely incidental to the provision of Internet access service. Individuals providing Internet access should refer to §3.366 of this title (relating to Internet Access Services).

(b) Hold permits. All providers of data processing services must obtain [~~a~~] Texas sales and use tax permits[~~permit~~] and collect tax on charges [~~the total amount charged~~] for data processing services, or accept [~~a~~] properly completed resale, exemption, or direct pay permit certificates [~~certificate~~] in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale); §3.287 of this title (relating to Exemption Certificates); §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Effective October 1, 1999, 20% of the total amount charged for data processing services is exempted from tax. The exemption applies to services performed on or after October 1, 1999. The exemption does not apply to services performed before the effective date and billed or paid for after the effective date of the exemption.

(c) Resale certificates.

(1) Providers of data processing services may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property is transferred to the client. For example, a service provider purchases magnetic tape to transfer the results of data processing services to customers. The tape is transferred to the customer, and the customer owns and uses the tape to review the results of the data processing service. The service provider may purchase the tape tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the tape and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property which will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will only be exempt to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(d) Unrelated services.

(1) A service will be considered as unrelated if:

(A) it is neither a data processing service, nor a service taxed under other provisions of the Tax Code, Chapter 151;

(B) it is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the service is distinct and identifiable. Examples of such a service would be consultation, development of and preparation of feasibility studies, design and development, or training.

(2) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the data processing service provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. However, if the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The service provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(3) Charges for services or expenses directly related to and incurred while providing the taxable service are taxable and may not be separated for the purpose of excluding these charges from the tax base. Examples would be charges for meals, telephone calls, hotel rooms, or airplane tickets.

(e) Service benefit location. If both the data processing service provider and the customer are located in Texas, Texas tax is due.

(f) Service benefit location–multi-state customer.

(1) To the extent a data processing service is used to support a separate, identifiable segment of a customer's business (other than general administration or operation of the business) the service is presumed to be used at the location where that part of the business is conducted.

(2) If that part of the business is conducted at locations both within and outside the state, the service is not taxable to the extent it is used outside Texas. A multi-state customer may use any reasonable method for allocation which is supported by business records.

(3) A multi-state customer purchasing data processing services for the benefit of both in-state and out-of-state locations is responsible for issuing to the data processing service provider an exemption certificate asserting a multi-state benefit, and for reporting and paying the tax on that portion of the data processing charge which will benefit the Texas location. A data processing service provider that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

(4) The customer's books must support the assignment of the service to an identifiable segment of the business, the determination of the location or locations of the use of the service, and the allocation of the taxable charge to Texas.

(5) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(g) Local taxes.

(1) For local sales tax purposes, city, county, transit authority, and/or special purpose district sales taxes are due if the data processing service provider has only one place of business (the location where clients request service) within the boundaries of a local taxing entity. Local sales tax must be collected based upon the tax rate at that location, except that no MTA or CTD sales tax is due on services provided at a location outside the boundaries of the transit area. In the case of multiple locations, if an order for service is placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity the tax is allocated.

(2) For the purposes of the local use tax, if a place of business is outside the boundaries of a local taxing entity, the data processing service provider will be required to collect local use tax if the client is within the local taxing entity and the service provider has representation in the local taxing entity as outlined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Even if the service provider is not required to collect local use tax, the client is still liable for the tax if the service is performed or a benefit is derived from the service within the boundaries of a local taxing entity.

(A) An in-state customer purchasing data processing services for the benefit of locations in more than one local taxing entity is responsible for issuing to the data processing service provider an exemption certificate claiming a multi-city benefit and for determining the extent of benefit for each entity. The local use tax for each entity must be reported, allocated, and paid by the customer. A data processing service provider that accepts in good faith an exemption certificate claiming a multi-city benefit is relieved of responsibility for collecting and remitting local tax on transactions to which the certificate relates.

(B) A multi-state customer purchasing data processing services for the benefit of both in-state and out-of-state locations is responsible for issuing an exemption certificate and for reporting and paying local tax as provided by subsection (f)(3) and (4) of this section.

(h) Use tax. If a provider of a data processing service is not doing business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas tax, it is the Texas customer's responsibility to report and pay the state and local use tax directly to this office.

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

Filed with the Office of the Secretary of State, on June 6, 2000.

TRD-200003985
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 463-3699

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34 TAC §3.342

The Comptroller of Public Accounts proposes an amendment to §3.342, concerning information services. The amendment redefines "information services" reflecting changes made by Senate Bill 441, 76th Legislature, 1999, effective October 1, 1999, regarding Internet access service. The bill also reduces the taxable sales price to 80% of the amount billed for the information service. The amendment includes definitions of Internet and Internet access service and refers providers of Internet access services to §3.366 of this title (relating to Internet Access Services). The amendment informs taxpayers that, effective October 1, 1999, 20% of the charge for information services will be exempt from sales and use tax.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the amended rule will be in effect there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the amended rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. The amendment would have no significant fiscal impact on 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 Bryant K. Lomax, Manager, Tax Policy 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, §151.00393 and §151.00394.

§3.342. Information Services.

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

(1) Data processing services - Processing, reformatting, or manipulating[~~manipulation of~~] data provided by the customer is data processing and is not included in the definition of information services.

(2) Information services - Furnishing general or specialized news or other current information, including financial information, by printed, mimeographed, electronic, or electrical transmission, or by utilizing wires, cable, radio waves, microwaves, satellites, fiber optics, or any other method now in existence or which may be devised, and electronic data retrieval or research. The term information services does not include Internet access service or information services that are provided in conjunction with and merely incidental to the provision of Internet access service when provided for a single charge.

(3) Internet - collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(4) Internet access service - a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Internet access service does not include any other taxable service, unless the taxable service is provided in conjunction with and is merely incidental to the provision of Internet access service. Individuals providing Internet access should refer to §3.366 of this title (relating to Internet Access Services).

(5) Nontaxable information services.

(A) The sale of information that is gathered or compiled on behalf of a particular client is not subject to tax if the information is of a proprietary nature to that client and may not be sold to others by the person who gathered or compiled the information. Any subsequent sale of such information by the client for whom the information was gathered or compiled is subject to tax. Examples include opinion polls and management consultant reports.

(B) Any sale of information primarily derived from laboratory, medical, or exploratory testing or experimentation or any similar method of direct scientific observation of physical phenomena is not subject to tax. Examples include, but are not limited to, geophysical survey information, polygraph test, and medical test results.

(C) Information required to be furnished pursuant to the Open Records Act is not subject to sales tax. See §3.341 of this title (relating to Sales of Governmental Publications, Records, or Documents). Fees paid when obtaining these documents may be excluded from the tax base if separately stated when the documents are furnished to clients. Tax will only be due on the amount over and above the cost of the documents.

(6) [~~(b)~~] Taxable information services. Information that [~~which~~] is gathered, maintained, or compiled and made available by the provider of the information service to the public or to a specific segment of industry for a consideration is subject to sales tax. [~~Except as provided in subsection (d)(3) of this section, the total charge for information services whether by subscription or on an as-needed basis is taxable.~~] Examples of taxable [~~such~~] information services include, but are not limited to, the following:

(A) [~~(1)~~] newsletters;

(B) [~~(2)~~] scouting reports and surveys, including those used in sports and the oil and gas and related industries;

(C) [~~(3)~~] mailing lists, and bad check lists (only that percentage which represents names of persons located in Texas is taxable);

(D) [~~(4)~~] real estate listings;

(E) [~~(5)~~] financial, investment, stock market, or bond rating, or financial reports, other than charges to a person by a financial institution for account balance information;

(F) [~~(6)~~] news clipping services and wire services; and

(G) [~~(7)~~] abstracts of title and other information provided by title plants.

(b) Hold permits. All providers of information services must obtain Texas sales and use tax permits and collect tax on charges for information services, or accept properly completed resale, exemption, or direct payment permit certificates in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale); §3.287 of this title (relating to Exemption Certificates); §3.288 of

this title (relating to Direct Payment Procedures and Qualifications). Effective October 1, 1999, 20% of the total amount charged for information services is exempted from sales and use tax. The exemption applies to services performed on or after October 1, 1999. The exemption does not apply to services performed before the effective date and billed or paid for after the effective date of the exemption.

(c) Exempt information services. Sales tax is not due on information services sold to a newspaper or to a radio or television station licensed by the Federal Communications Commission, if an exemption certificate is obtained. The exemption certificate must state that the purchaser is a newspaper with a general circulation published at least as frequently as weekly, or is a station licensed by the Federal Communications Commission.

[~~(d) Nontaxable information.~~]

[~~(1) The sale of information which is gathered or compiled on behalf of a particular client is not subject to tax if the information is of a proprietary nature to that client and may not be sold to others by the person who gathered or compiled the information. Any subsequent sale of such information by the client for whom the information was gathered or compiled is subject to tax. Examples include opinion polls and management consultant reports.~~]

[~~(2) Any sale of information primarily derived from laboratory, medical, or exploratory testing or experimentation or any similar method of direct scientific observation of physical phenomena is not subject to tax. Examples of information the sale of which is exempt from tax under this subsection include, but are not limited to, geophysical survey information, polygraph test, and medical test results.~~]

[~~(3) Information required to be furnished pursuant to the Open Records Act is not subject to sales tax. See §3.341 of this title (relating to Sales of Governmental Publications, Records, or Documents). Fees paid when obtaining these documents may be excluded from the tax base if separately stated when the documents are furnished to clients. Tax will only be due on the amount over and above the cost of the documents.~~]

(d) [~~(e)~~] Resale certificates.

(1) Providers of information service may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property will be transferred to the service provider's client. For example, an information provider purchases magnetic tape to transfer information to customers. The tape is transferred to the customer, and the customer owns and uses the tape to review the information. The information provider may purchase the tape tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the tape and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property which will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will only be exempt to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(e) [~~(f)~~] Unrelated services.

(1) A service will be considered as unrelated if:

(A) it is not an information service nor a service taxed under other provisions of the Tax Code, Chapter 151;

(B) it is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include consultation, training, expedited filing charges, escrow fees, or charges for proprietary information.

(2) Where nontaxable unrelated services and taxable services are sold or purchased for a single charge and the portion relating to taxable services represents more than 5.0% of the total charge, the total charge is presumed to be taxable. The presumption may be overcome by the information provider at the time the transaction occurs by separately stating to the customer a reasonable charge for the taxable services. However, if the charge for the taxable portion of the services is not separately stated at the time of the transaction, the service provider or the purchaser may later establish for the comptroller, through documentary evidence, the percentage of the total charge that relates to nontaxable unrelated services. The information provider's books must support the apportionment between exempt and nonexempt activities based on the cost of providing the service or on a comparison to the normal charge for each service if provided alone. If the charge for exempt services is unreasonable when the overall transaction is reviewed considering the cost of providing the service or a comparable charge made in the industry for each service, the comptroller will adjust the charges and assess additional tax, penalty, and interest on the taxable services.

(3) Charges for services or expenses directly related to and incurred while providing the taxable service are taxable and may not be separated for the purpose of excluding these charges from the tax base. Examples would be charges for meals, telephone calls, hotel rooms, or airplane tickets.

(f) [~~(g)~~] Service benefit location. If both the information service provider and the customer are located in Texas, Texas tax is due.

(g) [~~(h)~~] Service benefit location - multistate customer.

(1) To the extent information service is used to support a separate, identifiable segment of a customer's business (other than general administration or operation of the business) the service is presumed to be used at the location where that part of the business is conducted.

(2) If that part of the business is conducted at locations both within and outside the state, the service is not taxable to the extent it is used outside Texas. A multistate customer may use any reasonable method for allocation which is supported by business records.

(3) A multistate customer purchasing information services for the benefit of both in-state and out-of-state locations is responsible for issuing to the information service provider an exemption certificate asserting a multistate benefit, and for reporting and paying the tax on that portion of the charge for information which will benefit the Texas

location. An information provider that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

(4) The customer's books must support the assignment of the service to an identifiable segment of the business, the determination of the location or locations of the use of the service, and the allocation of the taxable charge to Texas.

(5) To the extent the use of the service cannot be assigned to an identifiable segment of a customer's business, the service is presumed to be used to support the administration or operation of the customer's business generally. The service is presumed to be used at the customer's principal place of business. The principal place of business means the place from which the trade or business is directed or managed.

(h) [~~(i)~~] Local taxes.

(1) For local sales tax purposes, city, county, transit authority, and special purpose district sales taxes are due if an information provider has only one place of business (the location where clients request service) within the boundaries of a local taxing entity. Local sales tax must be collected based on the tax rate at that location, except that no MTA or CTD sales tax is due on services provided at a location outside the boundaries of the transit area. In the case of multiple locations, if an order for service is placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity the tax is allocated.

(2) If a place of business is outside the boundaries of a local taxing entity, the information provider will be required to collect local use tax if the client is within the local taxing entity and the information provider has representation in the local taxing entity as outlined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Even if the information provider is not required to collect local use tax, the client is still liable for the tax if the service is performed or a benefit is derived from the service within the boundaries of a local taxing entity.

(A) An in-state customer purchasing information services for the benefit of locations in more than one local taxing entity is responsible for issuing to the information provider an exemption certificate asserting a multi-city benefit and for determining the extent of benefit for each entity. The local tax for each entity must be reported, allocated, and paid by the customer. An information provider that accepts in good faith an exemption certificate claiming a multi-city benefit is relieved of responsibility for collecting and remitting local tax on transactions to which the certificate relates.

(B) A multistate customer purchasing information services for the benefit of both in-state and out-of-state locations is responsible for issuing an exemption certificate and for reporting and paying local tax as provided by subsection (f)(3) and (4) of this section.

(i) [~~(j)~~] Use tax. If an information provider is not doing business in Texas or in specific local taxing jurisdictions and is not required to collect Texas state or local tax, it is the Texas customer's responsibility to report the state and local use tax directly to this office.

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

Filed with the Office of the Secretary of State, on June 6, 2000.

TRD-200003986

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: July 23, 2000

For further information, please call: (512) 463-3699

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34 TAC §3.366

The Comptroller of Public Accounts proposes a new §3.366, concerning Internet access services. The new section reflects the addition to the Tax Code of an exemption for Internet access service. The relevant statutory provisions are found in Tax Code, §§151.00303, 151.00394, and 151.325, and in changes made to Tax Code, §151.0101(a) and §151.0103, by Senate Bill 441, 76th Legislature, 1999, effective October 1, 1999.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the new rule will be in effect there will be no significant revenue impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. The rule would have no significant fiscal impact on 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 Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section 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 new section implements the Tax Code, §§151.00303, 151.00394, 151.325, 151.0101(a), 151.0103.

§3.366. Internet Access Services.

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

(1) Internet - collectively the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol / Internet Protocol, or any predecessor or successor protocols to the protocol, to communicate information of all kinds by wire or radio.

(2) Internet access service - a service that enables users to access content, information, electronic mail, or other services offered over the Internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term does not include telecommunications services or other taxable services, unless these services are provided in conjunction with and are merely incidental to the provision of Internet access service. For example: Basic Internet access service includes the ability to access general information (an information service) and/or the ability to send information or messages via e-mail (a telecommunication service). These services are incidental to the provision of Internet access services and, unless separately stated, are considered part of the Internet access service. On the other hand, a person selling information services using the Internet, such as a

company selling stock market prices, is not providing an Internet access service and must collect tax on the charge for its information service.

(b) Amount subject to tax. The sale, use, or other consumption in this state of Internet access service is exempt from sales or use tax in an amount not to exceed the first $25 of a monthly charge. This exemption applies to the total sales price the service provider charges a purchaser for Internet access, without regard to whether the service provider charges one lump-sum amount or separately bills the purchaser for each user. For example: Company A buys Internet access for 25 employees at several locations. The first $25 of the total charge to Company A is exempt and not the first $25 of each user's apportioned cost. Because a "purchaser" is a single entity and the $25 exemption is provided per purchaser, not user, account, or site, separate billings for employees or for different locations will not reduce the taxable amount. This exemption applies without regard to:

(1) whether the Internet access service is bundled with another service, including any other taxable service; or

(2) the billing period used by the service provider. Example: An Internet access service is provided for a set fee of $99 per year. The fee will qualify in its entirety for exemption because the monthly charge is less than $25. The exemption applies to services performed on or after October 1, 1999. The exemption does not apply to services performed before the effective date and billed or paid for after the effective date of the exemption.

(c) Hold permits. All providers of Internet access services must obtain a Texas sales and use tax permit and collect tax on the total amount subject to tax as provided in subsection (b) of this section, or accept a properly completed resale, exemption, or direct payment permit exemption certificate in lieu of collecting tax. See §3.285 of this title (relating to Resale Certificate; Sales for Resale); §3.287 of this title (relating to Exemption Certificates); and §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(d) Resale certificates.

(1) Providers of Internet access services may issue resale certificates in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property is transferred to the customers. For example, a service provider purchases diskettes to transfer software to customers. The service provider may purchase the diskettes tax free by issuing a resale certificate. However, promotional diskettes provided to potential customers are not resold and are taxable.

(2) An entity that markets Internet access services for others and gives away, or sells for a nominal amount (less than 25%), computer-related equipment as an inducement to sign an Internet service contract is considered the consumer of the equipment and must pay tax on its acquisition cost of the equipment. An entity that markets Internet access services for others and also sells related equipment for 25% or more of acquisition cost is a retailer of the equipment. The entity may buy the transferred equipment tax free for resale and collect tax on its charge to its customers. For example, Company A markets Internet access services provided by Company B. Company A purchases computers for $400 that it offers to customers for free when a customer signs a contract for Internet access service with Company B. Company A is the consumer of the computer and owes tax when it purchases the computer. If Company A sells the computer to its customer for $100 or more (25% or more of cost), Company A may purchase the computer tax free for resale but must collect tax from its customer on the sales price of the computer ($100). If Company A sells the computer for less than $100 under the condition that the customer will purchase Internet access service from Company B, the nominal amount paid by the customer is not taxable and Company A must pay tax on the original purchase price of the equipment.

(3) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered. For example, a provider of Internet access service may purchase tax free for resale telecommunication services used to provide the Internet access services.

(e) Service benefit location. If both the Internet access service provider and the customer are located in Texas, Texas tax is due.

(f) Service benefit location - multi-state customer.

(1) To the extent Internet access service is provided to and accessed by a multi-state customer with users both within and outside of Texas, the service is presumed to be used at the location from which the Internet is accessed. The service is not taxable to the extent it is used outside Texas. A multi-state customer may use any reasonable method for allocation that is supported by business records.

(2) A multi-state customer purchasing Internet access services for the benefit of both in-state and out-of-state locations is responsible for issuing to the Internet access service provider an exemption certificate asserting a multi-state benefit, and for reporting and paying the tax on that portion of the Internet access charge that will benefit the Texas location. An Internet access service provider that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

(g) Local taxes.

(1) For local sales tax purposes, city, county, transit authority, and/or special purpose district sales taxes are due if the Internet access service provider has only one place of business (the location from which the provider accepts orders for Internet service) within the boundaries of a local taxing entity. Local sales tax must be collected based upon the tax rate at that location, except that no transit authority sales tax is due on services provided to a location outside the boundaries of the transit area. In the case of multiple locations, if an order for Internet service is taken at one location but the service is provided from another location from which customers may order service, the place of business from which the service is provided will determine to which local taxing entity the tax is allocated.

(2) For the purposes of the local use tax, if a place of business is outside the boundaries of a local taxing entity, the Internet access service provider will be required to collect local use tax if the client is within the local taxing entity and the service provider has representation in the local taxing entity as outlined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Even if the service provider is not required to collect local use tax, the client is still liable for the tax if the service is received or a benefit is derived from the service within the boundaries of a local taxing entity.

(3) An in-state customer purchasing Internet access services for the benefit of locations in more than one local taxing entity is responsible for issuing to the Internet access service provider an exemption certificate claiming a multi-city benefit and for determining the extent of benefit for each entity. The local use tax for each

entity must be reported, allocated, and paid by the customer. An Internet access service provider that accepts in good faith an exemption certificate claiming a multi-city benefit is relieved of responsibility for collecting and remitting local tax on transactions to which the certificate relates.

(h) Use tax. If a provider of an Internet access service is not engaged in business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas tax, it is the Texas customer's responsibility to report and pay the state and local use tax directly to this office.

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

Filed with the Office of the Secretary of State, on June 6, 2000.

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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 463-3699

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Subchapter V. FRANCHISE TAX

34 TAC §3.579

The Comptroller of Public Accounts proposes a new §3.579, concerning child care credits. This new section is the result of Tax Code, new Subchapter N, §§171.701 - 171.707, and new Subchapter R, §§171.831 - 171.836. This new section is in accordance with Senate Bill 441 passed by the 76th Legislature, 1999. The section provides franchise tax guidelines for eligibility and calculation of two credits: day care and after school care. These credits are for expenditures made in Texas on or after January 1, 2000.

James LeBas, Chief Revenue Estimator, 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. LeBas 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 the clarification of Comptroller policy related to calculation of the day care credit and the after-school care credit. 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 Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section 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 new section implements the Tax Code, §§171.701-171.707 and §§171.831- 171.836.

§3.579. Child Care Credits.

(a) Effective date. A corporation may claim a day care credit or an after school credit only for expenditures made in Texas on or after January 1, 2000.

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

(1) "Day-care center" has the meaning assigned by Human Resources Code, §42.002.

(2) "Expenditure" means a direct contribution, donation, gift, or payment, but does not include an indirect contribution, donation, gift, or payment. Subsections (e) and (f) of this section set out qualifying expenditures. For example, a payment to an organization directly operating a qualifying program could be a qualifying expenditure, but a payment to a charitable organization who distributes the funds to another organization that actually operates the qualifying program will not be a qualifying expenditure.

(3) "Family home" has the meaning assigned by Human Resources Code, §42.002.

(4) "Primarily" means more than 50%.

(5) "School-age child care" means care provided before or after school and during the summer and holidays primarily for children who are at least five years of age but younger than 14 years of age. The program must provide care during school holidays, when most businesses are open and most parents are working, but need not provide care on universally-recognized holidays, such as Thanksgiving, Christmas, and New Year's Day.

(c) Information required. A corporation that claims the day care credit under this section must submit all additional information required by the Comptroller necessary to complete the report required by Tax Code, §171.707.

(d) Limitations. A corporation may not convey, assign, or transfer the day care credit or after school credit to another entity, unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

(e) Day care credit.

(1) A corporation may claim a credit under this subsection only for a qualifying expenditure relating to:

(A) the establishment or operation of a day-care center primarily to provide care for the children of employees of the corporation or for children of the employees of the corporation and one or more other entities sharing the costs of establishing and operating the center; or

(B) the purchase of child-care services that are actually provided to children of employees of the corporation at a:

(i) day-care center; or

(ii) family home that is registered or listed with the Department of Protective and Regulatory Services under Human Resources Code, Chapter 42.

(2) A qualifying expenditure means an expenditure for:

(A) planning the day-care center;

(B) preparing a site to be used for the day-care center;

(C) constructing the day-care center;

(D) renovating or remodeling a structure to be used for the day-care center;

(E) purchasing equipment necessary in the use of the day-care center and installed for permanent use in or immediately adjacent to the day-care center, including kitchen appliances and other food preparation equipment;

(F) expanding the day-care center;

(G) maintaining and operating the day-care center, including paying direct administration and staff costs; or

(H) purchasing all or part of child-care services that are actually provided to children of employees of the corporation at a day-care center or registered or listed family home.

(3) The amount of credit is:

(A) equal to the lesser of 50% of the corporation's qualifying expenditures or $50,000; and

(B) not to exceed 90% of the amount of tax due for the report on which the credit is claimed.

(4) If a corporation shares in the cost of establishing or operating a day-care center, the corporation is entitled to a credit for the qualifying expenditures made by that corporation, subject to the limitation prescribed by subsection (d) of this section.

(5) A corporation must apply for a credit under this subsection on or with the franchise tax report for the period for which the credit is claimed.

(6) If the corporation is claiming a credit for a qualifying expenditure for purchasing child-care services, the corporation must maintain proof that the services were actually provided to children of employees of the corporation at a day-care center or registered or listed family home.

(7) The comptroller shall adopt a form for corporations to use to apply for and claim the credit. A corporation must use this form to apply for and claim the credit.

(8) A corporation may claim a credit under this subsection for qualifying expenditures made during an accounting period only against the tax owed for the corresponding reporting period.

(f) After school care credit.

(1) A corporation may claim a credit under this subsection only for a qualifying expenditure relating primarily to the operation of a school-age child care program that is operated by:

(A) a nonprofit organization licensed under Human Resources Code, Chapter 42;

(B) a nonprofit, accredited educational facility, including:

(i) an organization whose standards of care are consistent with those set out by a recognized national accreditation body for school-age child care, or

(ii) an organization who is a charter member of a national organization that establishes school- age child care guidelines as a prerequisite for national affiliation or membership;

(C) another nonprofit entity under contract with the nonprofit, accredited educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the program operated under the contract; or

(D) a county or municipality, if the governing body of the county or municipality annually adopts standards of care by order or ordinance that include minimum child-to-staff ratios, staff qualifications, facility, health, and safety standards, and mechanisms for monitoring and enforcing the standards.

(2) A qualifying expenditure means an expenditure for:

(A) constructing, renovating, or remodeling a facility or structure to be used by the program;

(B) purchasing necessary equipment, supplies, or food to be used in the program; or

(C) operating the program, including administrative and staff costs.

(3) The amount of the credit is equal to 30% of a corporation's qualifying expenditures.

(4) A corporation may claim a credit under this subsection for a qualifying expenditure during an accounting period only against the tax owed for the corresponding reporting period.

(5) A corporation may not claim a credit in an amount that exceeds 50% of the amount of net franchise tax due, after applying any other credits, for the reporting period.

(6) A corporation must apply for a credit under this subsection on or with the tax report for the period for which the credit is claimed.

(7) The comptroller shall adopt a form for corporations to use to apply for and claim the credit. A corporation must use this form to apply for and claim a credit.

(8) A corporation is not eligible for the credit if the corporation cannot establish that the facilities, equipment, supplies, food, administrative services, and staff services are primarily used for the program. Therefore, a corporation must maintain proof, in the form of a written acknowledgement provided by the recipient operating the qualifying program. The written acknowledgement must set out the amount of the donation, contribution, gift, or payment and must specify that the donation, contribution, gift, or payment will be used for a qualifying expenditure, as set out in subsection (f)(2) of this section, primarily for the program.

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

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Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
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Part 3. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 41. INSURANCE PROGRAMS

Subchapter B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §§41.17 - 41.20

The Teacher Retirement System of Texas (TRS) proposes new §§41.17, 41.18, 41.19, and 41.20 concerning the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program. Specifically, these proposed new sections reflect program details relating to eligibility, enrollment timelines and coverage timelines. The purpose of the proposed new rules is to notify eligible participating members, eligible retirees, and their eligible family members of the guidelines and timelines for eligibility, enrollment, and coverage.

Ronnie Jung, Chief Financial Officer, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Jung has also determined that for each year of the first five years the proposed rules are in effect the public benefit anticipated will be that there will be clarity regarding the agency's ability to select or reject coverage options. There will be no effect on small businesses. There are no anticipated economic costs to the persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Charles L. Dunlap, Executive Director, 1000 Red River, Austin, Texas 78701.

These sections are proposed under the Insurance Code Art. 3.50-4A, which gives TRS authority to adopt rules as necessary to implement and administer the Texas Public School Employees Group Long-Term Care Insurance Program. The new sections are also proposed under Government Code, Chapter 825, §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the transaction of business of the Board.

No other articles, statutes or codes are affected by this proposal.

§41.17. Definitions.

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

(1) Carrier or Insurer–Any entity authorized by the Texas Department of Insurance to provide any of the insurance coverage, benefits, or services described by Insurance Code art. 3.50-4A under the insurance laws of this state.

(2) Effective date of employment–The first day of active duty in an eligible employee's first TRS-covered position in a Texas public school.

(3) Eligible family members–Family members described in §41.18(a) and (b) of this title (relating to Eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program).

(4) Newly hired–Eligible employees who begin employment in their first TRS-covered position in a Texas public school during or after the initial enrollment period.

(5) Participating member–A person defined by Government Code §§822.001 and 822.002 whose membership has not terminated as described by Government Code §§822.003 - 822.006.

(6) Trustee or TRS–The Teacher Retirement System of Texas.

§41.18. Eligibility for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

(a) Participating members of the Teacher Retirement System of Texas who are not participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act or the Texas State College and University Employees Uniform Insurance Benefits Act, their spouses, surviving spouses, parents, grandparents, parents of their spouses and parents of their surviving spouses shall be eligible under the Insurance Code, Article 3.50-4A.

(b) Texas public school retirees, as defined by Insurance Code, Article 3.50-4A, §2, who are not participating in a group insurance program under the Texas Employees Uniform Group Insurance Benefits Act or the Texas State College and University Employees Uniform Insurance Benefits Act, their spouses, surviving spouses, parents, grandparents, parents of their spouses and parents of their surviving spouses shall be eligible under the Insurance Code, Article 3.50-4A.

§41.19. Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

(a) The initial enrollment period for eligible participating members and their eligible family members to participate in the long-term care insurance program shall begin on August 1, 2000 and end at 11:59 p.m. Central Time November 30, 2000.

(b) The initial enrollment period for eligible Texas public school retirees and their Eligible Family Members to participate in the long-term care insurance program shall begin on July 3, 2000 and end at 11:59 p.m. Central Time September 30, 2000.

(c) In accordance with Insurance Code, Article3.50-4A, the trustee has authority to declare periodic open enrollment and the rules and conditions for such open enrollment periods.

(d) The standard enrollment period for newly hired eligible participating members and their eligible family members to participate in the long-term care insurance program shall begin on the effective date of employment and end at 11:59 p.m. Central Time on the 30th day after the effective date of employment.

(e) The standard enrollment period for eligible current Texas public school employees who are covered under their employer-sponsored group long-term care plan will begin on the date such plan is terminated by their employer and end at 11:59 p.m. Central Time on the 30th day after the termination date of such plan.

(f) The standard enrollment period for surviving spouses of eligible participating members and surviving spouses of eligible retirees to participate in the long-term care insurance program shall begin on the first day after the eligible employee or retiree dies and end at 11:59 p.m. central time on the 30th day after the end of the month in which the eligible participating member or retiree dies.

(g) The standard enrollment period for new spouses and parents of new spouses shall begin on the date of the eligible participating member's or retiree's marriage and end at 11:59 p.m. Central Time on the 30th day after marriage.

(h) If an eligible individual described in subsection (d), (e), (f) or (g) of this section is permitted to enroll under two or more of the provisions of this section, the individual may enroll during the timeframe of either enrollment period.

(i) An individual's status as an eligible retiree, eligible participating member or eligible family member shall be determined as of the date a complete enrollment application is received by the carrier.

§41.20. Effective Date of Coverage Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

(a) Coverage for eligible retirees and eligible family members of eligible retirees of the Teacher Retirement System of Texas who enroll during the initial enrollment period and who satisfy underwriting guidelines shall be effective the later of:

(1) October 1, 2000; or

(2) The first day of the month after the date the carrier grants underwriting approval.

(b) Coverage for eligible participating members of the Teacher Retirement System of Texas who enroll during the initial enrollment period and who satisfy underwriting guidelines shall be effective on the later of:

(1) December 1, 2000; or

(2) The first day of the month after the date the carrier grants underwriting approval.

(c) Coverage for eligible family members of eligible participating members of the Teacher Retirement System of Texas who enroll during the initial enrollment period and who satisfy underwriting guidelines shall be effective on the later of:

(1) December 1, 2000; or

(2) The first day of the month after the date the carrier grants underwriting approval.

(d) Coverage for newly hired eligible participating members of the Teacher Retirement System of Texas who enroll during their first 30 days of eligibility shall be effective on the first day of the month following the carrier's receipt of complete enrollment materials.

(e) Coverage for eligible family members of newly hired eligible participating members of the Teacher Retirement System of Texas who enroll during their first 30 days of eligibility and who satisfy underwriting guidelines shall be effective on the first day of the month after the date the Carrier grants underwriting approval.

(f) Coverage for eligible participating members and retirees of the Teacher Retirement System of Texas who enroll during open enrollment periods which may be determined by the trustee and who satisfy underwriting guidelines shall be effective on the date established by the trustee.

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

Filed with the Office of the Secretary of State, on June 12, 2000.

TRD-200004123
Charles Dunlap
Executive Director
Teacher Retirement System of Texas
Proposed date of adoption: July 28, 2000
For further information, please call: (512) 391-2115

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 3. TEXAS YOUTH COMMISSION

Chapter 85. ADMISSION AND PLACEMENT

Subchapter A. COMMITMENT AND RECEPTION

37 TAC §85.3

The Texas Youth Commission (TYC) proposes an amendment to §85.3, concerning Admission Process. The amendment will change the time and days on which the Marlin Orientation and Assessment Unit will receive youth committed to TYC; and establish the requirement that the youths parents are notified that chemical agents will be used as necessary to control conduct that meets certain criteria.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient government. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0385 concerning crisis intervention and assessment Centers which provides the Texas Youth Commission authority to establish and operate an assessment center.

The proposed rule implements the Human Resource Code, §61.034 concerning policies and rules which gives TYC the authority to make rules appropriate to the proper accomplishment of its functions.

§85.3. Admission Process.

(a) Purpose. The purpose of this rule is to establish the location and protocol whereby youth committed to the Texas Youth Commission (TYC) are received into the custody of the agency.

(b) Intake activities, including receipt of the youth from the committing county shall be performed by the TYC diagnostic intake unit, Marlin Orientation and Assessment Unit located at Marlin, Texas.

(c) The Marlin Orientation and Assessment Unit in Marlin, Texas receives youth committed to TYC between 8 a.m. and 8 p.m. [~~5 p.m. on~~] Monday through Friday [~~and Tuesday unless prior arrangements have been made, and between 8 a.m. and 8 p.m. on Wednesday, Thursday, and Friday~~].

(d) Youth are not allowed to have personal possessions while at the assessment unit. Personal items are inventoried and returned to the county transporter. The transporter and youth are asked to sign an inventory/receipt for property items returned to the transporter's care. Items a youth may be allowed to keep are inventoried on the Personal Property and Clothing Inventory form, CCF-510, and a copy is given to the youth.

(e) Parents are notified:

(1) of youth's admission;

(2) of TYC's medical consent authority;

(3) of procedures for mail and visits; and

(4) that TYC will use chemical agents as necessary to control conduct if certain behavior criteria is met.

~~[(e) Parents are notified of youth's admission and TYC's medical consent authority and are advised of procedures for mail and visits.]~~

(f) Orientation to the admissions process and the TYC system is provided and documented as required in (GAP) §91.15 of this title (relating to Youth Orientation).

(g) Routine admission procedures include, but are not limited to the following.

(1) Each youth and his possessions are searched.

(2) Youth property, if any, is inventoried.

(3) A body identification form is completed, each youth showers, is screened for pediculosis, and receives treatment if indicated.

(4) Initial health screening is performed for each youth.

(5) Clothing is issued.

(6) Personal hygiene articles are made available as needed.

(7) Each youth may be photographed and fingerprinted. The photograph and fingerprints are filed in the youth's masterfile.

(8) Intake staff assigns each youth an official TYC registration number.

(9) Initiation of sex offender registration with the Texas Department of Public Safety (DPS), as required by law.

(10) A youth is required to provide a blood sample for the DPS DNA database if the youth:

(A) has a conviction or adjudication for murder, aggravated assault, burglary of a habitation, or any offense for which the youth must register as a sex offender; or

(B) is ordered by the juvenile court to provide a sample.

(h) In addition to assessment and placement activities, counseling, and academic education is provided.

(i) TYC staff transports youth to their initial placements and notifies the families, the parole officer, committing court, prosecuting attorney, chief probation officer, and others as needed of the placement location.

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

Filed with the Office of the Secretary of State, on June 6, 2000.

TRD-200003980
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 23, 2000
For further information, please call: (512) 424-6244

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

Part 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

Chapter 193. STANDING DELEGATION ORDERS

22 TAC §193.10

The Texas State Board of Medical Examiners has withdrawn from consideration the proposed action of new §193.10, which appeared in the April 21, 2000, issue of the *Texas Register* (25 TexReg 3359).

Filed with the Office of the Secretary of State on June 12, 2000.

TRD-200004121
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: June 12, 2000
For further information, please call: (512) 305-7016

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Chapter 355. MEDICAID REIMBURSEMENT RATES

Subchapter A. COST DETERMINATION PROCESS

1 TAC §§355.102, 355.103, 355.105, 355.106, 355.110, 355.111

The Texas Health and Human Services Commission (HSSC) adopts amendments to §§355.102, 355.103, 355.105, 355.106, 355.110, and 355.111. The amendments to §§355.103, 355.105, 355.110, and 355.111 are adopted without changes to the proposed text published in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3123). The amendment to §355.102 and §355.106 are adopted with technical changes.

Justification for the amendments is to define approval processes and cost reporting procedures, clarify allowable and unallowable costs, remove obsolete references, replace an obsolete reference with a new reference, and correct a typographical error. The amendments clarify current allowable and unallowable costs rules regarding where to report different types of benefits on the cost report and the definition of a passenger van. Clarifications are also being made to the process for requesting a waiver of the related party requirements for reporting costs on the cost report, the disclosure and process for requesting approval of an acceptable allocation method, and the contact for sending a request for an informal review of cost report adjustments. The adoption also specifies that the request of a waiver of the related party requirement for reporting costs on the cost report must be submitted within 45 days of the due date of the cost report. Clarifications are also being made to the definition of direct costing of certain costs on the cost report. The adoption clarifies that prior approval must be obtained to use an allocation method that is not in compliance with DHS rules. The adoption explains what is a functional allocation method. The adoption also grants a compliance period of 15 calendar days before a vendor hold can be placed for failure to submit a required cost report, correct a typographical error regarding how often mandatory cost report training must be attended. The rules requiring completion of cost reports according to instructions and rules that differentiate between 1994, 1995, and 1996 cost reports and cost reports for 1997 and subsequent years have been deleted. The requirement that cost reports must be completed according to instructions and rules has been moved and restated without a differentiation between cost report years. The rule reference to vendor hold for the nursing facility program has been revised to a new rule reference.

The amendments will function by providing guidance to contracted providers regarding the completion of required costs reports.

The department received no comments regarding adoption of the amendments. The department has made technical changes to §355.102(j)(4)(D) to correct the cite to §355.103(b)(10)(B)(ii) of this title (relating to Specifications for Allowable and Unallowable Costs) and to §355.106 to correct the cite to be 40 TAC §19.2703 (relating to Vendor Hold).

The amendments are adopted under the Government Code, §531.033, which authorizes the commissioner of the Health and Human Services Commission to adopt rules necessary to carry out the commission's duties, and §531.021(b), which establishes the commission as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code.

The amendments implement the Government Code, §531.033 and §531.021(b).

§355.102. General Principles of Allowable and Unallowable Costs.

(a) Allowable and unallowable costs. Allowable and unallowable costs, both direct and indirect, are defined to identify expenses which are reasonable and necessary to provide contracted client care and are consistent with federal and state laws and regulations. When a particular type of expense is classified as unallowable, the classification means only that the expense will not be included in the database for reimbursement determination purposes because the expense is not considered reasonable and/or necessary. The classification does not mean that individual contracted providers may not make the expenditure. The description of allowable and unallowable costs is designed to be a general guide and to clarify certain key expense areas. This description is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

(b) Cost-reporting process. The primary objective of the cost-reporting process is to provide a basis for determining appropriate reimbursement to contracted providers. To achieve this objective, the reimbursement determination process uses allowable cost information reported on cost reports or other surveys. The cost report collects actual allowable costs and other financial and statistical information, as required. Costs may not be imputed and reported on the cost

report when no costs were actually incurred (except as stated in §355.103(b)(16)(A)(i) of this title (relating to Specifications for Allowable and Unallowable Costs) or when documentation does not exist for costs even if they were actually incurred during the reporting period.

(c) Accurate cost reporting. Accurate cost reporting is the responsibility of the contracted provider. The contracted provider is responsible for including in the cost report all costs incurred, based on an accrual method of accounting, which are reasonable and necessary, in accordance with allowable and unallowable cost guidelines in this section and in §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), revenue reporting guidelines in §355.104 of this title (relating to Revenues), cost report instructions, and applicable program rules. Reporting all allowable costs on the cost report is the responsibility of the contracted provider. The Texas Department of Human Services (DHS) is not responsible for the contracted provider's failure to report allowable costs; however, in an effort to collect reliable, accurate, and verifiable financial and statistical data, DHS is responsible for providing cost report training, general and/or specific cost report instructions, and technical assistance to providers. Furthermore, if unreported and/or understated allowable costs are discovered during the course of an audit desk review or field audit, those allowable costs will be included on the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(d) Cost report training. DHS is responsible for conducting, at no charge to the provider, comprehensive cost report training for each contracted program. Beginning with the 1997 cost reports, it is the responsibility of the provider to ensure that each preparer signing the Cost Report Methodology Certification has attended cost report training conducted by DHS. Preparers may be employees of the provider or persons who have been contracted by the provider for the purpose of cost report preparation. Preparers must attend cost report training for each program for which a cost report is submitted. Preparers must attend cost report training for two consecutive years, after which they are required to attend training on at least a biennial basis. A copy of the most recent cost report training certificate for each preparer of the cost report must be submitted with each cost report. Travel costs to attend the state-sponsored cost report training are allowable within the travel limits specified in §355.103(b)(12) of this title (relating to Specifications for Allowable and Unallowable Costs). Contracted preparer's fees to attend state-sponsored cost report training are allowable.

(1) For nursing facilities, failure to file a completed cost report signed by preparers who have attended the required cost report training may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(2) For all other programs, failure to file a completed cost report signed by preparers who have attended the required cost report training constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(e) Generally accepted accounting principles. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, DHS rules take precedence for provider cost-reporting purposes.

(f) Allowable costs. Allowable costs are expenses, both direct and indirect, that are reasonable and necessary, as defined in paragraphs (1) and (2) of this subsection, and which meet the requirements as specified in subsections (i), (j), and (k) of this section, in the normal conduct of operations to provide contracted client services meeting all pertinent state and federal requirements. Only allowable costs are included in the reimbursement determination process.

(1) "Reasonable" refers to the amount expended. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious buyer pays for a given item or service. In determining the reasonableness of a given cost, the following are considered:

(A) the restraints or requirements imposed by arm's-length bargaining, i.e., transactions with nonowners or other unrelated parties, federal and state laws and regulations, and contract terms and specifications; and

(B) the action that a prudent person would take in similar circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, and members, and the fulfillment of the purpose for which the business was organized.

(2) "Necessary" refers to the relationship of the cost, direct or indirect, incurred by a provider to the provision of contracted client care. Necessary costs are direct and indirect costs that are appropriate in developing and maintaining the required standard of operation for providing client care in accordance with the contract and state and federal regulations. In addition, to qualify as a necessary expense, a direct or indirect cost must meet all of the following requirements:

(A) the expenditure was not for personal or other activities not directly or indirectly related to the provision of contracted services;

(B) the cost does not appear as a specific unallowable cost in §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs);

(C) if a direct cost, it bears a significant relationship to contracted client care. To qualify as significant, the elimination of the expenditure would have an adverse impact on client health, safety, or general well-being;

(D) the direct or indirect expense was incurred in the purchase of materials, supplies, or services provided to clients or staff in the normal conduct of operations to provide contracted client care;

(E) the direct or indirect costs are not allocable to or included as a cost of any other program in either the current, a prior, or a future cost-reporting period;

(F) the costs are net of all applicable credits;

(G) allocated costs of each program are adequately substantiated; and

(H) the costs are not prohibited under other pertinent federal, state, or local laws or regulations.

(3) Direct costs are those costs which are incurred by a provider which are definitely attributable to the operation of providing contracted client services. Direct costs include, but are not limited to, salaries and nonlabor costs necessary for the provision of contracted

client care. Whether or not a cost is considered a direct cost depends upon the specific contracted client services covered by the program. In programs in which client meals are covered program services, the salaries of cooks and other food service personnel are direct costs, as are food, nonfood supplies, and other such dietary costs. In programs in which client transportation is a covered program service, the salaries of drivers are direct costs, as are vehicle repairs and maintenance, vehicle insurance and depreciation, and other such client transportation costs.

(4) Indirect costs are those costs which benefit, or contribute to, the operation of providing contracted services, other business components, or the overall entity with which DHS has contracted. These costs could include, but are not limited to, administration salaries and nonlabor costs, building costs, insurance expense, and interest expense. Central office and/or home office administrative expenses are considered indirect costs.

(g) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary, according to the criteria specified in subsection (f)(1)-(2) of this section and which do not meet the requirements as specified in subsections (i), (j), and (k) of this section or which are specifically enumerated in §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs) or program-specific reimbursement methodology. Providers must not report as an allowable cost on a cost report a cost that has been determined to be unallowable. Such reporting may constitute fraud. (Refer to 40 TAC §79.2103 (Statutory Bases) for the statutory basis for Medicaid fraud and §355.106(a) of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports)).

(1) For nursing facilities, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(2) For all other programs, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(h) Other financial and statistical data. The primary purpose of the cost report is to collect allowable costs to be used as a basis for reimbursement determination. In addition, providers may be required on cost reports to provide information in addition to allowable costs to support allowable costs, such as wage surveys, workers' compensation surveys, or other statistical and financial information. Additional data requested may include, when specified and in the appropriate section or line number specified, costs incurred by the provider which are unallowable costs. All information, including other financial and statistical data, shown on a cost report is subject to the documentation and verification procedures required for an audit desk review and/or field audit.

(1) For nursing facilities, inaccuracy in providing, or failure to provide, required financial and statistical data may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(2) For all other programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(i) Related party transactions.

(1) In determining whether a contracted provider organization is related to a supplying organization, the tests of common ownership and control are to be applied separately. Related to a contracted provider means that the contracted provider to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, leases, or supplies. Common ownership exists if an individual or individuals possess any ownership or equity in the contracted provider and the institution or organization serving the contracted provider. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations, then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create an irrebuttable presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family for cost-reporting purposes:

(A) husband and wife;

(B) natural parent, child, and sibling;

(C) adopted child and adoptive parent;

(D) stepparent, stepchild, stepsister, and stepbrother;

(E) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law;

(F) grandparent and grandchild;

(G) uncles and aunts by blood or marriage;

(H) nephews and nieces by blood or marriage; and

(I) first cousins.

(2) A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contracted provider organization and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contracted provider organization or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to the interest in the assets of the organization, e.g., a reversionary interest provided for in the articles of incorporation of a nonprofit corporation.

(3) The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances involved, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control to their directors in common.

(4) Costs applicable to services, equipment, facilities, leases, or supplies furnished to the contracted provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, the cost must not exceed the price

of comparable services, equipment, facilities, leases, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contracted provider through the related organization (whether related by common ownership or control), and to avoid payment of artificially inflated costs which may be generated from less than arm's-length bargaining. The related organization's costs include all actual reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, leases, or supplies to the provider. The intent is to treat the costs incurred by the supplier as if they were incurred by the contracted provider itself. Therefore, if a cost would be unallowable if incurred by the contracted provider itself, it would be similarly unallowable to the related organization. The principles of reimbursement of contracted provider costs described throughout this title will generally be followed in determining the reasonableness and allowability of the related organization's costs, where application of a principle in a nonprovider entity would be clearly inappropriate.

(5) An exception is provided to the general rule applicable to related organizations. The exception applies if the contracted provider demonstrates by convincing evidence to the satisfaction of DHS that certain criteria have been met. If all of the conditions of this exception are met, then the charges by the supplier to the contracted provider for such services, equipment, facilities, leases, or supplies are allowable costs. If Medicare has made a determination that a related party situation does not exist or that an exception to the related party definition was granted, DHS will review the determination made by Medicare to determine if it is applicable to the current situation of the contracted provider and in compliance with this subsection (relating to related party transactions). In order to have the Medicare determination considered for approval by the department, a copy of the applicable Medicare determination must accompany each written exception request submitted to the department, along with evidence supporting the Medicare determination for the current cost-reporting period. If the exception granted by Medicare no longer is applicable due to changes in circumstances of the contracted provider or because the circumstances do not apply to the contracted provider, DHS may choose not to consider the Medicare determination. Written requests for an exception to the general rule applicable to related organizations must be submitted for approval to the Rate Analysis Department within 45 days of the due date of the cost report in order to be considered for that year's cost report. Each request must include documentation supporting that the contracted provider meets each of the four criteria listed in subparagraphs (A)-(D) of this paragraph. Requests that do not include the required documentation for each criteria will not be considered for that year's cost report.

(A) The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the contracted provider organization.

(B) A majority of the supplying organization's business activity of the type carried on with the contracted provider is transacted with other organizations not related to the contracted provider and the supplier by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, leases, or supplies furnished by the organization. In determining whether the activities are of similar type, it is important also to consider the scope of the activity. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arm's-length bargaining by well-informed buyers and sellers.

(C) The services, equipment, facilities, leases, or supplies are those which commonly are obtained by entities such as the contracted provider from other organizations and are not a basic element of contracted client care ordinarily furnished directly to clients by such entities. This requirement means that entities such as the contracted provider typically obtain the services, equipment, facilities, leases, or supplies from outside sources, rather than producing them internally.

(D) The charge to the contracted provider is in line with the charge of such services, equipment, facilities, leases, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the organization for such services, equipment, facilities, leases, or supplies.

(6) Disclosure of all related-party information on the cost report is required for all costs reported by the contracted provider, including related-party transactions occurring at any level in the provider's organization, (e.g., the central office level, and the individual contracted provider level). The contracted provider must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation must include an identification of the related person's or organization's total costs, the basis of allocation of direct and indirect costs to the contracted provider, and other business entities served. If a contracted provider fails to provide adequate documentation to substantiate the cost to the related person or organization, then the reported cost is unallowable. For further guidelines regarding adequate documentation, refer to §355.105(b)(2) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(7) When calculating the cost to the related organization, the cost-determination guidelines specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs) apply.

(j) Cost allocation. Direct costing must be used whenever reasonably possible. Direct costing means that allowable costs, direct or indirect, (as defined in subsection (f)(3)-(4) of this section) incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For example, the payroll costs of a direct care employee who works across cost areas within one DHS-contracted program would be directly charged to each cost area of that program based upon that employee's continuous daily time sheets and the costs of a direct care employee who works across more than one service delivery area would also be directly charged to each service delivery area based upon that employee's continuous daily time sheets.

(1) If cost allocation is necessary for cost-reporting purposes, contracted providers must use reasonable methods of allocation and must be consistent in their use of allocation methods for cost-reporting purposes across all program areas and business entities.

(A) The allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. Allocated costs are adjusted if DHS considers the allocation method to be unreasonable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by DHS for cost-reporting purposes.

(B) DHS reviews each cost-reporting allocation method on a case-by-case basis in order to ensure that the re-

ported costs fairly and reasonably represent the operations of the contracted provider. If in the course of an audit it is determined that an existing or approved allocation method does not fairly and reasonably represent the operations of the contracted provider, then an adjustment to the allocation method will be made consistent with subsection (f)(3)-(4) of this section. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(C) Any allocation method used for cost-reporting purposes must be consistently applied across all contracted programs and business entities in which the contracted provider has an interest.

(D) Providers must use an allocation method approved or required by DHS. Any change in cost-reporting allocation methods from one year to the next must be fully disclosed by the contracted provider on its cost report and must be accompanied by a written explanation of the reasons and justification for such change. If the provider wishes to use an allocation method that is not in compliance with the cost-reporting allocation methods in paragraphs (3)-(4) of this subsection, the contracted provider must obtain written prior approval from DHS's Rate Analysis Department.

(i) Requests for approval to use an allocation method other than those identified in paragraphs (3)-(4) of this subsection or for approval of a provider's change in cost-reporting allocation method other than those identified in paragraphs (3)-(4) of this subsection must be received by DHS's Rate Analysis Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(ii) The Rate Analysis Department will forward its written decision to the contracted provider within 45 days of its receipt of the provider's original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, then DHS may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(iii) Failure to use an allocation method approved or required by DHS or to disclose a change in an allocation to DHS will result in the following.

(I) For nursing facilities, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by DHS may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(II) For all other programs, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by DHS constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(2) Cost-reporting methods for allocating costs must be clearly and completely documented in the contracted provider's workpapers, with details as to how pooled costs are allocated to each segment of the business entity, for both contracted and noncontracted programs.

(A) If a contracted provider has questions regarding the reasonableness of an allocation method, that contracted provider should request written approval from the Rate Analysis Department prior to submitting a cost report utilizing the allocation method in question. Requests for approval must be received by the Rate Analysis Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(B) The Rate Analysis Department will forward its written decision to the contracted provider within 45 days of its receipt of the original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, DHS may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(3) When a building is shared and the building usage is separate and distinct for each entity using the building, the building costs, identified as building and facility cost categories on the cost report, should be allocated based upon square footage and may not be allocated with other indirect costs as a pool of costs. When the same building space is shared by various entities, the shared building costs, identified as building and facility cost categories on the cost report, should be allocated using a reasonable method which reflects the actual usage, such as an allocation based on time in shared activity areas or a functional study of shared dietary costs related to shared dining and kitchen areas.

(4) Where costs are shared, are not directly chargeable and are allocated as a pool of costs, the following allocation methods are acceptable for cost-reporting purposes.

(A) If all the business components of a contracted provider have equivalent units of equivalent service, indirect costs must be allocated based upon each business component's units of service. For example, if a provider had two nursing facilities, indirect costs requiring allocation as a pool of costs must be allocated based upon each nursing facility's units of service, since the units of service are equivalent units and the services are equivalent services. If a provider had a nursing facility and a residential care program, indirect costs requiring allocation as a pool of costs could not be allocated based upon units of service because even though the units of service for a nursing facility and a residential care facility are equivalent units, the services are not equivalent services. If a home health agency has indirect costs requiring allocation as a pool of costs across its Medicare home health services and its Medicaid primary home care services, it could not use units of service to allocate those costs, since neither the units of service nor the services are equivalent.

(B) If all of a contracted provider's business components are labor-intensive without programmatic residential facility or residential building costs, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs based either on each business component's pro rata share of salaries or labor costs or on a cost-to-cost basis.

(i) For cost-reporting cost allocation purposes, the term "salaries" includes wages paid to employees directly charged to the specific business component. The term "salaries" also includes fees paid to contracted individuals, excluding consultants, who perform services routinely performed by employees, which

are directly charged to the specific business component. The term "salaries" does not include payroll taxes and employee benefits associated with the wages of employees.

(ii) For cost-reporting cost-allocation purposes, the term "labor costs" includes salaries as defined in clause (i) of this subparagraph, plus the payroll taxes and employee benefits associated with the wages of the employees.

(iii) The cost-to-cost method allocates costs based upon the percentage of each business component's directly-charged costs to the total directly-charged costs of all business components.

(C) If a contracted provider's business components are mixed, with some being labor-intensive and others having a programmatic residential or institutional component, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs either:

(i) based upon the ratio of each business component's total costs less that business component's facility or building costs, as related to the contracted provider's total business component costs less facility or building costs for all the contracted provider's business components, with "facility or building costs" referring to those cost categories as identified on the cost report; or

(ii) based upon the labor costs method stated in subparagraph (B)(ii) of this paragraph.

(D) In order to achieve a more accurate and representative reporting of costs than results from allocating shared indirect costs as a pool of costs, a provider may choose to allocate its indirect shared expenses on an appropriate and reasonable functional basis. If allocating shared direct client care costs, a provider may use an appropriate and reasonable functional method. For example, costs of a central payroll operation could be allocated to all business components based on the number of checks issued; the costs of a central purchasing function could be allocated based on the number of purchases made or requisitions handled; payroll costs for an administrative employee working across business components could be directly charged based upon that employee's time sheets and/or allocated based upon a documented time study; food costs could be allocated based upon a functional study of shared dietary costs; transportation equipment costs could be allocated based upon mileage logs; and shared laundry costs could be allocated based upon a functional study of the number of pounds/loads of laundry processed. Providers choosing to allocate allowable employee-related self-insurance paid claims in accordance with §20.103(b)(10)(B)(ii) of this title relating to Specifications of Allowable and Unallowable Costs) should base the allocation on percentage of salaries of employees benefiting from the coverage for fully self-insured situations or on percentage of premiums of covered employees for partially self-insured situations since purchased premiums must be directly charged.

(E) Because the determination of reimbursement is based on cost data, allocation methods based upon revenue streams are inappropriate and unallowable.

(k) Net expenses. Net expenses are gross expenses less any purchase discounts or returns and allowances. Purchase discounts are cash discounts reducing the purchase price as a result of prompt payment, quantity purchases, or for other reasons. Purchase returns and allowances are reductions in expenses resulting from returned merchandise or merchandise which is damaged, lost, or incorrectly billed. Only net expenses may be reported on the cost report. Expenses reported on the cost report must be adjusted for all such purchase discounts or returns and allowances.

§355.106. Basic Objectives and Criteria for Audit and Desk Review of Cost Reports.

(a) The Texas Department of Human Services (DHS) conducts desk reviews and field audits of provider cost reports in order to ensure that all financial and statistical information reported in the cost reports conforms to all applicable rules and instructions. Cost reports must be completed according to instructions and rules in accordance with §355.105(b)(4) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). DHS may require supporting documentation other than that contained in the cost report to substantiate reported information.

(1) For nursing facilities, failure to complete cost reports according to instructions and rules in accordance with §355.105(b)(4) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) may result in vendor hold as specified in 40 TAC §19.2703 (relating to Vendor Hold).

(2) For all other programs, failure to complete cost reports according to instructions and rules in accordance with §355.105(b)(4) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(b) The basic objective of audits and desk reviews is to verify that each provider's cost report:

(1) displays financial and other statistical information in the format required by DHS;

(2) reports expenses in conformity with DHS's lists of allowable and unallowable costs;

(3) follows generally accepted accounting principles, except as otherwise specified in DHS's lists of allowable and unallowable costs, and other pertinent rules or as otherwise permitted in the case of governmental entities operating on a cash or modified accrual basis; and

(4) is completed in accordance with each program's cost report instructions and rules.

(c) DHS verifies the information specified in subsection (b) of this section by:

(1) comparing each provider's reported costs to:

(A) past patterns of expenditures for similar services;

(B) the results of previous field audits;

(C) normal operating cost relationships; and

(D) industry average costs, when available;

(2) reviewing each provider's reported costs for:

(A) reported unallowable costs;

(B) omitted allowable costs, if discovered during the course of the audit or desk review; and

(C) understated or overstated allowable costs, if discovered during the course of the audit or desk review;

(3) checking for completion of required information;

(4) checking the format for proper cost classification;

(5) checking for mathematical accuracy; and

(6) adjusting the cost report, or notifying the provider that research and/or corrections are required.

(d) In accordance with methodology rules, cost report instructions or policy clarifications, DHS may reassign allowable costs to the appropriate line items of a cost report.

(e) DHS seeks to maximize the number of field audited cost reports available for use in its cost projections. In addition to cost reports selected for field audit based upon risk analysis, other specific criteria and random sampling, DHS may conduct field audits of cost reports that show unusual fluctuations or trends in costs or other statistics. DHS may also conduct field audits when desk reviews are insufficient to verify the accuracy of reported costs.

(f) For cost reports pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years, each provider entity or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on cost reports. This requirement includes records pertaining to related party transactions or other business activities engaged in by the provider.

(1) For nursing facilities, failure to allow access to any and all records necessary to verify information submitted to DHS on cost reports may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(2) For all other programs, failure to allow access to any and all records necessary to verify information submitted to DHS on cost reports constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(g) A contracted provider may request an informal review, and subsequently an appeal, of a desk review or field audit disallowance in accordance with §355.110 of this title (relating to Informal Reviews and Formal 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 June 6, 2000.

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Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
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For further information, please call: (512) 438-3108

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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 adopts amendments to 13 TAC 3.1 through 13 TAC §3.6, 13 TAC §3.8 through 13 TAC §3.9, 13 TAC §3.12, and 13 TAC §3.15 relating to the Texas State Publications Depository Program, with changes to the proposed text as published in the December 10, 1999 issue of the *Texas Register* (24 TexReg 11056).

These amendments bring the State's retention periods for records and print and electronic publications into closer accordance. They also clarify definitions in existing rules, remove redundant language, and revise deposit requirements for specific types of publications. These new rules also 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.

The following is a summary of comments received. Following each comment is the commission's response.

Comment: In §3.1, material requested by the public under the open records law is excluded from the definition of a state publication. Perhaps §3.1 should include an explanation that a document requested by the public under the open records law is not considered a publication merely because it was requested by the public, unless it otherwise meets the definition of a state publication.

Response: We agree that §3.1(13), as proposed, unintentionally implies that a document requested under open records reporting would thereby become a "publication." We have modified the language to explain that the term "state publication" does not include information distributed to members of the public under a request made under the open records law, if the requested information does not otherwise meet the definition of a state publication.

Comment: §3.3 says if there is a retention period specified in the State Records Retention Schedule for a record that becomes a publication because it has been publicly distributed, the greater of the two retention periods applies. That section also says issues of online state publications will be accessible by Internet connection for two years from the date of release or last modification. Are you making a special case for a two-year retention of Internet publications?

Response: Our intent is to remind agency staff that retention compliance with publication rules does not necessarily mean that records retention rules had been met as well. To clarify this, we have modified the language in §3.3(e) to remind state agencies that compliance with this section does not constitute compliance with records retention rules for state government records. In this manner, it remains clear that online retention of electronic publications is two years under publication rules, but additional offline retention may be required for some publications under records retention rules.

Comment: From §3.3(d)(2)(D) we understand that we must keep superceded information on the Web even if it contains outdated information. Is your agency going to provide instructions on how we can distinguish this outdated information from the current version without unduly modifying the original?

Response: §3.3(d)(2)(D) does indeed specify that superseded information must be kept on the Web for the duration of the publication retention period. This will insure public access to Texas state government electronic publications for an extended period. We have developed a process for retaining electronic publications on the Internet and have distributed these guidelines to agency staff attending training sessions for TRAIL, the electronic indexing service for state publications.

The following organization commented on the proposed rules:

The Texas Department of Health requested the clarifications and revisions shown above.

The amendments are adopted under Government Code §441.103(b), that 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), that provides authorization for the commission to adopt rules relating to the distribution of state publications by the Texas State Library and Archives Commission. The amendments affect Government Code, §441.101 through §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) Commission–The Texas State Library and Archives Commission.

(2) Depository library–Any library that the Director and Librarian or the commission designates as a depository library for state publications.

(3) Depository publication–A state publication in any format distributed from or on behalf of the Texas State Library to a depository library.

(4) Director and Librarian–Chief executive and administrative officer of the Texas State Library and Archives Commission.

(5) Electronic external storage devices–Removable electronic media used to store and transfer electronic information.

(6) Electronic format–A form of recorded information that can be processed by a computer.

(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.

(8) On-line–Accessible via a computer or terminal, rather than on paper or other medium.

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

(11) Serial–Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, transactions.

(12) State agency–Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.

(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 limited to contractors with or grantees of the agency, 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 if it does not otherwise meet the definition of a state publication.

(14) State Publications Depository Program–A program of the Texas State Library designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

(15) Texas Records and Information Locator (TRAIL)–A program of the Texas State Library designed to locate, index, and make available state publications in electronic format.

(16) Texas State Library–The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.

(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.

§3.2. State Publications in Multiple Information Formats.

When a state publication is distributed to the public in multiple formats simultaneously, state agencies are required to provide access to or copies of that publication to the Commission in all formats in which the publication is 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 in §3.5 of this title (relating to Standard Exemptions for State Publications in Print Format Only,), in §3.6 of this title (relating to Standard Exemptions for State Publications in 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) If 300 or more copies are produced, 55 copies must be deposited with the State Publications Depository Program.

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

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

(1) State agencies must deposit electronic state publications on electronic external storage devices only when they are not accessible to the public by Internet connection.

(2) State agencies must meet the following requirements when submitting state publications on electronic external storage devices:

(A) Computer Diskette. One copy of all applicable state publications must be submitted on three and one-half inch, 1.44 megabyte high density disks, configured to an MS-DOS platform and formatted in ASCII (American Standard Code for Information Interchange) or other software approved by the Texas State Library.

(B) Compact Disks–Read-Only Memory. One copy of all applicable state publications must be submitted on disks that adhere to standards of ISO (International Organization of Standards) 9660. Files will be formatted in ASCII, or other software that is provided and is in the public domain or has been purchased with a license agreement to distribute it with each copy of the disk. If the file is compressed, software and instructions must be included on the disk to decompress all data directly to a hard drive from commands found in a file on the root directory.

(C) State Publications on Other Electronic External Storage Devices. For new or improved media which may become commonly available, one copy of all applicable state publications may be submitted. All such devices or media for submitting state publications must be approved by the Director and Librarian and must adhere to standards set by the Texas State Library.

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

(1) State agencies are required to provide the Texas State Library with guaranteed access, at no charge, to state publications available by an Internet connection.

(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, Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(ii) by a Uniform Resource Locator (URL) provided by the agency that describes each state publication's specific name and location on the Internet; and

(iii) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(B) Indexing. Indexed state publications will be accessible through indexes which meet current ANSI/NISO (American National Standards Institute/National Information Standards Organization) Z39.50 search and retrieval standards and which adhere to the application profile of the Federal Information Processing Standards Publication 192 or its successor document.

(C) Availability. 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 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) Supercession. For state publications that are updated as needed to keep information accurate, or that are replaced by other publications, the superceded 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. 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, 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) Annual or biennial report (narrative description and statistics of programs, services, activities);

(B) Statistical compilations (annual or multi-year);

(C) Codes (published as compendia);

(D) Regulations (published as compendia); and

(E) Directories (of facilities, services, providers).

(2) Three copies of annual financial reports, 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) Two copies of requests for legislative appropriations and quarterly and annual reports of measures must be deposited with the State Publications Depository Program.

§3.5. Standard Exemptions for State Publications in Print Format Only.

The Director and Librarian has exempted from deposit requirements certain kinds of state publications distributed in print format. A state agency is not required to deposit these state publications in print format:

(1) agendas;

(2) advertisements;

(3) alumni materials;

(4) announcements;

(5) artwork;

(6) calendars;

(7) contracts;

(8) correspondence;

(9) course schedules;

(10) certain curriculum catalogs (departmental only);

(11) drafts of plans, reports;

(12) fiction;

(13) forms;

(14) fund raising materials;

(15) grant proposals, bids;

(16) hearings (transcripts of);

(17) job listings;

(18) literary criticisms;

(19) memorabilia;

(20) memoranda (including e-mail);

(21) news or press releases;

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

(23) notices of sale;

(24) daily or weekly periodicals (which are summarized in monthly or quarterly publications);

(25) personnel manuals;

(26) photographs;

(27) poetry;

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

(29) programs (announcements of);

(30) recruitment materials;

(31) reprints (reissued without change);

(32) stationery;

(33) student publications (those produced by students);

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

(35) volunteer newsletters.

§3.6. Standard Exemptions for State Publications in Electronic Format Only.

The Director and Librarian has exempted from deposit requirements certain kinds of state publications distributed in electronic format. A state agency is not required to deposit or provide access to these state publications in electronic format:

(1) agendas;

(2) advertisements;

(3) alumni materials;

(4) announcements;

(5) artwork;

(6) contracts;

(7) correspondence;

(8) drafts of plans, reports;

(9) fiction;

(10) fund raising materials;

(11) grant proposals, bids;

(12) literary criticisms;

(13) non-print memorabilia;

(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;

(22) student publications (those produced by students); and

(23) volunteer newsletters.

§3.8. State Publications Contact Person.

Each state agency must designate in writing or via the Internet one person to act as liaison with the State Publications Depository 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 size and complexity of the agency'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) Each state agency must submit a publication reporting form that describes state publications as they become available.

(b) State publications submitted in formats other than those made available from an Internet connection must be listed on a paper form that is enclosed with each shipment.

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

(1) of its initial availability by the Internet connection;

(2) and as changes are made which alter its:

(A) Uniform Resource Locator;

(B) title;

(C) scope; or

(D) accessibility by new use constraints and technical prerequisites.

(3) Agencies unable to access the electronic reporting form for state publications made available on-line may request special authorization to submit a paper form.

§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 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 regarding staff access to Internet services and Internet accessibility of the local catalog;

(2) provide a user interface to the Texas Records and Information Locator (TRAIL), in a format approved by the Director and Librarian, through all public terminals;

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

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

(5) provide access to state electronic 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;

(6) implement a use policy for electronics state publications which is consistent with the institution's general use policy;

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

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

(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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 7, 2000.

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Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463-5459

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS AND OTHER REQUIRED INFORMATION

16 TAC §§25.71 - 25.74, 25.76, 25.81, 25.83, 25.89

The Public Utility Commission of Texas (commission) adopts amendments to §25.71, relating to General Procedures, Requirements and Penalties; §25.72, relating to Uniform System of Accounts; §25.73, relating to Financial and Operating Reports; §25.74, relating to Reports on Sale of Property and Mergers; §25.76, relating to Gross Receipts Assessment Report; §25.81, relating to Service Quality Reports; §25.83, relating to Construction Reports; and §25.89, relating to Report of Loads and Resources with changes to the proposed text as published in the March 24, 2000, *Texas Register* (25 TexReg 2507). The proposed amendments are necessary to modify reporting requirements to conform to the Public Utility Regulatory Act (PURA) as amended by Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session

Law Service, 2543 (Vernon) (SB7). These amendments were adopted under Project Number 21232.

The commission received comments on the proposed amendments from Austin Energy; Brazos Electric Power Cooperative, Inc. (Brazos); Greenville Electric Utility System, the City of Denton, and the City of Garland (collectively, Cities); San Antonio City Public Service (CPS); and Texas Electric Cooperatives, Inc. (TEC).

All parties commented on the jurisdiction of the commission over municipally owned utilities and electric cooperatives, citing PURA §40.004 and §41.004, which enumerate specific purposes for which the commission has jurisdiction. By explicitly excluding municipally owned utilities and electric cooperatives from the definition of the term electric utility, PURA has made a further distinction between the statute's treatment of these entities and its treatment of investor owned utilities.

The commission agrees with the commenters that its jurisdiction over municipally owned utilities and electric cooperatives is limited and has undertaken these amendments in order to remove reporting requirements that are no longer within the commission's authority. The commission intends to require reports from municipally owned utilities and electric cooperatives only to the extent necessary to carry out its statutory responsibilities. In doing so, the goal of the commission is to collect such information in the least burdensome manner possible, while retaining the administrative efficiency gained by uniformity. These amendments strike a fair and equitable balance among those concerns and are consistent with the commission's authority over municipally owned utilities and electric cooperatives.

§25.71, relating to General Procedures, Requirements, and Penalties

Brazos and TEC stated that electric cooperatives should be excluded from the general applicability of the reporting rules. They proposed language to indicate that the rules shall apply to electric cooperatives only where explicitly stated.

The commission agrees and has amended the rule so that electric cooperatives and municipally owned utilities are excluded from the general applicability of the reporting rules, unless otherwise specified in a specific section.

Brazos and TEC stated that special reports required in §25.71(g) should only be required in accordance with the commission's jurisdiction under PURA §41.004. TEC provided suggested language to accomplish this.

The commission agrees and has incorporated the concept proposed by TEC in the rule as amended.

§25.72, relating to Uniform System of Accounts

Brazos and TEC stated that the commission does not have the authority to require electric cooperatives to keep a uniform system of accounts; Brazos is required to keep accounts in accordance with Rural Utilities Service requirements. A cooperative's accounting method lies within the jurisdiction of the cooperative's board of directors. Therefore, Brazos recommended deletion of forms of the phrase "electric cooperative" from the rule as proposed.

The commission disagrees with the commenters. For purposes of reporting transmission costs, electric cooperatives are required to utilize a uniform system of accounts "as will be adequately informative for all regulatory purposes." In response to Brazos' assertion regarding the board of directors' jurisdiction over this issue, subsection (d) provides that an electric cooperative may adopt an alternative system of accounts upon notification to, not the approval of, the commission. The rule specifically mentions the Rural Utilities Service requirements as an example of such an alternative.

§25.74, relating to Reports on Sale of Property and Mergers

Brazos and TEC stated that the commission cannot require a report on the sale of property or on a merger, given that such decisions are within the sole discretion of the cooperative's board of directors. Brazos recommended that the proposed amendment be deleted.

Cities, Austin Energy, and CPS suggested that the proposed language be modified to remove any implication that a sale, acquisition, lease or rental by a municipal utility is conditioned upon report under §25.74(e). Cities indicated such a modification could be accomplished by requiring the reporting of these activities in annual generating capacity reports. CPS provided suggested language for §25.74(e) to require reporting of a sale, acquisition, lease or rental of generating facilities, without conditioning such activities on the filing of the report with the commission.

The commission agrees with Cities, Austin Energy, and CPS and has adopted CPS's suggested language for application to both electric cooperatives and municipally owned utilities.

§25.76, relating to Gross Receipts Assessment Report

Brazos suggested adding the phrase "subject to the jurisdiction of the commission," which is used in this section, throughout the reporting requirements to indicate that cooperatives are required to file reports with the commission only under limited circumstances.

The commission disagrees that such language is necessary. Proposed §25.71(a) states, "(t)his chapter does not apply to municipally owned utilities or electric cooperatives unless otherwise specified." The inclusion of the phrase in proposed §25.76 is a clarification that is also found in the statutory language addressing this provision.

§25.81, relating to Service Quality Reports

Brazos and TEC stated that the commission does not have the authority to require service quality reports from electric cooperatives; a cooperative's board of directors has exclusive authority to monitor and enforce service quality standards.

The commission agrees and has amended the proposed rule accordingly.

§25.83, relating to Construction Reports

Brazos noted that §25.101, referenced in §25.83, does not make a distinction between generation and transmission requirements for certificates of convenience and necessity. Brazos further stated that electric cooperatives have been specifically exempted from any generation- related certificate requirements by PURA §37.051(c). TEC stated that the commission does not have the authority to require preliminary construction report forms from electric cooperatives.

The commission concludes that the issues raised by Brazos and TEC should be addressed in conjunction with an amendment to §25.101, which will be considered in this project at some later date. In the interest of clarity, the commission has changed the

section number that is referred to in this section from §23.31(c) to §25.101.

All comments, including any not specifically discussed herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure, and specifically PURA §14.003 which grants the commission the authority to require reports of utilities and to establish the form and frequency of such reports; §16.001, which imposes an assessment on each public utility, retail electric provider, and electric cooperative; PURA §39.155, which authorizes the commission to require reports to assess market power; PURA §40.004, which authorizes the commission to require of municipally owned utilities information relating to the aggregate load and energy requirements of the state and information relating to market power; and PURA §41.004, which authorizes the commission to require of electric cooperatives information necessary to satisfy its responsibilities relating to electric cooperatives, information relating to the aggregate load and energy requirements of the state, and information relating to market power.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 14.052, 16.001, 39.155, 40.004, and 41.004.

§25.71. General Procedures, Requirements and Penalties.

(a) Who shall file. The record-keeping, reporting, and filing requirements listed in this subchapter shall apply to all electric utilities operating in the State of Texas. This subchapter does not apply to municipally owned utilities or electric cooperatives unless otherwise specified. Moreover, the provisions of this subchapter are applicable to all services provided by the reporting entity.

(b) Initial reporting. Unless otherwise specified in a section of this subchapter, periodic reporting shall commence as follows:

(1) Quarterly reporting. For records, reports and other required information under this chapter, reporting shall begin with an initial filing for the first fiscal quarter for which information is available.

(2) Annual Reporting. For all reports and other required information under this chapter, reporting shall begin with an initial filing for the most recent fiscal year ending on or prior to April 30 of the first year the record, report or other required information must be filed with the commission.

(c) Maintenance and location of records. Records, books, accounts, or memoranda required of an electric utility, as defined in the Public Utility Regulatory Act, §31.002(6), may be kept outside the State of Texas so long as those records, books, accounts, or memoranda are returned to the state for any inspection by the commission that is authorized by the Public Utility Regulatory Act.

(d) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the electric utility or electric cooperative under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the electric utility's or the electric cooperative's operation.

(e) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome for any electric utility or electric cooperative to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be included in the report.

(f) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this subchapter.

(1) Monthly reports: 45 days after the end of the reported period.

(2) Quarterly reports other than shareholder reports: 45 days after the end of the reported period.

(3) Semi-annual reports: 45 days after the end of the reported period.

(4) Annual earnings report: May 15 of each year.

(5) Shareholder annual reports: seven days from the date of mailing the same to shareholders.

(6) Securities and Exchange Commission Filings: 15 days from the initial filing date with the Securities and Exchange Commission.

(7) Special or additional reports: as may be prescribed by the commission.

(8) Annual reports required by §25.76 of this title (relating to Gross Receipts Assessment Report) shall be due August 15 of each year and shall reflect transactions for the previous July 1 through June 30 reporting period.

(9) Annual reports required by §25.77 of this title (relating to Payments, Compensation, and Other Expenditures) shall be due June 1 of each year and shall reflect the transactions for the most recent calendar year.

(g) Special and additional reports. Each electric utility shall report, on forms prescribed by the commission, special and additional information, as requested, that relates to the operation of the business of the electric utility. Electric cooperatives and municipally owned utilities may be required to file special or additional reports to the extent such information is necessary and is within the jurisdiction of the commission.

(h) Penalty for refusal to file on time. In addition to penalties prescribed by law, and §22.246 of the title (relating to Administrative Penalties) the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

§25.72. Uniform System of Accounts.

(a) Each electric utility and electric cooperative shall keep uniform accounts, in accordance with this section, of all business transacted. The classification of electric utilities and electric cooperatives, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

(b) Classification. For the purposes of accounting and reporting to the commission under this subchapter, each electric utility or electric cooperative shall be classified as follows:

(1) Major: electric utilities or electric cooperatives that had in each of the last three consecutive years sales or transmission service that exceeded any one or more of the following:

(A) one million megawatt-hours of total sales;

(B) 100 megawatt-hours of sales for resale;

(C) 500 megawatt-hours of gross interchange out; or

(D) 500 megawatt-hours of wheeling for others (deliveries plus losses).

(2) Nonmajor: electric utilities or electric cooperatives that are not classified as "major" as defined in paragraph (1) of this subsection.

(c) System of accounts. For the purpose of accounting and reporting to the commission, each electric utility and electric cooperative shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(1) Major: uniform system of accounts as adopted and amended by the Federal Energy Regulatory Commission (FERC) for major electric utilities and electric cooperatives or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(2) Nonmajor: uniform system of accounts as adopted and amended by the FERC for nonmajor electric utilities and electric cooperatives or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(d) Other system of accounts. When an electric utility or electric cooperative has adopted a uniform system of accounts required or approved by a state or federal agency other than the FERC (e.g., United States Department of Agriculture - Rural Utilities Service), that system of accounts may be adopted by the electric utility or electric cooperative after notification to the commission.

(e) Merchandise accounting. Each electric utility and electric cooperative shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

(f) Accounting period. Each electric utility and electric cooperative shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the electric utility or electric cooperative.

(g) Rules related to capitalization of construction costs. Each electric utility and electric cooperative shall accrue allowance for funds used during construction on construction work in progress to the extent not included in rate base. In the event construction work in progress is included in rate base pursuant to the rules in §25.231(c)(2)(D) of this title (relating to Cost of Service), capitalization of allowance for funds used during construction for electric utilities and electric cooperatives is allowed.

§25.73. Financial and Operating Reports.

(a) Annual reports.

(1) Each electric utility shall file with the commission the same annual report required by the Federal Energy Regulatory Commission (FERC). Such annual reports shall be filed with the commission on the same dates as required to be filed with the FERC. Major electric utilities that are not required to file such reports shall file with the commission an annual report on the form prescribed by the FERC.

(2) Each electric utility holding company subject to annual reporting to the Securities and Exchange Commission and each electric utility shall file with the commission three copies of its annual report to shareholders and customers. Unless included in the annual report to shareholders and customers, each electric utility shall file concurrently with the filing of such report three copies of any audited financial statements that may have been prepared on its behalf.

(b) Annual earnings report. Each electric utility not required to file an Annual Report pursuant to the Public Utility Regulatory Act (PURA) §39.257 shall file with the commission, on commission-prescribed forms, an earnings report providing the information required to enable the commission to properly monitor electric utilities within the state. Each transmission service provider shall file with the commission a report that will permit the commission to monitor its transmission costs and revenues pursuant to §25.193(a)(5) of this title (relating to Procedures for Modifying Transmission Rates).

(1) Each electric utility shall report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each electric utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than the date prescribed in §25.71(f)(4) of this title (relating to General Procedures, Requirements and Penalties).

(c) Securities and Exchange Commission reports. Each electric utility and electric utility holding company subject to reporting requirements of the Securities and Exchange Commission shall file three copies of each required report with the commission. Three copies of each such report including 10-Ks, 10-Qs, 8-Ks, Annual Reports, and Registration Statements filed with the Securities and Exchange Commission shall be submitted to the commission no later than 15 days from the initial filing date with the Securities and Exchange Commission.

(d) Duplicate information. An electric utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

§25.74. Reports on Sale of Property and Mergers.

(a) An electric utility shall not sell, acquire, lease or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of $100,000 unless the electric utility reports such transaction to the commission while pending or within 30 days after closing.

(b) An electric utility shall not merge or consolidate with another electric utility or public utility operating in the State of Texas unless the electric utility reports such transaction to the commission while pending or within 30 days after closing.

(c) Electric utilities shall not purchase voting stock in another electric utility or public utility doing business in the State of Texas, unless the electric utility reports such purchase to the commission while pending or within 30 days after closing.

(d) Electric utilities shall not loan money, stocks, bonds, notes or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the electric utility unless the electric utility reports such transaction to the commission while pending or within 30 days after closing. A properly filed tariff change with respect to energy conservation loans available to customers, who may or may not be shareholders as described in this subsection, will be considered adequate reporting to the commission.

(e) An electric cooperative or municipal utility shall report to the commission any sale, acquisition, lease, or rental of any generating facilities in the State of Texas for a total consideration in excess of $100,000, during the pendency of the transaction or within 30 days after closing.

§25.76. Gross Receipts Assessment Report.

Each electric utility , electric cooperative, and retail electric provider subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment as required by the Public Utility Regulatory Act on a form prescribed by the state comptroller. This report shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Chapter 16, Subchapter A.

§25.81. Service Quality Reports.

Each electric utility shall submit annual service quality reports no later than February 14 of each year on a form prescribed by the commission.

§25.83. Construction Reports.

Each electric utility constructing a facility requiring reporting to the commission under §25.101 of this title (relating to Certification Criteria) shall report to the commission on the commission-prescribed preliminary construction report form prior to the commencement of construction.

§25.89. Report of Loads and Resources.

Each transmission service customer that submits an annual report of loads and resources to the Electric Reliability Council of Texas independent system operator pursuant to §25.198(l) of this title (relating to Initiating Transmission Service) or other reliability council shall file a copy with the commission and maintain a copy of supporting documentation for five years. If no such annual report is prepared, the transmission service customer shall maintain a record of the load and resource documents prepared in the normal course of its activities for five years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2000.

TRD-200004033
Rhonda Dempsey
Rules Coordinator
Public Utility Commission
Effective date: June 28, 2000
Proposal publication date: March 24, 2000
For further information, please call: (512) 936-7308

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16 TAC §25.100

The Public Utility Commission of Texas (commission) adopts the repeal of §25.100 relating to Other Records, Reports, and Information that May be Required with no changes to the text as published in the March 17, 2000, *Texas Register* (25 TexReg 2239). This section is not necessary as the information is provided as an appendix to the commission's substantive rules in Chapter 25. This appendix provides more accurate information as a result of frequent updates without the restrictions of a rulemaking proceeding. The appendix is available through the commission's Central Records and on the commission's web site. This repeal is adopted under Project Number 22047.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Subchapter E. CERTIFICATION, LICENSING AND REGULATION

16 TAC §§25.105, 25.109, 25.111

The Public Utility Commission of Texas (commission) adopts an amendment to §25.105 relating to Registration and Reporting by Power Marketers without changes to the proposed text as published in the March 17, 2000, *Texas Register* (25 TexReg 2240). The commission adopts new §25.109 relating to Registration of Power Generation Companies and Self-Generators and new §25.111 relating to Registration of Aggregators with changes to the proposed text as published in the March 17, 2000, *Texas Register* (25 TexReg 2240). Project Number 21082 has been assigned to this proceeding. The amendment and new rules are necessary to implement provisions of the Public Utility Regulatory Act (PURA) §§39.351, 39.353, 39.354, 39.3545, 39.356 and 39.357. The §25.105 amendment retains existing requirements for power marketers but eliminates requirements for exempt wholesale generators (EWGs) and qualifying facilities (QFs), in order to eliminate duplication with the proposed new requirements for power generation companies (PGCs). Section 25.109 establishes registration requirements and procedures for power generation companies, including exempt wholesale generators and qualifying facilities, that intend to sell electricity at wholesale. It also establishes registration requirements and procedures for self-generators that generate more than one megawatt of electricity but do not intend to sell electricity at wholesale. Section 25.111 establishes registration requirements and procedures for persons and public entities seeking to aggregate the loads of electricity customers.

A public hearing on the amendment and proposed sections was held at commission offices at 9:30 a.m. on April 18, 2000. Representatives from Alcoa Inc. (Alcoa), Central and South West Corporation (CSW-REP), Consumers Union, Texas Legal

Services Center and Texas Ratepayers' Organization to Save Energy (collectively, Consumers), East Texas Cooperatives, Office of Public Utility Counsel (OPUC), Reliant Energy Inc. (Reliant), Southwestern Public Service Company (SPS), TXU Electric Company (TXU), and TXU and CPL Cities (TC Cities) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment to §25.105 from Alcoa. Comments on §25.109 were received from Brazos Electric Power Cooperative, Inc. (Brazos), the City of Plano (Plano), El Paso Electric Company (EPE), SPS, Texas Industrial Energy Consumers (TIEC), TXU Power Generation Company (TXU-PGC), and reply comments from OPUC, TIEC, and TXU-PGC. The commission received comment on §25.111 from the City of Austin d/b/a Austin Energy (Austin), the Commercial Ratepayer Coalition (CRC), Consumers, CSW-REP Retail Electric Provider (CSW-REP), OPUC, Plano, SPS, TC Cities, Texas Electric Cooperatives, Inc. (TEC), and TXU Retail Electric Provider (TXU-REP). The commission also received reply comments on §25.111 from Consumers, the Cities of Denton, Greenville, and Garland (DGG Cities), OPUC, Reliant, TC Cities, Texas Industrial Energy Consumers (TIEC), and TXU-REP. Pursuant to commission staff request at the public hearing, Austin, CSW-REP, OPUC, TC Cities, and TEC filed clarifying comments on §25.111.

§25.105. Registration and Reporting by Power Marketers

Alcoa noted that the elimination of EWGs and QFs from §25.105 creates the need for a conforming change in §25.345(i)(6), concerning the submission of generation site information, and recommended either deletion or change to the reference.

The commission agrees to a conforming change to §25.345(i)(6) relating to Recovery of Stranded Costs Through Competitive Transition Charge (CTC), and plans to address it in Project Number 21232, *Rule Changes to Conform to the Electric Restructuring Act.*

§25.109. Registration of Power Generation Companies and Self- Generators

TIEC said that it generally supports the proposed rule and believes that the rule reflects compromise by various parties as a result of the commission workshops. EPE requested new language be added to state that §25.109 does not apply to a utility that is not subject to PURA Chapter 39, pursuant to PURA §39.102(c), until the expiration of its rate freeze period.

The commission declines to make the change requested by EPE; however, it agrees that EPE is not required to register as a PGC until the expiration of its rate freeze period. Until EPE is unbundled, it will continue to own transmission and distribution facilities. As an owner of transmission and distribution facilities, EPE does not meet the definition of "power generation company" in PURA §31.002(10), and therefore it is not required to register as a PGC under this rule.

Alcoa commented that the references in subsection (a) to ownership are incomplete because the status of someone as a PGC pursuant to PURA §31.002(10) is based not on ownership of generation, but on being someone who is generating electricity. Alcoa recommended the references be changed to "owns or operates." Alcoa also recommended a new paragraph be added: "(4) Whenever ownership and operation are not in the same person, the owner and operator may elect which person shall be responsible for the registration as a PGC."

The commission declines to make the changes recommended by Alcoa. Notwithstanding the definition of "power generation company" in PURA §31.002(10), the commission believes that ownership of generation facilities is an essential characteristic of a power generation company. For example, a key safeguard against market power in a competitive market is PURA §39.154(a) which provides that a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering capacity to, a power region. One of the purposes of registration is to facilitate the enforcement of PURA §39.154(a). If the commission were to register the parties who operate generation as PGCs instead of the parties who own generation, it is conceivable that an owner could avoid the 20% limit in PURA §39.154(a).

TXU-PGC noted that the definition of "potentially marketable capacity" in PURA §39.154(d) does not contain any threshold capacity level. TXU-PGC argued that the commission should revise the one MW threshold capacity level in the self-generation registration requirement in paragraph (a)(2) so that the threshold would apply to the self- generating entity in lieu of each facility. Alternatively, TXU-PGC recommended that the meaning of "electric generating facility" in paragraph (a)(2) be clarified so that it refers to all generating units at a location. TIEC disagreed with TXU-PGC's recommendations, asserting that many large commercial and industrial companies have small generators that are used for backup or supplemental self-use; and requiring these companies to submit information on each facility would be burdensome. TIEC added that, transaction costs make it unlikely that power generated by a facility under one MW would be sold in the wholesale market.

The commission concludes that the term "generating facility" in this section should refer to all generating units at a location, whether the facility is a PGC facility or a self- generation facility. Therefore, the commission adds a definition of "generating facility" to subsection (b) consistent with the language TXU-PGC recommended. The commission's view is that registration requirements for self-generators are not burdensome, and the companies TIEC describes would likely be self-generators, so the least burdensome registration requirements would apply.

Parties had concerns about the use of the word "person" in the rule, especially as it concerned the applicability of the rule. TEC commented that Senate Bill 7 (Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2591 (Vernon) (codified as an amendment to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§39.351, 39.353, 39.354, 39.3545, 39.356, and 39.357)) excludes electric cooperatives from the definition of "electric utility," "person," and "corporation." Plano noted that the proposed rule did not include a definition of "person." Brazos noted that §25.109(b) should include a definition of "person" that is consistent with PURA §11.003(14) or that §25.109(a) should exclude electric cooperatives from the application. OPUC disagreed, asserting registration by electric cooperatives is important for both safety and reliability reasons.

The commission agrees that electric cooperatives and municipal corporations are not required to register as PGCs or self-generators. Consequently, the commission adds to §25.109(b) a definition of "person" consistent with PURA §11.003(4). The commission notes, however, that electric cooperatives,

municipal corporations, and other entities that own generation and offer electricity for sale in the state are subject to periodic reporting requirements pursuant to PURA §39.155(a).

Alcoa asserted that the requirement of self-generators that have more than ten MW to provide net dependable capability (NDC) ratings would impose significant engineering costs on self-generators who are not otherwise required to calculate these ratings. It recommended that self-generators should register using nameplate ratings instead of NDC. TIEC agreed with Alcoa.

SPS commented that references to "nameplate capacity" in subsection (c) should be replaced with the term "nameplate rating" since that term is defined in §25.109(b)(1). SPS also recommended deleting the word "capacity" in the title of subsection (c).

The commission agrees that a requirement for self-generators to report NDC as part of their registration could result in significant costs for self-generators that do not otherwise need to calculate NDC. The commission amends §25.109(c)(3) to allow self-generation units that are not required to provide or keep a record of NDC by the reliability council in which they operate, or by the independent organization for the power region in which they operate, to use the nameplate rating. The commission deletes the word "capacity" from paragraphs (c)(2) and (3), but retains "capacity" in the title of subsection (c) to indicate the type of ratings addressed in the subsection.

Alcoa argued that paragraphs (i)(1) and (2), which require compliance with Independent System Operator (ISO) reliability standards, are in conflict with PURA §39.151(l) with respect to a QF serving a steam host and selling power into the wholesale market. Alcoa argued it is inappropriate to designate paragraphs (i)(1) and (2) as automatic and significant violations of PURA when they may be exempt under the statute. Alcoa recommended adding language consistent with PURA §39.151(1). TIEC endorsed Alcoa's recommendation. With regard to paragraph (i)(6), Alcoa and TXU-PGC argued that suspension or revocation of a registration, certification, or license by any state or federal authority should not automatically rise to a level that would warrant suspension or revocation of PGC registration. Alcoa recommended deleting paragraph (i)(6), although it said the commission could require a PGC to report any suspensions or revocations within a reasonable period, such as 30 or 45 days. TXU-PGC recommended revising paragraph (i)(6) so that it would refer only to suspension or revocation of an authorization to generate electricity. In reply comments, OPUC opposed the deletion of paragraph (i)(6), arguing that suspension or revocation of a license by another state or federal authority may reflect a violation of PURA if the generator in question is conducting similar activities in Texas. OPUC proposed notification within 72 hours as an appropriate compromise and said that TXU-PGC's proposed revision would be acceptable.

The commission declines to make these changes to subsection (i) because it does not intend for the actions in subsection (i)(1) through (8) to "automatically" result in suspension or revocation, nor does the language imply such automatic action. The commission will exercise discretion in suspending or revoking the registration of a PGC. With regard to PURA §39.151(l), that section precludes an independent organization from adopting reliability rules that impede any manufacturing process associated with an industrial generation facility. This section of PURA is to be implemented by the independent organizations and need not be reflected in the registration rule. TXU-PGC's proposed revision would limit the commission's review of suspensions and revocations in other jurisdictions to those licenses that relate to the generation of electricity and, therefore, is not adopted.

In reply to various recommendations from parties for clarification changes, the commission also makes numerous non-substantive changes to the published rule.

§25.111. Registration of Aggregators

The comments reflected some confusion concerning the different types of aggregators and the application of various PURA and rule provisions to each type. The most common point of confusion is that, in the published rule, private "persons" could be "public aggregators." To reduce the possibility for confusion in the future, the commission replaces the terms "private aggregator" and "public aggregator" with "Class I" and "Class II" respectively. Because of the varying eligibility and operational restrictions on Class II aggregators in the law, Class II contains four subclasses. In general terms, Class I aggregators are private entities that aggregate private entities; Class II.A aggregators are private entities that aggregate public entities; Class II.B aggregators are political subdivision corporations, as defined in the rule, that aggregate public entities; Class II.C aggregators are municipalities or other political subdivisions that aggregate citizens who choose to participate; and Class II.D aggregators are private entities that contract with a public entity to administrate citizen aggregation. These classifications are based on statutory provisions that describe the types of entities that may provide aggregation services and the related operational parameters.

This preamble summarizes the positions of parties in the terms they used in comments, which were those of the published rule. Parties' use of the term "public aggregator" is interpreted to include all of the kinds of aggregators now called "Class II" because that was the term used in the published rule. However, in some instances, where the context so indicated, comments referring to "public aggregators" were interpreted narrowly to indicate only Class II.B and II.C aggregators.

Similarly, the use of the term "person" may engender confusion. As defined in the rule, it includes individuals, partnerships, mutual or cooperative associations, and corporations, but excludes municipal corporations, electric cooperatives, political subdivisions, or political subdivision corporations. Therefore, provisions of the rule that apply to "persons" do not apply to those entities that are excluded from the definition, regardless of which class of aggregator is at issue.

PURA leaves much that is unspecified concerning the role of aggregators in the restructured market. The commission adopts this rule with the goal of leaving as much to market forces as possible while upholding its charge to protect the public interest. Several features of the restructured market should be noted at the outset. First, the REP is the designated point of customer contact. As such, a relationship between the customer and the REP is mandatory in the procurement of electricity while the involvement of an aggregator as an intermediary is optional to REPs and customers. Second, a REP cannot be expected to negotiate against itself on behalf of a customer group, and this is a fundamental component of the differences between REPs and aggregators. Third, some of the activities inherent in the REPs' role resemble aggregation services or have the same effect. For example, a REP, by virtue of its market role, negotiates for

the purchase of power for all of its customers in the aggregate. Further, if a REP wishes to attract a particular type of customer, it can offer the group of customers with its desired profile an improved rate and pursue them through marketing operations. The REP does not need to be a registered aggregator to tailor and market services to meet customers' needs. A REP would not be expected to organize customers to purchase electricity from another REP.

Preamble Question Number 1: The proposed rule is drafted from the perspective that aggregators negotiate with retail electric providers (REPs) on behalf of a group of electricity customers. However, similar services could be provided to customers by a consultant without direct negotiation with a REP on behalf of the customers. The commission invites comments on whether the rule draws an appropriate distinction between consultation and aggregation services.

Consumers disagreed with the question's premise and stated that the proposed rule does not assume that aggregators will negotiate entirely on behalf of customers, since the rule allows REP affiliates to register as aggregators. Consumers and OPUC commented that REP affiliates should be prohibited from becoming aggregators to avoid conflict of interest. OPUC argued that an aggregator that is associated with a REP will have a strong incentive to bring its customers to its associated REP, becoming, in effect, the REP's marketing arm.

Consumers argued that the disclosure to the customer of an aggregator's affiliation to a REP does not remove the incentive for an aggregator to favor its affiliated REP. Consumers proposed that, should the commission permit aggregator affiliates of REPs, the commission should require those aggregators to follow a strict code of conduct with their REPs, including disclosures to customers, separate books and records, and limitations on communications between the aggregator and the affiliated REP. Consumers clarified that, if affiliate relationships are not prohibited, it would seek arm's- length transactions between REPs and affiliate aggregators, as well as disclosure requirements about the affiliate relationships.

TXU-REP and Reliant objected to Consumers' suggested prohibition of aggregators affiliated with REPs. Reliant argued that the Legislature did not expressly grant the commission the authority to forbid affiliation between an aggregator and a REP in Senate Bill 7. Reliant said that it is unnecessary for the commission to infer power to prohibit affiliate relationships because it has the authority to enact rules ameliorating the potential harms described by Consumers and OPUC. Reliant argued that an aggregator who places the interest of an affiliated REP above the interests of its own customers would lose customers, and that the rule's disclosure requirements, along with a proposal to allow customers to rescind a contract if such disclosures are not made, would adequately protect customers. TXU-REP noted that if the rule were to preclude the REPs from having aggregator affiliates, holding company systems would be forced to choose between providing either aggregation or REP services.

The commission agrees with Consumers that the published rule allowed an aggregator to represent the seller, or REP. The commission concludes that, as a matter of policy, aggregators should only represent buyers of electricity. Creating codes of conduct between affiliated aggregators and REPs to ensure that the aggregator serves only the customer's interests would be a potentially cumbersome method for ensuring that an aggregator represents the customer's interest. The commission determines that the most efficient, and least confusing, method for ensuring that an aggregator represents the customer's interest is to prohibit aggregators from representing sellers of electricity and thus from being an affiliate of a REP. Customer choice may be a confusing time for some Texas customers, and the commission concludes that customers should be assured that an aggregator represents its interests. The commission amends adopted subsection (d) (3) and (4) (proposed (c)(3) and (4)) to prohibit an aggregator from affiliating with a REP.

The commission disagrees with Reliant that the potential harm to customers that could result from the aggregator's affiliate relationship with a REP can be sufficiently ameliorated through disclosures and other customer protections. The commission determines that aggregators should only represent buyers of electricity, and not sellers, for reasons discussed above. However, the commission determines that, to fully inform customer choice, disclosures such as those mentioned by Reliant and provided for in adopted (f)(1)(A), (K), and (M) (proposed (e)(1)(A), (K), and (M)) are still necessary.

Under PURA §39.353(d), the commission makes this amendment as a condition necessary to regulate the reliability and integrity of aggregators. The commission uses the authority granted in PURA §39.353(d) to establish the condition for Class I aggregators. For Class II aggregators, the commission observes that PURA §39.354 and §39.3545 and Local Government Code §303.001 and §303.002 all imply a buyer's agent relationship for Class II aggregators. Class II.A aggregators, private persons that aggregate municipality and other political subdivision customers, are defined by PURA as "authorized by two or more municipal (or political subdivision) governing bodies to join the bodies into a single (or multiple) purchasing unit(s)…." The commission interprets the use of "authorized" in PURA §39.354 and §39.3545 to mean that the person is to be functioning as a "buyers' agent" for the authorizing municipalities and other political subdivisions. The commission also concludes that Class II.D aggregators, which are the only other types of aggregators that are not public entities and which administrate citizen aggregation programs pursuant to contracts with political subdivisions, should not be affiliated with REPs. Therefore, the commission amends adopted subsection (d)(4)(D) (proposed (c)(4)(D)) to indicate that non-affiliation with a REP is a registration requirement for persons who are Class II.A and II.D aggregators. The commission notes, however, that the public entity clients of the persons who are Class II.A and II.D aggregators have the ultimate enforcement authority: they are free to explicitly protect their "buyers' agent" interests in their written authorizations and contracts. Adopted subsection (d)(4)(A) and (D) (proposed (c)(4)(A) and (D)) are modified to reflect this conclusion.

The commission understands that it is possible for an aggregator to be a buyer's agent and to receive its actual payment for its services from the REP. The commission concludes that customers should be aware of aggregators that form agency relationships with REPs, and amends adopted subsection (f)(1)(K) (proposed (e)(1)(K)) and subsection (i) (2) (proposed (h) (2)), accordingly. The commission also finds that adopted subsection (f) (1) (M), regarding disclosure of compensation sources, also addresses this concern.

In addition, the commission adds a new subsection (b) purpose statement. The new subsection explains the commission's finding that aggregators have a buyer's agent function in the restructured market, and that REPs are not aggregators.

Subsection (b) also clarifies the rule's purpose of delineating the registration and operating requirements for aggregators in the restructured market. The inclusion of subsection (b) has changed the designation of the subsections from the published version of this section. Hereafter, the commission will reference the adopted designations in commission comments, and the proposed designations in parties' comments.

CRC, TIEC, and CSW-REP stated that the rule accurately reflects the distinction between aggregation services and consultation services. TXU-REP, TC Cities and OPUC commented in support of the conclusion underlying the rule that aggregation hinges upon the act of negotiating purchases of electricity for a customer group. OPUC suggested that any consultant providing services similar to aggregation services is likely to be an aggregator also.

CSW-REP stated that the rule properly recognizes that not all consultant activities are activities that necessitate registration as aggregators. CSW-REP articulated a range of activities that a consultant could undertake with individual clients and without aggregating the loads of two or more electric service customers for the purpose of purchasing electricity services. CSW-REP, CRC, TXU-REP, and TC Cities indicated that aggregation services revolve around the negotiation and procurement of electricity, and are distinguishable from consultant services such as load profiling, energy audits, or advice on market opportunities.

Consumers agreed that the rule should not draw a distinction between consultation and aggregation services by listing the services that constitute each, since it is currently not possible to anticipate all the various components of aggregation services that may develop in the restructured market. Consumers maintained, however, that the rule should contain a definition of "aggregation services" and that the definition should parallel the statutory wording to include "services relating to negotiating the purchase of electricity on behalf of two or more buyers." Consumers indicated that such a definition would not encompass a consultation service such as development of a load curve.

The commission concludes that it is not appropriate to have a definition of "aggregation services" that articulates a particular type of service, because such services will evolve in the restructured market. The commission agrees that the roles of aggregators and consultants differ when a REP is contacted for purposes of negotiating the purchase of electricity. Therefore the commission inserts clarifying language to that effect in the definition of "aggregator." With this clarification, the commission concludes that the rule draws an appropriate distinction between consultation and aggregation services.

Preamble Question Number 2: The workshop transcripts reveal that views vary widely on whether, and under what conditions, aggregators should accept monies from electricity customers. The proposed rule attempts to establish customer protection strategies without substantially constraining possibilities for compensation to aggregators for aggregation services. First, the rule prohibits private aggregators from accepting payments or prepayments for electric service, but the rule is silent on this topic with respect to public aggregators. Second, the rule imposes financial requirements only on the aggregators who are persons, and who accept payments for aggregation services. The rule does not impose financial requirements on public entities. The rule does not dictate whether or not the aggregator is, functionally speaking, a buyer's agent, a seller's agent, or both. Instead, for customer information, the rule requires disclosure to the customers of the basis on which the aggregator will be compensated for services, such as fees from the REP, pre-paid fees from the customer, payments from the customer upon delivery of service, a combination of the above, or other methods. This requirement is applicable only to aggregators who are persons. The commission requests comment on whether the rule strikes the proper balance in allowing market forces to operate while protecting customers.

CSW and TC Cities made the overall comment that the proposed rule struck the proper balance between market forces and customer protection. Other parties' comments in response to this question clustered into three sub-issues: 1) prohibitions on most aggregators for accepting payments for electric services; 2) varying financial requirements for aggregators; and 3) an aggregator's role as either a buyer's agent or seller's agent.

TC Cities and Consumers argued that private aggregators should not accept payments for electric service, but public aggregators could receive payments for electricity, based on an interpretation of PURA §§39.353, 39.354 and 39.3545, that the former cannot take title to electricity and the latter can.

TXU-REP proposed that aggregators, whether public or private, should not be precluded from offering other competitive services, such as billing or collection services, on behalf of a REP. TXU-REP maintained that an aggregator could provide this service as an independent billing agent according to a contract with a REP and that the REP would be ultimately responsible for the proper handling of the billing transaction. TXU- REP proposed changes to proposed subsection (c)(3)(C) for clarification.

The commission agrees with the implied conclusion of Consumers and TC Cities that aggregators who cannot take title to electricity should not be allowed to directly accept payments or prepayments for electric service. They could, of course, accept payment for aggregation services. The commission concludes that aggregators who cannot take title to electricity cannot directly accept payments or prepayments for electric service. Apart from customer protection concerns, allowing aggregators to collect monies for electricity services could jeopardize arrangements for the securitization of funds, where applicable. The commission amends adopted subsection (d)(3)(D) accordingly.

The commission agrees with TXU-REP that the prohibition on direct acceptance of monies for electric service should not preclude an aggregator from contracting with a REP as an independent billing agent to provide competitive billing and collection services for the REP. The commission notes that such a contract would not necessarily be limited to the customers aggregated by the aggregator. The commission views the role of an independent billing agent as the administrator of the billing and collection functions of a retail operation rather than as the direct recipient of payments for electric services provided by the REP. The commission is developing rules in Project Number 22255, *Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing Senate Bill 7 and Senate Bill 86*, that will articulate standards for billing customers and collecting payments. The commission anticipates that standards will include identification of the REP as a seller of electricity, as the recipient of payment for service, and as the point of customer contact. The commission may adopt rules specifying the conditions for the collection of certain payments, such as the transition charges resulting from securitized funds, which may

require special payment procedures and credit and security arrangements for REPs that collect such transition charges. For these reasons, the commission finds that, while adopted subsection (d)(3)(D) prohibits most aggregators from directly accepting payments for electric service, it does not prohibit the aggregator from contracting with the REP to provide billing and collection services for the REP according to terms and conditions established by the commission. Registration as an aggregator does not explicitly permit or disallow the registrant to act as an independent billing agent. The commission amends adopted subsection (d)(3)(D) to clarify that aggregators can participate in the competitive billing and collection services market as independent billing agents when, and only when, they meet any applicable conditions.

On the second topic, whether differentiation of financial requirements among aggregator types is appropriate, Consumers, TC Cities, and Plano supported the rule's construction. The rule imposes the financial requirements specified in proposed subsection (f) on aggregators that are persons but not on aggregators that are municipalities, other political subdivisions, or political subdivision corporations (i.e., not persons). Consumers proposed that persons who are public aggregators should be required to file and update letters of authorization from the public bodies they aggregate. Plano noted that the accountability for public aggregators properly resides with elected and appointed officials of public entities.

CSW-REP proposed that public aggregators who aggregate only the loads of political subdivisions should not be subject to the rule's financial requirement because they are acting in the public interest. CSW-REP also proposed that the financial requirements should not apply to "affinity" organizations, such as university alumni associations or other not-for-profit organizations providing aggregation services to their members, or to market participants such as power marketers or REPs. Consumers replied that CSW- REP's statement implies that circumstances could occur under which the aggregator is an agent of the REP, and reiterated their position that aggregators should not be affiliated with REPs.

CRC argued that the legislature intended that private aggregators be subject to additional conditions beyond those applied to public aggregators, since PURA §39.353 prohibits selling or taking title to electricity, and requires compliance with customer protection provisions, disclosure requirements, and all marketing guidelines, and terms and conditions established by the commission concerning reliability and integrity.

The commission concurs with Consumers that it is appropriate to apply the financial requirements to all registering parties who meet the definition of a person, regardless of which type of registration they seek, assuming that they meet the other triggering criteria (intentions to collect payment in advance of service). The financial requirements help to ensure the protection of customers who are aggregated by a person. The commission concludes that this provision appropriately includes affinity organizations, because these financial requirements are necessary to protect customers when deposits or other advance payments for aggregation services are collected. The commission concludes that financial provisions are not appropriately applied to aggregators that are public entities (Class II.B and II.C) because they are subject to other measures of public accountability.

On the subject of whether the aggregator should be free to be either a buyer's agent or seller's agent, CSW-REP and TXU-REP supported the proposed rule in permitting aggregators to represent either buyers or sellers, because that should be determined in the market. CRC proposed that REPs should be permitted to act as aggregators, arguing that it would increase customer choice and is not prohibited by PURA.

CSW-REP and CRC argued that the disclosure of an aggregator's source of compensation under proposed subsection (e)(1)(M) is appropriate and adequate protection to permit customers make informed judgments. TXU-REP opposed the disclosure of the relationship to buyers or sellers, as well as the source of an aggregator's compensation, contending that it is not reasonable to require this type of disclosure in a competitive market.

Consumers and OPUC disagreed with the notion that it is possible for aggregators to truly represent both buyers and sellers, stating that an aggregator representing a seller does not have an incentive to always find the best negotiated electric rate for the customer. Consumers argued that a proper balance between market forces and customer protection can be established only by prohibiting a direct or affiliated relationship between the aggregator and the REP. However, Consumers acknowledged that REPs could still compensate unaffiliated aggregators if that fact were disclosed to customers and if the unaffiliated aggregator were actually working on behalf of the buyers rather than choosing a REP based on the size of the compensation that he or she will receive from the REP. Consumers argued that the sole role of the aggregator is to represent buyers of electricity, whether the buyers are part of a "voluntary association" formed for the purpose of purchasing electricity together, or whether the buyers are part of an existing association that seeks to purchase electricity for its members. Consumers stated that their vision of buyers does not include a group of buyers who are gathered together on behalf of a REP by the REP's agent or affiliate, and maintained that the commission cannot assume that REP affiliates would negotiate only on behalf of customers. In addition, Consumers argued that disclosure of payments to aggregators from REPs does not resolve the conflict of interest problem. However, Consumers suggested several other "code of conduct" controls in the event that the commission chooses to allow affiliated aggregators, including separate entity requirements, arm's length behavior, use of names similar to the REP's name, and disclosure of affiliate relationships to customers. TC Cities agreed that aggregators should disclose their agency relationships and added that all names under which the aggregator operates should also be disclosed.

This issue is integrally related to the concerns discussed in Preamble Question Number 1. The commission concludes that SB7 contemplated aggregators as buyers' agents only and that, as a matter of policy, aggregators should not be affiliates of REPs. The commission finds that customers are least likely to be confused by the aggregator's role in the marketplace if aggregators only act as the buyer's agent, and thus are not affiliates of REPs. As mentioned previously, the commission concludes that customers should be aware of aggregators that form agency relationships with REPs, and requires such disclosure in adopted subsection (f)(1)(K) and subsection (i)(2).

Preamble Question Number 3: In certain instances, statutory conditions that appear applicable to all aggregators are stated in PURA §39.353, relating to Registration of Aggregators, but are

not restated in PURA §39.354 and §39.3545, which concern the registration of public aggregators. Because a person can seek registration as both a private and a public aggregator, a person could be subject to different operating constraints for public customers than private customers. The commission requests comment on the extent to which the following matters apply to all aggregators.

(a) First, PURA §39.353 states, "A retail electric provider is not an aggregator." The commission interprets this sentence to mean that certificated REPs cannot also be registered as aggregators that register pursuant to that PURA provision. How should the absence of the sentence in §39.354 and §39.3545 be construed? If REPs were allowed to register as public aggregators, what would be the practical result?

Consumers, TC Cities, and Plano interpreted the absence of the statement "a retail electric provider is not an aggregator," in PURA §39.354 and §39.3545 to mean that public aggregators are allowed to sell and take title to electricity, and would therefore perform some REP functions. TC Cities argued that taking title to electricity and REPs' relationship to aggregators are related issues, and asserted that, since REPs take title to electricity, the Legislature must have intended to specifically preclude private aggregators from taking title to electricity. CRC interpreted the statement "(r)etail electric providers are not aggregators" to simply mean that a certificated REP must go through the registration process for aggregators. In that vein, CRC maintained that, if the legislature had intended for aggregators and REPs to be mutually exclusive, the language would have been stronger and more prohibitive, and PURA §39.352, relating to certification of REPs, would contain similar language.

Conversely, TXU-REP, OPUC, and CSW-REP argued that the statement "(r)etail electric providers are not aggregators" applies to all types of aggregators. TXU-REP maintained that, because no specific statutory exception applies, the statement should apply to public aggregators, as well. OPUC stated that a REP cannot be an aggregator pursuant to PURA §39.353, a prohibition that extends to a private REP acting as a municipal aggregator or a political subdivision aggregator. CSW-REP argued that the statute is clear in prohibiting an entity from being both a REP and an aggregator. CSW- REP asserted that this principle applies to both private and public aggregators, since the functions of REPs and aggregators are dependent upon whether they may take title to electricity.

Consumers, TC Cities and CRC expressed no concern about REPs acting as aggregators for certain entities. Consumers concluded that a REP that has obtained the express authorization of a political subdivision could possibly register as a public aggregator.

CRC proposed that REPs with the "requisite expertise," after proper disclosure, should be allowed to provide aggregation services. According to CRC, the market should provide a niche to serve those customer groups that choose to use a third party to negotiate their electricity procurement, and maintained that the proposed rule may inhibit the choices available to customer groups by prohibiting REPs from acting as aggregators.

Plano and CSW-REP questioned the implications of a REP acting as an aggregator. Plano questioned whether political subdivisions can be REPs and, as such, be subject to disclosure requirements, and expressed concerns about the ability of REPs to perform aggregation services in an unbiased, objective manner. According to CSW-REP, combining the functions of REPs and aggregators would create a variety of conflicts. CSW-REP added that the statute does not prohibit a REP from creating an aggregator affiliate that can register as both a public and private aggregator.

The commission concurs with CSW-REP that it is appropriate to distinguish the role of the aggregator from the role of the REP. The commission concludes that the aggregator's role is to negotiate with REPs on behalf of customers, whereas a REP's role is to provide electricity to customers. REPs are also intended to be a customer's primary contact point for electric service. The commission finds that the statement "(r)etail electric providers are not aggregators" was intended to set aggregators apart from REPs. It is a descriptive statement speaking to inherent differences in roles rather than a prohibition applicable to some aggregators and not others. The commission concludes that REPs may not be aggregators in any of the aggregation scenarios provided for in PURA or the Local Government Code.

Moreover, as is explained under the next question, the commission concludes that, where all REPs take title to electricity, only one type of aggregator, the political subdivision corporation, is granted authority to do so. While the commission concurs that a difference between a REP and an aggregator is the ability to take title to electricity, that is not the only, nor the most significant difference. Taking title to electricity is inherent in and fundamental to the role of the REP, but not to the role of the aggregator.

PURA §§39.353, 39.354, and 39.3545 all specify that aggregators negotiate the purchase of electricity from REPs. The commission believes that this distinction is an important one, since a REP will not negotiate with itself to purchase electricity.

(b) Second, PURA §39.353 states, "Aggregators may not take title to electricity." The commission interprets this sentence to mean that aggregators registering pursuant to this provision may not accept payment for electricity services from customers. How should the absence of this sentence in PURA §39.354 and §39.3545 be construed? If the prohibition does not apply to all aggregators, then persons who are registered as both a private and a public aggregator could be in the position of taking title to electricity for some customers, and accepting their payments, while not doing so for others. What are the implications of such a result?

TC Cities, Plano, and CRC asserted that the prohibition against taking title to electricity does not apply to public aggregators aggregating pursuant to PURA §39.354 and §39.3545, since the absence of a prohibition against taking title to electricity in those sections implies permission to take title to electricity. TC Cities also commented on Local Government Code §303.002, stating that a municipality contracting pursuant to Local Government Code §303.002(b) with a private aggregator to administer an aggregation project on behalf of municipal residents would be the only opportunity for an aggregator to take title to and accept payments for electricity. TC Cities stated that, in that situation, the private aggregator would have to register as a public aggregator, and should have to face rigorous financial accountability and registration requirements before taking title to the electricity being aggregated.

Plano posited that the prohibition against taking title to electricity was included for private aggregators because of the significant

liability issues surrounding private individuals and entities taking title to electricity.

CRC stated that the rule should not impose conditions on public aggregators that PURA did not extend to them.

OPUC stated that a private entity aggregating municipalities and political subdivisions should not be permitted to take title to electricity, but indicated that there are no limitations on public entities acting as municipal or political subdivision aggregators.

TXU-REP disputed TC Cities', Consumers', and OPUC's assertion that all public aggregators may take title to and sell electricity, since the governing provisions of PURA and the Local Government Code dictate that only public aggregators that form political subdivision corporations may take title to and sell electricity. According to TXU-REP, PURA §39.353(b) defines the generic term aggregator, a definition that prohibits taking title to or selling electricity, for PURA §39.351 through §39.358. According to TXU-REP, unless municipal aggregators or political subdivision aggregators are specifically granted the power to sell or take title to electricity, they are forbidden from doing so by the generally applicable definition of "aggregator" in PURA §39.353(b). TXU-REP argued that a political subdivision corporation, operating pursuant to Local Government Code §303.001, is the only entity that is specifically granted the power to take title to electricity. CSW-REP maintained that the fundamental difference between a REP and an aggregator is the ability to take title to electricity, a distinction that must apply to both public and private aggregators.

DGG Cities and TC Cities argued the limitations of PURA §39.353(b) do not apply to public entities. They noted that PURA §39.353(b) defines an aggregator as a person that joins customers, while the definition of "person" in PURA §11.003(14) and (7) specifically excludes municipal corporations. DGG Cities concluded that neither PURA nor the Local Government Code prohibit a municipality acting as a political subdivision aggregator from taking title to electricity.

The commission concludes that only Local Government Code §303.001 specifically provides for political subdivision corporations to "purchase electricity," and thus take title to electricity. Local Government Code §303.002 and PURA §39.354 and §39.3545 do not contain similar provisions, while PURA §39.353 clearly prohibits aggregators from taking title to electricity. Looking first to PURA §39.354 and §39.3545, the commission observes that two categories of aggregators are addressed in each: persons who aggregate municipalities or political subdivisions pursuant to PURA, and municipalities or political subdivisions aggregating pursuant to Local Government Code §303. Local Government Code §303.001 creates a narrow exception in authorizing political subdivision corporations to take title to electricity acquired for public use by municipalities and other political subdivisions that they aggregate. No such flexibility was built into Local Government Code §303.002, which allows municipalities and political subdivisions to aggregate on behalf of their electing private citizens. The commission finds no legal or policy reason to read such an authorization into the provision where it is not expressly stated. Under the statutory scheme, municipalities and political subdivisions may act as aggregators, not resellers, of electric power to private citizens. This statutory scheme is supportive of the commission's policy determination that REPS serve as the primary customer contact for electric service. The commission modifies adopted subsection (d)(3) and (4) to reflect this conclusion.

Preamble Question No. 4: From a customer perspective, what are the differences between aggregators and REPs? How will a customer be able to distinguish a REP from an aggregator? The commission invites comment on ways, if any, this rule should further differentiate the role of the aggregator in the market place from that of the REP.

Consumers stated that customers would not be able to distinguish a REP from an aggregator if a REP were allowed to function in both capacities, or if aggregators were allowed to affiliate with REPs, and asserted that disclosure of affiliation does not solve the problem. OPUC argued that requiring residential and small commercial electric customers to differentiate between a REP and affiliated aggregator would be a significant and unnecessary burden to them.

TXU-REP, TC Cities, CSW-REP, and CRC described the different roles that aggregators and REPs serve. TXU-REP stated that the distinction between REPs and aggregators is that REPs sell electricity, but aggregators serve as intermediaries negotiating for the purchase of electricity from any REP by customers and fulfilling a different role in the market. TXU-REP asserted that this distinction would be lost if the position of Consumers and OPUC was adopted. TXU-REP asserted that the aggregator's identification of the REP as the seller of the electricity in any billing materials, as required by PURA §17.102(2), will ensure that the customer understands the key distinction between the aggregator and the REP.

CSW-REP and TC Cities commented that the rule has already distinguished aggregators from REPs to the extent currently possible. CSW-REP noted that customers might not easily make the distinction in a newly competitive marketplace.

The commission agrees with Consumers that customers will not be able to readily distinguish an aggregator from a REP if a REP is allowed to do both functions, as discussed earlier. The commission concludes that the rule should further differentiate the role of the aggregator in the market place from that of the REP by keeping the two roles separate among market participants and labeling the market participants accordingly: An aggregator represents buyers of electricity, a REP is the seller of electricity, and the two shall not be affiliated. The commission concludes that this separation of roles will enable customers to determine which market participant provides each function. While the REP may contract out marketing and other services that are similar to aggregation services, aggregators are not allowed to contract with REPs in any way that makes them, in effect, a "seller's agent."

However, the commission concedes that in a fully developed and healthy competitive market, the prohibition on aggregator affiliation with REPs may no longer be necessary. The commission intends to review the necessity of this prohibition in light of one year of market experience. For this reason, the commission adds a new subsection (k) to sunset the prohibition on aggregator affiliation with REPs. The sunset is effective 18 months after the start of customer choice, allowing time for a review and rulemaking proceeding after one year of market experience.

General comments on the rule:

CRC stated that aggregation is a method for smaller electricity users to benefit from a competitive electric retail market. According to CRC, some commercial customers are successfully aggregating through organizations or associations in states that are currently in the process of opening retail electric markets.

CRC noted that, in setting up an aggregation, association members will need to determine if they will act as the aggregator, or if they will hire a consultant to negotiate with REPs on their behalf, a decision will depend on the amount of control the organization would like to keep over its aggregation process. According to CRC, if the organization's members decide to be directly involved in the negotiation process, the organization will need to register as the aggregator; if the organization decides to hire a consultant, the members will need to choose an entity registered as a private aggregator. CRC maintained that this choice may be different from group to group, and both options should be available.

The commission concludes that the rule does not preclude an organization from acting as its own aggregator, and finds that the alternate registration requirements contained in adopted subsections (f) and (g) may facilitate this option for some organizations.

Texas Legal Services Center indicated that it would be helpful to clarify in the rule that public aggregator refers to the type of entity being aggregated, instead of the entity that is performing the aggregation.

The commission implemented the "Class I" and "Class II" terminology throughout the rule to address this point.

As previously noted, the designation of subsections in the adopted rule changed from the published rule because of the addition of a new subsection (b), relating to purpose. Therefore, the commission will reference the proposed designations in parties' comments and the adopted designations in commission comments.

Adopted Subsection (a):

TEC stated that the following sentence in §25.111(a), "An electric cooperative aggregating electric service customers outside of its certificated service area shall register with the commission" is inconsistent with the definition of "a person" in PURA §11.003, and recommended its deletion.

TXU-REP questioned the statutory authority for electric cooperatives to act as aggregators outside their own service areas. TXU-REP pointed out that PURA §41.055(11) gives the cooperative's board of directors the power to make decisions affecting the cooperative's method of conducting business, but asserted that such power is limited under Chapter 41 to serve customers within their service territory. TXU-REP argued that, once a cooperative elects to serve customers outside its territory, it becomes subject to significantly increased oversight by the commission. As a result, TXU-REP reasoned, it would be inconsistent with the provisions of PURA for the commission to permit an electric cooperative to aggregate customers outside its service area without any commission oversight. TXU-REP argued that registration is not a burdensome requirement, and that all competitive aggregators, including electric cooperatives aggregating customers outside their service areas, should be required to register with the commission.

TEC retorted that the issue is not by what authority cooperatives are authorized to engage in aggregation activities, but whether the commission has jurisdiction to require registration by cooperatives wishing to perform such activities. TEC pointed out that commission jurisdiction over electric cooperatives is limited by PURA §41.004, which does not provide for commission jurisdiction over the registration of electric cooperatives that aggregate the loads of their member consumers. TEC asserted that PURA contains no provision supporting commission jurisdiction over an electric cooperative aggregating load outside its service area. Finally, TEC responded that PURA Chapters 39 and 41 were consistent in that Chapter 41 pertains to electric cooperatives and Chapter 39, specifically §39.002, expressly includes provisions limiting its applicability to electric cooperatives.

The commission agrees with TEC that the definition of person in PURA §11.003 does not include electric cooperatives. Further, the commission concludes that PURA §39.002 is unambiguous: the requirements for aggregators in PURA §39.353 do not apply to electric cooperatives. Therefore, the commission deletes from adopted subsection (a) the sentence "An electric cooperative aggregating electric service customers outside of its certificated service area shall register with the commission." Correspondingly, the electric cooperative cannot then represent itself as a commission- sanctioned aggregator. In line with its policy determination that aggregators cannot fully function as a buyer's agent while being affiliated with a REP, the commission cautions electric cooperatives who elect choice against representing themselves as being a buyer's agent for a customer group when the cooperative also functions as a REP.

The commission concludes that the provisions of PURA relating to the powers of electric cooperatives in the restructured electric market are not entirely clear. They might be construed to permit cooperatives to perform aggregation services without registering, as TEC advocates. On the other hand, these provisions might be construed as prohibiting any entity from performing such services without registering. Because cooperatives have strong connections to the communities where they operate, the commission anticipates that cooperatives are likely to be responsive to their customers and preserve their customer good will. For this reason, the commission refrains from making an interpretation of law at this time and does not object to cooperatives performing aggregation services without registering. The commission has the latitude to reconsider its decision on this matter as the market develops, and will be concerned if customers have bad experiences with cooperatives performing these services.

Proposed Subsection (b):

Consumers proposed language for subsection (b)(1) to parallel the statutory definition of aggregation in PURA §39.002. Consumers also proposed a final sentence to proposed subsection (b)(1) to clarify that, for purposes of this definition, separately metered tenants are not a voluntary association, maintaining that such language would protect tenants' customer choice in electricity and prevent forced aggregation by landlords.

The commission concurs with Consumers that one customer negotiating for energy for its own use at multiple locations is not an aggregator and is, therefore, not required to register. However, the commission does not agree that adopted subsection (c) must be modified, since adopted subsection (a) states that the rule does not apply to this activity.

Consumers proposed a definition for Aggregation Services, to include "services relating to negotiation." TIEC opposed the definition as overly broad, since the definition could be construed to capture services provided by a consultant not involved in the negotiations.

Consistent with the discussion in Preamble Question Number 1, the commission concludes that the rule strikes the proper balance between aggregation and consultation services, and

declines to adopt Consumers' language. The commission does, however, clarify the types of activities that an aggregator may be involved with in adopted subsection (c)(2).

Consumers proposed new language for proposed subsection (b)(2)(A) to clarify that aggregation services involve the purchase of electricity, as contrasted with persons acting in connection with the sale of electricity, such as a REP, REP's agent, or a broker. Consumers also proposed language to require the disclosure of the basis for the fee or commission paid by a REP to a private aggregator.

The commission declines to adopt Consumers' proposed language for adopted subsection (c)(2)(A), and concludes that the amendment to the definition of aggregator addresses Consumers' first point. The commission further concludes that the disclosure requirement is adequately addressed in adopted subsections (f)(1)(A), (K) and (M) and (i)(2).

TXU-REP recommended amending proposed subsection (b)(2)(B)(i) and (ii) to add the concluding sentence, "A municipal aggregator that is not a political subdivision corporation may not sell or take title to electricity." Plano questioned why a definition of third party aggregators is included in a rule that does not refer to such entities again, and sought clarification.

The commission concurs with TXU-REP that the only aggregator authorized to take title to electricity is the political subdivision corporation. Rather than modify the definitions, the commission makes this clarification in adopted subsection (d). With respect to Plano's comment, the definition of third party was not included in the published rule, and thus no clarification is necessary on this point.

TEC stated that the second sentence of proposed (b)(3) is inconsistent with the definition of "person" in PURA §11.003 (which specifically excludes cooperatives) as applied to §39.353 (a) and (b), which establishes a registration requirement for aggregation services. TEC recommended replacing this sentence with the following: "Person - an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation, but not including a municipal corporation or an electric cooperative." Plano commented that it is unclear whether REPs are persons and recommended that, if REPs are included as persons, the definition should so specify.

The commission concurs with TEC, and, pursuant to the discussion of adopted subsection (a), modifies adopted (c)(3) accordingly. In reply to Plano, the commission finds that the definition of persons is inclusive of REPS, but the eligibility restrictions on persons who seek to register as aggregators prohibit REPs from registering as aggregators. The issue of REPs not being aggregators is discussed in Preamble Question Number 3a.

Plano proposed language to help distinguish suspension from revocation.

The commission finds that Plano's proposed language regarding suspension and revocation closely approximates the language of the published rule, and thus concludes that no further clarification is necessary.

Proposed Subsection (c):

TXU-REP proposed language to clarify that an aggregator should be able to offer billing or collection services, as an independent billing agent.

The commission adopts the TXU-REP recommendation with a modification to adopted subsection (d)(3)(D).

CSW-REP commented that the rule should clarify that an "affirmatively requesting citizen" must be a resident of the political subdivision and that the citizen has a verifiable arrangement with the political subdivision for that subdivision to act as the citizen's aggregator.

The commission agrees that the term "affirmatively requesting citizen" requires clarification, and changes adopted subsection (d)(4)(C) to clarify that voluntary agreements of affirmatively requesting citizens must be verifiable.

SPS proposed language for proposed subsection (c)(4)(D) and (E) to require public aggregators to comply with customer protection provisions, disclosure requirements, and marketing guidelines, as well as reliability and integrity requirements. DGG Cities refuted those comments, arguing that PURA does not require municipalities that aggregate under PURA §39.353 or §39.3545 to comply with these same provisions. DGG Cities argued that when a municipality acts as a public aggregator, it acts in the public interest and must answer to its citizenry in a manner not required of private aggregators.

CSW-REP stated that the rule should clarify the role of a citizen aggregation administrator and its relationship with the political subdivision; specifically, that the administrator is the agent of the political subdivision and will negotiate on behalf of the political subdivision with one or more REPs for the purchase of electricity, but will not take title to such electricity.

Plano maintained that a third-party administrator performing services under Local Government Code §303.002 should be required to register as a public aggregator and be subject to all regulations applicable to public aggregators.

TC Cities did not propose changes to proposed subparagraph (c)(4)(D), relating to an administrator of citizen aggregation, and commented that this subparagraph does not, and should not, address the appropriate threshold of aggregation activity that must take place before an administrator is hired. TC Cities asserted that administrators do not need to register. TC Cities argued that Local Government Code §303.002 does not limit aggregation to aggregators; requiring third party administrators to register would render "third party" meaningless, and administrators are already accountable to registered public aggregators. Finally, TC Cities offered that an administrator's role should be uniquely defined by contract and not defined in the rule.

The commission notes that adopted subsection (i)(2) requires all aggregators to comply with the commission's education, disclosure and marketing guidelines and rules, including those pertaining to customer protection, and declines to adopt SPS' proposed language.

The commission concludes that, where municipalities or political subdivisions aggregating public citizens pursuant to Local Government Code §303.002 elect to utilize outside administrators, in those instances in which the administrator meets the definition of "person," the administrator must be registered as an aggregator. This conclusion is based on the fact that this activity is the only one available to a "person" under Local Government Code §303.002, and aggregation by a "person" under Local Government Code provisions is captured by the registration mandate in PURA §39.3545. The commission has modified adopted subsection (d)(4)(D) to reflect this requirement of the law. The modification allows an exception for the admin-

istrator who is an employee of the political subdivision that is conducting citizen aggregation pursuant to Local Government Code §303.002 because the commission is satisfied the political subdivisions' public accountability systems are sufficient in that case.

Proposed Subsection (d):

CSW-REP contended that the rule created confusion regarding whether a public aggregator must meet the requirements of proposed subsections (d) and (e), and suggested that the commission consider revising these provisions to state more specifically the requirements for public aggregators.

The commission agrees that the term "public aggregator" is confusing, since both a person and a public body can act as a public aggregator. The commission believes its adoption of the "Class I" and "Class II" terminology will help interested parties distinguish the differences between types of aggregators. The commission clarifies that adopted subsection (e) applies only to Class II.B and Class II.C aggregators, and not to persons.

OPUC stated that political subdivisions aggregating pursuant to the Local Government Code must follow the standards for local governments.

The commission concurs with OPUC, but does not find that any further revisions to the rule are necessary to reflect this fact.

Proposed Subsection (e):

In response to CSW-REP's above comments, the commission clarifies that adopted subsection (f) applies only to Class I, Class II.A, or Class II.D aggregators, and not to municipalities, other political subdivisions, or political subdivision corporations.

Consumers and TC Cities questioned the public policy reasons for allowing a single aggregator to operate under numerous names, since it would create difficulties in tracking complaints. According to TC Cities, customers should have the best possible information to ensure that agency relationships are revealed, and multiple operating names for aggregators might frustrate that effort. TC Cities proposed language that would require a registering party to provide all trade or commercial names to potential residential and commercial customers.

The commission concurs with Consumers and TC Cities that multiple trade or commercial names can be difficult to track, and can cause confusion for customers, but declines to limit aggregators to two trade or commercial names. As a remedy, the commission amends adopted subsection (f)(1)(A) to require aggregators to disclose all trade and commercial names to customers when requesting aggregation services.

CRC stated that proposed subsection (e)(1)(I) and (J) would impose additional requirements of expertise on entities registering as an aggregator and could be an obstacle for the development of aggregation by customer groups and smaller entities. According to TXU-REP, the requirement would be more appropriate for a certification process.

The commission revises adopted subsection (f)(1)(I) and (J) by adding the words "if any," and concludes that this modification addresses CRC's concerns with respect to these subparagraphs. The commission understands that some information will not be applicable to certain registering parties; accordingly, the commission's aggregator registration form will indicate that a response of "not applicable" is an acceptable response. Concerning TXU-REP's comment, the commission finds that information about prior experience is an important component of understanding an aggregators' business practice, and concludes that such information will be helpful in evaluating aggregator registration requests. The registration process adopted in the rule requires commission action on a submitted registration request before an aggregator may conduct business. For that reason, the commission declines to delete adopted (f)(1)(I).

With respect to TXU-REP's comments concerning adopted subsection (f)(1)(J), the commission finds that the names of subsidiaries and affiliates that provide utility-related experience is an important component of understanding an aggregators' business practice, and concludes that such information will be helpful in evaluating aggregator registration requests. For that reason, the commission declines to delete adopted subsection (f)(1)(J).

TXU-REP proposed the deletion of proposed subsection (e)(1)(K), stating that the requirement would be more appropriate for a certification process. CRC expressed concern that the requirement would impose additional requirements of expertise on entities registering as an aggregator and could be an obstacle for the development of aggregation by customer groups and smaller entities. TC Cities proposed language to require disclosure of agency relationships and the nature of agency agreements with REPs.

The commission's decision to disallow affiliate relationships to REPs renders moot TXU-REP's comment, but adopted subsection (f)(1)(K) is kept in relation to agency relationships to address TC Cities' concern of informing customer choice. With respect to CRC's comments, the commission understands that some information will not be applicable to certain registering parties; accordingly, the commission's aggregator registration form will indicate that a response of "not applicable" is an acceptable response.

TXU-REP commented that the requirement to disclose sources of compensation to customers is not reasonable in a competitive market, since companies who perform an intermediary role, such as delivering customers to a REP, do not typically have to disclose the sources of their revenue in other competitive markets. TXU-REP argued that the choice to disclose such information is the aggregator's, and a customer will be able to choose whether or not to deal with an aggregator that does not disclose its source of compensation.

Consumers expressed concern with TXU-REP's statement that an aggregator affiliate of a REP should not be compelled to disclose its business arrangement with customers. Consumers maintained that an aggregator affiliate of a REP that has no obligation to disclose its business arrangement with its customers is not negotiating in good faith on behalf of its customers. In such an arrangement, according to Consumers, a customer may pay more, rather than less, for their electricity. Consumers proposed prohibiting a direct or affiliated relationship between the aggregator and the REP, but allowing REPs to compensate aggregators (with previous disclosure to customers) would strike an appropriate balance in protecting customers. Consumers asserted that such a proposal would work much like an independent insurance agent; in such an arrangement, the agent is paid a commission by the insurer, but still maintains the fiduciary obligations to get the best deal for the customer. According to Consumers, using an aggregator to secure customers for a specific REP serves no legitimate purpose, and

could be similar to third- party telemarketers working for long distance companies, a situation that led to slamming.

The commission concludes that required disclosure of the source of an aggregator's compensation to its customers is consistent with the mandate of PURA §39.101(b) and (f), which direct the commission to adopt and enforce rules to ensure that customers receive sufficient information to make an informed choice and be protected from unfair, misleading, or deceptive practices. The commission declines to delete adopted subsection (f)(1)(K).

Consumers proposed a new subparagraph to be added to proposed paragraph (e)(1) that would require a person registering as a public aggregator to file proof of authorization from the public entity, and to update the authorizations.

The commission agrees that a person aggregating a political subdivision should be authorized by that political subdivision, and adds Consumers' language as adopted subsection (f)(1)(R).

Proposed Subsection (f):

CRC maintained that prepayment by customer group members to cover expenses incurred in contemplation of aggregation services could trigger the financial requirements outlined in proposed subsection (f), and thus deter customer groups from taking advantage of aggregation. Additionally, CRC commented that expenses such as the cost of preparing load profiles should not trigger the financial requirements, and proposed language to clarify this subsection.

The commission declines to adopt CRC's language, since the commission declines to further differentiate between aggregation and consulting services, as discussed in Preamble Question Number 1. The commission does, however, clarify the role of the aggregator in adopted subsection (c)(2).

CRC proposed that the financial restriction in proposed subsection (f)(1) cover only prepayments for aggregation services, since a constraint on all types of payments could limit the methods in which a customer group could choose to pay an outside consultant for aggregation services.

The commission concurs that the rule should protect only customer deposits and advance payments for aggregation services because the protection of customer payments is not at issue where the customer makes payment upon receipt of a service.

While not proposed by any outside comments, the commission concludes that increased specificity concerning acceptable financial resources would assist new entrants in developing their options. The commission concludes that increased specificity is beneficial in that it expands the types of acceptable financial evidence that are acceptable for meeting the financial requirements of aggregators, where applicable, and it standardizes the types of financial evidence available to aggregators with those contemplated for REPs. Accordingly, the commission amends adopted subsection (g)(1)(A) - (C) to include detailed financial evidence information.

Proposed Subsection (g):

Consumers proposed language to be added to proposed section (g)(2), regarding proprietary or confidential information, which would articulate the presumption that information filed pursuant to the rule is public information. Consumers proposed language would place the burden of establishing confidentiality on the registering party.

The commission agrees that such an explanation would be helpful to new entrants and clarifies adopted subsection (h)(2) to address Consumers' concern.

CSW-REP noted that proposed subsection (g)(3)(D) is silent with respect to the consequences of commission rejection of an application, and suggested that the commission clarify the consequences of rejection and next steps for parties to undertake.

The commission adopts CSW-REP's suggestion and indicates in adopted subsection (h)(3)(D) that unacceptable registrations are rejected without prejudice to refiling.

According to TXU-REP, the commission has included requirements that are appropriate only for a certification process, and has assigned itself the power to reject an aggregator's registration. TXU-REP therefore recommended the deletion of proposed subsection (g)(3)(D), relating to commission approval or rejection of a registration request, and transferring the time period for processing a registration to proposed subsection (g)(3)(B).

The commission declines to accept TXU-REP's proposed changes to adopted subsection (h)(3)(B) and (D). The commission finds that the legislature granted authority to revoke aggregator registrations and assess administrative penalties, procedures that necessitate commission discretion to review and accept or reject registration requests.

Proposed Subsection (h):

Austin commented that municipally owned utilities would promulgate the customer protections contained in proposed subsection (h)(2) under their own authority, consistent with PURA §40.055(a)(7).

The customer protections contained in adopted subsection (i)(2) were authorized by PURA §39.101(a), (b), and (e). PURA §39.101(e) grants the commission jurisdiction over all providers of electric service in adopting and enforcing the rules necessary to protect the customer rights and entitlements granted under §39.101(a) and (b). Austin maintains that PURA §40.055(a)(7) grants the municipally owned utility the authority to promulgate the customer protections granted by §39.101(a) and (b). The commission concurs with this assessment; however, PURA §40.055 grants authority to promulgate customer right and entitlement rules only for municipally-owned utilities and not for municipalities or political subdivisions that are required to register by PURA §39.354 and §39.3545 aggregators.

The commission concludes that PURA Chapter 40 specifically applies to municipally owned utilities and not to municipalities. Nowhere in Chapter 40 is a municipally owned utility granted authority to act as an aggregator. A municipality that chooses to aggregate its public facility loads with those of other political subdivisions must abide by Local Government Code §303.001 and join with other municipalities or political subdivisions to form a political subdivision corporation. A municipality that chooses to aggregate the loads of affirmatively requesting citizens must abide by Local Government Code §303.002. PURA §39.354(a) and (b) combine to require a municipality aggregating pursuant to Local Government Code §303 to register. The commission therefore concludes that when municipalities aggregate pursuant to either Local Government Code §303.001 or §303.002,

either they, or the political subdivision corporations they belong to, must register under Chapter 39 and be subject to the customer protections of Chapter 39 that identify the customer protection provisions for aggregators.

Consumers proposed an amendment to proposed subsection (h)(4) to clarify that material changes include new or amended authorizations for persons registering as public aggregators.

The commission agrees that such information is important, and, as discussed previously, has amended adopted subsection (f) to require this type of information. With respect to adopted subsection (i)(4), the commission agrees that this type of information is a material change, but concludes that the rule need not delineate all material changes.

TXU-REP questioned whether proposed subsection (h)(7)(A), regarding the use of financial resources, could be misconstrued to require an aggregator to freeze such financial resources, and maintained that such a freeze would impose and unnecessary hardship on some aggregators and limit entry into the aggregation market. TXU-REP proposed a clarifying statement allowing registrants to make reasonable withdrawals from a cash or equivalent account required under proposed subsection (f)(1)(B) and (C).

The commission disagrees with TXU-REP. The commission concludes that such protected funds should not be used as a source of financing by an aggregator, particularly one that is unable to raise other forms of capital, and declines to adopt TXU-REP's proposed language. The commission notes, however, that the clarification of the types of financial evidence available in adopted subsection (g) should provide aggregators with a greater choice of financial alternatives to meet their customer protection requirements without putting customers at risk.

Proposed Subsection (i):

The commission adds language to adopted subsection (j) to clarify that significant violations "include, but are not limited to" adopted subsection (j)(1) - (11).

TC Cities proposed language for proposed subsection (i)(12) that would provide for revocation for failure to disclose agency and affiliate relationships and all trade names to residential and commercial customers.

The commission concludes that adopted subsection (j)(2) and (j)(4) capture the essence of TC Cities' proposal, and therefore no change to the rule is necessary.

According to TXU-REP, proposed subsection (i)(6) should identify only the suspension or revocation of any other aggregation registration, certification, or license, since some state and federal licenses are insignificant or purely administrative, and proposed language to that effect. TXU-REP maintained that a one-time accidental or inadvertent switch of a customer's REP should not be considered a significant violation; rather, a pattern of such switches should be used as a significant violation justifying suspension or revocation.

The commission concurs with TXU-REP that some certificate revocations are not associated with providing aggregation services, but clarifies that the list of violations cited in adopted subsection (j) is not intended to be automatic cause for revocation; rather the commission will address suspension or revocation on a case-by-case basis. For this reason, the commission declines to adopt TXU-REP's language.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment and new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.351, which grants the commission authority to require registration of power generation companies; §39.353, which grants the commission authority to establish terms and conditions necessary for the regulation of the reliability and integrity of aggregators; §39.354 and §39.3545, which require the commission to develop registration procedures for municipal and political subdivision aggregators; §39.356, which grants the commission authority to establish terms under which the commission may suspend or revoke a power generation company's or an aggregator's registration; and §39.357, which grants the commission authority to impose an administrative penalty for violations of §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 15.024, 39.351, 39.353, 39.354, 39.3545, 39.356, and 39.357.

§25.109. Registration of Power Generation Companies and Self-Generators.

(a) Application.

(1) A person that owns an electric generating facility in Texas and is either a power generation company (PGC), as defined in §25.5 of this title (relating to Definitions), or a qualifying facility (QF) as defined in §25.5 of this title, and generates electricity intended to be sold at wholesale, must register as a PGC.

(2) A person that owns an electric generating facility rated at one megawatt (MW) or more, but is not a PGC, must register as a self-generator. A QF that does not sell electricity or provides electricity only to the purchaser of the facility's thermal output must register as a self-generator.

(3) A person that owned such generating facility prior to September 1, 2000 shall register after September 1, 2000 and before January 1, 2001. A person that becomes subject to this section after September 1, 2000 must register on or before the first date of generating electricity.

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

(1) Generating facility - All generating units located at, or providing power to the electricity-consuming equipment at an entire facility or location.

(2) Nameplate rating - The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(3) Net dependable capability - The maximum load in megawatts, net of station use, which a generating unit or generating station can carry under specified conditions for a given period of time, without exceeding approved limits of temperature and stress.

(4) Person - Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or

cooperative association, and a corporation, but does not include an electric cooperative.

(c) Capacity ratings. For purposes of this section, the capacity of generating units shall be reported as follows:

(1) Renewable resource generating units shall be rated at the nameplate rating;

(2) All other generating units having a nameplate rating of ten MW or less shall be rated at the nameplate rating; and

(3) All other generating units having a nameplate rating greater than ten MW shall be rated at the summer net dependable capability. Self-generation units that are not required to calculate net dependable capability by the reliability council in which they operate or by the independent organization for the power region in which they operate shall be rated at the nameplate rating.

(d) Registration requirements for self-generators. To register as a self-generator, a person shall provide the following information:

(1) The legal name of the registering party.

(2) The Texas business address and principal place of business of the registering party.

(3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications relating to the self-generator should be addressed.

(4) For each generating facility that is located in the state, the following information:

(A) Name;

(B) Location by county, utility service area, control area, power region, and reliability council; and

(C) Capacity rating in megawatts.

(e) Registration requirements for power generation companies. To register as a PGC, a person shall provide the following information:

(1) The legal name of the registering party as well as any trade or commercial name(s) under which the registering party intends to operate.

(2) The registering party's Texas business address and principal place of business.

(3) The name, title, address, telephone number, facsimile transmission number, and e-mail address of the person to whom communications should be addressed.

(4) The names and types of business of the registering party's corporate parent companies, along with percentages of ownership.

(5) A description of the types of services provided by the registering party that pertain to the generation of electricity.

(6) The name and corporate relationship of each affiliate that buys and sells electricity at wholesale in Texas, sells electricity at retail in Texas, or is an electric or municipally owned utility in Texas.

(7) For each generating facility that is located in the state, the following information:

(A) Name;

(B) Location by county, utility service area, control area, power region, and reliability council; and

(C) Capacity rating in megawatts.

(8) For any application filed with the Federal Energy Regulatory Commission (FERC) after the effective date of this section, copies of any information, excluding responses to interrogatories, that was filed in connection with the FERC registration, and any order issued by the FERC pursuant thereto. Such registrations shall include, for example, determination of exempt wholesale generator (EWG) or QF status.

(9) An affidavit by an authorized person attesting that the registering party:

(A) Generates electricity that is intended to be sold at wholesale;

(B) Does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under §25.5 of this title; and

(C) Does not have a certificated service area.

(f) Registration procedures. The following procedures apply to the registration of PGCs and self-generators.

(1) Registration shall be made by completing the form approved by the commission, which shall be verified by oath or affirmation and signed by an owner, partner, or officer of the registering party. Registration forms may be obtained from the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each registering party shall file its registration form with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22 of this title, Subchapter E (relating to Pleadings and Other Documents).

(2) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete form, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.

(3) The registering party may designate answers or documents that it believes to contain proprietary or confidential information. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to registration information for PGCs and self-generators.

(g) Post-registration requirements for self-generators. Self-generators shall report any material change during the preceding year in the information provided on the registration form by February 28 of each year.

(h) Post-registration requirements for power generation companies. PGCs shall report any material change in the information provided on the registration form within 45 days of the change. A material change would include, for example, a merger or consolidation with another owner of electric generation facilities that offers electricity for sale in this state. PGCs shall comply with the reporting requirements of the commission's rules implementing the Public Utility Regulatory Act (PURA) §39.155(a).

(i) Suspension and revocation of power generation company registration and administrative penalty. Pursuant to PURA §39.356, registrations of PGCs pursuant to this section are subject to sus-

pension and revocation for significant violations of PURA or rules adopted by the commission. The commission may also impose an administrative penalty for a significant violation at its discretion. Significant violations may include the following:

(1) Failure to comply with the reliability standards and operational criteria duly established by the independent organization that is certified by the commission;

(2) For a PGC operating in the Electric Reliability Council of Texas (ERCOT), failure to observe all scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator in ERCOT;

(3) Providing false or misleading information to the commission;

(4) Engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(5) A pattern of failure to meet the conditions of this section, other commission rules, regulations or orders;

(6) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(7) Failure to operate within the applicable legal parameters established by PURA §39.351; and

(8) Failure to respond to commission inquiries or customer complaints in a timely fashion.

§25.111. Registration of Aggregators.

(a) Application. Any person, municipality, political subdivision, or political subdivision corporation that aggregates the loads of two or more electric service customers for purposes of purchasing electricity services shall register with the Public Utility Commission of Texas (commission) pursuant to this section. A single electricity customer, including a municipality or political subdivision, negotiating service in multiple locations for its own use, does not need to register with the commission.

(b) Purpose statement. The role of an aggregator in the restructured electric market is to be a buyer's agent for customer groups. An entity that joins customers together as a single purchasing unit and negotiates on their behalf for the purchase of electricity service in Texas is considered an aggregator and must register pursuant to this section. In contrast, an entity that sells electricity is a retail electric provider (REP) and is subject to other commission rules. This section sets out conditions for registering and operating as an aggregator, including the condition that the aggregator, a buyer's agent, may not be affiliated with a REP or other seller's agent representing the REP.

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

(1) Aggregation - to join two or more electricity customers into a purchasing unit to negotiate the purchase of electricity by the electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any non-bypassable charges or fees as a result of aggregating its load.

(2) Aggregator - An entity is an aggregator, as opposed to a consultant, if it conducts any activity that joins two or more customers into a purchasing unit to negotiate the purchase of electricity from retail electric providers (REPs). If an entity conducts activities only in the capacity of advisor to a customer or set of customers, without contact with REPs specific to that customer or customer group, then it is a consultant that does not need to register pursuant to this section. An aggregator that provides aggregation services to Texas electricity customers must meet one of the following definitions:

(A) Class I aggregator - a person joining two or more customers, other than municipalities and political subdivision corporations, into a single purchasing unit to negotiate the purchase of electricity from REPs.

(B) Class II aggregator - a person or municipality or other political subdivision that provides aggregation services to municipalities or other political subdivisions in the manner stated below:

(i) A person authorized by two or more municipal governing bodies to join the bodies into a single purchasing unit to negotiate the purchase of electricity from REPs or a municipality aggregating under Local Government Code, Chapter 303.

(ii) A person or political subdivision corporation authorized by two or more political subdivision governing bodies to join the bodies into a single purchasing unit or multiple purchasing units to negotiate the purchase of electricity from REPs for the facilities of the aggregated political subdivisions or a person or political subdivision aggregating under Local Government Code, Chapter 303.

(3) Person - an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, or a corporation, but not including a municipal corporation or an electric cooperative. For purposes of this section, a political subdivision or political subdivision corporation is not a person.

(4) Political subdivision - a county, municipality, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice.

(5) Political subdivision corporation - an entity consisting of two or more political subdivisions created to act as an agent, or otherwise, to negotiate the purchase of electricity for the use of the respective public facilities in accordance with Local Government Code §303.001.

(6) Proprietary customer information - any information compiled by an aggregator on a customer in the normal course of aggregating electric service that makes possible the identification of any individual customer by matching such information with the customer's name, address, account number, type or classification of service, historical electricity usage, expected patterns of use, types of facilities used in providing service, individual contract terms and conditions, price, current charges, billing records, or any other information that the customer has expressly requested not be disclosed. Information that is redacted or organized in such a way as to make it impossible to identify the customer to whom the information relates does not constitute propriety customer information.

(7) Revocation - the cessation of all aggregation business operations in the state of Texas, pursuant to commission order.

(8) Suspension - the cessation of all aggregation business operations in the state of Texas associated with obtaining new customers, pursuant to commission order.

(d) Types of aggregator registrations required.

(1) Entities seeking to aggregate electricity customers may not provide aggregation services in the state unless they have

registered with the commission. Such registration may be sought after September 1, 2000.

(2) There are two types of registration available to aggregators. An entity seeking to aggregate under the terms and conditions set forth in the Public Utility Regulatory Act (PURA) §39.353 shall register as a "Class I aggregator." An entity seeking to aggregate under the terms and conditions set forth in PURA §39.354 or §39.3545, or both, shall register as a "Class II aggregator." The Class II category of registration has four subclasses, A through D. The terms of eligibility and operational requirements for each type of aggregator are specified in paragraphs (3) and (4) of this subsection. The registering party must indicate the Class and subclass, if any, under which it wishes to register. If a person is eligible and wishes to perform aggregation services under more than one class of registration, it shall obtain all applicable registrations.

(3) Registration of Class I aggregators. A Class I aggregator may join at least two voluntary customers into a single purchasing unit to negotiate the purchase of electricity from REPs. A Class I aggregator shall:

(A) be a person and not a REP;

(B) not be an affiliate of a REP;

(C) not include municipalities, political subdivisions, or political subdivision corporations among the customers of an aggregation;

(D) not take title to electricity, and not accept any money associated with payment or prepayment for electric service, as distinguished from aggregation services, unless it does so under contract with a REP, consistent with any rules adopted by the commission relating to customer billing as an independent billing agent for a REP;

(E) comply with the customer protection rules, disclosure requirements, and marketing guidelines of PURA and this title;

(F) comply with any other terms and conditions established by the commission to regulate reliability and integrity of aggregators.

(4) Registration of Class II aggregators. A Class II aggregator shall not be a REP or an affiliate of a REP and shall register pursuant to at least one of the following sets of eligibility and operational requirements:

(A) Class II.A: Person that aggregates municipalities, political subdivisions, or both. A person registered as a Class II.A aggregator pursuant to this subparagraph may join two or more authorizing municipal governing bodies into a single purchasing unit to negotiate the purchase of electricity from REPs, or it may join two or more authorizing political subdivision governing bodies, including municipal governing bodies, into single or multiple purchasing units to negotiate the purchase of electricity from REPs for the facilities of the aggregated political subdivisions. A person aggregating political subdivisions pursuant to this subparagraph may not take title to electricity. The authorizations shall be written and may specify the buyer's agent role of the aggregator to the extent desired by the political subdivision.

(B) Class II.B: Political subdivision corporation aggregating political subdivisions. A political subdivision corporation registered as a Class II.B aggregator pursuant to this subparagraph may join two or more authorizing political subdivision governing bodies, including municipal governing bodies, into single or multiple purchasing units to negotiate the purchase of electricity from REPs for the facilities of the aggregated political subdivisions. A political subdivision corporation aggregating political subdivisions pursuant to this subparagraph may take title to electricity.

(C) Class II.C: Public body that aggregates its citizens. A municipality or other political subdivision registered as a Class II.C aggregator pursuant to this subparagraph may negotiate for the purchase of electricity and energy services on behalf of each affirmatively requesting citizen of the municipality in accordance with Local Government Code §303.002, with the option to contract with a third party or another aggregator for the administration of the aggregation of the purchased services. An affirmatively requesting citizen is a resident of the political subdivision who voluntarily agrees to participate in the aggregation by a means that may be verified after the fact. If the Class II.C aggregator contracts for the administration function with a third party that is a person, other than its own employee, the person must be a registered Class II.D aggregator.

(D) Class II.D: Administrator of citizen aggregation. A person registered as a Class II.D aggregator pursuant to this subparagraph may administer the aggregation of electricity and energy services purchased for each requesting citizen of a municipality or other political subdivision in accordance with Local Government Code §303.002 pursuant to a contract with the municipality or political subdivision. An affirmatively requesting citizen is a resident of the political subdivision who voluntarily agrees to participate in the aggregation by a means that may be verified after the fact. A Class II.D aggregator must have verifiable authorization from the political subdivision to administer its citizen aggregation program. The authorization shall be written and may include conditions on the administrator's transactions with its affiliated REP, if any, when so specified by the political subdivision. The Class II.D registration authorizes its holder to administer a citizen aggregation program on behalf of the political subdivision but does not authorize its holder to negotiate for the purchase of electricity and energy services on behalf of the citizens of the political subdivision. An administrator of citizen aggregation must register pursuant to this subparagraph when the administrator meets the definition of "person" under this section, except when the administrator is an individual employed by the political subdivision conducting citizen aggregation pursuant to Local Government Code §303.002. A Class II.D aggregator may not take title to electricity and may not be a REP or an affiliate of a REP.

(e) Requirements for public bodies seeking to register as Class II.B or II.C aggregators. A municipality, other political subdivision, or political subdivision corporation seeking to register and operate as a Class II.B or Class II.C aggregator in accordance with this section shall provide the following information on a registration form approved by the commission. This subsection does not apply to registering parties who are persons, as defined in this section.

(1) The legal name of the registering party as well as any trade or commercial name(s) under which the registering party intends to operate;

(2) The registering party's Texas business address and principal place of business;

(3) The names and business addresses of the registering party's principal officers;

(4) The names of the registering party's affiliates and subsidiaries, if applicable;

(5) Telephone number of the customer service department or the name, title and telephone number of the customer service contact person;

(6) Name, physical business address, telephone number, fax number, and e-mail address for a regulatory contact person and for an agent for service of process, if a different person;

(7) The types of electricity customers that the registering party intends to aggregate; and

(8) Any other information required of public bodies on a registration form approved by the commission.

(f) Requirements for persons seeking to register as a Class I or Class II.A or Class II.D aggregator. A person seeking any registration under this section shall provide evidence of competency and experience in providing the scope and nature of its proposed services by providing the information listed in either paragraph (1) or (2) of this subsection on a registration form approved by the commission. This subsection does not apply to registering parties who are municipalities, other political subdivisions, or political subdivision corporations.

(1) Standard registration.

(A) The legal name(s) of the registering party. A registering party may operate under a maximum of five trade or commercial names. At the time of registration, the registering party shall provide all names to the commission and an explanation of its plan for disclosing the names to its customers;

(B) The Texas business address and principal place of business of the registering party;

(C) The name, title, business address, and phone number of each of the registering party's directors, officers, or partners;

(D) Address and telephone number for the customer or member service department or the name, title and telephone number of the customer service contact person;

(E) Name, physical business address, telephone number, fax number, and e-mail address for a Texas regulatory contact person and for an agent for service of process, if a different person;

(F) The types of electricity customers that the registering party intends to aggregate;

(G) Applicable information on file with the Texas Secretary of State, including, but not limited to, the registering party's endorsed certificate of incorporation certified by the Texas Secretary of State, a copy of the registering party's certificate of good standing, or other business registration on file with the Texas Secretary of State;

(H) Disclosure of delinquency with taxing authorities in the state of Texas;

(I) A description of prior experience, if any, of the registering party or one or more of the registering party's principals or employees in the retail electric industry or a related industry;

(J) The names of the affiliates and subsidiaries, if any, of the registering party that provide utility-related services, such as telecommunications, electric, gas, water or cable service;

(K) Disclosure of any affiliate or agency relationships and the nature of any affiliate or agency agreements with REPs or transmission and distribution utilities, and an explanation of plans for disclosure to customers and REPs with whom it does business, of its agency relationships with REPs;

(L) A list of other states, if any, in which the registering party and registering party's affiliates and subsidiaries that provide utility- related services, such as telecommunications, electric, gas, water, or cable service, currently conduct or previously conducted business;

(M) Disclosure of the registering party's known or anticipated sources of compensation for aggregation services, and an explanation of plans for disclosure to its customers of the sources of compensation for aggregation services;

(N) Disclosure of the history of bankruptcy or liquidation proceedings of the registering party or any predecessors in interest in the three calendar years immediately preceding the registration request;

(O) Disclosure of whether the registering party, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft or larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;

(P) A statement indicating whether the registering party is currently under investigation, either in this state or in another state or jurisdiction for violation of any customer protection law or regulation;

(Q) The following information regarding the registering party's complaint history during the three years preceding the application:

(i) Any complaint history regarding the registering party, registering party's affiliates or subsidiaries that provide utility-related services, such as telecommunications, electric, gas, water, or cable service, the registering party's predecessors in interest, and principals with public utility commissions or public service commissions in other states where the registering party is doing business or has done business in the past. Relevant information shall include, but not be limited to, the number of complaints, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occurred. The Office of Customer Protection shall provide similar complaint information on file at the commission for review.

(ii) Any complaint history regarding the registering party, registering party's affiliates or subsidiaries that provide utility-related services, such as telecommunications, electric, gas, water or cable service, the registering party's predecessors in interest, and principals on file with the Texas Secretary of State, Texas Comptroller's Office, Office of the Texas Attorney General, and the Attorney General in other states where the registering party is doing business.

(R) For a person registering as a Class II.A aggregator, pending authorizations, if any, from public entities for the registering party to aggregate their loads.

(S) Any other information required of persons on a registration form approved by the commission.

(2) Alternative limited registration. A person seeking registration pursuant to this paragraph may aggregate only customers who seek to contract for 250 kilowatts or more, per customer, of peak demand electricity. Requirements for registration under this paragraph are as follows:

(A) The person shall provide the commission a signed, notarized affidavit stating that it possesses a written consent from each customer it wishes to serve, authorizing the person to provide aggregation services for that customer;

(B) The person shall complete applicable portions of the registration form other than the information prescribed in paragraph (1)(J), (K), (L), (M) and (Q) of this subsection;

(C) The person shall meet financial requirements of this section, if applicable;

(D) A person registering on the basis of this paragraph is subject to the applicable post-registration requirements of subsection (i) of this section.

(g) Financial requirements for certain persons. A person registering under this section who intends to take any deposits or other advance payments from electricity customers for aggregation services, as distinguished from electric services, shall demonstrate financial resources necessary to protect customers from the loss of deposits or other advance payments through fraud, business failure or other causes. Aggregation services are distinct from retail electric services. A person registered initially on the basis of not accepting customer deposits or other advance payments for aggregation services shall amend its registration with a showing to the commission that it is able to comply with the requirements of this subsection in advance of accepting deposits or other advance payments for aggregation services.

(1) Standard financial qualifications. The amount of required financial resources shall equal the registering person's cumulative obligations to customers arising from deposits or other advance payments for aggregation services made by customers prior to the delivery of aggregation services. A person registering under this paragraph shall disclose its methodology for calculating required financial resources on the registration form.

(A) Financial evidence. A aggregator may use any of the financial instruments listed below, as well as any other financial instruments approved in advance by the commission, in order to satisfy the financial requirements established by this rule.

(i) Cash or cash equivalent, including cashier's check or sight draft;

(ii) A certificate of deposit with a bank or other financial institution;

(iii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 15 months;

(iv) A line of credit or other loan issued by a bank or other financial institution, including a bond in a form approved by the commission, irrevocable for a period of at least 15 months;

(v) A loan issued by a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 15 months;

(vi) A guaranty issued by a shareholder or principal of the applicant; a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant irrevocable for period of at least 15 months.

(B) Loans or guarantees. To the extent that it relies upon a loan or guaranty described in subparagraph (A)(v) or (vi) of this paragraph, the aggregator shall provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the financial resources needed to fund the loan or guaranty.

(C) Unencumbered resources. All cash and other instruments listed in subparagraph (A) of this paragraph as evidence of financial resources shall be unencumbered by pledges for collateral. These financial resources shall be subject to verification and review prior to registration of the aggregator and at any time after registration in which the aggregator relies on the cash or other financial instrument to meet the requirements under this subsection. The resources available to the aggregator must be authenticated by independent, third party documentation.

(D) Credit ratings. To meet the requirements of this paragraph, a aggregator may rely upon either its own investment grade credit rating, or a bond, guaranty, or corporate commitment of an affiliate or another company, if the entity providing such security is also rated investment grade. The determination of such investment grade quality will be based on the ratings of either Standard & Poors (S&P) or Moody's Investor Services (Moody's). If the investment grade credit rating of either S&P or Moody's is suspended or withdrawn, the REP must provide alternative financial evidence consistent with this paragraph within ten days of the credit downgrade.

(E) Disclosure to financial backers. A person registering under this paragraph shall provide evidence that a copy of this rule has been provided to any party providing, either directly or indirectly, financial resources necessary to protect customers pursuant to this paragraph.

(F) Ongoing Responsibilities. A person registering under this paragraph is subject to the ongoing financial requirements and other applicable post-registration requirements of subsection (i) of this section.

(2) Alternative financial qualifications for limited registration. A person seeking registration pursuant to this paragraph is limited to aggregating only customers who seek to contract for 250 kilowatts or more, per customer, of peak demand electricity. Requirements for registration on this limited basis are as follows:

(A) The person shall provide the commission a signed, notarized affidavit indicating that it has a written consent from each customer it wishes to serve, stating that the customer is satisfied that the aggregator can provide aggregation services without establishing the cash and credit resources prescribed in paragraph (1) of this subsection.

(B) The person shall complete portions of the registration request form other than the information prescribed in paragraph (1) of this subsection;

(C) A person registering on the basis of this paragraph is subject to the applicable post-registration requirements of subsection (i) of this section.

(h) Registration procedures. The following procedures apply to all entities seeking to register pursuant to this section:

(1) A registration request shall be made on the form approved by the commission, verified by oath or affirmation, and signed by a registering party owner or partner, or an officer of the registering party. The form may be obtained from the Central Records division of the commission or from the commission's Internet site. Each registering party shall file its form to request registration with the commission's Filing Clerk in accordance with the commission's procedural rules, Chapter 22 of this title, Subchapter E (relating to Pleadings and Other Documents).

(2) The registering party may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Registering parties may not designate the entire registration request as confidential. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission applicable to requests to register as an aggregator. If and when a public information request is received for information designated as confidential, the

registering party has the burden of establishing that information filed pursuant to this rule is proprietary or confidential.

(3) An application shall be processed as follows:

(A) The registering party shall immediately inform the commission of any material change in the information provided in the registration request while the request is pending.

(B) The commission staff shall review the submitted form for completeness. Within 15 business days of receipt of an incomplete request, the commission staff shall notify the registering party in writing of the deficiencies in the request. The registering party shall have ten business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within ten business days, the staff will notify the registering party that the registration request is rejected without prejudice.

(C) Based upon the information provided pursuant to subsections (e), (f), and (g) of this section, the commission shall determine whether a registering party is capable of fulfilling customer protection provisions, disclosure requirements, and marketing guidelines of PURA.

(D) The commission shall determine whether to accept or reject the registration request within 60 days of the receipt of a complete application. Unacceptable registrations will be rejected without prejudice to refiling.

(i) Post-registration requirements.

(1) An aggregator may not refuse to provide aggregation services or otherwise discriminate in the provision of aggregation services to any customer because of race, creed, color, national origin, ancestry, sex, marital status, source or level of income, disability, or familial status; or refuse to provide aggregation services to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services; or otherwise unreasonably discriminate on the basis of the geographic location of a customer.

(2) An aggregator shall comply with the commission's education, disclosure, and marketing guidelines and rules, including those pertaining to customer protection and the filing of regular reports on customer complaints. An aggregator may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission. An aggregator shall disclose to customers, when a customer requests aggregation services, all of its trade or commercial names, any agency relationships with REPs, and its sources of compensation for the provision of aggregation services.

(3) An aggregator shall update any changes to business name, address, or phone number within ten business days from the date of the change.

(4) An aggregator shall notify the commission within 30 days of any material change to its registration request, or if the registrant ceases to meet any commission requirements.

(5) An aggregator may amend its registration by providing only the information relevant to the amendment on the registration form. The amendment shall be submitted pursuant to subsection (h)(1) of this section.

(6) An aggregator shall file an annual report with the commission on September 1 of each year on a form approved by the commission.

(7) An aggregator that is required to demonstrate financial qualifications specified in subsection (g)(1) of this section are subject to the following ongoing conditions:

(A) The aggregator shall maintain records on an ongoing basis for any advance payments received from customers. Financial resources required under subsection (g)(1)(A) - (C) of this section, shall be maintained at levels sufficient to demonstrate that the registrant can cover all advanced payments that are outstanding at any given time.

(B) The aggregator shall file a sworn affidavit demonstrating compliance with subsection (g)(1)(A) - (D) of this section within 90 days of receiving the first payment for aggregation services before those services are rendered.

(C) Financial obligations to customers shall be payable to them within 30 business days from the date the aggregator notifies the commission that it intends to withdraw its registration or is deemed by the commission not able to meet its current customer obligations. Customer payment obligations shall be settled before registration is withdrawn.

(D) Financial resources required pursuant to subsection (g)(1) of this section shall not be reduced by the aggregator without the advance approval of the commission.

(E) The annual update required by paragraph (6) of this subsection shall include a sworn affidavit attesting to compliance with subsection (g)(1) of this section, and an explanation of the methodology for that compliance.

(F) The aggregator shall maintain records on an ongoing basis of authorizations from the public entities that have authorized it to provide aggregation services.

(8) A person that initially received its registration on the basis of not accepting payments for aggregation services, and was therefore not subject to subsection (g) of this section, shall amend its registration with a showing to the commission that it is able to comply with the requirements of subsection (g) of this section in advance of accepting payments.

(9) Persons registered pursuant to the alternative requirements for limited registration specified in subsections (f)(2) and (g)(2) of this section shall make available to the commission the written consent of individual customers, if requested.

(10) A registered aggregator that ceases to provide aggregation services may withdraw its registration by notifying the commission 30 days prior to ceasing operations and providing proof of refund of any monies owed to customers. An aggregator that withdraws its registration is not required to comply with paragraphs (1) - (9) of this subsection, following such a withdrawal.

(11) A registration shall not be transferred without prior commission approval. The transferee shall submit an application for registration in accordance with this section. The commission shall determine whether to approve the transfer within 60 days of the receipt of a complete application submitted in accordance with subsection (h) of this section.

(j) Suspension and revocation of registration and administrative penalty. Pursuant to PURA §39.356, registrations granted pursuant to this section are subject to suspension and revocation for significant violations of PURA or other rules adopted by the commission. At its discretion, the commission may also impose an administrative penalty for a significant violation. Significant violations include, but are not limited to, the following:

(1) providing false or misleading information to the commission;

(2) engaging in fraudulent, unfair, misleading, deceptive or anti-competitive practices;

(3) failing to maintain the minimum level of financial resources required under subsection (g)(1) of this section, if applicable;

(4) a pattern of failure to meet the conditions of this section, other commission rules, or orders;

(5) bankruptcy, insolvency, or failure to meet its financial obligations on a timely basis;

(6) suspension or revocation of a registration, certification, or license by any state or federal authority;

(7) conviction of a felony by the registrant or a principal or officer employed by the registrant, of any crime involving fraud, theft or deceit related to the registrant's aggregation service;

(8) failure to operate within the applicable legal parameters established by PURA §§39.353, 39.354, 39.3545, and Local Government Code Chapter 303;

(9) failure to respond to commission inquiries or customer complaints in a timely fashion;

(10) switching or causing to be switched the REP of a customer without first obtaining the customer's authorization; or

(11) billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill.

(k) Sunset of affiliate limitation. The provisions of this section that speak to a prohibition on aggregators from affiliating with REPs cease to be effective July 1, 2003. When this occurs, the agency disclosures required in subsections (f)(1)(K) and (i)(2) of this section shall also include a requirement to disclose any affiliate relationships between the aggregator and REPs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2000.

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Rhonda Dempsey
Rules Coordinator
Public utility Commission
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Proposal publication date: March 17, 2000
For further information, please call: (512) 936-7308

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Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §26.100

The Public Utility Commission of Texas (commission) adopts the repeal of §26.100 relating to Other Records, Reports, and Information that May be Required with no changes to the text as published in the March 17, 2000, *Texas Register* (25 TexReg 2248). This section is not necessary as the information is provided as an appendix to the commission's substantive rules in Chapter 26. This appendix provides more accurate information as a result of frequent updates without the restrictions of a rulemaking proceeding. The appendix is available through the commission's Central Records and on the commission's web site. This repeal is adopted under Project Number 22047.

The commission received no comments on the proposed repeal.

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Public Utility Commission
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Part 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

Chapter 68. ARCHITECTURAL BARRIERS

16 TAC §§68.10, 68.20, 68.21, 68.30, 68.31, 68.60-68.66, 68.70, 68.90, 68.93, 68.100, 68.101

The Texas Department of Licensing and Regulation adopts amendments to §§68.10, 68.20, 68.21, 68.30, 68.31, 68.60-68.66, 68.70, 68.90, 68.93, 68.100 and new §68.101 with changes to the proposed text as published in the January 21, 2000 issue of the *Texas Register* (25 TexReg 340). The proposed new §68.34 which was published in the January 21, 2000 issue of the *Texas Register* (25 TexReg 344) is being withdrawn and merged with §68.31 for clarification. The proposed new §68.102 which was published in the January 21, 2000 issue of the *Texas Register* (25 TexReg 347) is being withdrawn for further study.

All rule amendments, deletions and additions are to clarify the department's jurisdiction, to provide a set of rules that are easier to read, understand and adhere to, for clarification, and to comport with legislative changes to Article 9102.

The Department held a public hearing on February 14, 2000 and received comments for and against the proposed rule amendments. Below are the comments received and the department's response.

Comment on Proposed rule 68.10 *Definitions*: Baylor University commented that the Tax Code should not be used to define a religious organization, but rather the agency should adopt

§307 of the Americans with Disabilities Act (ADA) which would result in an exemption from the public accommodation and commercial facilities definition of buildings and facilities owned by religious organizations or entities controlled by them. *Agency Response: Disagree*. Adopting the ADA's religious organization exemption would overreach the agency's statutory authority under Article 9102.

Comment on Proposed rule 68.20(a) *Registration-Submittal of Construction Documents*: Advocacy, Inc. would like to clarify the timeline for submitting documents, in the event construction has begun prior to the sealing of documents and suggests adding the language, "or prior to the commencement of construction whichever date is earlier." *Agency Response: Disagree*. Section 5(k) of Article 9102 requires plan registration within five days after sealing; if construction has commenced and the documents have not been sealed, a design professional may still submit the documents within five days after sealing. Restricting the ability to register a project after construction has begun is in conflict with the statutory language.

Comment on Proposed rule 68.20(a) *Registration-Submittal of Construction Documents*: Healthcare Environment Design states the five-day submittal requirement is too severe; 30 days at a minimum would be better. Owners without a design professional should also have a timeline for submitting documents. *Agency Response: Disagree*. The five-day submittal requirement is statutory, and the rule clarifies that the five days refers to business days. Building owners are required to submit plans within thirty days of commencement of construction under §5(k) of Article 9102.

Comment on Proposed rule 68.20(a) *Registration-Submittal of Construction Documents*: The Texas Society of Architects urges the department to use a "reasonable test" when monitoring the five-day submittal requirement. Owners should be held to the same standard as design professionals. *Agency Response: Agree*. The department strives to be reasonable in all of its regulatory activities, however the five-day submittal requirement is statutory as is a 30-day submittal requirement for building owners.

Comment on Proposed rule 68.20(a) *Registration-Submittal of Construction Documents*: The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates support this rule as it reflects the agreement with the commentators and the Texas Society of Architects. *Agency Response: Agree.*

Comment on Proposed rule 68.20(a) *Registration-Submittal of Construction Documents*: The University of Texas System would like the present rule retained because, after construction documents are sealed, they are distributed and changes are made. The final documents are generally not complete until prior to construction. *Agency Response: Disagree*. The five-day submittal requirement is by statute.

Comment on Proposed rule 68.20(a) *Registration-Submittal of Construction Documents*: The Texas Board of Architectural Examiners suggests adding the words "date and signature" after the word "seal." *Agency Response: Disagree*. According to the commentator's administrative rule 22 TAC 1, §1.103(a), affixing the seal, the affixation date, and the signature must be placed on certain contract documents simultaneously. That rule precludes the possibility of sealing and dating the documents on different dates. Adding the words "date and signature" in these rules may lead design professionals to believe they can segregate the time for sealing and dating the documents.

Comment on Proposed rule 68.20(b) *Registration-Submittal of Construction Documents*: ADAPT supports this rule *Agency Response: Agree*.

Comment on Proposed rule 68.20(b) *Registration-Submittal of Construction Documents*: Allowing documents to be submitted after construction has commenced concerns Advocacy Inc., because there's no incentive for the owner to submit in a timely fashion. *Agency Response: Disagree*. The rule is designed to bring all construction activity into compliance and does not negate the department's ability to take enforcement action or to make a referral to a licensing board where appropriate.

Comment on Proposed rule 68.20(b) *Registration-Submittal of Construction Documents*: The Coalition of Texans with Disabilities (CTD) Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates support this rule because it makes it clear that design professionals who do not timely submit construction documents must submit them to the department. *Agency Response: Agree*.

Comment on Proposed rule 68.20(c) *Registration-Submittal of Construction Documents*: Advocacy, Inc. and Bob Ronson point out there's a typographical error; "on" should be "for." *Agency Response: Agree*. The wording will be changed as commented upon.

Comment on Proposed rule 68.20(c) *Registration-Submittal of Construction Documents*: Texas Board of Architectural Examiners proposes adding the words, "sealed, signed and dated" to modify construction documents. *Agency Response: Disagree*. There may be instances where an owner submits drawings without a design professional, therefore the documents will not have a seal.

Comment on Proposed rule 68.20(d) *Registration-Submittal of Construction Documents*: Advocacy, Inc. commented that there's no deadline for registering state leases; and the commentator asked why subsections (d), (e), and (f) are proposed to be deleted because the department's ability to request assistance from other government officials, and the authority of the department to request funding information and information on evidence of "commencement of construction" is important. *Agency Response: Disagree*. Under article 9102, inspections must be performed prior to occupancy for state leases, which necessarily requires lessors to register their projects prior to occupancy. Additionally, each state lease contract and bidding specifications requires an architectural barriers inspection. *Disagree*. The information deleted is to clean up the rules that are unenforceable and to make the rules applicable to entities or persons over whom the department has jurisdiction. The department will continue to seek assistance from other governmental authorities, and inquire about public funding where necessary. The definition of "commencement of construction" was moved to the definition section.

Comment on Proposed rule 68.20(d) *Registration-Submittal of Construction Documents*: The Texas Society of Architects questions why subsection (d) is proposed to be eliminated given that by statute, design professional must show proof of registering with TDLR to local building officials. *Agency Response: Disagree*. Policy statements replace rules that are

unenforceable against the agency. The department will continue to seek assistance from other governmental authorities.

Comment on Proposed rule 68.21(a)(4) *Registration-Subject Buildings and Facilities*: Advocacy, Inc. believes any tax abatement, not just property, should trigger departmental jurisdiction. *Agency Response: Agree*. The proposed rule adding the word "property" will be withdrawn.

Comment on Proposed rule 68.21(a) *Registration-Subject Buildings and Facilities*: The Texas Society of Architects believes changing the words significantly expands the meaning of public buildings to include the entire Texas built environment. The commentator believes the department over-reaches in this area in light of definitions for public accommodations and commercial facilities in both state and federal law. *Agency Response: Agree in part*. The intent of this rule was to mirror the language in Article 9102 §2(a)(1). The proposed rule will be amended to delete the words, "used by the public."

Comment on Proposed rule 68.21(e) *Registration-Subject Buildings and Facilities*: The Coalition of Texans with Disabilities (CTD) Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates support this rule because it adds buildings and facilities of religious organizations as subject to the act. *Agency Response: Agree*.

Comment on Proposed rule 68.21(e) *Registration-Subject Buildings and Facilities*: Accessibility Express supports listing buildings and facilities of a religious organization. *Agency Response: Agree*.

Comment on Proposed rule 68.21(e) *Registration-Subject Buildings and Facilities*: Baylor University comments that the Act does not authorize TDLR to regulate religious organizations because the Act does not specify that religious organizations are subject to the Act, but merely states that portions of a building or facility owned by a religious organization are exempt from the Act. The commentator states further that if regulation is authorized by the Act, that section of the Act is unconstitutional. The commentator also stated that religious organizations should be exempted from regulations as under the ADA, Title II of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. The commentator further states the proposed definition for a religious organization targets religious organizations because of their First Amendment activities; and, §2(g) could be interpreted to apply to religious organizations that lease to the state. *Agency Response: Disagree*. Section 2(a)(4) of Article 9102, "public accommodations" covers religious organizations. Additionally, a negative inference can be gleaned from §2(g) of the Act that exempts, within a building or facility of a religious organization, places used primarily for religious rituals. If all buildings or facilities owned by religious organization are exempted from the Act, then this subsection is unnecessary. The proposed rule clarifies §§2(a)(4) and 2(g) of the Act and does not impermissibly or unconstitutionally discriminate against religious organizations. *Disagree*. The three Federal laws cited are civil rights laws, not building codes. Religious organizations are not exempted from fire codes or construction codes, and are specifically not exempted from the Texas Accessibility Standards (TAS). The TDLR does not have state statutory authority to follow the ADA's exemption. Additionally, if a religious organization leased a facility to the state, that facility would already be covered by §2(a)(3) of the Act.

Comment on Proposed rule 68.21(e) *Registration-Subject Buildings and Facilities*: The Coalition of Texans with Disabilities (CTD); Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates support this rule. *Agency Response: Agree*.

Comment on Proposed rule 68.21(f) *Registration-Subject Buildings and Facilities*: Advocacy, Inc. is pleased that buildings and facilities not subject to the Act may voluntarily invoke the department's services and would like to see the same courtesy extended to state leases. *Agency Response: Agree*. State leases are subject to the Act, under §2(a)(3). The words "by the department" will be deleted, so as to reflect the intent that either a contract provider or the department may perform review and inspection services for non-subject buildings or facilities.

Comment on Proposed rule 68.30(1) *Exemptions*: Accessology, Inc. would like the federal building exemption expanded to include buildings or facilities leased to the federal government; or, to modify the exemption to read, "to the extent there is no conflict with federal mandates." The commentator has received resistance from federal entities who lease buildings or facilities in the state of Texas, and the commentator questions the agency's authority over these leases. *Agency Response: Agree*. The federal exemption will be changed to include buildings or facilities leased to the federal government.

Comment on Proposed rule 68.30(8) *Exemptions*: Advocacy, Inc. believes common areas should include youth classrooms, education buildings, fellowship halls, activity centers and assembly areas and that such an interpretation of the Act is within state policy. *Agency Response: Disagree*. The statutory exemption applies to places used primarily for religious rituals. We believe, dependent upon the religious organization, this could include assembly areas. All other common areas are specifically covered under rule 68.21(e) and §2(a)(4) of the Act.

Comment on Proposed rule 68.30(8) *Exemptions*: The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates state that allowing a religious organization to determine areas of religious ritual is appropriate. The commentators would like to add to the list of common areas not subject to the exemption "seating, classrooms, and assembly areas" even if religious rituals for some faiths take place in assembly areas. Those areas become public accommodations subject to the Act and ADA. *Agency Response: Disagree in part*. To automatically exclude from this exemption, areas that could have been built primarily for religious rituals is in conflict with Article 9102, the Texas Religious Freedom and Restoration Act and a recent Third Court of Appeals ruling. The department agrees that within a facility of a religious organization, a place not used primarily for religious ritual may be subject to the Act under §2(a)(4).

Comment on Proposed rule 68.30(8) *Exemptions*: Accessibility Express states the religious organization exemption should be expanded to include church offices, educational facilities, family life centers, recreation facilities, etc., where attached, or detached from the worship center. *Agency Response: Disagree*. The exemption does not include those areas listed in the comment because those areas are most often used primarily for purposes other than religious ritual and a recent Third Court of Appeals ruling has held those exemptions as an impermissible expansion of the Act.

Comment on Proposed rule 68.30(8) *Exemptions*: Shuford Farmer would like existing church buildings to be exempted because renovations are cost prohibitive; if existing churches are exempt, the church organizations can better serve the public needs. *Agency Response: Agree*. Existing churches are exempted until they are renovated, modified or altered. Those that undergo additions, renovations, or new construction must adhere to the applicable portions of TAS, the proposed rules and statutory requirements.

Comment on Proposed rule 68.30(8) *Exemptions*: The Baptist Convention wants to make their buildings accessible but often cannot afford to fully comply; churches are proactive in addressing social needs and the ability to provide those services is directly related to funding. The initial legislative intent of the act was to free churches from a regulatory climate and to allow churches the freedom to improve their facilities without state oversight. The proposed rule allowing owner/occupants to determine where a religious ritual occurs is wise; a less restrictive interpretation would encourage churches to complete the improvements that they have already begun. *Agency Response: Agree in part*. When churches renovate or modify an existing building or facility, they must make it accessible to the extent that it is not disproportionate to those alterations in terms of cost and scope, which is in accord with the legislative intent as evinced by §2(g) of the Act and a recent Third Court of Appeals ruling.

Comment on Proposed rule 68.31 *Variance Procedures*: Advocacy, Inc. would like to see the word "impracticable" and the phrase "irrelevant to the nature, use or function of the building or facility" defined in the rules so as to give staff guidance on how and when to grant a variance. They also stated that allowing a variance request to be submitted after construction has commenced or construction is complete gives no incentive for an owner to submit construction documents timely. Finally, the commentator would like variance appeals to run from the date of issuance, not receipt. *Agency Response: Disagree*. Structural impracticability is defined in the TAS at 3.5.59 and 4.1.1(5)(a). The TAS has the same effect as an administrative rule and reciting it here would be redundant. We believe the phrase "irrelevant to the nature, use or function of the building or facility" is self-evident and does not require additional definition. *Disagree*. Section 5(k) of the Act requires the owner to submit construction documents within 30 days from the start of construction. The possibility of administrative penalties for not complying with this requirement is the incentive for an owner to timely submit. *Agree*. These sections dealing with time to appeal require clarification; given the possible delays in the US postal system and the State's mail system, it would be appropriate to start counting the appeal timeline from the date of issuance, and to expand the timeline to 21 calendar days. The proposed rule will be changed allotting 21 calendar days from issuance of the variance decision.

Comment on Proposed rule 68.31(7)(9) *Variance Procedures*: The Texas Society of Architects believes the process of appeals from one TDLR employee to another is unfair. Inherent in this process is the agency's vested interest in the original decision. The commentator also believes eliminating the implied encouragement to seek out other agency opinions ensures the appearance of impartiality. *Agency Response: Disagree in part*. The proposal is to clean up the rules that are unenforceable and to make the rules applicable to entities or persons over whom the department has jurisdiction. The authority and duty to grant or deny waivers or modifications of the standards is vested in the department, Executive Director and the Commission. The department will continue to seek the opinions of other agencies where necessary. A section adding an appeal to the Commission will be added to reflect legislative changes.

Comment on Proposed rule 68.31 *Variance Procedures*: University of Texas Systems would like the time period for appeals to be extended to 30 days from 14 and 10 days respectively because if a variance request is denied, the requestor must meet with users and consultants. The process takes time due to the number of participants. *Agency Response: Agree in part*. The proposed rule will be changed allotting 21 calendar days from issuance of the variance decision.

Comment on Proposed rule 68.31(8) and (10) *Variance Procedures*: Advocacy, Inc. would like to know why these sections are proposed for deletion given that input from rehabilitative agencies and the Governor's Committee on People with Disabilities is required by statute. *Agency Response: Disagree*. Subsection (8) is redundant to statutory language found in §5(a) of article 9102. Under subsection (10), the department has authority to perform re-inspections under the general authority granted in Chapter 51 of the Occupations Code.

Comment on Proposed rule 68.34 *Technical Deviations-Built Conditions*: Advocacy, Inc. believes there's no basis in law for this section and no standards to guide agency staff in implementing technical deviations. *Agency Response: Disagree*. Article 9102, §2(c) authorizes the Commission to waive or modify standards under strict guidelines. The Technical Deviations will be administered under the exact guidelines for variances. To clarify, this section will be withdrawn and merged with §68.31 (Variance Procedures). The prohibition of applying for a variance post construction will be deleted.

Comment on Proposed rule 68.34 *Technical Deviations-Built Conditions*: The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates state that Technical Deviations are not allowed under the ADA Guidelines, therefore they are inconsistent with the ADA. The ADA Technical Assistance Center has advised the commentators that the language "minor and would not adversely affect person with disabilities" allows too much discretion in determining what constitutes access. Allowing technical deviations for built conditions is giving permission for non-compliance. The commentators want the rule withdrawn and to retain the current language in §68.34. *Agency Response: Disagree*. Section 2(c) of the Act allows the Commission to waive or modify standards. This section and §§2(d) and (e) of the Act spell out in detail, what "discretion" the Commission has in making these decisions. Further, Paragraph 3.2 of the TAS and of the ADA Accessibility Guidelines allow "conventional building industry tolerances for field conditions." The Technical Deviations will be administered under the exact guidelines for variances, and the proposed rules will be changed to reflect that intent. To clarify, this section will be withdrawn and merged with §68.31 (Variance Procedures). The prohibition of applying for a variance post construction will be deleted.

Comment on Proposed rule 68.34 *Technical Deviations-Built Conditions*: Healthcare Environment Design queries what is the difference between a variance and a technical deviation? *Agency Response*: A variance is processed prior to the com-

pletion of construction and a technical deviation is processed after construction is complete. To clarify, this section will be withdrawn and merged with §68.31 (Variance Procedures). The prohibition of applying for a variance post construction will be deleted.

Comment on Proposed rule 68.34 *Technical Deviations-Built Conditions*: The Texas Council for Developmental Disabilities is concerned that the proposed language allows too much discretion in determining access. *Agency Response: Disagree in part*. The Commission, Commissioner and staff of the TDLR are empowered by the legislature to make these types of decisions, with strict guidance from Article 9102. However, given the confusion on the intent of this proposed rule and to clarify, this section will be withdrawn and merged with §68.31 (Variance Procedures). The prohibition of applying for a variance post construction will be deleted.

Comment on Proposed rule 68.60 *Review of Construction Documents*: Advocacy, Inc. states there is no timeline for submitting construction documents. *Agency Response: Disagree*. Timelines for submitting construction documents are in §5(k) of the Act, and in rule 68.20.

Comment on Proposed rule 68.62(a) *Inspections*: Advocacy, Inc. suggests for clarity, "The building or facility owner must request an inspection from the department or independent contract provider no later than thirty (30) days after the completion of construction." *Agency Response: Agree*. The rule will be changed to reflect the suggested language.

Comment on Proposed rule 68.62 *Inspections*: Advocacy, Inc. states there's no mention of a timeline for completing state-leased inspections which compares with the statutory requirement of inspecting "prior to occupancy." The commentator believes the statutory language should be repeated in the rules. *Agency Response: Disagree*. It is not necessary to use the rule process to reiterate that which is written in the statute, and the statute requires inspections prior to occupancy.

Comment on Proposed rule 68.62(3)(d) *Inspections*: Accessology, Inc. believes the department, through policy, accepts without question or verification that the registered design professional is the owner's designated agent. However, after construction is complete, the designation must be in writing. The commentator would like clarification. *Agency Response: Agree*. The term "designated agent" will be deleted from this section. To clarify the owner's responsibility to verify corrective modifications, a sentence will be added requiring owners to submit verification to the department.

Comment on Proposed rule 68.64(a) *Certificates and Approvals*: The Texas Society of Architects believes that switching between "substantial compliance" and "full compliance" as well as the distinction drawn between "owner" and "owner's agent" is confusing. *Agency Response: Agree*. The modifying phrases referring to compliance as either "full" and "substantial" will be deleted. The proposed rules will be changed to delete distinctions between an "owner" and an "owner's agent." We will add to the definition of an "owner," the ability to designate an agent so that the term "owner" will be synonymous with a "designated agent."

Comment on Proposed rule 68.65 *Advisory Committee*: The Texas Society of Architects would like added to subsection (a), "The purpose of the Architectural Barriers Committee is to review rules and Technical Memoranda relating to the Architectural Barriers program and recommend changes in the rules and Technical Memoranda to the Commission and the Executive Director." Since TM's are considered either as taking away from TAS or addition to it, the AB advisory board should fulfill its role by providing guidance on TM's. *Agency Response: Agree*. The language will be changed to reflect the comment.

Comment on Proposed rule 68.66(f) *Contract Providers*: Advocacy. Inc. believes that deleting the monitoring of contract providers (CP) is of concern, as the department should oversee CP's thereby insuring quality work. *Agency Response: Disagree*. The deletion of this section does not take away the department's authority to monitor CP's. The department is removing rules that are unenforceable and redundant to policy, contracts or statutory language. All contract provider contracts have monitoring clauses written therein, and the department will continue to monitor the work of CP's. A subsection will be added to clarify that CP's are subject to monitoring and §68.93 will be amended to show the department will investigate complaints on CP's.

Comment on Proposed rule 68.66 *Contract Providers*: Healthcare Environment Design states that inspectors have more authority than plan reviewers, therefore the educational requirements for inspectors should be higher than the plan reviewers, not vice versa. *Agency Response: Disagree*. Plan reviewers must interpret standard construction documents. Inspectors are not required to read or interpret construction documents, but rather assess "as-built conditions." The educational and experience requirements are appropriate for the different tasks. A majority of the contract provider's satisfy both requirements.

Comment on Proposed rule 68.66 *Contract Providers*: The Texas Society of Architects would like subsection (b)(1) to read: "Persons who perform plan review services shall meet the following qualifications: a degree in architecture, engineering, interior design, landscape architecture or equivalent and a minimum of one year experience related to building planning, accessibility design or review, or equivalent," so that the language tracks the Act. Also, subsection (f) is unnecessary and can be placed in the CP's contract; however if retained, the language "prior to the expiration of a current contract" will set up procedural problems. *Agency Response: Agree*. Language in subsection (b)(1) will be changed to reflect the comment. Also, subsection (f) will be modified to read, "Contract providers must attend the Texas Accessibility Academy or another accessibility educational course approved by the department prior to executing a new contract."

Comment on Proposed rule 68.66(b) *Contract Providers*: The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates support this rule. *Agency Response: Agree*.

Comment on Proposed rule 68.66(b)(4) and (c)(4) *Contract Providers*: The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates state the test score requirement should be 100% because of the importance of providing accurate plan reviews and inspections. *Agency Response: Disagree*. A test score of 100% is not necessary to determine competency to perform plan reviews and inspections particularly since those functions are performed with written aides.

Comment on Proposed rule 68.66(f) *Contract Providers*: The Coalition of Texans with Disabilities (CTD); Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates support the three-year continuing education requirement, but do not want the deletion of department monitoring and want current language retained. *Agency Response: Disagree*. The deletion of this section does not take away the department's authority to monitor CP's. The department is removing rules that are unenforceable and redundant to policy, contracts or statutory language. All contract provider contracts have monitoring clauses written therein.

Comment on Proposed rule 68.66(f) *Contract Providers*: ADAPT states the proposed rule should allow for monitoring, revocation of contracts and a vehicle for citizens complaints against CP's. *Agency Response: Disagree*. Monitoring and revocation of contracts is addressed in the individual contracts. Complaints may be filed against a CP and if after an investigation, the complaint is substantiated, appropriate action can be taken under the contract terms.

Comment on Proposed rule 68.66(f) *Contract Providers*: Texas Council for Developmental Disabilities comments that CP's should have the most accurate and up to date knowledge of the laws. *Agency Response: Agree*. Accurate and updated information is provided to CP's by the use of "ICP Bulletins" and through the agency's website.

Comment on Proposed rule 68.70(a)(1) *Responsibilities of the Registrant-Construction Document Submittals*: The Texas Board of Architectural Examiners proposes adding the word "date" to the phrase, "...shall seal, sign...". *Agency Response: Disagree*. Since, upon sealing, the affixation date must be placed on construction documents under the commentator's administrative rules, adding the date requirement here may confuse registrants into believing the act of sealing and affixing a date are separate functions.

Comment on Proposed rule 68.70(e) *Responsibilities of the Registrant-Construction Document Submittal*: Accessology, Inc. stated the phrase, "and returning" indicates that the department does not retain ownership over documents as stated in proposed rule 68.60(b). *Agency Response: Agree*. This subsection will be deleted.

Comment on Proposed rule 68.70(f) *Responsibilities of the Registrant-Construction Document Submittals*: Advocacy, Inc. comments that allowing documents to be submitted after construction is complete gives no incentive for the owner to submit in a timely fashion. *Agency Response: Disagree*. Section 5(k) of the Act requires the owner to submit construction documents within 30 days from the start of construction. The possibility of an administrative penalty of $1,000 per day per violation is sufficient incentive for an owner to timely submit.

Comment on Proposed rule 68.71 *Responsibilities of the Registrant - Resubmittals*: Advocacy, Inc. believes this section has merit and wants to know why deletion is proposed. *Agency Response: Disagree*. This rule is combined with 68.70 and is repeated verbatim in subsection (f).

Comment on Proposed rule 68.72 *Responsibilities of the Registrant - Resubmittals*: Advocacy, Inc. believes this section has merit and wants to know why deletion is proposed. *Agency Response: Disagree*. The section has been moved, not deleted. This section is combined with 68.62 and is added to subsection (d).

Comment on Proposed rule 68.92 *Responsibilities of the Registrant - Resubmittals*: Advocacy, Inc. believes this section has merit and wants to know why deletion is proposed. *Agency Response: Disagree*. The proposal to delete this section is due to the redundancy to Article 9102, §5(m).

Comment on Proposed rule 68.93 *Complaints and Investigations*: Advocacy, Inc. would like to see a rule that requires the department to respond to complaints and a timeframe for responses. *Agency Response: Disagree*. The TDLR's enabling legislation, Chapter 51 of the Occupations Code, requires the agency to respond to complaints and to provide quarterly updates.

Comment on Proposed rule 68.100(b) *Technical Standards and Technical Memoranda*: Texas Society of Architects proposes the following language: "(b) The Texas Department of Licensing and Regulation may from time to time, issue Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed and approved by the Architectural Barriers Advisory Committee." *Agency Response: Agree in part*. The department will change this subsection to show that the AB Advisory Committee will review, and the department may issue TM's. We disagree with requiring Advisory Board approval prior to issuing a TM, because approval oversteps the Advisory Board's authority to advise the Commission.

Comment on Proposed rule 68.101 *State Leases*: Advocacy, Inc. states there's no definition for "existing facilities", and the proposal to have minimum standards apply to buildings built prior to applicable laws; invites private entities to violate Title III of the ADA, and possibly state agencies to violate Title II of the ADA. The proposal does not make clear that premises are subject to full compliance with TAS after applicable dates. *Agency Response: Agree in part*. The Department's rule does not encourage non-compliance with federal civil rights laws, but rather mandates accessible spaces leased to the state. For clarification, the proposed rule will define an "existing facility or building" as "one that has not been constructed, renovated, modified or altered since January 1, 1972." The section title will be amended to show parenthetically, that the section includes initial and renewed leases.

Comment on Proposed rule 68.101 *State Leases*: The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates commented that the ADA Technical Assistance Center expressed concern about the language and believes it could result in massive violations of the ADA. Title II of the ADA prohibits discrimination against persons with disabilities in services provided by state governments; many state leases are covered by the Rehabilitation Act of 1973 that bars discrimination. The proposed language attempts to address a building code requirement, and the requirements must be tied to the use of the building. The commentators recommend removing this rule at this time, and if necessary to develop rules with the U.S. Regional Technical Assistance Center on the ADA. *Agency Response: Disagree*. The proposed language provides accessibility to and into the area where services are provided for state leased facilities. The proposed rule categorizes state leases dependent upon the same standards as other buildings and facilities in the State

of Texas, however adds a category of "existing buildings" so as to ensure access to services in state leases where a building has not undergone an alteration, renovation or an addition. The TAS is a building code. To clarify which entrance is required to be in compliance, the word "leased" will be added to subsection (C). To clarify signage requirements for existing facilities, rule 68.101(5)(E) will be amended to read: "(E) Signage at toilet rooms/bathrooms shall comply with TAS 4.30. Toilet rooms/bathrooms serving the leased area which are not accessible shall be provided with signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5 and 4.30.7, indicating the location of the nearest accessible toilet room/bathroom within the facility." A typographical error appears in §68.101(5)(G); TAS 4.17 will be amended to read "TAS 4.31." In the event an element is provided in a lease that it not covered by this subsection, subsection (H) will be added to show that alteration standards would apply.

Comment on Proposed rule 68.101 *State Leases*: ADAPT believes this rule could result in de-certification of the AB program from the ADA. The department can play a vital role in the lives and civil rights of citizens in small communities. State leases have had ample time to find solutions. The commentator would like the rule withdrawn and joins CTD's comments. *Agency Response: Disagree*. The state program is currently certified only for purposes of Title III of the ADA. These facilities are not covered by Title III of the ADA. Bringing state-leased facilities into compliance with TAS could not jeopardize the Department's certification.

Comment on Proposed rule 68.101 *State Leases*: The Texas Council for Developmental Disabilities comments that the language must assure accessibility and adhere to the requirements of Title II of the ADA, Rehabilitation Act of 1973 and the Texas Architectural Barriers Act. *Agency Response: Disagree*. The proposed language is designed to assure accessibility where previously there was no specific accessibility standard applicable. The proposed rule does not authorize lessors to ignore Federal law.

Comment on Proposed rule 68.102 *Dimensional Tolerances for Built Conditions*: The Texas Council for Developmental Disabilities believe the width of a door and the set-up of toilet arrangements must be set at minimums with no tolerances that may pose a barrier to persons with mobility impairments. The Coalition of Texans with Disabilities (CTD), Nancy Crowther, American Disabled for Attendant Programs Today (ADAPT), and the San Antonio Area Disability Advocates state the rule would deny access for some individuals who use wheelchairs. The rule should be withdrawn and the department should adopt the tolerances allowed in the new ADAAG when it is implemented. Advocacy, Inc. states that tolerances are already built into TAS and ADAAG, the proposed tolerances are independent of field conditions, and are too lenient, particularly with the larger ranges under §68.102(2)-(6). The result of allowing tolerances to doors and hallways could block accessibility. Accessology, Inc. commented that tolerances under subsection (1) and (2) should not apply to thresholds, as those allowances could make it difficult for a person in a wheelchair to negotiate entranceways. *Agency Response: Agree*. The proposed rule will be withdrawn for further study.

Comment on Proposed rule 68.102 *Dimensional Tolerances for Built Conditions*: Healthcare Environment Design is for this proposal stating that permitting some construction tolerances in the process makes a lot more sense than having to argue with inspectors over fractions of an inch. The commentator encourages the application of common sense to all of the standards. The Bower Downing Partnership, Inc. states the approach (for dimensional tolerances) stems from common sense thinking, and applauds the proposal. Even with the best contractor, meeting TAS requirements on the mark is difficult. The proposed rule change will encourage owners to spend time and money toward meeting TAS requirements. *Agency Response: Agree in part*. The department strives to use common sense in utilizing its regulatory authority. However, due to the well thought out comments we received opposing the proposed rule, this proposal will be withdrawn for further study.

The amendments will function by increasing program integrity.

The amendments and new rules are adopted under Texas Revised Civil Statutes Annotated, article 9102 (Vernon 1999), which provides the Texas Department of Licensing and Regulation the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purpose of the Act.

The Article and Code affected by the amendments and new rules are Texas Revised Civil Statutes Annotated Article 9102 (Vernon 1999) and Texas Occupations Code, Chapter 51 (Vernon 1999).

§68.10. Definitions.

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

(1) Act - Texas Revised Civil Statutes Annotated, Article 9102.

(2) Building - Any structure used and intended for supporting or sheltering any use or occupancy.

(3) Commencement of Construction - Placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork or other construction related work.

(4) Completion of Construction - That phase of a construction project which results in occupancy or the issuance of a certificate of occupancy.

(5) Construction Documents - Working drawings and specifications used for construction of a building or facility.

(6) Contract Provider - The individual, company, or authority under contract with the department to perform plan reviews, inspections, or both.

(7) Designated Agent - An individual designated by the owner to act on the owner's behalf.

(8) Facility - All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real property.

(9) Lessee - with respect to state leased or occupied space, the state agency that enters into a contract with a building owner. In instances of free space or where a written contract is non-existent, reference to the lessee shall mean the occupying state agency.

(10) Owner - The person or persons, company, corporation, authority, commission, board, governmental entity, institution or any other unit that holds title to the subject building or facility. For

purposes under these rules and the Act, an owner may designate an agent.

(11) Religious Organization - An organization that qualifies as a religious organization as provided in Vernon's Texas Statutes and Codes Annotated Tax Code, Title 1, Subtitle C, Chapter 11, §11.20(c).

(12) Renovated, Modified or Altered - Any construction activity, including demolition, involving any part or all of a building or facility. Cosmetic work and normal maintenance do not constitute a renovation, modification or alteration.

(13) State Agency - A board, commission, department, office, or other agency of State government.

(14) Variance Application - The formal process by which the owner petitions the department to rule on the impracticability of applying one or more of the standards or specifications to a building or facility.

§68.20. Registration–Submittal of Construction Documents.

(a) Construction documents covering each subject building or facility with an estimated construction cost of $50,000 or more shall be shipped, postmarked or received by the department or contract provider not later than five business days after the registered design professional places the applicable professional seal on the construction documents.

(b) If construction documents are not submitted prior to completion of construction, they shall be submitted to the department and may not be submitted to a contract provider.

(c) An Architectural Barriers Project Registration form must be completed for each subject building or facility and submitted with the construction documents and the applicable review fee.

(d) State leased buildings or facilities that are not being constructed or substantially renovated shall be registered with the department by completing a State Lease Registration form.

§68.21. Registration–Subject Buildings and Facilities.

(a) A building or facility identified in the Act is subject to compliance if:

(1) public funds from a municipality, county, the state or any political subdivision of the state are used any time during the construction process;

(2) a municipality, county, the state or any political subdivision of the state donate land or other use of public lands on which buildings or facilities are constructed with private funds;

(3) constructed with private funds with the intent of donating or deeding to a public entity; or

(4) tax abatements or other incentives are provided by a municipality, county, the state or any political subdivision of the state.

(b) Buildings or facilities that are leased or rented to the state:

(1) include space provided at no cost to a state agency for conducting state business with or without a written contract;

(2) may be exempted from compliance if it is determined by the occupying agency that the space will not be used by the public and that the occasion for employment for persons with disabilities is improbable because of the essential job functions. The agency shall, prior to advertisement for bid, submit to the department for a determination a completed Lease Evaluation Form obtained from the department. If a Lease Evaluation Form is not submitted, compliance with all applicable standards shall be required.

(c) The following private entities are considered public accommodations and subject to the Act:

(1) an inn, hotel, motel, or other place of lodging except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) a restaurant, bar, or other establishment serving food or drinks;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) a terminal, depot, or other station used for specified public transportation;

(8) a park, zoo, amusement park, or other place of recreation;

(9) a museum, library, gallery, or other place of public display or collection;

(10) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(d) Commercial facilities are subject to the Act if they are intended for non-residential use and if their operations will affect commerce. Such application shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in the Americans with Disabilities Act (ADA) §242, or covered under the ADA, Title III, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the federal Fair Housing Act of 1968.

(e) Buildings or facilities of a religious organization are subject to the Act except for areas exempted under §68.30 of this title (relating to Exemptions).

(f) Buildings or facilities not subject to the Act may be reviewed and/or inspected upon request and payment of the applicable fee(s).

§68.30. Exemptions.

The following buildings, facilities, or spaces are exempted from the Act:

(1) Buildings or facilities owned and operated, or leased by the federal government;

(2) Construction Sites. Structures, sites, and equipment directly associated with the actual processes of construction, including, but not limited to, scaffolding, bridging, materials hoists, mate-

rials storage, construction trailers, portable toilet units provided for use exclusively by construction personnel on a construction site;

(3) Raised Security Areas. Raised areas used primarily for purposes of security, life safety, or fire safety, including, but not limited to, observation galleries, prison guard towers, fire towers, or lifeguard stands;

(4) Limited Access Spaces. Spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or tunnels;

(5) Equipment Spaces. Spaces frequented primarily by personnel for maintenance, repair, or periodic monitoring of equipment. Such spaces, include but are not limited to, elevator pits, elevator penthouses, mechanical, electrical, or communications equipment rooms, piping or equipment catwalks, petroleum and chemical processing and distribution structures, electric substations and transformer vaults, environmental treatment structures, and highway and tunnel utility facilities.

(6) Single Occupant Structures. Single occupant structures accessed only by passageways below grade or elevated above grade, including but not limited to, toll booths that are accessed only by underground tunnels.

(7) Restricted Occupancy Spaces. Vertical access (elevators and platform lifts) is not required for the second floor of two-story control buildings located within a chemical manufacturing facility where the second floor is restricted to employees and does not contain common areas or employment opportunities not otherwise available in accessible locations within the same building.

(8) Places Used Primarily for Religious Rituals. Within a building or facility of a religious organization, an area used primarily for religious ritual, as determined by the owner or occupant. To facilitate the plan review, the owner, or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to common areas. Examples of common areas include but are not limited to: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits.

§68.31. Variance Procedures.

If the owner believes that application of the standards is irrelevant to the nature, use, or function of the building or facility or that compliance with any particular standard or specification is impracticable, a separate variance application shall be submitted for each building, facility or condition.

(1) Decisions on variances will be decided on pre-construction conditions and circumstances.

(2) Requests to waive or modify a standard shall be submitted on a Variance Application obtained from the department. Written cost estimates as well as drawings justifying the cost of compliance shall be attached.

(3) Variance applications must be submitted by the owner.

(4) Variance applications shall be accompanied by the applicable fee.

(5) A denial of a variance application may be appealed to the Director of Code Review and Inspections in writing within 21 calendar days from issuance.

(6) The applicable fee shall accompany appeals to the Director of Code Review and Inspections.

(7) A denial of a variance appeal from the Director of the Code Review and Inspections Division may be appealed to the Executive Director of the Texas Department of Licensing and Regulation in writing within ten days of notification of the Division Director's decision. The decision of the Executive Director may be appealed to the Texas Commission of Licensing and Regulation in writing within ten calendar days of notification of the Executive Director's decision.

(8) At each stage of the variance process, the party making the request shall be advised in writing of the determination. A Commission decision will be issued after a regularly scheduled quarterly commission meeting.

§68.60. Review of Construction Documents.

(a) After review, the person making the submission will be advised in writing of the results. Construction documents will be approved only when the documents reflect compliance with all applicable accessibility standards. Conditional approval may be issued when it is determined that resubmittals are not warranted. Conditional approvals will refer to all items noted during the review which must be included in the design and construction of the building or facility.

(b) Construction documents received by the department shall become the property of the department.

§68.61. Resubmittals.

When the department or contract provider requires verification of design revisions, such verifications may be made by submission of revised construction documents, change orders, addenda, and letters specifically addressing each revision.

(1) Resubmittals will be reviewed and the person making the resubmittal will be advised of the results. Resubmittals will be approved only when the resubmittal reflects compliance with all applicable accessibility standards. Conditional approval may be issued when it is determined that additional submittals are not warranted.

(2) When unsolicited verification of design revisions are submitted, they will be reviewed as time permits.

(3) Resubmittals received after completion of construction (based on the recorded estimated completion date) may not be reviewed but will become a matter of record.

§68.62. Inspections.

(a) The building or facility owner must request an inspection from the department or contract provider no later than thirty (30) days after the completion of construction.

(b) Inspections will be performed during the normal operating hours of the owner. Any deviation from operating hours shall be at the convenience of the owner.

(c) The owner will be notified of the impending inspection and requested to be present during the inspection.

(d) The owner will be advised of the results of each inspection. Owners must submit verification of corrective modifications as directed by the department.

§68.63. Corrective Modifications.

When corrective modifications to achieve compliance are required, the department will provide the owner a list of deficiencies and a deadline for completing modifications. An extension may be granted by the department if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections. Corrective modifications are subject to verification.

§68.64. Certificates and Approvals.

(a) A Certificate of Substantial Compliance will be issued to the owner, after a building or facility has had a satisfactory inspection or submitted verification of corrective modifications.

(b) An Accessibility Approval will be issued to the owner upon satisfactory verification that a subject building or facility or portions thereof which has been renovated, modified, or altered is in compliance with applicable standards.

(c) Project information pertaining to certifications and approvals may be requested by completing a Project Information Request form obtained from the department and submitting it to the department with the appropriate fee.

§68.65. Advisory Committee.

(a) The purpose of the Architectural Barriers Advisory Committee is to review rules and Technical Memoranda relating to the Architectural Barriers program and recommend changes in the rules and Technical Memoranda to the Commission and the Executive Director.

(b) Recommendations of the committee will be transmitted to the Commission by the Executive Director through the Director of the Code Review and Inspections Division.

(c) Committee meetings are called by the chair or Executive Director. Meetings in excess of those mandated by the Act may be authorized by the Executive Director.

(d) Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and traveling to and from committee meetings. The least expensive method of travel should be used. Expenses can be reimbursed to committee members only when the legislature has specifically appropriated money for that purpose.

(e) Expenses paid to committee members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.

(f) The committee shall consist of four building professionals and five consumers with disabilities. Committee members will serve staggered three-year terms.

§68.66. Contract Providers.

(a) The purpose of the contract providers program is to assist the department in performing review and inspection services.

(b) Persons who perform plan review services shall meet the following qualifications:

(1) a degree in architecture, engineering, interior design, landscape architecture or equivalent and a minimum of one year experience related to building planning, accessibility design or review, or equivalent; or

(2) eight years experience related to building planning, accessibility design or review, or equivalent; or

(3) four years experience related to building planning, accessibility design or review, or equivalent and certification as an accessibility specialist granted by a model building code organization; and

(4) satisfactory completion of the Texas Accessibility Academy with a test score of 80% or higher.

(c) Persons who provide inspection services shall meet the following qualifications:

(1) minimum of a high school diploma or equivalent; and

(2) four years experience related to building inspections, accessibility inspections, building planning, accessibility design or review, or equivalent; or

(3) two years experience related to building inspections, accessibility inspections, building planning, accessibility design or review, or equivalent and; certification as an accessibility specialist as granted by a model building code organization; and

(4) satisfactory completion of the Texas Accessibility Academy with a test score of 80% or higher.

(d) Contract providers may set and collect fees for services. The fee for Project Filing established by §68.80 of this title (relating to Fees) shall be collected by the contract provider at the time of the plan review and submitted with the Project Registration form on each project when it is forwarded to the department by the contract provider. The fee for Inspection Filing shall be submitted to the department at the time the file is requested, prior to performing the inspection.

(e) Contract providers shall adhere to the Act, department rules, Technical Memoranda, and all procedures established by the department for plan reviews and inspections.

(f) Contract providers must attend the Texas Accessibility Academy or another accessibility educational course approved by the department prior to executing a new contract.

(g) Contract Providers are subject to monitoring, audits and investigation by the department.

§68.70. Responsibilities of the Registrant–Construction Document Submittals.

(a) Construction documents submitted for review shall include all disciplines.

(1) Design professionals responsible for the project shall seal, sign and number construction documents in accordance with the requirements of their respective registration boards.

(2) In projects involving multiple phases, construction documents pertaining to each phase shall be submitted in accordance with §68.20(a) (relating to Registration - Submittal of Construction Documents).

(3) In projects involving "fast-track" construction, partial submittals may be made. Construction documents pertaining to each portion of the work shall be submitted in accordance with §68.20(a) (relating to Registration - Submittal of Construction Documents).

(4) All other requirements of this section shall be met and owners and design professionals are not relieved of any other obligations under the Act or these rules.

(b) Unless one person has overall responsibility, construction documents covering projects involving separate areas of responsibility must be submitted by persons responsible for each area.

(c) A completed Architectural Barriers Project Registration form and review fee shall accompany documents. Registrants must include on the Project Registration form the name of the building owner as defined by these rules and current address of the owner.

(d) When bid packages involve multiple facilities such as prototypes or other identical facilities, only one set of building drawings need be submitted. A registration form must be submitted on each subject building and facility. Drawings noting site adaptations are required for each location.

(e) If construction documents were not submitted timely as directed by §68.20(a) (relating to Registration - Submittal of Construction Documents), they shall be submitted for review as soon as possible following that date. Construction documents submitted after completion of construction may not be submitted to a contract provider.

(f) Verification of design revisions shall be submitted upon request of the department.

§68.90. Sanctions–Administrative Sanctions or Penalties.

If a person violates Texas Revised Civil Statutes Annotated, Article 9102, or a rule, or order of the Executive Director or Commission relating to the Act, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with the Act or Texas Occupations Code, Chapter 51 (Vernon 1999) and 16 Texas Administrative Code, Chapter 60 (1999) of this title (relating to the Texas Department of Licensing and Regulation).

§68.93. Complaints and Investigations.

Any person who suspects that any building or facility is not in compliance may submit a complaint to the department in accordance with Texas Occupations Code, Chapter 51 (Vernon 1999). Complaints regarding contract providers will be investigated.

§68.100. Technical Standards and Technical Memoranda.

(a) The Texas Department of Licensing and Regulation adopts by reference the Texas Accessibility Standards (TAS), April 1, 1994 edition.

(b) The Texas Department of Licensing and Regulation may from time to time, issue Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Architectural Barriers Advisory Committee.

(c) Copies of TAS or Technical Memoranda may be obtained at: www.license.state.tx.us or by contacting the department.

§68.101. State Leases (Initial or Renewed).

Buildings or facilities that are leased or occupied in whole or in part for use by the State shall meet the following requirements of the Texas Accessibility Standards (TAS).

(1) New Construction: shall comply with TAS 4.1.2 and 4.1.3.

(2) Additions: shall comply with TAS 4.1.5.

(3) Alterations: shall comply with TAS 4.1.6.

(4) Historic Buildings or Facilities: shall comply with TAS 4.1.7.

(5) Existing Buildings and Facilities are ones that have not been constructed, renovated, modified or altered since January 1, 1972. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, as a minimum, the following shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 4.6.

(B) An accessible route from the parking area(s) shall comply with TAS 4.3.

(C) At least one entrance serving the leased space shall comply with TAS 4.14.

(D) If toilet rooms/bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms/bathrooms or at least one unisex toilet room/bathroom serving the leased area shall comply with TAS 4.22 or 4.23.

(E) Signage at toilet rooms/bathrooms shall comply with TAS 4.30. Toilet rooms/bathrooms serving the leased area which are not accessible shall be provided with signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5 and 4.30.7, indicating the location of the nearest accessible toilet room/bathroom within the facility.

(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 4.15. If more than one drinking fountain is provided, at least 50% shall comply with TAS 4.15.

(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 4.31.

(H) If an element or space of a lease is not specified in this subsection but applicable to a state leasehold, that element or space shall comply with TAS 4.1.6.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 6, 2000.

TRD-200003983
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: June 26, 2000
Proposal publication date: January 21, 2000
For further information, please call: (512) 463-7348

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16 TAC §§68.32, 68.71, 68.72, 68.92

The Texas Department of Licensing and Regulation adopts the repeal of §§68.32, 68.71, 68.72, and 68.92 of the Architectural Barriers Administrative Rules without changes as proposed in the January 21, 2000 issue of the *Texas Register* (25 TexReg 347).

Sections 68.32, 68.71, and 68.72 are repealed because these sections have been combined with other sections for clarity. Section 68.92 is repealed because it is redundant to Article 9102.

The Department received several comments regarding the repeal of §68.71, 68.72 and 68.92. Advocacy, Inc. believes these sections have merit and want to know why deletion is proposed. The agency response is that §68.71 is combined with §68.70 and is repeated verbatim in subsection (f). Section 68.72 is combined with §68.62 and is repeated verbatim in subsection (d). Also, §68.92 is deleted due to the redundancy to Article 9102, §5(m).

The justification for the repeal is less redundancy and better clarification of the rules.

The repeal is adopted under Texas Revised Civil Statutes, Article 9102 (Vernon 1999), which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take action necessary to assure compliance with the intent and purpose of the Article.

The Article and Code affected by the adopted repeal is Texas Revised Civil Statutes, Article 9102 (Vernon 1999) and Texas Occupations Code, Chapter 51 (Vernon 1999).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 6, 2000.

TRD-200003982
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: June 26, 2000
Proposal publication date: January 21, 2000
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TITLE 22. EXAMINING BOARDS

Part 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

Chapter 163. LICENSURE

22 TAC §163.5

The Texas State Board of Medical Examiners adopts an amendment to §163.5, concerning licensure, without changes to proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2261).

This section is being adopted to amend the language regarding photographs that are submitted with licensure applications and documentation required for applicants who have been treated for alcohol/substance abuse or mental illness.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2000.

TRD-200004119
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: July 2, 2000
Proposal publication date: March 17, 2000
For further information, please call: (512) 305-7016

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Chapter 193. STANDING DELEGATION ORDERS

22 TAC §193.9

The Texas State Board of Medical Examiners adopts new §193.9, concerning pronouncement of death and collaborative management of glaucoma, without changes to the proposed text as published in the April 21, 2000, issue of the *Texas Register* (25 TexReg 3359). Section 193.10 is being withdrawn elsewhere in this issue of the *Texas Register*.

Section 193.9 will enable physicians to make a pronouncement of death based on facts given to them by licensed vocational nurses through electronic communication.

One comment was received regarding adoption of the section. The board considered the comment sent by the Board of Licensed Vocational Nurses, but disagreed with the commenter's suggestion that their proposed language added clarity to the rule as it was published.

The new section is adopted under the authority of the Occupations Code, §153.001, which provides the Texas State Board of Medical Examiners to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; and enforce this subtitle.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 12, 2000.

TRD-200004120
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: July 2, 2000
Proposal publication date: April 21, 2000
For further information, please call: (512) 305-7016

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Part 19. POLYGRAPH EXAMINERS BOARD

Chapter 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §§391.2 - 391.5, 391.8 - 391.10

The Polygraph Examiners Board adopts amendments to §§391.2, 391.3, 391.4, 391.5, 391.8, 391.9 and new §391.10, concerning the Polygraph Examiner Internship, with changes to the proposed text as published in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2529). The text in its entirety will be republished.

The Board has determined that the rule on approved schools is outdated and refers the public to the Board office for current information. A definition to clarify the commencement of the intern licensing period was added.

The changes made to the rules are non substantive and are as follows:

Throughout each section the word "board" was changed to be capitalized and now reads as "Board".

In §391.3(16) the words "and/or Executive Officer" were added to read as follows: "The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to

Procedure and Qualifications) and:" This was inadvertently omitted from the proposal and has been changed to be consistent with §391.3(16)(C) which states the same thing.

In §391.4(6) the word "portion" has been changed to "phase" to be consistent with the proposal. Originally, the word "portion" was changed to "phase" throughout proposed §391.4 Twice, this was inadvertently omitted when proposed. Section 391.4(6) now reads as follows: "Failure to pass any phase of the examination shall require such person to retake that phase failed. No polygraph examiner's license shall be issued until the intern has passed all phases of the examination."

No comments were received regarding adoption of the amendments and new rule.

The amendments and new section are adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the Board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

§391.2. Procedure and Qualifications.

The procedure and qualifications for obtaining an internship permit shall be as follows.

(1) Qualifications. A person is qualified to receive an internship permit:

(A) who has not been convicted of a felony or a misdemeanor involving moral turpitude;

(B) who holds a baccalaureate degree from a college or university accredited by an organization that the Board designates and that the Board determines has accreditation standards to ensure a high level of scholarship for students, or in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application, which shall consist of two basic elements:

(i) training-training shall be defined as a minimum of the number and type of hours of instruction necessary to obtain a basic law enforcement certificate issued by the Texas Commission on Law Enforcement Standards;

(ii) application of training-application of training shall be defined as an adequate demonstration, in the opinion of the Board, by the applicant of the required training, as defined herein, on a continuous basis for a five year period, immediately preceding the application.

(C) who, prior to the issuance of the internship permit, furnishes the Board with evidence of a surety bond or insurance policy in the sum of $5,000. Such bond or insurance policy shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy, all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

(D) For current and former Governmental Polygraph Examiners see §391.10 of this title (relating to Procedures and Qualifications of Current and Former Governmental Polygraph Examiners).

(2) Procedure. A person meeting the qualifications set forth in paragraph (1) of this section who seeks to obtain an internship permit shall proceed as follows.

(A) Complete fully the internship application furnished by the Board and submit such application along with all other requested information to the Board for approval. In order to allow ample administrative and investigative time, applications must be at the address of the Board at least 10 calendar days prior to the opening date of the Board meeting at which its consideration is being requested.

(B) An internship permit issued by the Board shall be valid for a term of 12 months from the date of issue. Such permit may be extended or renewed for any term not to exceed six months upon good cause shown to the Board. A trainee or intern shall not be entitled to hold an internship permit after the expiration of the original 12-month period and six-month extension, if such extension is approved by the Board, until 12 months after the date of expiration of the last internship permit held by the said trainee or intern. Provided that any trainee or intern, who, upon completion of his internship program, fails to pass the State Polygraph Examiners Licensing Examination may be required to appear before the Board to discuss the reason for such failure and, in the case of a trainee or intern having completed a 12-month internship program, to show cause why his license should be extended.

§391.3. Internship Training Schedule.

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) History and development of polygraph–four hours.

(2) Legal and ethical aspects of polygraph.

(A) Texas Polygraph Examiners Act–10 hours.

(B) Statements and reports, civil rights, examiner and professional ethics–10 hours.

(3) Physiology–24 hours.

(A) Nervous system, autonomic nervous system.

(i) Sympathetic system.

(ii) Parasympathetic system.

(B) Circulatory system and the heart.

(C) Respiratory system.

(D) Effects of drugs, alcohol, and illness.

(4) Psychology–24 hours.

(A) General.

(B) Abnormal.

(C) As applied to polygraphy.

(5) Interrogation and interviews–100 hours.

(A) Receiving case briefing.

(B) Pre-test interview.

(C) Post-test interview.

(6) Chart interpretation–120 hours.

(A) All types of tests and responses.

(B) Chart marking.

(C) Test results: No Deception Indicated, Deception Indicated, Inconclusive or No Opinion.

(7) Question formulation and test construction–120 hours.

(A) All types of tests.

(B) All types of questions.

(C) Semantics.

(8) Instrumentation–10 hours.

(A) Construction and maintenance.

(B) Trouble shooting.

(C) Nomenclature.

(9) Summary and general review –10 hours.

(10) Supervised testing and interviewing–minimum of 30 tests.

(11) Counseling and critique as required in opinion of sponsor.

(12) A list of approved polygraph schools shall be maintained in the Board office and will be made available upon request. Those Board approved polygraph schools the Board normally provides a list of current reference material and that information will be made available to sponsor and interns upon request.

(13) The Board may request and require inspection and review of the internship program of any licensed examiner or internee at any time to ascertain compliance with the program approved by the Board.

(14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board. To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application and completed a minimum of 40 hours of continuing education in the two years immediately proceeding the sponsorship. Documentation of this continuing education must be on file with the Board office prior to approval of the examiner as a sponsor.

(15) No licensed examiner shall have more than two interns under his sponsorship at any one time.

(16) The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications) and:

(A) who is a graduate of a polygraph examiners course approved by the Board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

(17) The intern licensing period shall begin:

(A) on the date of the first class day, of a Board approved polygraph basic school and continue as long as the intern maintains a passing grade in that class provided the intern has, prior to the commencement of the school, completed all of the requirements for the intern license;

(B) if the school has begun and the applicant has not completed all of the requirements for licensure, the internship shall begin on the date the applicant is approved for the intern license; or

(C) if the applicant is not a graduate of an approved polygraph examiners course but intends to complete not less than 12 months of internship training; the internship shall begin on the date the applicant is approved for the intern license by the Board.

§391.4. State Examinations for Polygraph Examiner License.
State examinations for polygraph examiner license shall conform with the following.

(1) When an intern becomes eligible, as provided by law, the intern may take the state examination for a polygraph examiners license under the direct supervision of the Board.

(2) Such examinations shall be held at Austin, Texas, or at other locations designated by the Board. Persons eligible to take the examination will be notified of the time, date, and location.

(3) Examinations shall be held at quarterly Board meetings, the dates, locations, and times being designated by the Board.

(4) Examinations shall consist of and include questions relating to those topics set forth in the internship training schedule and a presentation of actual polygraph examinations conducted by the applicant during their internship training for Board evaluation.

(5) The grades given by all grading members on the licensing examinations will be totaled and averaged and a grade of 70% must be obtained in order to pass.

(6) Failure to pass any phase of the examination shall require such person to retake that phase failed. No polygraph examiner's license shall be issued until the intern has passed all phases of the examination.

(7) Persons failing any phase(s) thereof may retake the phase(s) at the next scheduled examination date, provided that such person is qualified to retake the phase(s) under the law or as set forth herein under the rules and regulations pertaining to interns. Provided further that if any person taking and failing any phase of such examination for the third time, such person shall not be eligible to take another examination until the expiration of 12 months from the date of the last examination, providing such person is otherwise qualified to take such examination by law and under the applicable regulations.

(8) When an intern fails the original licensing examination, or any phase thereof, the intern shall not be permitted to engage in any actual polygraph testing until such time as the intern and the sponsor have reviewed the failing examination with a member of the Board or a member of the Board's staff at the discretion of the Board chairman. The time, date, and place of the review will be designated by the Board or its staff. The sponsor shall furnish the Chairperson or their designated representative with a written affidavit stating what corrective action will be taken or an oral discussion of those corrective actions acceptable to the Chairperson.

§391.5. Intern Supervision.
The intern sponsor, or a licensed examiner meeting the requirements to be a sponsor, is required to review all examinations conducted by an intern examiner under his/her supervision on a weekly basis. The sponsor or other licensed examiner shall carefully review each test the intern conducts for compliance with the Polygraph Examiners Act, accurate chart interpretation and the principles of quality test administration. The sponsor need NOT be present at the time of the examination. The sponsor is not required to review the charts before an opinion is rendered, but the Intern is required to inform the Examinee that the Intern's opinion of the polygraph examination is preliminary until that examination is reviewed by his sponsor.

§391.8. Applicant With Out-of-State License.

The Board will require a holder of an out-of-state polygraph examiners license to have held that license for a minimum period of two years before they will be considered for licensing under the Polygraph Examiner's Act, §12.

§391.9. Intern Licensure Requirements for Preceptor Trainees.

(a) An intern polygraph examiner who is not a graduate of an approved polygraph examiners school may qualify to receive his or her intern polygraph examiner's license when the intern has satisfied the Board that he or she is competent to administer polygraph examinations before the issuance of a polygraph intern license, in accordance with the provisions set forth in the Polygraph Examiners Act and the Board's rules and regulations. In order to satisfy the Board of the intern's competency to administer polygraph examinations, the intern shall:

(1) complete a total of 344 hours of supervised instruction and study until a minimum of 60 days of supervised study time has elapsed, which shall include:

(A) history and development of polygraph 4 hours;

(B) legal and ethical aspects of polygraph-20 hours;

(C) physiology-30 hours;

(D) psychology-30 hours;

(E) interrogation and interviews-75 hours;

(F) chart interpretation-75 hours;

(G) question formulation and test construction-100 hours;

(H) instrumentation-10 hours; and

(2) appear before the Board at the next regularly scheduled meeting to determine the intern's competency to administer polygraph examinations.

(b) These additional requirements do not supercede the basic requirements set forth in §391.3 of this title (relating to Internship Training Schedule), but will exist in addition to those requirements.

§391.10. Procedures and Qualifications of Current and Former Governmental Polygraph Examiners.

(a) All provisions of the Polygraph Examiners Act and Chapters 391, 393, 395 and 397 of that Act apply to applicants that are current or former governmental polygraph examiners except as follows:

(1) In lieu of a six month or twelve month internship program as defined in §8 (a) (3) of the Act, an applicant who is serving, or within two years prior to the date the applicant's application was received in the Board's office has served, as a polygraph examiner in a governmental agency, may qualify to sit for a licensing examination by providing to the Board appropriate documentation showing that the applicant satisfies each of the following conditions:

(A) That the applicant graduated from a polygraph course that is approved by the Board; and

(B) That the applicant is, or was, authorized by their governmental agency to conduct polygraph examinations for that agency for a period of at least six months or longer; and

(C) That the applicant participated in a quality control program administered by his/her governmental agency which quality control program reviewed 100% of the applicant's polygraph examinations; and

(D) That the applicant was not the subject of any action on the part of their governmental agency that removed the applicant's polygraph authorization during the course of the applicant's employment; and

(E) That the Board obtains in writing from the applicant's polygraph program manager that the applicant qualifies under subparagraphs (A)-(D) of this paragraph.

(2) All other provisions for a current or former governmental polygraph examiner applying for a Texas Polygraph Examiners License shall remain the same as currently stated in the Polygraph Examiners Act and only the definition of the "internship" is hereby modified.

(b) The provisions of §391.10 are intended to cover the issuance of a Texas Polygraph Examiner's License to a current and/or former governmental polygraph examiner, regardless of their residency, for polygraph testing in the State of Texas only.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2000.

TRD-200004051
Frank DiTucci
Executive Officer
Polygraph Examiners Board
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Proposal publication date: March 24, 2000
For further information, please call: (512) 424-2058

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Chapter 401. GRIEVANCE REVIEW OF DISCIPLINARY ACTION

22 TAC §401.1

The Polygraph Examiners Board adopts an amendment to §401.1, concerning the Grievance Review of Disciplinary Action of Employees, with changes to the proposed text as published in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2532). The text in its entirety will be republished.

The Board has determined that the rule is outdated.

The changes made to the rule are non substantive and are as follows:

Throughout §401.1 the word "board" was changed to be capitalized and now reads as "Board".

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the Board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

§401.1. Grievance Policy.

(a) Policy. It is the policy of the Polygraph Examiners Board to receive and process points of contention concerning disciplinary action when an employee or former employee makes proper applica-

tion. Such requests shall be processed in a fair and prompt manner. However, the procedures outlined in this section do not apply to employees who have completed less than six months of their current period of service.

(1) No employee shall be disciplined, penalized, coerced, or otherwise prejudiced in employment for exercising the rights provided for in this policy.

(2) In exercising any of the rights provided for by this policy, an employee may represent himself or may be represented by an attorney at his own expense.

(3) An employee who has become involved in a grievance hearing at his own request may not thereafter refuse to answer or reply to questions related to the review. If such should occur, the review or appeal procedure will be discontinued, and the employee will have forfeited the right to this hearing.

(b) Grievance Hearing Officer. The chairman may designate the grievance hearing officer. The hearing officer will be responsible for the integrity of the hearing process, will maintain an orderly procedure, and will assure a fair and impartial hearing. He may appoint a sergeant-at-arms if he deems it necessary. He will restrict the employee's plea and evidence to the points of contention set forth in the employee's written request for a hearing. In addition, he may request the attendance or testimony of any agency member and order further investigation as he deems necessary. The hearing officer will use his personal discretion in determining who shall appear before a hearing.

(c) Grievance Board Hearing Committee. The committee will be appointed by the chairman and shall consist of not more than three members. The chairman may sit as a member of the committee. All committee members must be Board members at the time of the hearing. Committee members, who the chairman determines have a real or apparent conflict of interest in the outcome of the proceedings, are not eligible to participate. In such cases, the chairman shall appoint another Board member to sit on the committee during the proceedings.

(d) Grievance Board Hearing Committee Procedures. Employees who qualify for a hearing before the grievance Board hearing committee, and desire to exercise this right must submit a written request to the Chairman of the Board. This written request must contain the points of contention of the employee, a statement that an attorney will or will not represent the employee, and the names of any agency members or other persons the employee desires to have present for the purpose of presenting evidence or giving testimony.

(1) The request for a hearing must be received by the Chairman of the Board within 10 days from the date that the employee receives formal written notice of disciplinary action. A claim that the written notice of disciplinary action was not received by the employee will not be a defense. When properly appealed, disciplinary action will be stayed pending the grievance Board hearing.

(2) Once all preliminary matters have been resolved, proper written notice containing the date, location, and other pertinent information will be furnished to the employee. Included in this notice will be the chairman's selection for the members to serve on the grievance Board hearing committee.

(3) All documents that either party intends to present at the hearing will be furnished to the opposing party no later than 10 days prior to the hearing. Any document not timely produced to the opposing party will not be considered by the committee.

(4) Either party may request a reporter. The hearing officer will determine if a court reporter is necessary and make arrangements for the reporter to be present. This expense will be paid by the requesting party. Copies of the transcript will be paid for by the parties requesting them. Other expenses incurred by the appealing employee or expenses for witnesses he requests who are not members of this agency must be paid for by the employee.

(5) The hearing officer may request the presence and assistance of a representative from the attorney general's office at such hearings.

(6) A finding rendered by a grievance Board hearing committee will be based on majority rule. A finding rendered by a grievance Board hearing committee may take the form of one of the following:

(A) support the departmental disciplinary action taken;

(B) recommend a lesser or greater disciplinary action; or

(C) recommend no disciplinary action to be taken.

(7) Upon completion of the hearing, the hearing officer will furnish the findings to the Chairman of the Board within 10 days from the conclusion of the hearing. The Chairman of the Board will report the findings to the employee within 10 days of the Chairman of the Board's receipt of the findings.

(8) Attorneys participating in the hearing process are reminded that this hearing is not being conducted under rigid judicial procedure, but is to be conducted informally but orderly. Testimony shall be taken under oath.

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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Frank DiTucci
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TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 28. MEDICAID THIRD PARTY RECOVERY

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts an amendment to §28.102, and new §§28.501-28.503 relating to health insurer requirements for third party recovery in the Medicaid program. Section 28.503 is adopted with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1252). Sections 28.102, 28.501 and 28.502 are adopted without changes and therefore will not be republished.

The Social Security Act, §1902a(25) (codified at 42 U.S.C. §1396a(a)(25)) requires the department to implement reasonable procedures to identify, establish, and seek recovery from third parties who may have a legal liability to pay for services provided by Medicaid. The Human Resources Code, §32.042, establishes the requirement that the department must identify Medicaid recipients and applicants who have third party health insurance coverage and that health insurers must provide information to the department to accomplish this requirement. It also provides a penalty for any insurer who fails or refuses to comply with the requirements of the section. These final rules implement the department's procedures for entering into agreements with health insurers, the information required from health insurers, the method of compliance and protections of confidentiality of Medicaid recipients and health insurers providing the information, and the imposition of penalties for a health insurer's failure to provide the requested information.

There were no comments received from the public on the proposed rules. The department is making the following editorial changes to clarify the intent and improve the accuracy of the rules.

Change: Concerning §28.503(e), the department clarified that if the insurer did not request a hearing within the time stated, the right to a hearing is waived. Also, concerning §28.503(e), the department deleted the statement that the penalties would accrue until paid or until final judgment, as this provision is redundant and all penalties are appealable and subject to review by the court. No other changes were made to the rules.

Subchapter A. GENERAL PROVISIONS

25 TAC §28.102

The amendment is adopted under the Human Resources Code, §32.033, which gives the department the authority to adopt rules for the enforcement of its third party recovery rights, and Government Code, §531.021, which gives the Health and Human Services Commission the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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

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Subchapter E. HEALTH INSURER REQUIREMENTS

25 TAC §§28.501-28.503

The new sections are adopted under the Human Resources Code, §32.033, which gives the department the authority to adopt rules for the enforcement of its third party recovery rights, and Government Code, §531.021, which gives the Health and Human Services Commission the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

§28.503. Notice and Appeal of Administrative Penalty.

(a) The department will send the insurer a Notice of Administrative Penalty at least 30 days prior to the date that administrative penalties will begin to accrue. The notice will contain the following information:

(1) the date on which administrative penalties will begin to accrue if the information requested by the department is not received on or before that date; and

(2) the amount of the administrative penalty which will be assessed for each day of non-compliance after the date indicated on the notice letter.

(b) If the insurer does not submit the information on or before the date on which administrative penalties begin to accrue, penalties will be assessed as stated in the notice letter.

(c) An insurer may request a hearing in writing within 20 days of receiving written notice from the department of administrative penalty .

(d) If a hearing is requested, the hearing is a contested case under the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing rules in Chapter 1 of this title (relating to Formal Hearings).

(e) If an insurer fails to submit a request for hearing within 20 days from the date of the notice letter, or fails to appear at a scheduled hearing, the right to a hearing is waived and the amount of penalties assessed per day of non-compliance is final.

(f) The order of administrative penalty will be reported to the attorney general for collection.

(g) The enforcement of the penalty may be stayed during the time the order is under judicial review if the insurer pays the penalty assessed as of the date of the order to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. An insurer who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by the Texas Rules of Civil Procedure.

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 34. WAIVER PROGRAM FOR MEDICALLY DEPENDENT CHILDREN

25 TAC §34.3, §34.31

On behalf of the State Medicaid Director, the Texas Department of Health (department) adopts an amendment to §34.3 and new §34.31, concerning deinstitutionalization of children from Texas nursing facilities under emergency and non-emergency situations. Section 34.3 and new §34.31 are adopted with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1254).

The sections are intended to allow the department to move eligible children from nursing facilities to their homes, if the parent(s) make that choice. New §34.31 allows the Medically Dependent Children Program (MDCP) to offer program participation to eligible children in the event of an emergency or unforeseen closure of a Texas nursing facility and makes permanent an emergency rule addressing this issue adopted by the board on November 19, 1999.

Amended §34.3 broadens the pool of potentially eligible children who may be considered for non-emergency deinstitutionalization through an existing interagency agreement with the Texas Department of Human Services. It eliminates the requirement that a child must have been a resident in a Texas nursing facility prior to September 1, 1997, to be considered under the interagency agreement. The amendment requires only that the child have been a resident in a Texas nursing facility for four months to be considered for participation under the agreement. If, prior to residency in a Texas nursing facility, the child resided in another institution in Texas for long term care purposes, the amendment allows that time in the other institution to count towards the four months of residency in a Texas nursing facility. Further, MDCP retains the option of giving preference for access to these limited slots to children who were residing in a Texas nursing facility prior to the adoption of these rules.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

Comment: One commenter requested that the language in the final rules clarify that slots designated for deinstitutionalization under the interagency agreement would be preserved for that purpose and would not be used for children served under the emergency deinstitutionalization provision.

Response: The department disagrees. It cannot assure that these slots will be preserved in such a situation. Utilization rates of slots designated under the interagency agreement, the number of children requiring slots under the emergency deinstitutionalization, and fiscal implications are among the issues that will be considered with respect to preservation of slots. No change was made as a result of this comment.

Two commenters requested that the language related to deinstitutionalization under the interagency agreement state that any child who has resided in a nursing facility in the past six months have access to these slots, thereby removing the date-specific residency requirement.

The department agrees in part. The commenters recommendation has been modified to eliminate the date-specific residency requirement. The department has revised the language of §34.3(c) to allow any child who has resided in a Texas nursing facility for four months since September 1, 1995, to access these slots; however, preference for access to these slots may be given to those children who were residing in the Texas nursing facility prior to the effective date of these new and amended rules. This modification comports with the departments twofold intent: it provides an opportunity for a broader pool of children to be considered under the interagency deinstitutionalization agreement, and it is structured in a manner that precludes the placement of a child in a nursing facility for the purpose of accessing one of the deinstitutionalization slots.

The comments received were generally favorable; however, commenters had questions, specific concerns, and/or offered suggestions for changes. The commenters were Advocacy, Inc., and United Cerebral Palsy of Texas.

The amendment and new section are adopted under the Social Security Act, §1915(c) relating to Medicaid waiver programs for home or community based services; Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991), as amended by Chapter 747, Actions of the73rd Legislature (1993) which authorizes the Texas Board of Health (board) to adopt rules necessary to administer the MDCP; and the Health and Safety Code §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§34.3. Participant Eligibility Criteria.

(a) Applicant eligibility. To be an applicant of the Medically Dependent Children Program (MDCP), an individual must reside in Texas.

(b) Participant eligibility. To be a participant of the MDCP, an individual must:

(1) live in Texas;

(2) be under 21;

(3) be Medicaid eligible;

(4) participate in no other §1915(c) Medicaid waiver program;

(5) meet the medical necessity criteria for nursing facility care. Each applicant's/participant's medical necessity criteria must be assessed on the client assessment review and evaluation form. Reevaluations are performed at a minimum every 12 months using the same process;

(6) have a physician's signed approval attesting that the authorized and other specified services are necessary to avoid institutional placement and are appropriate to meet the participant's needs in the home. The physician-approved individual plan of care (IPC) must specify health-related care needs and must document waiver services, non-waiver Medicaid services, and any other home and community-based services, as well as services and supports provided by the primary caregiver(s);

(7) have an IPC which documents the Texas Department of Health's (department's) plan to authorize and the participant's plan to utilize waiver services without an interruption in service delivery of more than 60 days;

(8) have an approved IPC for which the projected annual cost for waiver services does not exceed the established annual waiver service cost allowance. The allocation for direct care waiver services (respite services and adjunct supports) for participants who are age

20 will be prorated for the participant's remaining eligibility period. The department may grant exceptions to the cost allowance for respite services or adjunct supports on a temporary basis when extenuating circumstances preclude the development or implementation of an IPC within the cost allowance. In such cases, approval will depend upon the department's review of the circumstances of the request; upon the availability of other resources, including family, volunteer, or community resources; and upon the waiver program's financial status. The department may deny requests for exceptions to the annual cost allowance if vacancies in the waiver are frozen, if the program anticipates a budgetary shortfall, if the primary caregiver does not participate in identifying and pursuing other possible resources which must be used prior to waiver services, or if the request does not demonstrate that extenuating circumstances exist. A reduction in the annual cost allowance does not in itself constitute an extenuating circumstance. Following a review of the circumstances, the department will determine which category of exceptional funding is appropriate, as described in subparagraphs (A) and (B) of this paragraph. The specific amount approved within a given category will be based on a budget developed to address the extenuating circumstances. Once approved, continuation of funding for each approved exception to the cost allowance is subject to periodic review and renewal.

(A) Category A. The department may grant an exception to a participant's annual cost allowance not to exceed 10% of the participant's annual cost allowance if the existing extenuating circumstances will likely be resolved within six months.

(B) Category B. The department may grant an exception to the participant's annual cost allowance under one or more of the special circumstances described in clauses (i)-(iv) of this subparagraph. The total amount allowable for exceptions under Category B may not exceed $5,000. Special circumstances include:

(i) the caregiving ability of the participant's sole primary caregiver is expected to be affected significantly for more than six months due to a disability or illness of the caregiver;

(ii) the caregiving ability of the participant's primary caregiver is expected to be affected significantly for more than six months due to a disability or illness of one of the participant's siblings, parents, grandparents, or other member of the participant's household; or due to the recent loss of another primary caregiver;

(iii) the participant's primary caregiver needs additional services to support provider training during a transition from one type of provider to another. An exception under this circumstance may not exceed $1,000; and

(iv) the participant has a severe immunological disorder or a similar medical condition which would make child care in a group setting a life-threatening situation; and

(9) meet the following requirements:

(A) the applicant or participant must be eligible for supplemental security income (SSI) benefits in the community; or

(B) the applicant or participant must meet SSI disability criteria and must:

(i) meet the institutional income and resource criteria established for the Texas Medicaid Program; or

(ii) be an individual under 19 years of age for whom the Texas Department of Protective and Regulatory Services (PRS) assumes financial responsibility, in whole or in part (not to exceed Level II foster care payment), and who is being cared for in:

(I) a family foster home which is licensed or certified and supervised by PRS; or

(II) a family foster home which is licensed or certified and supervised by a licensed public or private nonprofit child-placing agency; or

(iii) be a member of a family which receives full Medicaid benefits as a result of qualifying for temporary assistance to needy families (TANF); or

(iv) qualify under other Medicaid Type Programs covered under the waiver.

(c) Deinstitutionalization.

(1) Any MDCP registrant who has resided in a Texas nursing facility for at least four months since September 1, 1995, may be considered for deinstitutionalization into MDCP under §34.3; however, if, prior to residency in a Texas nursing facility, the child resided in another institution in Texas for long term care purposes, that time in the other institution may count towards the four months of residency in a Texas nursing facility for purposes of this section; and further, preference for access to these slots may be given to those children who were residing in a Texas nursing facility prior to the effective date of the rules, if:

(A) has been determined to be Medicaid eligible; and

(B) has met all of the criteria in subsection (b) of this section.

(2) The names of qualified individuals applying for nursing facility deinstitutionalization shall be maintained on a waiting list separate from that for other MDCP registrants.

(3) An individual applying for nursing facility deinstitutionalization under MDCP shall become eligible for waiver services under this subsection if:

(A) a vacancy designated for qualified individuals under this subsection exists within the waiver; and

(B) the individual's Texas Index for Level of Effort (TILE) funding is available to be allocated for home and community-based services.

(d) Applicant/participant choice. An eligible applicant or participant and his parent or guardian or both must be provided the option of:

(1) participating in the waiver program as specified in the IPC;

(2) being placed in institutional care; or

(3) refusing both options specified in paragraphs (1) and (2) of this subsection.

(e) Waiting lists. Participants in the waiver program are selected from the MDCP waiting list, which is maintained on a first-come, first-served basis. The names of Medicaid-eligible, qualified individuals who complete the MDCP pre-application registration process and who are residents of a Texas nursing facility as described in subsection (c) of this section are maintained on a separate waiting list for nursing facility deinstitutionalization. Their participation in the waiver will not delay the entry of individuals who are not residents of a Texas nursing facility and whose names are maintained on the regular MDCP waiting list. A registrant's waiting list status is assured unless:

(1) the pre-application registration materials clearly indicate the individual does not qualify as a candidate for the waiver program; or

(2) the family or the registrant requests that the registrant's name be removed from the waiting list.

(f) Medicaid eligibility date. A participant's Medicaid eligibility under the waiver is contingent upon the actual delivery of waiver services. For participants eligible for Medicaid only through this waiver, the effective date of Medicaid coverage coincides with the date the participant actually receives waiver services.

(g) Application deadline. If a registrant fails to complete and return all required application materials within 35 calendar days from the date of the application transmittal letter, the registrant's potential application shall be closed. In such a case, the registrant's name may be re-entered at the end of the waiting list, upon request. Exceptions may be made following a review of special circumstances.

(h) Eligibility denial and exceptions. Unless an exception is made following a review of special circumstances, waiver eligibility shall be denied or terminated if:

(1) waiver services are not utilized as described in the IPC, unless:

(A) the participant is hospitalized;

(B) the planned waiver service provider is temporarily unable to comply with the participant's IPC;

(C) a replacement waiver service provider is being sought; or

(D) other non-waiver, non-Medicaid resources are being used temporarily;

(2) the applicant/participant's primary caregiver fails to return a signed IPC within the specified time frame, not to exceed 30 days from transmittal of the unsigned document;

(3) the applicant/participant's primary caregiver does not participate in the eligibility determination process, the care planning process, or the implementation of the IPC;

(4) the applicant/participant's primary caregiver does not comply with the responsibilities enumerated in a departmental form which he/she has signed; or

(5) the IPC, inclusive of MDCP services, does not reflect a routine direct care contribution by the primary caregiver(s).

(i) Reduction in services. Waiver services may be reduced when:

(1) the need for waiver services decreases as determined during the care planning process;

(2) non-waiver resources become available;

(3) the primary caregiver does not participate fully in the care planning process;

(4) the participant's TILE score changes in such a way that the participant's annual cost allowance decreases;

(5) the rate(s) paid to MDCP providers increase and the participant's IPC is already at the maximum annual cost allowance;

(6) a time-limited exception to the annual cost allowance expires; or

(7) MDCP expenditures and budgetary considerations and constraints indicate that cost reduction is necessary.

§34.31. Deinstitutionalization Due to Closure of Facility.

(a) An individual who resided in a Texas nursing facility and continued to reside there until scheduled to be discharged from the facility due to its closure may apply for services to support the individual's deinstitutionalization if the individual:

(1) has been determined to be Medicaid eligible; and

(2) has met all of the criteria in of §34.3(b) of this title (relating to Participant Eligibility Criteria).

(b) The names of qualified individuals applying for nursing facility deinstitutionalization under the Medically Dependent Children Program (MDCP) shall be maintained on a waiting list separate from that for other MDCP registrants.

(c) An individual applying for nursing facility deinstitutionalization under MDCP shall become eligible for waiver services under this subsection if:

(1) a vacancy designated for qualified individuals under this subsection exists within the waiver; and

(2) the individual's Texas Index for Level of Effort (TILE) funding is available to be allocated for home and community-based services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Part 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

Chapter 419. MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

Subchapter O. ENROLLMENT OF MEDICAID WAIVER PROGRAM PROVIDERS

25 TAC §§419.701 - 419.708, 419.710 - 419.712

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §419.711 and §419.712 and amendments to §§419.701 through 419.708 and §419.710 of Chapter 419, Subchapter O, concerning Enrollment of Medicaid Waiver Program Providers, which was proposed in the March 10, 2000, issue of the *Texas Register* (25 TexReg 1963 - 1966). Sections 419.702, 419.704 through 419.707, 419.711, and 419.712 are adopted without changes to the text as proposed. Sections 419.701, 419.703, 419.708 and 419.710 are adopted with changes.

The amendments include a provision regarding proposed assignments that are part of a plan approved by the department to redesign the public provider service system. TDMHMR believes it necessary to create an exception for public providers to §419.710(d)(1), which requires a proposed assignee to be provisionally certified or hold a current waiver program agreement, to ensure that such plans are implemented timely. Additionally, TDMHMR believes that through the process of approving these plans it can ensure the capability of the public provider to be a waiver program provider, even though the public provider may not be provisionally certified or hold a current waiver program provider agreement.

New sections are added to include the rules, laws, and regulations referenced in the subchapter and to clarify the distribution of the subchapter. Amendments are made to clarify that the processes in the subchapter address the requirements for a person "to obtain a waiver program provider agreement" instead of "to enroll as a program provider." Definitions added for the terms "community center" and "SOCS." Definitions of the terms "Title XVIII," "Title XIX," and "Title XX" are deleted because the terms are not used in the subchapter. The definition of the term "HCSSA license" is revised indicating that the Texas Department of Human Services is responsible for issuing the such license. Clarifying language is added requiring that an applicant submit a separate application packet for each waiver program agreement it seeks to obtain. Also, a provision is added requiring that professional references support the work experience required in the subchapter. References to other department rules are updated to reflect newly adopted rules.

In §§419.701, 419.703(13), 419.708(a), and 419.710(i), references to the Mental Retardation Local Authority (MRLA) Program are revised consistent with the title of the program rule. Language is deleted from the definition of the term "applicant" because it is unnecessary to its meaning. Language is added to clarify the definition of the term "LAR (legally authorized representative)." In §419.708(a) and §419.710(i), the references to Chapter 419, Subchapter P (relating to Home and Community-based Waiver Service - OBRA (HCS-O) Program are revised consistent with the title of the program rule.

A public hearing was held on March 22, 2000, at TDMHMR, Central Office, Austin. No public testimony was received. Big Spring State Hospital responded stating no comment.

The new sections are adopted under the Texas Health and Safety Code, §532.015(a), which provides TDMHMR with broad rulemaking authority; the Texas Government Code, §531.021(a), and the Texas Human Resources Code §32.021(a), which provide the HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Acts 1995, 74th Texas Legislature, Chapter 6, §1, (Senate Bill 509), which clarifies the authority of HHSC to delegate the operation of all or part of a Medicaid program to a health and human services agency; and the Human Resources Code, §32.021(c), which provides an agency operating part of the Medicaid program with the authority to adopt necessary rules for the proper and efficient operation of the program. HHSC has designated TDMHMR as the operating agency for selected Medicaid waiver programs including Home and Community-based Services (HCS), the Home and Community-based Services - OBRA (HCS-O) Program, and the Mental Retardation Local Authority (MRLA) Pilot programs.

§419.701. Purpose.

The purpose of this subchapter is to establish the process and conditions under which the Texas Department of Mental Health and Mental Retardation (TDMHMR) enters into a waiver program provider agreement with providers of home and Community-based services waiver programs operated by TDMHMR including the Home and Community-based Services (HCS), Home and Community-based Services - OBRA (HCS-O), and the Mental Retardation Local Authority (MRLA) Pilot programs as authorized by the Health Care Financing Administration in accordance with §1915(c) of the Social Security Act.

§419.703. Definitions.

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

(1) Affiliate - An employee or independent contractor of an applicant or a person with a significant financial interest in an applicant including, but not limited, to the following:

(A) if the applicant is a corporation, then each officer, director, stockholder with an ownership of at least 5%, subsidiary, and parent company;

(B) if the applicant is a limited liability company, then each officer, member, subsidiary, and parent company;

(C) if the applicant is an individual, then the individual's spouse, each partnership and each partner thereof of which the individual is a partner and each corporation in which the individual is an officer, director, or stockholder with an ownership of at least 5%;

(D) if the applicant is a partnership, then each partner and parent company; or

(E) if the applicant is a group of co-owners under any other business arrangement, then each owner, officer, director, or the equivalent thereof under the specific business arrangement, and each parent company.

(2) Applicant - A person seeking to participate as a program provider.

(3) Assignment of a waiver program provider agreement - The transfer of rights, interests, and obligations of the waiver program provider agreement from the program provider to another person.

(4) Community center - An entity established under the Texas Health and Safety Code, Chapter 534, Subchapter A.

(5) Debarred - Termination of rights to continue an existing Medicaid provider agreement, to receive a new Medicaid provider agreement, to participate as a provider or manager of a provider agency, or to make a bid, offer, application or proposal for a TDMHMR Medicaid provider agreement or contract in accordance with §406.63(b)(2) of this title (relating to Debarment and Suspension of Current and Potential Contractor's Rights) of Chapter 406, Subchapter B (relating to ICF/MR Programs Contracting Requirements).

(6) Excluded - The temporary or permanent exclusion by a state or federal authority of a person from participating as a provider in a federal health care program as defined in Section 1128(f) of the Social Security Act. Exclusion includes refusal to reimburse the person for items and services furnished by that person and refusal to enter into or renew a provider agreement or the termination of the provider agreement with the person.

(7) HCSSA license - A Home and Community Support Services Agencies license issued by the Texas Department of Human Services.

(8) LAR (legally authorized representative) - A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and who may include a parent, guardian, or managing conservator of a child or adolescent, a guardian of an adult, or a personal representative of a deceased individual.

(9) Person - A corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, individual, or any other legal entity.

(10) Program provider - A person who delivers waiver program services under a waiver program provider agreement with TDMHMR.

(11) SOCS - State-operated community services.

(12) Self-assessment - The document an applicant completes to describe the procedures that are used and the evidence that is presented to demonstrate the applicant's compliance with the program provider principles.

(13) Waiver program - A home and community-based program serving people with mental retardation and/or related conditions which is operated by TDMHMR, including the HCS, HCS-O, and MRLA Pilot programs, as authorized by the Health Care Financing Administration in accordance with Section 1915(c) of the Social Security Act.

(14) Waiver program provider agreement - A written agreement between TDMHMR and a program provider that describes the conditions for participating as a program provider, a program provider's obligations in providing waiver program services, and the obligations of TDMHMR.

§419.708. Provider Certification.

(a) No later than 120 calendar days following TDMHMR's approval of the enrollment of the first consumer in a provisionally certified provider's program, TDMHMR or its designee conducts a certification review in accordance with Chapter 419, Subchapter D (relating to Home and Community-based Services (HCS)), Chapter 419, Subchapter P (relating to Home and Community-based Services - OBRA (HCS-O) Program), or Chapter 409, Subchapter L (relating to Mental Retardation Local Authority (MRLA) Pilot Program), as applicable.

(b) TDMHMR may terminate the waiver program provider agreement of a provisionally certified provider that is not certified within 540 calendar days following the effective date of the waiver program provider agreement.

(c) TDMHMR may terminate the waiver program provider agreement of a provisionally certified provider that was provisionally certified prior to the effective date of this subchapter but is not certified within 365 calendar days following the effective date of this subchapter.

(d) A program provider whose waiver program provider agreement has been terminated in accordance with subsections (b) or (c) of this section must re-apply to obtain a waiver program provider agreement in accordance with this subchapter.

§419.710. Waiver Program Provider Agreement Assignment.

(a) No assignment of a waiver program provider agreement is effective until it is approved in writing by TDMHMR. The effective date of the assignment may not precede the date of TDMHMR's approval of the assignment.

(b) A program provider must notify TDMHMR Medicaid Administration in writing at least 30 calendar days prior to the proposed assignment of its waiver program provider agreement. This notification must include the legal name of the proposed assignee, proposed date of the assignment, and the provider vendor number. If the program provider fails to provide this notification in a timely manner, approval of the assignment may be delayed.

(c) Upon approval of the assignment, the program provider (hereafter referred to as the assignor) and the assignee, as indicated, are subject to the following provisions.

(1) The assignee must keep, perform and fulfill all of the terms, conditions and obligations that must be performed by the assignor under the waiver program provider agreement and this subchapter.

(2) The assignee is subject to all pending conditions which exist against the assignor, including but not limited to, any plan of correction, audit exception, vendor hold, or proposed termination of a waiver program provider agreement.

(3) The assignor and the assignee are jointly and severally liable to TDMHMR for any liabilities or obligations that arise from any act, event, or condition which occurred or existed prior to the effective date of the assignment and which is identified in any survey, review, or audit conducted by TDMHMR.

(4) The assignor must complete and submit billing claims to TDMHMR for services provided prior to the approval date of the assignment in accordance with state rules.

(5) The assignee must complete the enrollment/transfer process within 95 calendar days of the effective date of the assignment if any consumer requests to transfer into or from the assignor's program or any initial enrollments into the assignor's program are pending as of the effective date of the assignment.

(6) The assignor must give written notification to each consumer or the consumer's LAR in the assignor's program of the proposed assignment, the proposed effective date of the assignment and of the consumer's option to transfer to another program provider.

(7) The assignee must retain written documentation signed by each consumer or the consumer's LAR verifying that the notification was received and indicates the consumer's or LAR's choice whether to receive services from the assignee after the assignment is effective or to transfer to another program provider.

(d) Except as provided by subsection (e) of this section, TDMHMR does not approve an assignment unless:

(1) the proposed assignee holds a current waiver program provider agreement with TDMHMR or is eligible to enter into a provider agreement with TDMHMR as specified in §419.707(a) of this title (relating to Waiver Program Provider Agreement);

(2) consumers are enrolled and receiving services or individuals are pending enrollment (as indicated by the TDMHMR Automated Enrollment and Billing System) in the assignor's program; and

(3) the assignor and the proposed assignee submit an assignment agreement to TDMHMR that includes:

(A) a statement that the assignor and assignee agree to the provisions set forth in subsection (c) of this section;

(B) the effective date of the assignment, the name and address of the assignor and assignee and the provider vendor number to be assigned;

(C) a statement that the assignment is subject to and contingent upon TDMHMR's written approval of the assignment or the assignment is void;

(D) the signatures of the authorized representatives of the assignor and the assignee acknowledged before a notary public;

(E) a blank space for TDMHMR's representative to sign indicating approval of the assignment agreement; and

(F) any other provision required by law to make the assignment agreement legally enforceable.

(e) If the proposed assignment is part of a plan approved by TDMHMR to redesign the public provider service system, the proposed assignee is not subject to the provisions in subsection (d)(1) of this section. An example of such a proposed assignment is when the proposed assignee is a community center and the proposed assignor is a SOCS or a community center.

(f) TDMHMR may disapprove an assignment for good cause including, but not limited to:

(1) a vendor hold on Medicaid payments is currently in effect for a program operated by the proposed assignee; or

(2) a proposed contract/provider agreement termination is in effect for a program operated by the proposed assignee.

(g) On the date TDMHMR receives notice of a proposed assignment in accordance with subsection (b) of this section, TDMHMR may place a vendor hold on Medicaid payments to the assignor until all findings made from a survey, billing and payment review or audit which has been or is being conducted by TDMHMR are resolved.

(1) At its discretion, TDMHMR may allow an assignor to obtain a surety bond or an irrevocable letter of credit in order to release the vendor hold prior to completing a survey, billing and payment review, or audit.

(2) The surety bond or irrevocable letter of credit must be for a period of three years. The three-year period begins with the effective date of the assignment. TDMHMR specifies the amount of the surety bond or letter of credit.

(3) The surety bond or irrevocable letter of credit must be in a format acceptable to TDMHMR and must not include requirements for TDMHMR to:

(A) return the original bond or irrevocable letter of credit prior to receipt of payment; or

(B) submit a sight draft or any other draft or demand requirement other than TDMHMR's letter demanding payment.

(4) If the assignor submits an acceptable surety bond or irrevocable letter of credit to TDMHMR, TDMHMR releases the vendor hold.

(5) If TDMHMR does not approve the proposed assignment, the vendor hold is released.

(h) TDMHMR may recoup Medicaid payments from the assignor or assignee for liabilities or obligations arising from any act, event, or condition which occurred or existed prior to the effective date of the assignment and which is identified in a survey, review, or audit conducted by TDMHMR.

(i) If TDMHMR approves an assignment, TDMHMR or its designee conducts an on-site certification review within 120 calendar days of the effective date of the assignment in accordance with Chapter 419, Subchapter D (relating to Home and Community-based Services (HCS)), Chapter 419, Subchapter P (relating to Home and Community-based Services - OBRA (HCS-O) Program), or Chapter 409, Subchapter L (relating to Mental Retardation Local Authority (MRLA) Pilot Program), as applicable.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2000.

TRD-200004064
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-5216

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TITLE 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 5. PROPERTY AND CASUALTY

Subchapter N. RESIDENTIAL PROPERTY INSURANCE MARKET ASSISTANCE PROGRAM

28 TAC §§5.9403 - 5.9406, 5.9408 - 5.9411

The Commissioner of Insurance adopts amendments to §§5.9403, 5.9404, 5.9405, 5.9406, 5.9408, 5.9409, 5.9410, and 5.9411, concerning the plan of operation of the Residential Property Insurance Market Assistance Program (MAP). The amendments to §§, 5.9404, 5.9406, 5.9409, 5.9410, and 5.9411 are adopted without changes to the text published in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3168) and will not be republished. The amendments to §§5.5903, 5.9405 and 5.9408 are adopted with changes.

Article 21.49-12 was enacted by the Texas Legislature in 1995 to require the Commissioner to establish a voluntary market assistance program to assist consumers in obtaining residential property insurance coverage, defined in Article 21.49-12, §1(a) as homeowners and residential fire and allied lines coverage, in underserved areas that are determined and designated by the Commissioner. The purpose of the MAP is to provide a fair, efficient, and economical voluntary mechanism to assist Texas consumers in obtaining residential property insurance in designated underserved areas of the state, including rural areas. The adopted amendments are necessary to update the plan of operation (i) to incorporate changes that allow the MAP application process to be handled directly by department staff without requiring MAP applications to be submitted through an originating agent; (ii) to incorporate changes that reflect that residential property insurance in underserved areas does not include farm and ranch owners and farm and ranch insurance policies; and (iii) to revise three miscellaneous areas of the plan. Sections 5.9405(b) and 5.9408(b)(3) were changed from the text as proposed to conform references to Article 21.49-12, §§(2) and (4) to the new numbering of subsections of Article 21.49-12 required by S.B. 324 (enacted by the 76th Texas Legislature.) Correction of a typographical error has been

made to §5.9403. These amendments are recommended for adoption by the MAP Executive Committee pursuant to Article 21.49-12, §2(a) of the Insurance Code and §5.9412 of the plan of operation. The amended sections were considered by the Commissioner of Insurance in a public hearing on May 24, 2000, Docket No. 2447.

The following adopted amendments to §§5.9403, 5.9406 and 5.9409 concern the processing of MAP applications directly by department staff without requiring the applications to be submitted through an originating agent. Section 5.9403 is amended in definition number (2) entitled "Application" to add the language "or completed by an applicant and the Department" to clarify that the department staff may assist applicants with completion of the MAP applications in addition to MAP applications being completed and submitted through an originating agent. Section §5.9406 is amended in subsection (e) to provide that if the department's MAP Division completes an application, the department will obtain documentation concerning eligibility from the applicant or will obtain information from the applicant to obtain the needed eligibility documentation directly from the agent. Subsection (g) is amended to add that the department as well as an originating agent may re-submit an application to the MAP. Section 5.9409 is amended in subsection (a) to provide that the department's MAP Division will assist applicants applying directly to the MAP as specified in subsection (a)(5) (A)-(C). Subsection (a)(1) is amended to delete the word "only" to clarify that applicants may apply directly to the MAP in lieu of applications only being submitted through an originating agent. Subsection (a)(2) is deleted in its entirety because the department staff is now authorized to complete applications directly without the requirement of referring applicants to participating agents. Subsection (a)(3) is renumbered as (a)(2) and is amended to delete the reference to the Property and Casualty Intake Unit and provide that insurers submit completed application packets to the MAP Division. New subsection (a)(3) has been added to allow applicants to apply directly to the MAP and receive assistance in completing the application from department staff. It further specifies that the same eligibility requirements apply to both direct applications and those submitted through originating agents. New subsection (a)(4) has been added to clarify that the MAP application form (TMAP-10) will be used for the direct applications with information relating to the originating agent marked "not applicable." New paragraph (5)(A) specifies that when applicants apply directly to the MAP, department staff will request ZIP code information to verify that the risk is located in an underserved area. New paragraph (5)(B) outlines the procedure that department staff will follow to determine if the applicant meets the eligibility requirements concerning his/her inability to obtain residential property insurance and that if the applicant requests assistance with obtaining this information the department staff member will make a diligent effort to provide the assistance. New paragraph (5)(C) specifies that department staff will determine eligibility for participation in the MAP once the required information concerning the applicant's inability to obtain residential property insurance is received. Paragraph (6)(A) is amended to provide that if an applicant applies directly to the department, the application will be initialed and dated by the staff member assisting with the application. Subsection (b)(1) is amended to clarify that the preliminary processing steps described in the paragraph apply only to applications submitted by an originating agent. New subsection (b)(2) has been added to provide that if the applicant has applied directly to the MAP, preliminary processing includes logging in the name and address of the applicant. Subsection (b)(4) is amended to clarify that ineligible applications are required to be returned to the originating agent only if the application is submitted through an originating agent. Subsection (c)(1) is amended in paragraph (1) to provide that eligible MAP applications will be provided electronically by the department's MAP division to all participating insurers. Paragraphs (1)(A) and (2)(A) of subsection (c) are amended to specify how the requirements apply in instances where an application is submitted through an originating agent and also in instances where the applicant applied directly to the MAP. Subsection (d)(4) is amended in paragraph (4) to clarify that the requirement of notifying the originating agent of the policy issuance is only required if the application was submitted by an originating agent. Section 5.9409 is amended to delete subsection (f) in its entirety. This amendment is necessary because the 76th Legislature enacted S.B. 324 which repealed section 5 of Article 21.49-12 of the Insurance Code that imposed the confidentiality provisions on the MAP program. The confidentiality requirements were repealed in Article 21.49-12 because such requirements would greatly impede the department staff's efforts to assist applicants with completion of their applications over the phone. The adopted amendments to §5.9403 and 5.9494 implement S.B. 323 (enacted by the 76th Texas Legislature) which establishes that residential property insurance for purposes of the MAP does not include farm and ranch and farm and ranch owners policies. The Legislature enacted S.B. 1499 during the 75th Legislature to provide that effective January 1, 1998, farm and ranch and farm and ranch owners insurance was no longer regulated as a personal lines coverage pursuant to Articles 5.35 and 5.101 of the Insurance Code, but rather was to be regulated as commercial property insurance under Article 5.13-2 of the Insurance Code. S.B. 323 (enacted by the 76th Texas Legislature) specifies that residential property insurance does not include farm and ranch coverages and that the MAP will no longer assist homeowners in underserved areas in obtaining farm and ranch coverages because they are now defined as commercial coverages. Section 5.9403 is amended to delete the reference to farm and ranch coverages from the definition of "residential property insurance." Section 5.9404, subsections (b) and (c) are amended to clarify that residential property insurance forms and endorsements do not include farm and ranch and farm and ranch owners policies and may not be used either in Class 1 or Class 2 designated underserved areas in writing coverage through the MAP. A provision is added to the section to clarify that statutory references do not include farm and ranch and farm and ranch owners policies. Subsection (d) of §5.9404 is amended in paragraphs (2) (F) and (3)(E) to delete provisions that provide that the types of coverage that may be provided in underserved areas include any other coverage available under policy forms and endorsements filed by an individual insurer pursuant to Article 5.13-2 for the purpose of providing farm and ranch and farm and ranch owners coverage and approved by the Commissioner. The remaining adopted amendments revise three miscellaneous areas of the plan of operation. Subsections (a) and (b) of §5.9405, subsections (b)(3) and (d)(1)(A) of §5.9408, and subsection (a)(1) of §5.9411 have been amended to conform references to Article 21.49-12 §2 to the new numbering of subsections of Article 21.49-12 required by S.B. 324. Section 5.9409 is amended to redesignate current subsections (g) and (h) as new subsections (f) and (g) respectively. Section 5.9409 is also amended in subparagraph (F)(ii) to change the reference to "key rates" as a rating factor to "public protection classification codes." Section 5.9410 (relating to the Executive Committee) is amended in subsections (c)(2) and (d)(4) to add

language to clarify that the Executive Committee and subcommittees are not required to meet quarterly unless there are items of substantive business to conduct.

One commenter supports the amendments that allow the MAP application process to be handled directly by department staff without requiring MAP applications to be submitted through an originating agent and believes that these revisions should make the application process faster, easier, and more accessible to consumers.

For: Office of Public Insurance Counsel.

The amendments are adopted pursuant to the Insurance Code Article 21.49-12 and §36.001. Article 21.49-12 §1(a) requires the Commissioner to establish a voluntary market assistance program to assist Texas consumers in obtaining residential property insurance coverage in underserved areas, which shall be determined and designated by the Commissioner by rule using the standards specified in Article 5.35-3 §1 of the Insurance Code. Article 21.49-12 §2(a) provides that the MAP Executive Committee may submit suitable amendments to the plan of operation to the Commissioner for adoption by rule after notice and hearing. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

§5.9403. Definitions.

The following words and terms when used in this plan of operation, which is contained in §§5.9401-5.9415 of this title (relating to the Residential Property Insurance Market Assistance Program Plan of Operation), shall have the following meanings unless the context clearly indicates otherwise.

(1) Agent commissions–The portion of the premium paid by an insurer participating in the Residential Property Insurance Market Assistance Program for production of the residential property insurance business pursuant to Article 21.49-12 §4 of the Insurance Code.

(2) Application–The form promulgated by the Texas Department of Insurance to be completed by an applicant and the originating agent and submitted to the Texas Department of Insurance or completed by an applicant and the Department to apply for assistance in obtaining residential property insurance through the Residential Property Insurance Market Assistance Program.

(3) Commissioner–Commissioner of Insurance of the State of Texas.

(4) Department–Texas Department of Insurance.

(5) Designated underserved area–An area determined and designated by rule as an underserved area by the Commissioner of Insurance, pursuant to Article 21.49-12 of the Insurance Code, using the standards specified in Article 5.35-3 §1 of the Insurance Code.

(6) Executive Committee–The 11-member body appointed by the Commissioner of Insurance and authorized pursuant to Article 21.49-12 of the Insurance Code to advise and consult with the Commissioner with regard to the administration of the Residential Property Insurance Market Assistance Program.

(7) Insurer–Any insurer licensed to write property or casualty insurance and actually writing residential property insurance in Texas, including Lloyd's, reciprocals, or interinsurance exchanges; an insurer is actually writing residential property insurance in Texas if the insurer has reported under the statistical plan a positive number for residential property insurance direct written premium during the last reporting period.

(8) Issuing agent–

(A) A licensed local recording agent appointed to represent the insurer providing residential property insurance coverage through the Residential Property Insurance Market Assistance Program who signs, executes, and delivers the policies of insurance; maintains a record of the business; examines and inspects the risk; receives and collects premiums; and performs other customary duties of a local recording agent; or

(B) A salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents appointed to represent the insurer providing residential property insurance coverage through the Residential Property Insurance Market Assistance Program who signs, executes, and delivers the policies of insurance; maintains a record of the business; examines and inspects the risk; and receives and collects premiums; and performs other customary duties of a local recording agent.

(9) Manufactured home–Mobile home, manufactured housing, or manufactured home as defined in the Texas Manufactured Housing Standards Act (Texas Revised Civil Statutes, Article 5221f).

(10) MAP–The Residential Property Insurance Market Assistance Program authorized and operated pursuant to Article 21.49-12 of the Insurance Code to assist consumers in Texas in obtaining residential property insurance coverage in underserved areas as determined and designated by the Commissioner of Insurance by rule.

(11) Originating agent–

(A) A licensed local recording agent authorized by Article 21.49-12 of the Insurance Code to complete an application for assistance on behalf of an applicant for submission to the Residential Property Insurance Market Assistance Program without being appointed to represent the insurer providing the coverage through the Residential Property Insurance Market Assistance Program; or

(B) A salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents authorized by Article 21.49-12 of the Insurance Code to complete an application for insurance on behalf of an applicant for submission to the Residential Property Insurance Market Assistance Program without being appointed to represent the insurer providing the coverage through the Residential Property Insurance Market Assistance Program.

(12) Residence premises–The residence premises shown on the declarations page of the insured's residential property insurance policy and which includes the one-family or two-family dwelling and other private structures and grounds.

(13) Residential property insurance–Insurance against loss to real or tangible personal property at a fixed location provided in a homeowners policy or residential fire and allied lines policy.

(14) Residential risk–Dwelling, manufactured home, or other private structure located on the residence premises, and personal property contained therein.

(15) Unaffiliated–Not an affiliate or not affiliated with another insurer or insurers as "affiliate" is defined in the Insurance Holding Company System Regulatory Act (Article 21.49-1 of the Insurance Code).

§5.9405. Rates.

(a) Pursuant to Article 21.49-12 §2(b)(2) of the Insurance Code, each insurer has the right to individually evaluate the risk and apply the rates that are in accordance with the provisions of the Insurance Code that are applicable to that insurer.

(b) Pursuant to Article 21.49-12 §2(b)(3) of the Insurance Code, each insurer has the option of providing a premium quote on the same coverage basis for which it normally provides insurance in this state using its own underwriting guidelines and the rates determined in accordance with the provisions of the Insurance Code applicable to that insurer.

§5.9408. Participating Agents.

(a) Qualifications.

(1) An individual is eligible to perform the functions of an originating agent for a MAP applicant if the individual, at the time the application to the MAP is completed, is duly licensed by the Department as a local recording agent or is a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents.

(2) An individual is eligible to perform the functions of an issuing agent for an insurer voluntarily participating in the MAP if the individual is duly licensed by the Department as a local recording agent and is appointed to represent the insurer or is a salaried representative for an insurer whose plan of operation does not contemplate the use of local recording agents.

(b) Functions of an originating agent.

(1) The originating agent shall complete the application for assistance in obtaining residential property insurance on behalf of the MAP applicant.

(2) The originating agent shall submit the application and documentation required by subsection (e) of §5.9406 of this plan of operation (also subsection (e) of §5.9406 of this title, relating to Eligibility for Referral) regarding cancellation, non-renewal, or declination to the MAP as soon as possible, but no later than the fifth business day following completion of the application.

(3) Pursuant to Article 21.49-12 §4(f) of the Insurance Code, if the originating agent and the issuing agent are not the same person, the originating agent may not be held to be the agent of the insurer unless there is an appointment as specified by Article 21.14 of the Insurance Code.

(c) Functions of an issuing agent.

(1) The issuing agent shall perform all of the customary duties of a local recording agent including, but not limited to, the following:

(A) signing, executing and delivering policies of insurance;

(B) maintaining a record of the business;

(C) examining and inspecting the risk; and

(D) receiving and collecting premiums.

(2) The issuing agent may also be the originating agent.

(d) Agent commissions.

(1) Originating agent's commission.

(A) Pursuant to Article 21.49-12 §4(e) of the Insurance Code, the originating agent shall share commissions with the issuing agent.

(B) The originating agent's share of the commission for the original policy term shall be as follows: $25 when the policy premium is $500 or less, and $50 when the policy premium is over $500.

(C) If the issuing agent is a licensed local recording agent, the originating agent's share of the commission for policy renewals shall be 25 percent of the amount of the commission paid to the issuing agent by the insurer. If the issuing agent is a salaried representative, the originating agent's commission fee for policy renewals shall be $15. The renewal commission and renewal commission fee requirements shall apply only to policy renewals in which the insurer is the same insurer as when the original policy was issued through the MAP.

(D) Within five working days after the issuance date of the insurance policy issued through the MAP, the insurer shall notify the Department by mail or facsimile transmission and the originating agent in writing or via electronic means that the insurance policy was issued. The notice shall include the insurance policy number and the name, address, telephone number, and fax number of the issuing agent.

(E) The issuing agent shall be responsible for payment of the originating agent's share of the commission and commission fee as specified in subparagraphs (B) and (C) of this paragraph within 30 days after the date the commission payment is made to the issuing agent by the insurer.

(2) Issuing agent's commission. The payment of the commission to the issuing agent is based on the contract or agreement between the insurer and the issuing agent.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 6, 2000.

TRD-200003990
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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Proposal publication date: April 14, 2000
For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

Part 1. COMPTROLLER OF PUBLIC ACCOUNTS

Chapter 3. TAX ADMINISTRATION

Subchapter O. STATE SALES AND USE TAX

34 TAC §3.293

The Comptroller of Public Accounts adopts an amendment to §3.293, concerning food; food products; meals; food service, with changes to the proposed text as published in the December 31, 1999, issue of the Texas Register (24 TexReg 12017).

Subsection (g)(3) of this rule is being amended to reflect the increase in the amount exempted from sales tax on individual sales of food, gum, or candy when sold from a bulk vending machine from $ .25 to $ .50 as directed by House Bill 2146,

76th Legislature, 1999. Subsection (e)(1) is clarified to provide that an employee must be involved in preparing or serving food in order for the employee's meal served immediately prior to, during, or after a shift to be nontaxable. Subsection (f)(5) is clarified to provide that the sales price of meals and food in most cases includes separately stated charges for the room or facility.

A grammatical correction replacing the word "which" with the word "that" was made to subsection (f)(4) of the proposed rule.

Comments were received from the Texas Hotel and Motel Association, suggesting the addition of language in subsection (f)(5) to clarify that the sales price for meals and food charged by a hotel to a customer does not include a separately stated charge for a room or facility for which hotel occupancy tax is already imposed under Tax Code, §156.051. The comptroller accepts the suggestion and has changed the language in subsection (f)(5) to clarify this point. However, as stated in the rule, hotel occupancy tax paid by a caterer or food service provider to a hotel for a banquet room or facility is considered part of the overhead cost of the catered meal and is taxable as part of the sales price.

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, §§151.007, 151.305, and 151.314.

§3.293. Food; Food Products; Meals; Food Service.

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

(1) American plan - The system used by hotels, rooming houses, and the like where one price covers room, food, and service.

(2) Bulk vending machine - A coin-operated device that contains unsorted items and randomly dispenses goods in approximately equal amounts without selection of a particular item or type of item by the customer.

(3) Candy - Confections such as candy bars, chewing gum, or candy kisses, but does not include products used exclusively for cooking, such as chocolate bits.

(4) Caterer - A person engaged in the business of preparing and serving meals, drinks, or other food products at locations designated by a customer.

(5) Food - All edible products intended for humans which products are consumed for taste, aroma, or nutritional value.

(6) Food products.

(A) Food products include items intended for human consumption. Examples include, but are not limited to: cereal and cereal products, milk and milk products, including ice cream, oleomargarine, meat and meat products, poultry products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, condiments and salt, sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products, canned foods, or any combination of these.

(B) Food products do not include:

(i) alcoholic beverages, carbonated and noncarbonated soft drinks, diluted juices, ice, candy, or medicines, tonics, vitamins, and medicinal preparations in any form. A substance will be treated as medicinal or as a tonic if the substance has no nutritional value, or the quantities of food elements in the substance are small and its contribution to any diet is small, or the substance has substantial nutritional value but the substance is marketed, labeled, and promoted to the public as being therapeutic; or

(ii) food ready for immediate consumption.

(7) Food service operator - Persons who operate restaurants and like places of business, caterers, wedding and bridal consultants, and others selling food ready for immediate consumption.

(8) Mobile vendor - A person who sells food from a motor vehicle, push cart, or any other form of vehicle.

(9) Food ready for immediate consumption.

(A) Food ready for immediate consumption means the type of food, beverages, or meals normally prepared, served, or sold by restaurants, lunch counters, cafeterias, etc., which, when sold, require no further preparation prior to consumption.

(B) When food is sold by a retailer who provides eating facilities (tables, trays, chairs, benches, or booths), food ready for immediate consumption also includes:

(i) all food sold in a heated state;

(ii) all food sold in individual-sized packages or portions when food heating facilities are available for customer use;

(iii) all food sold with eating utensils provided, including plates, knives, forks, spoons, glasses, cups, or straws;

(iv) all sandwiches ready for immediate consumption (examples of sandwiches ready for immediate consumption include most triangle-type sandwiches, whether or not refrigerated, such as ham, cheese, tuna, or chicken salad. An example of a sandwich not ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or a partially frozen filling);

(v) all individual ice cream sundries; for example: ice cream cones, ice cream sandwiches, dishes, bars, sticks, specialties, or the like; however, ice cream sundries when sold in prepackaged units containing six or more such items are not included;

(vi) all individual-sized portions of bakery products sold in quantities of five or less; and

(vii) all food sold in individual-sized packages or portions requiring no further processing before consumption, when more than 75% of the retailer's gross sales on an outlet-by-outlet basis consist of sales of nonfood items and/or food sold in a heated state, with utensils provided, or in the form of sandwiches or individual ice cream sundries.

(C) When food is sold by a retailer who does not provide eating facilities (tables, trays, chairs, benches, or booths), food ready for immediate consumption also includes:

(i) all food sold in a heated state, when the food is heated by the retailer rather than the customer;

(ii) all food sold with eating utensils provided, including plates, knives, forks, spoons, glasses, cups, or straws;

(iii) all sandwiches ready for immediate consumption (examples of sandwiches ready for immediate consumption include most triangle-type sandwiches, whether or not refrigerated, such as ham, cheese, tuna, or chicken salad. An example of a sandwich

not ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or partially frozen filling); and

(iv) all individual ice cream sundries. For example: ice cream cones, ice cream sandwiches, dishes, bars, sticks, specialties, or the like; however, ice cream sundries sold in prepackaged units containing six or more such items are not included.

(10) Retirement facility - A facility which provides permanent housing and residence to individuals, a majority of whom are 60 years of age or older.

(11) Wedding or bridal consultant - A person who provides services other than or in addition to the preparation and serving of food at weddings. Such services may include sending invitations, providing floral arrangements, decorating, supervision, and cleanup.

(b) Taxable food sales. Tax is due on the sale of food, meals and drinks:

(1) prepared, served, or sold ready for immediate consumption by any retailer whether the food is sold to be eaten on premises or to go;

(2) sold through a vending machine;

(3) prepared, sold, or served under the American plan. If the American plan is used by hotels, boarding houses, or other places of business, the charge for meals must be separated from the charges for room or lodging. If the charges for meals and lodging are not separately stated on the bill to the customer, hotel occupancy tax must be collected on the entire charge. If the lump-sum charge is not subject to hotel occupancy tax, sales tax must be collected on the portion of the charge attributable to the meals;

(4) sold by universities, colleges, junior colleges, or other schools of higher learning;

(5) prepared, sold, or served by caterers and wedding or bridal consultants. See subsection (f) of this section;

(6) sold ready for immediate consumption by a mobile vendor;

(7) sold by concession stands at ball parks, recreation halls, gymnasiums, and other like places of business, or served to a person seated in a stadium witnessing a sporting event;

(8) purchased ready for immediate consumption by a common carrier for the purpose of serving passengers traveling en route aboard the carrier; or

(9) sold to a person confined in a correctional facility operated under the authority or jurisdiction of or under contract with this state or a political subdivision of the state. This does not include meals provided by the correctional facility at no cost to the inmates as part of their incarceration.

(c) Exempt sales.

(1) Food not ready for immediate consumption.

(2) Food sales by schools, school-associated groups, and state institutions. For the purposes of this paragraph, food includes soft drinks and candy but does not include alcoholic beverages. Tax is not due on the sale of food when:

(A) sold by religious organizations or sold at religious functions conducted under the authority of a particular religious organization;

(B) sold or served by public or private schools, school districts, student organizations, or parent- teacher associations in an elementary or secondary school during the regular school day pursuant to an agreement with the proper school authorities;

(C) sold or served by a parent-teacher association during a fund-raising sale, the proceeds of which do not go to the benefit of an individual;

(D) sold by a person under 19 years of age who is a member of a nonprofit organization devoted to the exclusive purpose of education, physical, or religious training, and groups associated with public or private elementary or secondary schools as a part of a fund-raising drive sponsored by the organization for its exclusive use;

(E) served to students, residents, or patients of hospitals, day care centers, summer camps, and other institutions licensed by the state for the care of human beings. However, meals served to visitors or employees of these establishments are taxable;

(F) served to permanent residents of a retirement facility at the retirement facility. Meals served to visitors or employees of the facility are taxable; or

(G) provided at no cost to inmates by correctional facilities as part of the inmates' incarceration.

(3) Items purchased with food coupons under the food stamp program operated under 7 United States Code, Chapter 51.

(d) Mobile vendors.

(1) A person who supplies food to a mobile vendor may be required to remit the tax due on the retail sale of these products. The Tax Code, §151.024, authorizes the comptroller to regard a supplier as a retailer and a mobile vendor as an agent for these sales.

(2) After the supplier has been notified by the comptroller that the mobile vendor will be regarded as an agent of the supplier, the amount of tax to be remitted to the comptroller will be computed by adding to the supplier's sales price the amount of markup the mobile vendor will apply when the food is sold at retail and multiplying this sum by the applicable tax rate.

(3) For reporting and auditing purposes, a 20% markup will be applied to a supplier's sales price to a mobile vendor unless the comptroller notifies an individual taxpayer in writing that a higher percentage of markup should be used to report these sales.

(e) Subsidies; employee meals; free meals.

(1) Meals furnished by food service operators to employees immediately prior to, during, or immediately after a shift, which are provided for the convenience of the food service operator, are not taxable if the employee is involved in preparing or serving of food.

(2) An employer is not liable for tax on the amount of any subsidy paid to a food service operator unless the subsidy is specifically contingent on, or included in, the sales price for meals served to employees or guests, or is the total consideration paid for the meals.

(3) Meals and beverages furnished to customers free of charge as promotional items are taxable to a restaurant owner only to the extent tax would have been due on the original purchase price of the food or drinks from suppliers.

(4) When the restaurant owner, for promotional purposes, sells two meals for the price of one meal, sales tax should be collected only on the amount charged. Sales tax should not be collected on the "free" meal.

(f) Responsibilities of persons who operate restaurants and like places of business, caterers, wedding or bridal consultants, and others selling food ready for immediate consumption (food service operators).

(1) Food service operators must collect tax on all sales of food ready for immediate consumption.

(2) A food service operator selling both food products and food ready for immediate consumption will be allowed to report tax on only food sold ready for immediate consumption if the records clearly identify, through methods such as sales invoices, or cash register coding, nontaxable and taxable food sales.

(3) Operators of eating establishments, caterers, wedding or bridal consultants, and other food service operators must pay the tax on the purchase of all equipment and replacement parts for equipment used to provide the food service. Examples of supply items and equipment taxable to the operator include, but are not limited to, tables, chairs, place mats, tablecloths, cloth napkins, silverware, dishes, cooking utensils, dispensers, garbage can liners, mop holders, lime squeezers, grill bricks, aprons, glass creamers, appliances, menus, and inserts.

(4) Operators of eating establishments, caterers, wedding or bridal consultants, and other food service operators may purchase on resale or exemption certificates those items that are furnished to their customers with the food or beverages. These items must be of a nonreusable nature or qualify for exemption as wrapping or packaging materials. Examples include nonreusable paper, wooden, plastic, and aluminum articles. Other items included are cake boxes, lunch boxes, cups (paper, plastic, or styrofoam), paper and plastic containers, bottle wraps, butter chip trays, paper dishes, knives, forks, spoons, paper napkins, soda straws, toothpicks, french fry bags, stir sticks, ice cream sticks, souffle cups, hot dog trays, and other types of nonreusable trays.

(5) Tax is due on any charge made for preparing and serving the meals and food. The sales price of meals and food includes any separately stated charge for the room or facility, or the use by a customer of any items, such as tables, chairs, tableware, and tablecloths. The separately stated charge for the use of these items is not considered a rental of the items to a customer but an expense connected with the sale of the meals or food products. The sales price of meals and food sold by a hotel or motel does not include a separately stated charge for a room or facility on which hotel occupancy tax is imposed under Tax Code, §156.051. A separately stated charge to a customer for hotel occupancy tax paid on a room or facility by a caterer or other food service provider is subject to sales tax.

(6) Sales tax is due on the transfer to the customer of any taxable item, such as flowers, invitations, decorations, etc., which become the property of the customer.

(7) Sales or use tax is not due on ice purchased for use as a part of a drink or food product to be sold in the regular course of business. Ice used to maintain food for immediate consumption in a cool state prior to sale is taxable.

(8) For information on tips and gratuities see §3.337 of this title (relating to Gratuities).

(9) For information on the responsibilities of persons who sell and serve mixed beverages see §3.289 of this title (relating to Alcoholic Beverages Exemptions).

(g) Food sales through vending machine.

(1) With the exceptions of soft drinks and candy, vending machine operators must report sales tax on 50% of the total gross receipts from sales of all food. No deduction will be allowed for spoilage, waste, or other loss of foods.

(2) Vending machine operators must pay sales tax on the total gross receipts from sales of soft drinks and candy except as provided in paragraph (3) of this subsection. Vending machine operators who include the tax in the sales price of food, soft drinks, and candy should refer to §3.328 of this title (relating to Optional Reporting Methods for Grocers and Other Vendors).

(3) No tax is due on the sale of food, gum, or candy for $ .50 or less from a bulk vending machine.

(h) Rounding off tax due. The practice of rounding off the amount of tax due on the sale of a taxable item is prohibited. Tax must be added to the sales price by using the formula prescribed in the Tax Code.

(i) When a package contains both food products and taxable items the application of the tax depends upon the essential character of the complete package. If the taxable items are the primary component of the package and a single charge is made, the entire sales price of the package is taxable. If the taxable items are not the primary component of the package, the entire sale is exempt unless a separate charge is made for the taxable items, in which case the separate charge is subject to tax. In cases where no charge is made for the taxable items, these items are promotional items not purchased for resale by the person preparing the package. The person who provided the promotional items is liable for the tax based upon the cost of the item.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2000.

TRD-200004070
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: June 29, 2000
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For further information, please call: (512) 463-3699

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Subchapter V. FRANCHISE TAX

34 TAC §3.544

The Comptroller of Public Accounts adopts an amendment to §3.544, concerning reports and payments, without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 554).

A new subsection, (a)(4), has been added to the rule. This provision concerns corporations that will not owe franchise tax because their gross receipts from the entire business are less than $150,000. This amendment is in accordance with Senate Bill 441, 76th Legislature, 1999. Subsection (b)(1) has been amended to provide for a variable annual interest rate on delinquent taxes for reports originally due on or after January 1, 2000. This amendment is in accordance with Senate Bill 1321, 76th Legislature, 1999.

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, §171.002 and §111.060.

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-200004040
Martin Cherry
Special Counsel
Comptroller of Public Accounts
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Proposal publication date: January 28, 2000
For further information, please call: (512) 463-4062

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34 TAC §3.560

The Comptroller of Public Accounts adopts an amendment to §3.560, concerning banking corporations, without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 555).

The amendment is in accordance with House Bill 2067, 76th Legislature, 1999, including a revised definition of "banking corporation" in subsection (b)(1), a new apportionment requirement for dividends and interest in subsection (f), and new enforcement guidelines in subsection (h). The bill repealed §171.1031 which apportioned dividends and interest to the bank's commercial domicile. A definition of "legal domicile" has been added to subsection (b) because of the new apportionment requirement for dividends and interest. The legislation states that these new provisions apply to reports originally due on or after January 1, 2000.

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, §§171.001, 171.259, and 171.316.

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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Martin Cherry
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For further information, please call: (512) 463-4062

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34 TAC §3.563

The Comptroller of Public Accounts adopts an amendment to §3.563, concerning savings and loan associations, without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 556).

The amendment is in accordance with House Bill 2067, 76th Legislature, 1999, including a revised definition of "savings and loan association" in subsection (b)(4), a new apportionment requirement for dividends and interest in subsection (e), and new enforcement guidelines in subsection (g). The bill repealed §171.1031, which apportioned dividends and interest to the saving and loan association's commercial domicile. A definition of "legal domicile" has been added to subsection (b) because of the new apportionment requirement for dividends and interest. The legislation states that these new provisions apply to reports originally due on or after January 1, 2000.

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, §§171.001, 171.260, and 171.317.

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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Martin Cherry
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Comptroller of Public Accounts
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Proposal publication date: January 28, 2000
For further information, please call: (512) 463-4062

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Subchapter GG. INSURANCE TAX

34 TAC §3.811

The Comptroller of Public Accounts adopts an amendment to §3.811, concerning the taxpayer election for reciprocal or interinsurance exchanges to be taxed under Insurance Code, Article 4.10, instead of the rate established for reciprocal or interinsurance exchanges under Insurance Code, Article 4.11B, without changes to the proposed text as published in the February 11, 2000, issue of the *Texas Register* (25 TexReg 1044).

The amendment eliminates references to qualification for tax rates based on investments and identifies the flat tax rate of 1.6% to be effective January 1, 2000, in accordance with House Bill 1837, 76th Legislature, 1999.

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 Insurance Code, Article 4.10, Article 4.11B, and Article 4.11C.

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-200003969
Martin Cherry
Special Counsel
Comptroller of Public Accounts
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Proposal publication date: February 11, 2000
For further information, please call: (512) 463-4062

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Chapter 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

Subchapter C. CLAIMS PROCESSING– TRAVEL VOUCHERS

34 TAC §5.22

The Comptroller of Public Accounts adopts an amendment to §5.22, concerning incorporation by reference: "State of Texas Travel Allowance Guide," without changes to the proposed text as published in the March 24, 2000, issue of the *Texas Register* (25 TexReg 2551).

The amendment is necessary because of the issuance of a new "State of Texas Travel Allowance Guide" by the comptroller in December 1999. The new guide reflects changes made by the 76th legislature, regular session, 1999 to the Travel Regulations Act and to the travel provisions of the General Appropriations Act. The new guide also includes policy changes that are intended to promote efficiency and eliminate ambiguities concerning the travel of state officers and employees. Chapter 10 of the new guide lists the major differences between it and the previous guide. A copy of the new guide is available upon request from Claims Division, P.O. Box 13528, Austin, Texas 78711.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §660.021, which requires the comptroller to adopt rules to administer the Travel Regulations Act and the travel provisions of the General Appropriations Act.

The amendment implements the Government Code, §§660.001-660.208. The amendment also implements the following provisions of the General Appropriations Act: Article III, §§7, 9, and 12; §§9-5.01 through 9-5.07; §9-5.10; Rider 10 in the appropriations to the Texas Lottery Commission; Rider 40 in the appropriations to the Department of Human Services; Rider 23 in the appropriations to the Department of Protective and Regulatory Services; Rider 78 in the appropriations to the Texas Education Agency; Rider 18 in the appropriations to the Department of Mental Health and Mental Retardation; and Rider 19 in the appropriations to the Department of Public Safety.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 6, 2000.

TRD-200003970
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
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Proposal publication date: March 24, 2000
For further information, please call: (512) 463-4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

Chapter 1. ORGANIZATION AND ADMINISTRATION

Subchapter C. PERSONNEL AND EMPLOYMENT POLICIES

37 TAC §§1.21 - 1.32, 1.34, 1.35, 1.39

The Texas Department of Public Safety adopts the repeal of §§1.21-1.32, §1.34, §1.35, and §1.39, concerning Personnel and Employment Policies, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2298) and will not be republished.

The justification for the repeal will be the elimination of unnecessary and outdated rules on internal human resource procedures.

The repeal of these sections deletes provisions that are internal procedures only, and which have no public impact. The repeal will further allow the department to administer human resources policies more quickly and efficiently.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2000.

TRD-200004074
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 29, 2000
Proposal publication date: March 17, 2000
For further information, please call: (512) 424-2135

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37 TAC §§1.36, 1.37, 1.41

The Texas Department of Public Safety adopts amendments to §§1.36, 1.37, and 1.41, concerning Personnel and Employment Policies. Section 1.41 is adopted with changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2299). Sections 1.36 and 1.37 are adopted without changes and will not be republished.

The justification for the amendments will be current and updated rules.

Amendment to §1.36 deletes subsection (b) and reformats current subsection (a) to better reflect current law and practice. Amendment to §1.37 adds and deletes language which is also necessary in order to better reflect current law and practice. Section 1.41(a)(2) corrects reference to the Human Resources Bureau, telephone number and zip code. The amendment of these sections will allow the department to administer human resources policies more quickly and efficiently.

Section 1.41(c)(6) is changed to reflect the current designation of "Office of General Counsel."

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department.

§1.41. Americans with Disabilities Act Grievance Procedures.

(a) Policy.

(1) The Texas Department of Public Safety has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the United States Department of Justice regulations implementing Title II of the Americans with Disabilities Act (ADA). Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" in programs or activities sponsored by a public entity.

(2) Complaints should be addressed to: Commander, Human Resources Bureau, 5805 North Lamar Boulevard, P.O. Box 4087, Austin, Texas 78773-0251, (512) 424-5901, who has been designated to coordinate ADA compliance efforts.

(3) The ADA coordinator shall maintain the files and records of the Texas Department of Public Safety relating to the complaints filed.

(4) The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible federal or state department or agency. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

(5) This policy shall be construed to protect the substantive rights of interested persons to meet appropriate due process standards, and to assure that the Texas Department of Public Safety complies with the ADA and the implementing regulations.

(b) Complaint procedures for program compliance.

(1) A complaint should be filed in writing or verbally, contain the name and address of the person filing it, and briefly describe the alleged violation of the regulations.

(2) A complaint should be filed within 30 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before adoption of this section will be considered on a case-by-case basis.)

(3) An investigation, as may be appropriate, shall follow a filing of complaint. The investigation shall be conducted by an employee designated by the assistant director. The designated investigator may not be a member of the same service or bureau administering the program or activity complained of. This procedure contemplates informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint. A copy of the investigative report will be forwarded to the major division chief over the program or activity complained of.

(4) A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the major division chief and a copy forwarded to the complainant no later than 30 days after its filing.

(5) The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made to the assistant director within 10 days of the date of the written determination issued by the major division chief. Based on his review of the investigation, the assistant director may alter the determination of the major division chief.

(c) Complaint procedure for employment compliance.

(1) An applicant for employment may file a complaint in writing or verbally. The complaint should contain the name and address of the person filing it. A complaint should be filed within 30 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before adoption of this section will be considered on a case-by-case basis.)

(2) A board consisting of the Equal Employment Opportunity (EEO) officer and two other members to be named by the director has been established to receive, review, and make determinations as to validity on complaints of discrimination. Upon receipt of the complaint, the ADA coordinator will forward the complaint to the EEO officer.

(3) The complaint must fully describe the nature of the complaint and provide sufficient details to enable the board to arrive at a thorough understanding of what has occurred. The board may request additional information.

(4) A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the EEO officer and a copy forwarded to the complainant, the chief of legal services, and the ADA coordinator no later than 30 days after its filing.

(5) The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made to the assistant director within 10 days of the date of the written determination issued by the EEO officer. Based on his review of the investigation, the assistant director may alter the determination of the EEO officer.

(6) The ADA coordinator will advise the Office of General Counsel, as necessary, about complaints received and the resolu-

tion of such complaints. The Office of General Counsel shall assist the coordinator as the need arises.

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 K. INSCRIPTION ON VEHICLES

37 TAC §1.151

The Texas Department of Public Safety adopts an amendment to §1.151, concerning Inscription On Vehicles, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2300) and will not be republished.

The justification for this section will be more efficient administration of the department.

Amendment to the section is necessary so the department can clarify current policy and more clearly meet the requirements of Chapter 721 of the Texas Transportation Code which allows for certain vehicles to be exempt from the inscription requirement.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.006(4), which authorizes the director of the Texas Department of Public Safety to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Transportation Code, §721.003.

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 15. DRIVERS LICENSE RULES

Subchapter B. APPLICATION REQUIREMENTS–ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.46

The Texas Department of Public Safety adopts new §15.46, concerning Application Requirements-Original, Renewal, Duplicate, Identification Certificates, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2302) and will not republished.

The justification for the new section will be to properly reconstitute a county's jury wheel information by providing better demographic data for this purpose.

House Bill 82, passed during the 76th Texas Legislature, 1999, requires applicants for a Texas driver license, personal identification certificate, or commercial driver license to provide information relating to their citizenship and county of residence. This statute is relating to the method by which a county reconstitutes the jury wheel and the duty of the department to remove certain names from a list used to reconstitute the jury wheel.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

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 16. COMMERCIAL DRIVER'S LICENSE

Subchapter B. APPLICATION REQUIREMENTS AND EXAMINATIONS

37 TAC §16.31

The Texas Department of Public Safety adopts an amendment to §16.31, concerning Commercial Driver's License Application Requirements and Examinations, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2302) and will not be republished.

The justification for this section will be to assist in the positive identification of an applicant for a Texas driver license or identification certificate.

Amendment to the section adds language referencing §15.24 of this title (relating to Identification of Applicants) as the designated section containing the listing of acceptable documents for driver license, commercial driver license or identification certificate applicants.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

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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37 TAC §16.40

The Texas Department of Public Safety adopts an amendment to §16.40, concerning Application Requirements and Examinations, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2303) and will not be republished.

The justification for the section will be to properly reconstitute a county's jury wheel information by providing better demographic data for this purpose.

Amendment to the section adds new subsection (d) which requires that applicants for a commercial driver license provide information relating to their citizenship and county of residence. This change is necessary due to the passage of House Bill 82, passed during the 76th Texas Legislature, 1999, relating to the method by which a county reconstitutes the jury wheel and the duty of the department to remove certain names from a list used to reconstitute the jury wheel.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

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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37 TAC §16.50

The Texas Department of Public Safety adopts an amendment to §16.50, concerning examination requirements, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2303) and will not be republished.

The justification for this section will be greater convenience to the public and increased efficiency in administering road tests to applicants for Commercial Driver Licenses.

Amendment to §16.50(a) clarifies the composition and components of the Commercial Driver License road test. Amendment to §16.50(b)(4) modifies and clarifies disqualification standards for Commercial Driver License road tests, and §16.50(b)(2)(F) is deleted because it is no longer applicable.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

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. CHANGE OF LICENSE STATUS, RENEWALS, SURRENDER OF LICENSE, FEES

37 TAC §16.72, §16.77

The Texas Department of Public Safety adopts amendments to §16.72 and §16.77, concerning Change of License Status, Renewals, Surrender of License, Fees, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2304) and will not be republished.

The justification for the section will be to properly reconstitute a county's jury wheel information by providing better demographic data for this purpose.

Subsection (f) is added as new language to §16.72 and §16.77 is reformatted to add new subsection (b). The new language is necessary in order for the department to comply with House Bill 82, which requires that applicants for a Texas driver license, personal identification certificate, or commercial driver license provide information relating to their citizenship and county of residence. This statute is relating to the method by which a county reconstitutes the jury wheel and the duty of the department to remove certain names from a list used to reconstitute the jury wheel.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

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. SANCTIONS AND DISQUALIFICATIONS

37 TAC §16.97, §16.106

The Texas Department of Public Safety adopts an amendment to §16.97 and new §16.106, concerning Sanctions and Disqualifications, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2305) and will not be republished.

The justification for the amendment and new section will be to prohibit problem commercial motor vehicle operators from obtaining an occupational driver license.

The Federal Highway Administration (FHWA) indicated concern on the fact that Texas may issue an occupational driver license for the operation of a commercial vehicle (CMV) to Commercial Driver License (CDL) holders if the suspending offense occurs in a non-CMV. Nationwide, due to an increasing number of CMV related fatalities and the high property damage a CMV may cause in an accident, FHWA is urging states to reconsider the occupational driver license issue and prohibit the issuance of an occupational driver license to CDL holders regardless of the type of vehicle being operated at the time of suspending offense. Therefore, amendment to §16.97 and new §16.106 prohibit the issuance of an occupational license to operate a CMV vehicle.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

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 18. DRIVER EDUCATION

Subchapter A. DRIVER TRAINING SCHOOL TESTING AND ISSUANCE OF INSTRUCTION PERMITS

37 TAC §18.1

The Texas Department of Public Safety adopts an amendment to §18.1, concerning Driver Training School Testing and Issuance of Instruction Permits, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2305) and will not be republished.

The justification for the section will be clarification in the process involved in the Parent Taught Driver Education program.

Amendment to the section adds the definition of "instructor" and renumbers remaining paragraphs. The amendment is necessary due to the passage of House Bill 953, 76th Texas Legislature, 1999, which added stepparent, grandparent, and step-grandparent to the definition of instructor.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

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. PARENT TAUGHT DRIVER EDUCATION

37 TAC §§18.21-18.24

The Texas Department of Public Safety adopts amendments to §§18.21-18.24, concerning Parent Taught Driver Education, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2306) and will not be republished.

The justification for the sections will be clarification in the process involved in the Parent Taught Driver Education program.

Amendments to the sections are necessary in order to comply with House Bill 953, passed during the 76th Texas Legislature, 1999. Amendments to the sections change the term "parent" to "instructor," delete unnecessary language that is specific to the completion of required forms and is already addressed in the Parent Taught course packet, and clarifies procedures for applying for the course. The title of the subchapter is also changed to better reflect the content of the sections.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005.

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. DEPARTMENT APPROVED DRIVER EDUCATION COURSES

37 TAC §18.31, §18.32

The Texas Department of Public Safety adopts amendments to §18.31 and §18.32, concerning Department Approved Driver Education Courses, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2308) and will not be republished.

The justification for the sections will be clarification in the process involved in the Parent Taught Driver Education program.

Amendment to §18.31 corrects reference to statute and deletes subsections (d) and (e) as they are no longer applicable. Amendment to §18.32 is necessary in order to update the name of the bureau responsible for approval of the Parent Taught program, curriculum and materials.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

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 19. BREATH ALCOHOL TESTING REGULATIONS

Subchapter B. TEXAS IGNITION INTERLOCK DEVICE REGULATIONS

37 TAC §§19.21 - 19.26

The Texas Department of Public Safety adopts the repeal of §§19.21-19.26, concerning Texas Ignition Interlock Device Regulations, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2309).

The justification for the repeal will be current and updated Ignition Interlock Device rules, as the repealed rules only address the approval of devices for use in the State of Texas and do not address vendor oversight required by House Bill 3492 passed during the 76th Texas Legislature..

The sections are repealed due to substantial changes being made. New Ignition Interlock Device sections are being adopted simultaneously with this repeal.

No comments were received regarding adoption of the repeal.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work and Texas Transportation Code, §521.2476.

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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37 TAC §§19.21 - 19.29

The Texas Department of Public Safety adopts new §§19.21-19.29, concerning Texas Ignition Interlock Device Regulations. §§19.21, 19.27, 19.28 and 19.29 are adopted with changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2309). §§19.22-19.26 are adopted without changes and will not be republished.

The new sections will ensure that all Ignition Interlock Device vendors in Texas will operate under the same rules, with the Department providing oversight to see that these rules are followed.

The new sections promulgate regulations for the approval of models and classes of these devices, standards for the calibration and maintenance, and responsibility of manufacturers of these devices.

House Bill 3492 passed during the 76th Texas Legislature required the Department to develop rules to provide oversight to the breath alcohol ignition interlock industry. Previous rules only addressed the approval of the devices for use in the state of Texas, so the addition of vendor oversight represents a major change to these rules.

A summary of the comments received and the Department's responses to the comments follow:

Oral comments were received from Mr. Dale Simcox and Mr. Ladd Holton, both of Ignition Interlock Group of Texas. These commenters suggested that the proposed language making felons and persons convicted of driving while intoxicated permanently ineligible was too restrictive. The Department agrees, and in response to these comments, §19.28(a)(3) will be modified so that applicants for certification will not be eligible if convicted of certain crimes within five years prior to the date of filing the application for certification as an IID service representative.

In order to make other proposed sections consistent with this revision, the Department is amending §19.21(38), which will now define "Revocation" to include the possibility of an individual losing his or her eligibility to be a service representative or inspector due to a conviction after certification. Also, §19.29(a)(5) is revised to track the new language in §19.28(a)(3).

Mr. Jim Ballard of Smart Start, Inc. submitted written and oral comments regarding §19.27(c)(2). The commenter suggested that the requirement that reference sample devices used in this program be only from the approved list for reference sample devices used in the Intoxilyzer program was too restrictive. The Department agrees and is changing the wording to only require approval from the Office of the Scientific Director.

The Department is also correcting typographical errors in §19.21 (24)(A)(iii) and §19.29(a)(2), and clarifying language in §19.29(b)(1) to make it clear that renewal of certification for an Ignition Interlock Inspector will not be required, but will be ongoing unless interrupted for cause.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and pursuant to Texas Transportation Code, §521.2476, which requires the department to establish rules for minimum standards for vendors of Ignition Interlock devices.

§19.21. Explanation of Terms and Actions.

The following words and terms, when used in this undesignated head, shall have the following meanings, unless indicated otherwise.

(1) Alcohol – Ethyl alcohol, also called Ethanol.

(2) Alcohol concentration – The weight amount of alcohol contained in a unit volume of breath or air, measured in grams of Ethanol/210 liters of breath or air and expressed as grams/210 liters. Breath alcohol concentration in these regulations shall be designated as "alcohol concentration."

(3) Alveolar air – Also called "deep lung air" or "alveolar breath." An air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

(4) Anticircumvention feature(s) – Any feature or circuitry incorporated into the Ignition Interlock Device (IID) that is designed to prevent human tampering which would cause the device not to operate as intended.

(5) Approval – Meeting and maintaining the requirements of these regulations and placement on the scientific director's list of approved devices. Approval may be denied, cancelled, withdrawn, and/or suspended at any time, for cause by the scientific director.

(6) Appropriate judiciary authority – a phrase used throughout these regulations that is meant to include personnel or court orders of the Texas judiciary system including but not be limited to: the actual court order requiring or authorizing installation of an IID, the court (or judge) that ordered or authorized that installation, pretrial services authorities (having to do with bail bond requirements in these matters), adult supervision (or adult probation) authorities and or occupational licensing authorities.

(7) Bogus – Any gas sample other than the unaltered, undiluted, or unfiltered alveolar air sample coming from the individual required to have an ignition interlock device installed in his/her vehicle.

(8) Breath alcohol analysis – Analysis of a sample of person's expired alveolar breath to determine the concentration of alcohol in the person's breath.

(9) Certification.

(A) Certification refers to meeting and maintaining the requirements set forth in these regulations. Under the provisions of these regulations, certification is granted to:

(i) inspectors,

(ii) service representatives, and

(iii) service centers.

(B) Certification is granted by the scientific director only when minimum requirements of certification have been met. All aspects of IID business in Texas must be performed under certification in order to be eligible for court purposes.

(C) Certificates are issued to inspectors, service representatives, and service centers. Certificates are not issued for individual IIDs or reference sample devices.

(10) Certified IID inspector. – Refers to an individual who meets the requirements stated in §19.29 of this title (relating to Ignition Interlock Device Inspector).

(11) Certified service center – Refers to any IID service center, whether fixed site or mobile, meeting and maintaining the provisions stated in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(12) Certified service representative – Refers to an individual who has successfully completed the requirements stated in these regulations and has received certification from the scientific director to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s). Service representative certification is contingent upon compliance with all provisions stated in §19.28 of this title (relating to Service Representative).

(13) Costs – The nonrefundable original administrative fees plus any and all costs incurred by the department for testimony and/or approval, or reevaluation, of any device. Any and all incurred costs and expenses shall be the responsibility of the manufacturers and shall be reimbursed to the department within 30 days. Additionally the reasonable cost of providing legislatively mandated inspections of certified service centers shall be reimbursed to the department in the form of inspection fees payable by either the manufacturer or vendor, whichever is appropriate. Failure to pay or reimburse the

department for these reasonable costs shall result in the denial or loss of certification of the affected service center(s).

(14) Data storage system – A computerized recording of all events monitored by the installed IID, which may be reproduced in the form of required reports.

(15) Department – The unmodified word department in these regulations refers to the Texas Department of Public Safety.

(16) Device – An ignition interlock device (abbreviated in this title as IID).

(17) Emergency bypass – a one-time event, authorized by a service representative that permits the IID-equipped vehicle to be started without the requirement of passing the breath test. This event must be recorded in the Data storage system. Also see Illegal Start.

(18) Filtered air samples – Any mechanism by which there is an attempt to remove alcohol from the human breath sample. Filters would include, but are not limited to, silica gel, drierite, cat litter, cigarette filters, water filters, cotton, etc.

(19) Fixed-site service center – A certified service center that is at a permanent location, i.e., not mobile.

(20) Free restart – The condition in which a test is successfully completed and the motor vehicle is started, and then at some point the engine stops for any reason (including stalling). A free restart is the ability to start the engine again, within two minutes, without completion of another breath alcohol analysis. This free restart does not apply, however, if the IID was awaiting a rolling retest that was not delivered.

(21) IID – The common abbreviation for Ignition Interlock Device used throughout these regulations.

(22) Ignition interlock device (abbreviated in this title as IID) – A device that is a breath alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must blow an alveolar breath sample into the analyzer which measures the alcohol concentration. If the alcohol concentration exceeds the startup set point on the interlock device, the motor vehicle engine will not start.

(23) Illegal start – An event wherein the IID-equipped vehicle is started without the requisite breath test having been taken and passed and/or is started when the IID is in a lockout condition or is started by enabling an unauthorized emergency bypass. Any and all of these events shall be recorded in the Data storage system as violations.

(24) Inactivation.

(A) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, or by the certified entity in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the scientific director. Recertification of an inactivated certificate will require a written request from the applicant to the scientific director and successful completion of the requirements outlined in §19.27, §19.28(c), or §19.29, of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate for recertification and/or other requirements determined by the scientific director. Inactivation will be used in, but not limited to, the following situations:

(i) an inspector or a service representative terminates employment under which certification was acquired and new employment does not require certification, or the new location of the inspector or service representative cannot be ascertained; or

(ii) an inspector or a service representative fails to renew current certification and reverts to an inactive status; or

(iii) a service center that no longer meets all the requirements for certification.

(B) Inactivation will not be considered by the office of the scientific director as a disciplinary action. It is for administrative program control to safeguard the scientific integrity of the IID program.

(25) Interlock – The mechanism which prevents a motor vehicle from starting when the alcohol concentration of a person exceeds a preset value.

(26) Lockout condition – A state wherein the IID will not allow the vehicle to be started until a certified service representative completes a violation reset, downloads the Data storage system and restores the IID to a state that will allow the vehicle to be started. Violation conditions that trigger the lockout condition will enable a unique auditory and/or visual cue that will warn the driver that the vehicle ignition will enter a lockout condition within a period not to exceed 5 days. This event will be uniquely recorded in the data storage system and will simultaneously start a clock that culminates in the actual lockout condition.

(27) Manufacturer – The actual producer of the device.

(28) Manufacturer's representative – An individual and/or entity designated by the manufacturer to act on behalf of or represent the manufacturer of a device. May be synonymous with vendor.

(29) Mobile service center – Any IID facility that has the personnel and equipment capability to be in use separately and simultaneously with it's parent fixed site service center, whether set up in a vehicle or temporarily set up at a site with a permanent foundation.

(30) Negative result – A test result indicating that the alcohol concentration is less than the startup set point value.

(31) Office of the scientific director – The individual responsible for the implementation, administration, and enforcement of the Texas Ignition Interlock Device Regulations or his staff.

(32) Positive result – A test result indicating that the alcohol concentration meets or exceeds the startup set point value.

(33) Proficiency test – A test administered by, and in the presence of, an IID inspector to establish and/or ascertain the competency of a service representative with regard to IID equipment.

(34) Purge – Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

(35) Recertification – Recertification refers to the regaining of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations, application for recertification requires a written request from the applicant to the scientific director. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful

completion of requirements stated in §19.27, §19.28(c) or §19.29 of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate, and/or additional requirements as stated by the scientific director.

(36) Reference sample device – A device which generates a headspace gas above a water/alcohol solution that is maintained at a thermostatically controlled temperature. This headspace gas can be used to simulate the breath alcohol concentration of an individual who has been drinking alcoholic beverages and whose alcohol concentration is reflected in an analysis of a breath sample. The results of this analysis are expressed as grams of alcohol/210 liters of breath.

(37) Retest set point – A pre-set or pre-determined alcohol concentration setting, which is the same (0.03) as the startup set point or with appropriate judiciary authority, as much as 0.02 higher than the startup set point, at which, or above, during a rolling retest, the device will record in the data storage system, the high alcohol result as a violation.

(38) Revocation.

(A) Revocation refers to the immediate cancellation of certification. Revocation is an action taken only by the scientific director. To regain certification after revocation requires a written request from the applicant to the office of the scientific director and successful completion of the requirements for certification and/or recertification and/or any additional requirements determined by the scientific director. Revocation invalidates any current IID program certification issued to the revoked entity for the period of revocation and until recertification. Unless provided for by specific provision in these regulations, revocation will apply when the holder of the certification no longer meets the criteria for certification. Examples of cases for which revocation will apply include, but are not limited to, the following:

(i) a certified IID service center that no longer meets the requirements of these regulations because of unreliability, incompetence, or violation of these regulations.

(ii) A certified inspector or service representative who is no longer in compliance with the requirements for certification under these regulations including a certified inspector or certified service representative who, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony.

(B) If after the allowed appeals process, the revocation of a service center is sustained; the revoked entity shall be required to replace the IID service and/or the IID as in §19.25(e) of this title (relating to Maintenance and Calibration Requirements).

(C) In the event that no appeal from the revoked service center is forthcoming, the revoked entity shall have 30 days to achieve the requirements of §19.25(e) of this title (relating to Maintenance and Calibration Requirements).

(D) Revocation will be for the purpose of enforcing these regulations and maintaining the scientific integrity of the Texas IID program. A revocation may be appealed to the director, Texas Department of Public Safety.

(39) Rolling retest – After passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5 to 15 minutes. Third and subsequent retests shall be required at intervals not to exceed 45 minutes from the previously requested test for the duration of the travel. See Retest set point.

(40) Rolling retest violation – An event, recorded in the data storage system when the rolling retest requirement is not met.

(41) Service center – The physical location where the service representatives perform their IID services. Also see Certified service center.

(42) Service representative – See Certified service representative.

(43) Startup set point – A pre-set or pre-determined alcohol concentration setting at which, or above, the device will prevent the ignition of a motor vehicle from operating. That value shall be an alcohol concentration of 0.03 g /210 liters of breath.

(44) Suspension – Suspension refers to the immediate cancellation or curtailment of certification and may be applied to any certified IID entity when, because of unreliability, incompetence, or violation of these regulations that entity is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the scientific director would not uphold the scientific integrity of the IID program. A suspension can be initiated by the scientific director, IID inspector, or designated representative of the scientific director. Prior to appeal to the director of the Department of Public Safety, suspensions may be set aside or sustained only after investigation by the scientific director. The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 days. The IID inspector or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director.

(A) A suspension cancels any certification issued to a suspended inspector or service representative for a period of suspension until recertification. During a suspension, the suspended entity is barred from providing any service in the IID program.

(B) A suspension curtails any certification issued to a suspended service center for a period of suspension until recertification. During a suspension, the suspended service center may continue to provide service to those IID customers in existence prior to the suspension, but shall not acquire new IID customers during the period of suspension.

(C) To regain certification after the period of suspension requires a written request from the suspended entity to the scientific director. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the scientific director to be a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the ignition interlock program and upholding these regulations. A suspension may be appealed to the director, Texas Department of Public Safety.

(45) Tampering – An overt or conscious attempt to physically disable or otherwise disconnect the IID from its power source and thereby allow the operator to start the engine without taking and passing the requisite breath test. This attempt, whether successful or not, shall be recorded in the data storage system as a violation.

(46) Vendor – The person or entity representing the manufacturer(s) of an approved IID and responsible for the day-to-day operations and the continuing certification of an IID service center. Must have manufacturer's approval for use of a particular approved IID either through purchase or lease agreement. May be synonymous with manufacturer's representative.

(47) Violation – Any of several events including but not limited to such things as high alcohol, whether from a violation set point or from a retest set point, a rolling retest violation, tampering or an illegal start. These events, recorded in the data storage system, must be reported as per appropriate judiciary requirements and which, when accumulated to a total determined by the appropriate judiciary authority, shall enter a lockout condition within a period not to exceed 5 days and require a violation reset.

(48) Violation reset – An unscheduled service of the IID and download of the data storage system by the service center required because an accumulation of violations has reached a number (predetermined by appropriate judiciary authority) that generates a lockout condition. This information shall be reported to the appropriate judiciary authority within 48 hours after the vendor becomes aware of the violation. Completion of this service will include restoring the IID to a state that will allow the vehicle to be started.

(49) Violation set point – A pre-set or pre-determined alcohol concentration setting at which, or above, the device will record the high alcohol result in the data storage system as a violation.

(50) Withdrawal of approval – Cancellation of approval of a device; to wit, not meeting or maintaining these regulations.

§19.27. Certification and Inspection of Service Centers.

(a) All IID service centers conducting business in this state, whether fixed site or mobile, must have the approval of and be certified by the scientific director.

(b) To initiate certification for an IID service center, a vendor or the IID manufacturer's representative shall submit an application to the scientific director for approval. The application, available from the scientific director, shall show the brand and/or model of the ignition interlock device(s) to be merchandised, the reference sample device to be used, and a list of qualified service representatives that are or will be certified. Only IIDs listed on the approved list referenced in §19.22(a) of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

(1) allow access for inspection under subsection (d) of this section,

(2) comply with subsection (g) of this section,

(3) comply with subsection (c) of §19.24 of this title (relating to Miscellaneous Requirements) concerning product liability and liability insurance requirements, and

(4) comply with subsection (d) of §19.24 of this title (relating to Miscellaneous Requirements) concerning product warranty and support of service requirements.

(c) All IID testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) Services rendered by the IID service center must be performed by a certified service representative.

(2) The service center must incorporate the use of analysis of a reference sample such as headspace gas from a mixture of water and a known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value within plus or minus 0.01g/210L, or other methodologies that may be approved by the scientific director. This reference analysis shall be performed in conjunction with all calibration confirmations and/or checks. Preparatory documentation (such as certificate of analysis) on the reference sample solution(s) shall be available to the scientific director. Only reference sample devices approved by the scientific director may be used in certified IID operations.

(3) All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).

(4) The applicant must agree to maintain any specified records designated by the scientific director; including but not limited to:

(A) submitting violation(s) if any, of any court order to the appropriate judiciary authority, not later than 48 hours after the vendor discovers the violation,

(B) maintaining complete records of each device installation for five years from the date of the installation,

(C) making IID records available, either by inspection or via copy to any appropriate judiciary authority and upon request to the scientific director.

(5) All anticircumvention features must be activated on any installed IID.

(6) The device must be installed and inspected in accordance with any applicable court order.

(d) The scientific director, an IID inspector, or a designated representative may at any time make an inspection of the certified IID service center to assure compliance with these regulations.

(e) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.

(f) Upon proof of compliance with subsections (a)-(c) of this section, certification will be issued by the scientific director. Issuance of a certificate to the service center shall be evidence that the service center meets all necessary criteria for approval and certification.

(g) Certification of any IID testing program is contingent upon the applicant's agreement to conform and abide by any directives, orders, or policies issued or to be issued by the scientific director regarding any aspect of the IID service center; this shall include, but not be limited to, the following:

(1) program administration;

(2) reports;

(3) records and forms;

(4) inspections;

(5) methods of operations and testing techniques;

(6) personnel training and qualifications;

(7) criminal history considerations for service representatives; and

(8) records custodian.

(h) Each service center currently doing business on the effective date of these regulations, will have ninety days to apply for and meet the requirements of service center certification, the department's capacity to conduct the certification process not withstanding.

(i) Certification of an IID service center may be denied, withdrawn, inactivated, suspended, or revoked by the scientific director if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the

vendor violates any law of this state that applies to the vendor. An IID service center whose certification has been denied, suspended or revoked may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the IID service center making the appeal under such conditions deemed necessary and notify the scientific director in writing.

§19.28. Service Representative.

(a) Initial certification.

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following:

(A) proof of employment by an ignition interlock device service center that meets the requirements set forth in §19.27 of this title (relating to Certification and Inspection of Service Centers); and

(B) documentation from the aforementioned employer that the applicant is currently trained in all necessary aspects of the specific IIDs involved in the vendors service center.

(C) If a service representative is certified to work with a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the scientific director may waive portions of subsection (a)(1)(B) of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(2) Prior to initial certification as a service representative of an ignition interlock device service center, an applicant must satisfactorily complete a written examination which shall cover the regulatory aspects of the Texas IID Program.

(A) Failure of the initial written examination will cause the applicant to be ineligible for reexamination for a period of 30 days.

(B) A subsequent failure will be handled the same as an initial failure.

(3) An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of filing of the applicant's application for certification as an IID service representative is not eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(4) The department, with advance notice to IID vendors, may impose additional requirements for service representative certification should the need be warranted.

(5) Upon successful completion of the requirements for initial certification, the scientific director will issue the individual a service representative's certificate valid for a specific, approved IID(s), and for a period of time designated by the scientific director unless inactivated, suspended, or revoked.

(b) Renewal of current certification. The service representative is required to renew certification prior to its expiration date. The minimum requirement for renewal of service representative certification will be:

(1) a biennial written acknowledgement from the service representative's employing IID vendor that this service representative is both;

(A) employed by the vendor in the capacity of a service representative, and

(B) currently trained in all necessary aspects of the IIDs involved in the vendor's service center.

(2) a biennial written acknowledgement from the service representative that he or she still meets the requirement of subsection (a)(3) of this section.

(3) Renewal of certification will be denied and current certification will be inactivated when the service representative:

(A) fails to furnish proper documentation required in subsections (b)(1)(A) and (B) of this section, or

(B) fails to meet the requirements of subsection (a)(3) of this section.

(4) Upon successful completion of the requirements for renewal of certification, the scientific director will issue the individual a service representative's certificate valid for a specific, approved IID(s) and for a period of time designated by the scientific director or until next renewal unless inactivated, suspended, or revoked.

(5) Each service representative currently doing business on the effective date of these regulations, will have ninety days to apply for and meet the requirements of service representative certification, the department's capacity to conduct the certification process not withstanding.

(c) Recertification. Certification that has been inactivated, suspended, or revoked must be regained before IID service representative work can be resumed. It will be the responsibility of the inactivated, suspended, or revoked service representative to notify the scientific director in writing of such intent. This notification shall be submitted in close proximity to the completion of any mandatory waiting period imposed under certification cancellation. An IID service representative whose certification has been suspended or revoked may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the IID service representative making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(d) Recertification shall take place pursuant to all the requirements of subsection (b) of this section.

§19.29. Ignition Interlock Device Inspector.

(a) The minimum qualifications for certification as an IID inspector are:

(1) meeting the formal education and training requirements of Subchapter A, §19.5 of this title (relating to Technical Supervisor Certification), and

(2) the satisfactory completion of an IID inspector examination that is approved by the scientific director, the content of which shall include, but not be limited to familiarity with:

(A) record keeping appropriate to approved IIDs in use in the state of Texas;

(B) operational principles and theories applicable to the program; and

(C) legal aspects of the IID program.

(3) Knowledge and understanding of the scientific theory and principles as to the operation of the IID and reference sample device.

(4) Persons who are currently engaged in business with or employed by an IID manufacturer or an IID vendor shall not be eligible to become a certified IID inspector.

(5) An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of filing of the applicant's application for certification as an IID inspector is not eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(6) The department, with advance notice, may impose additional requirements for IID inspector certification should the need be warranted.

(b) Certification.

(1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (a) of this section have been met, the scientific director will issue certification that will be valid unless inactivated, suspended, or revoked for cause.

(2) IID inspector certification may be voluntarily inactivated when it is no longer needed or automatically if the IID inspector fails to maintain the requirements set forth in subsection (a)(4) of this section.

(3) IID inspector certification may be suspended or revoked only by the scientific director for malfeasance, falsely or deceitfully obtaining certification, or failure to carry out the responsibilities set forth in these regulations.

(4) An IID inspector whose certification has been suspended or revoked may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the IID inspector making such appeal under such conditions deemed necessary and notify the scientific director in writing.

(c) Certificate. The issuance of a certificate to the IID inspector shall be evidence that the IID inspector has met the requirements for certification.

(d) Duties. A certified IID inspector will make an onsite inspection of each service center as needed. Such an inspection will include but not be limited to:

(1) Any and all IID technical requirements as per §19.23 of this title (relating to Technical Requirements).

(2) Any and all IID miscellaneous requirements as per §19.24 of this title (relating to Miscellaneous Requirements).

(3) Any and all IID maintenance and calibration requirements as per §19.25 of this title (relating to Maintenance and Calibration Requirements).

(4) Any and all service center requirements as per §19.27 of this title (relating to Certification and Inspection of Service Centers).

(5) Any and all service representative requirements as per §19.28 of this title (relating to Service Representative).

(e) Costs. Vendors shall reimburse the department for the reasonable cost of conducting each inspection of the vendor's facilities under this section.

(1) The optimal number of inspections per certified service center per year shall be two.

(2) The minimal number of inspections per certified service center per year shall be one.

(3) The department may conduct more inspections for cause, such as complaints from judicial, adult supervision, or clients at additional cost to the service center being inspected.

(4) The calculated cost per inspection will be standardized throughout the IID program unless there are individual vendor circumstances that require additional costs to the department and will consequently be passed through to the affected vendor(s).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 9, 2000.

TRD-200004087
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 1. TEXAS DEPARTMENT OF HUMAN SERVICES

Chapter 3. TEXAS WORKS

Subchapter SS. ONE-TIME TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

40 TAC §3.7202

The Texas Department of Human Services (DHS) adopts an amendment to §3.7202 without changes to the proposed text published in the May 5, 2000, issue of the *Texas Register* (25 TexReg 3927).

The department is adopting these rules because more families will potentially qualify for One-Time Temporary Assistance in Needy Families (OTTANF), which will assist in keeping them in the workforce and independent from ongoing TANF benefits. The amendment will allow households with one or two parents in the certified group to potentially qualify for OTTANF if they have loss of employment. Currently, only households with two parents in the certified group qualify based on a recent loss of employment.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 31, which provides the department with the authority to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.0325.

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 20. COST DETERMINATION PROCESS

40 TAC §§20.102, 20.103, 20.105, 20.106, 20.110, 20.111

The Texas Department of Human Services (DHS) adopts amendments to §§20.102, 20.103, 20.105, 20.106, 20.110, and 20.111. The amendments to §§20.103, 20.105, 20.110, and 20.111 are adopted without changes to the proposed text published in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3176). The amendment to §20.102 and §20.106 are adopted with technical changes.

Justification for the amendments is to define approval processes and cost reporting procedures, clarify allowable and unallowable costs, remove obsolete references, replace an obsolete reference with a new reference, and correct a typographical error. The amendments clarify current allowable and unallowable costs rules regarding where to report different types of benefits on the cost report and the definition of a passenger van. Clarifications are also being made to the process for requesting a waiver of the related party requirements for reporting costs on the cost report, the disclosure and process for requesting approval of an acceptable allocation method, and the contact for sending a request for an informal review of cost report adjustments. The adoption also specifies that the request of a waiver of the related party requirement for reporting costs on the cost report must be submitted within 45 days of the due date of the cost report. Clarifications are also being made to the definition of direct costing of certain costs on the cost report. The adoption clarifies that prior approval must be obtained to use an allocation method that is not in compliance with DHS rules. The adoption explains what is a functional allocation method. The adoption also grants a compliance period of 15 calendar days before a vendor hold can be placed for failure to submit a required cost report, correct a typographical error regarding how often mandatory cost report training must be attended. The rules requiring completion of cost reports according to instructions and rules that differentiate between 1994, 1995, and 1996 cost reports and cost reports for 1997 and subsequent years have been deleted. The requirement that cost reports must be completed according to instructions and rules has been moved and restated without a differentiation between cost report years. The rule reference to vendor hold for the nursing facility program has been revised to a new rule reference.

The amendments will function by providing guidance to contracted providers regarding the completion of required costs reports.

The department received no comments regarding adoption of the amendments. The department has made a technical change to §20.102(j)(4)(D) to correct the title in the cite to §20.103(b)(10)(B)(ii) of this title (relating to Specifications for Allowable and Unallowable Costs) and to §20.106 to correct the cite to be 1 TAC §355.403 (relating to Vendor Hold).

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§20.102. General Principles of Allowable and Unallowable Costs.

(a) Allowable and unallowable costs. Allowable and unallowable costs, both direct and indirect, are defined to identify expenses which are reasonable and necessary to provide contracted client care and are consistent with federal and state laws and regulations. When a particular type of expense is classified as unallowable, the classification means only that the expense will not be included in the database for reimbursement determination purposes because the expense is not considered reasonable and/or necessary. The classification does not mean that individual contracted providers may not make the expenditure. The description of allowable and unallowable costs is designed to be a general guide and to clarify certain key expense areas. This description is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

(b) Cost-reporting process. The primary objective of the cost-reporting process is to provide a basis for determining appropriate reimbursement to contracted providers. To achieve this objective, the reimbursement determination process uses allowable cost information reported on cost reports or other surveys. The cost report collects actual allowable costs and other financial and statistical information, as required. Costs may not be imputed and reported on the cost report when no costs were actually incurred (except as stated in §20.103(b)(16)(A)(i) of this title (relating to Specifications for Allowable and Unallowable Costs) or when documentation does not exist for costs even if they were actually incurred during the reporting period.

(c) Accurate cost reporting. Accurate cost reporting is the responsibility of the contracted provider. The contracted provider is responsible for including in the cost report all costs incurred, based on an accrual method of accounting, which are reasonable and necessary, in accordance with allowable and unallowable cost guidelines in this section and in §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs), revenue reporting guidelines in §20.104 of this title (relating to Revenues), cost report instructions, and applicable program rules. Reporting all allowable costs on the cost report is the responsibility of the contracted provider. The Texas Department of Human Services (DHS) is not responsible for the contracted provider's failure to report allowable costs; however, in an effort to collect reliable, accurate, and verifiable financial and statistical data, DHS is responsible for providing cost report training, general and/or specific cost report instructions, and technical assistance to providers. Furthermore, if unreported and/or understated allowable costs are discovered during the course of an audit desk

review or field audit, those allowable costs will be included on the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(d) Cost report training. DHS is responsible for conducting, at no charge to the provider, comprehensive cost report training for each contracted program. Beginning with the 1997 cost reports, it is the responsibility of the provider to ensure that each preparer signing the Cost Report Methodology Certification has attended cost report training conducted by DHS. Preparers may be employees of the provider or persons who have been contracted by the provider for the purpose of cost report preparation. Preparers must attend cost report training for each program for which a cost report is submitted. Preparers must attend cost report training for two consecutive years, after which they are required to attend training on at least a biennial basis. A copy of the most recent cost report training certificate for each preparer of the cost report must be submitted with each cost report. Travel costs to attend the state-sponsored cost report training are allowable within the travel limits specified in §20.103(b)(12) of this title (relating to Specifications for Allowable and Unallowable Costs). Contracted preparer's fees to attend state-sponsored cost report training are allowable.

(1) For nursing facilities, failure to file a completed cost report signed by preparers who have attended the required cost report training may result in vendor hold as specified in §19.2703 of this title (relating to Vendor Hold).

(2) For all other programs, failure to file a completed cost report signed by preparers who have attended the required cost report training constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §20.111 of this title (relating to Administrative Contract Violations).

(e) Generally accepted accounting principles. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, DHS rules take precedence for provider cost-reporting purposes.

(f) Allowable costs. Allowable costs are expenses, both direct and indirect, that are reasonable and necessary, as defined in paragraphs (1) and (2) of this subsection, and which meet the requirements as specified in subsections (i), (j), and (k) of this section, in the normal conduct of operations to provide contracted client services meeting all pertinent state and federal requirements. Only allowable costs are included in the reimbursement determination process.

(1) "Reasonable" refers to the amount expended. The test of reasonableness includes the expectation that the provider seeks to minimize costs and that the amount expended does not exceed what a prudent and cost-conscious buyer pays for a given item or service. In determining the reasonableness of a given cost, the following are considered:

(A) the restraints or requirements imposed by arm's-length bargaining, i.e., transactions with nonowners or other unrelated parties, federal and state laws and regulations, and contract terms and specifications; and

(B) the action that a prudent person would take in similar circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, and members, and the fulfillment of the purpose for which the business was organized.

(2) "Necessary" refers to the relationship of the cost, direct or indirect, incurred by a provider to the provision of contracted client care. Necessary costs are direct and indirect costs that are appropriate in developing and maintaining the required standard of operation for providing client care in accordance with the contract and state and federal regulations. In addition, to qualify as a necessary expense, a direct or indirect cost must meet all of the following requirements:

(A) the expenditure was not for personal or other activities not directly or indirectly related to the provision of contracted services;

(B) the cost does not appear as a specific unallowable cost in §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs);

(C) if a direct cost, it bears a significant relationship to contracted client care. To qualify as significant, the elimination of the expenditure would have an adverse impact on client health, safety, or general well-being;

(D) the direct or indirect expense was incurred in the purchase of materials, supplies, or services provided to clients or staff in the normal conduct of operations to provide contracted client care;

(E) the direct or indirect costs are not allocable to or included as a cost of any other program in either the current, a prior, or a future cost-reporting period;

(F) the costs are net of all applicable credits;

(G) allocated costs of each program are adequately substantiated; and

(H) the costs are not prohibited under other pertinent federal, state, or local laws or regulations.

(3) Direct costs are those costs which are incurred by a provider which are definitely attributable to the operation of providing contracted client services. Direct costs include, but are not limited to, salaries and nonlabor costs necessary for the provision of contracted client care. Whether or not a cost is considered a direct cost depends upon the specific contracted client services covered by the program. In programs in which client meals are covered program services, the salaries of cooks and other food service personnel are direct costs, as are food, nonfood supplies, and other such dietary costs. In programs in which client transportation is a covered program service, the salaries of drivers are direct costs, as are vehicle repairs and maintenance, vehicle insurance and depreciation, and other such client transportation costs.

(4) Indirect costs are those costs which benefit, or contribute to, the operation of providing contracted services, other business components, or the overall entity with which DHS has contracted. These costs could include, but are not limited to, administration salaries and nonlabor costs, building costs, insurance expense, and interest expense. Central office and/or home office administrative expenses are considered indirect costs.

(g) Unallowable costs. Unallowable costs are expenses that are not reasonable or necessary, according to the criteria specified in subsection (f)(1)-(2) of this section and which do not meet the requirements as specified in subsections (i), (j), and (k) of this section

or which are specifically enumerated in §20.103 of this title (relating to Specifications for Allowable and Unallowable Costs) or program-specific reimbursement methodology. Providers must not report as an allowable cost on a cost report a cost that has been determined to be unallowable. Such reporting may constitute fraud. (Refer to §79.2103 of this title (relating to Statutory Bases) for the statutory basis for Medicaid fraud and §20.106(a) of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports)).

(1) For nursing facilities, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable may result in vendor hold as specified in §19.2703 of this title (relating to Vendor Hold).

(2) For all other programs, placement as an allowable cost on a cost report of a cost which has been determined to be unallowable constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §20.111 of this title (relating to Administrative Contract Violations).

(h) Other financial and statistical data. The primary purpose of the cost report is to collect allowable costs to be used as a basis for reimbursement determination. In addition, providers may be required on cost reports to provide information in addition to allowable costs to support allowable costs, such as wage surveys, workers' compensation surveys, or other statistical and financial information. Additional data requested may include, when specified and in the appropriate section or line number specified, costs incurred by the provider which are unallowable costs. All information, including other financial and statistical data, shown on a cost report is subject to the documentation and verification procedures required for an audit desk review and/or field audit.

(1) For nursing facilities, inaccuracy in providing, or failure to provide, required financial and statistical data may result in vendor hold as specified in §19.2703 of this title (relating to Vendor Hold).

(2) For all other programs, inaccuracy in providing, or failure to provide, required financial and statistical data constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §20.111 of this title (relating to Administrative Contract Violations).

(i) Related party transactions.

(1) In determining whether a contracted provider organization is related to a supplying organization, the tests of common ownership and control are to be applied separately. Related to a contracted provider means that the contracted provider to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, leases, or supplies. Common ownership exists if an individual or individuals possess any ownership or equity in the contracted provider and the institution or organization serving the contracted provider. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations, then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create an irrebuttable presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family for cost-reporting purposes:

(A) husband and wife;

(B) natural parent, child, and sibling;

(C) adopted child and adoptive parent;

(D) stepparent, stepchild, stepsister, and stepbrother;

(E) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law;

(F) grandparent and grandchild;

(G) uncles and aunts by blood or marriage;

(H) nephews and nieces by blood or marriage; and

(I) first cousins.

(2) A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contracted provider organization and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contracted provider organization or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to the interest in the assets of the organization, e.g., a reversionary interest provided for in the articles of incorporation of a nonprofit corporation.

(3) The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances involved, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control to their directors in common.

(4) Costs applicable to services, equipment, facilities, leases, or supplies furnished to the contracted provider by organizations related to the provider by common ownership or control are includable in the allowable cost of the provider at the cost to the related organization. However, the cost must not exceed the price of comparable services, equipment, facilities, leases, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contracted provider through the related organization (whether related by common ownership or control), and to avoid payment of artificially inflated costs which may be generated from less than arm's-length bargaining. The related organization's costs include all actual reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, leases, or supplies to the provider. The intent is to treat the costs incurred by the supplier as if they were incurred by the contracted provider itself. Therefore, if a cost would be unallowable if incurred by the contracted provider itself, it would be similarly unallowable to the related organization. The principles of reimbursement of contracted provider costs described throughout this title will generally be followed in determining the reasonableness and allowability of the related organization's costs, where application of a principle in a nonprovider entity would be clearly inappropriate.

(5) An exception is provided to the general rule applicable to related organizations. The exception applies if the contracted provider demonstrates by convincing evidence to the satisfaction of DHS that certain criteria have been met. If all of the conditions of this

exception are met, then the charges by the supplier to the contracted provider for such services, equipment, facilities, leases, or supplies are allowable costs. If Medicare has made a determination that a related party situation does not exist or that an exception to the related party definition was granted, DHS will review the determination made by Medicare to determine if it is applicable to the current situation of the contracted provider and in compliance with this subsection (relating to related party transactions). In order to have the Medicare determination considered for approval by the department, a copy of the applicable Medicare determination must accompany each written exception request submitted to the department, along with evidence supporting the Medicare determination for the current cost-reporting period. If the exception granted by Medicare no longer is applicable due to changes in circumstances of the contracted provider or because the circumstances do not apply to the contracted provider, DHS may choose not to consider the Medicare determination. Written requests for an exception to the general rule applicable to related organizations must be submitted for approval to the Rate Analysis Department within 45 days of the due date of the cost report in order to be considered for that year's cost report. Each request must include documentation supporting that the contracted provider meets each of the four criteria listed in subparagraphs (A)-(D) of this paragraph. Requests that do not include the required documentation for each criteria will not be considered for that year's cost report.

(A) The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the contracted provider organization.

(B) A majority of the supplying organization's business activity of the type carried on with the contracted provider is transacted with other organizations not related to the contracted provider and the supplier by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, leases, or supplies furnished by the organization. In determining whether the activities are of similar type, it is important also to consider the scope of the activity. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arm's-length bargaining by well-informed buyers and sellers.

(C) The services, equipment, facilities, leases, or supplies are those which commonly are obtained by entities such as the contracted provider from other organizations and are not a basic element of contracted client care ordinarily furnished directly to clients by such entities. This requirement means that entities such as the contracted provider typically obtain the services, equipment, facilities, leases, or supplies from outside sources, rather than producing them internally.

(D) The charge to the contracted provider is in line with the charge of such services, equipment, facilities, leases, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the organization for such services, equipment, facilities, leases, or supplies.

(6) Disclosure of all related-party information on the cost report is required for all costs reported by the contracted provider, including related-party transactions occurring at any level in the provider's organization, (e.g., the central office level, and the individual contracted provider level). The contracted provider must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation must include an identification of the related person's or organization's total costs, the basis of allocation of direct and indirect costs to the contracted provider, and other business entities served. If a contracted provider fails to provide adequate documentation to substantiate the cost to the related person or organization, then the reported cost is unallowable. For further guidelines regarding adequate documentation, refer to §20.105(b)(2) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(7) When calculating the cost to the related organization, the cost-determination guidelines specified in §20.102 and §20.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs) apply.

(j) Cost allocation. Direct costing must be used whenever reasonably possible. Direct costing means that allowable costs, direct or indirect, (as defined in subsection (f)(3)-(4) of this section) incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For example, the payroll costs of a direct care employee who works across cost areas within one DHS-contracted program would be directly charged to each cost area of that program based upon that employee's continuous daily time sheets and the costs of a direct care employee who works across more than one service delivery area would also be directly charged to each service delivery area based upon that employee's continuous daily time sheets.

(1) If cost allocation is necessary for cost-reporting purposes, contracted providers must use reasonable methods of allocation and must be consistent in their use of allocation methods for cost-reporting purposes across all program areas and business entities.

(A) The allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. Allocated costs are adjusted if DHS considers the allocation method to be unreasonable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by DHS for cost-reporting purposes.

(B) DHS reviews each cost-reporting allocation method on a case-by-case basis in order to ensure that the reported costs fairly and reasonably represent the operations of the contracted provider. If in the course of an audit it is determined that an existing or approved allocation method does not fairly and reasonably represent the operations of the contracted provider, then an adjustment to the allocation method will be made consistent with subsection (f)(3)-(4) of this section. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §20.110 of this title (relating to Informal Reviews and Formal Appeals).

(C) Any allocation method used for cost-reporting purposes must be consistently applied across all contracted programs and business entities in which the contracted provider has an interest.

(D) Providers must use an allocation method approved or required by DHS. Any change in cost-reporting allocation methods from one year to the next must be fully disclosed by the contracted provider on its cost report and must be accompanied by a written explanation of the reasons and justification for such change. If the provider wishes to use an allocation method that is not in compliance with the cost-reporting allocation methods in paragraphs (3)-(4) of this subsection, the contracted provider must obtain written prior approval from DHS's Rate Analysis Department.

(i) Requests for approval to use an allocation method other than those identified in paragraphs (3)-(4) of this subsection or for approval of a provider's change in cost-reporting allocation method other than those identified in paragraphs (3)-(4) of this subsection must be received by DHS's Rate Analysis Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(ii) The Rate Analysis Department will forward its written decision to the contracted provider within 45 days of its receipt of the provider's original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, then DHS may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §20.110 of this title (relating to Informal Reviews and Formal Appeals).

(iii) Failure to use an allocation method approved or required by DHS or to disclose a change in an allocation to DHS will result in the following.

(I) For nursing facilities, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by DHS may result in vendor hold as specified in 1 TAC §355.403 (relating to Vendor Hold).

(II) For all other programs, failure to disclose a change in an allocation method or failure to use the allocation method approved or required by DHS constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §20.111 of this title (relating to Administrative Contract Violations).

(2) Cost-reporting methods for allocating costs must be clearly and completely documented in the contracted provider's workpapers, with details as to how pooled costs are allocated to each segment of the business entity, for both contracted and noncontracted programs.

(A) If a contracted provider has questions regarding the reasonableness of an allocation method, that contracted provider should request written approval from the Rate Analysis Department prior to submitting a cost report utilizing the allocation method in question. Requests for approval must be received by the Rate Analysis Department prior to the end of the contracted provider's fiscal year. Requests for approval of allocation methods will not be acceptable as a basis for the extension of the cost report due date.

(B) The Rate Analysis Department will forward its written decision to the contracted provider within 45 days of its receipt of the original written request. If sufficient documentation is not provided by the provider to verify the acceptability of the allocation method, DHS may extend the decision time frame. However, an extension of the due date of the cost report will not be granted. Written decisions made on or after the due date of the cost report will apply to the next year's cost report. A contracted provider may request an informal review, and subsequently an appeal, of a decision concerning its allocation methods in accordance with §20.110 of this title (relating to Informal Reviews and Formal Appeals).

(3) When a building is shared and the building usage is separate and distinct for each entity using the building, the building costs, identified as building and facility cost categories on the cost report, should be allocated based upon square footage and may not be allocated with other indirect costs as a pool of costs. When the same building space is shared by various entities, the shared building costs, identified as building and facility cost categories on the cost report, should be allocated using a reasonable method which reflects the actual usage, such as an allocation based on time in shared activity areas or a functional study of shared dietary costs related to shared dining and kitchen areas.

(4) Where costs are shared, are not directly chargeable and are allocated as a pool of costs, the following allocation methods are acceptable for cost-reporting purposes.

(A) If all the business components of a contracted provider have equivalent units of equivalent service, indirect costs must be allocated based upon each business component's units of service. For example, if a provider had two nursing facilities, indirect costs requiring allocation as a pool of costs must be allocated based upon each nursing facility's units of service, since the units of service are equivalent units and the services are equivalent services. If a provider had a nursing facility and a residential care program, indirect costs requiring allocation as a pool of costs could not be allocated based upon units of service because even though the units of service for a nursing facility and a residential care facility are equivalent units, the services are not equivalent services. If a home health agency has indirect costs requiring allocation as a pool of costs across its Medicare home health services and its Medicaid primary home care services, it could not use units of service to allocate those costs, since neither the units of service nor the services are equivalent.

(B) If all of a contracted provider's business components are labor-intensive without programmatic residential facility or residential building costs, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs based either on each business component's pro rata share of salaries or labor costs or on a cost-to-cost basis.

(i) For cost-reporting cost allocation purposes, the term "salaries" includes wages paid to employees directly charged to the specific business component. The term "salaries" also includes fees paid to contracted individuals, excluding consultants, who perform services routinely performed by employees, which are directly charged to the specific business component. The term "salaries" does not include payroll taxes and employee benefits associated with the wages of employees.

(ii) For cost-reporting cost-allocation purposes, the term "labor costs" includes salaries as defined in clause (i) of this subparagraph, plus the payroll taxes and employee benefits associated with the wages of the employees.

(iii) The cost-to-cost method allocates costs based upon the percentage of each business component's directly-charged costs to the total directly-charged costs of all business components.

(C) If a contracted provider's business components are mixed, with some being labor-intensive and others having a programmatic residential or institutional component, the contracted provider must allocate its indirect costs requiring allocation as a pool of costs either:

(i) based upon the ratio of each business component's total costs less that business component's facility or building costs, as related to the contracted provider's total business component costs less facility or building costs for all the contracted provider's

business components, with "facility or building costs" referring to those cost categories as identified on the cost report; or

(ii) based upon the labor costs method stated in subparagraph (B)(ii) of this paragraph.

(D) In order to achieve a more accurate and representative reporting of costs than results from allocating shared indirect costs as a pool of costs, a provider may choose to allocate its indirect shared expenses on an appropriate and reasonable functional basis. If allocating shared direct client care costs, a provider may use an appropriate and reasonable functional method. For example, costs of a central payroll operation could be allocated to all business components based on the number of checks issued; the costs of a central purchasing function could be allocated based on the number of purchases made or requisitions handled; payroll costs for an administrative employee working across business components could be directly charged based upon that employee's time sheets and/or allocated based upon a documented time study; food costs could be allocated based upon a functional study of shared dietary costs; transportation equipment costs could be allocated based upon mileage logs; and shared laundry costs could be allocated based upon a functional study of the number of pounds/loads of laundry processed. Providers choosing to allocate allowable employee-related self-insurance paid claims in accordance with §20.103(b)(10)(B)(ii) of this title relating to Specifications for Allowable and Unallowable Costs) should base the allocation on percentage of salaries of employees benefiting from the coverage for fully self-insured situations or on percentage of premiums of covered employees for partially self-insured situations since purchased premiums must be directly charged.

(E) Because the determination of reimbursement is based on cost data, allocation methods based upon revenue streams are inappropriate and unallowable.

(k) Net expenses. Net expenses are gross expenses less any purchase discounts or returns and allowances. Purchase discounts are cash discounts reducing the purchase price as a result of prompt payment, quantity purchases, or for other reasons. Purchase returns and allowances are reductions in expenses resulting from returned merchandise or merchandise which is damaged, lost, or incorrectly billed. Only net expenses may be reported on the cost report. Expenses reported on the cost report must be adjusted for all such purchase discounts or returns and allowances.

§20.106. Basic Objectives and Criteria for Audit and Desk Review of Cost Reports.

(a) The Texas Department of Human Services (DHS) conducts desk reviews and field audits of provider cost reports in order to ensure that all financial and statistical information reported in the cost reports conforms to all applicable rules and instructions. Cost reports must be completed according to instructions and rules in accordance with §20.105(b)(4) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). DHS may require supporting documentation other than that contained in the cost report to substantiate reported information.

(1) For nursing facilities, failure to complete cost reports according to instructions and rules in accordance with §20.105(b)(4) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) may result in vendor hold as specified in 1 TAC §355.403 (relating to Vendor Hold).

(2) For all other programs, failure to complete cost reports according to instructions and rules in accordance with §20.105(b)(4) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures) constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §20.111 of this title (relating to Administrative Contract Violations).

(b) The basic objective of audits and desk reviews is to verify that each provider's cost report:

(1) displays financial and other statistical information in the format required by DHS;

(2) reports expenses in conformity with DHS's lists of allowable and unallowable costs;

(3) follows generally accepted accounting principles, except as otherwise specified in DHS's lists of allowable and unallowable costs, and other pertinent rules or as otherwise permitted in the case of governmental entities operating on a cash or modified accrual basis; and

(4) is completed in accordance with each program's cost report instructions and rules.

(c) DHS verifies the information specified in subsection (b) of this section by:

(1) comparing each provider's reported costs to:

(A) past patterns of expenditures for similar services;

(B) the results of previous field audits;

(C) normal operating cost relationships; and

(D) industry average costs, when available;

(2) reviewing each provider's reported costs for:

(A) reported unallowable costs;

(B) omitted allowable costs, if discovered during the course of the audit or desk review; and

(C) understated or overstated allowable costs, if discovered during the course of the audit or desk review;

(3) checking for completion of required information;

(4) checking the format for proper cost classification;

(5) checking for mathematical accuracy; and

(6) adjusting the cost report, or notifying the provider that research and/or corrections are required.

(d) In accordance with methodology rules, cost report instructions or policy clarifications, DHS may reassign allowable costs to the appropriate line items of a cost report.

(e) DHS seeks to maximize the number of field audited cost reports available for use in its cost projections. In addition to cost reports selected for field audit based upon risk analysis, other specific criteria and random sampling, DHS may conduct field audits of cost reports that show unusual fluctuations or trends in costs or other statistics. DHS may also conduct field audits when desk reviews are insufficient to verify the accuracy of reported costs.

(f) For cost reports pertaining to providers' fiscal years ending in calendar year 1997 and subsequent years, each provider entity or its designated agent(s) must allow access to any and all records necessary to verify information submitted to DHS on cost reports. This requirement includes records pertaining to related party transactions or other business activities engaged in by the provider.

(1) For nursing facilities, failure to allow access to any and all records necessary to verify information submitted to DHS on cost reports may result in vendor hold as specified in §19.2703 of this title (relating to Vendor Hold).

(2) For all other programs, failure to allow access to any and all records necessary to verify information submitted to DHS on cost reports constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §20.111 of this title (relating to Administrative Contract Violations).

(g) A contracted provider may request an informal review, and subsequently an appeal, of a desk review or field audit disallowance in accordance with §20.110 of this title (relating to Informal Reviews and Formal 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 June 6, 2000.

TRD-200003988
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: June 26, 2000
Proposal publication date: April 14, 2000
For further information, please call: (512) 438-3108

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Chapter 63. REIMBURSEMENT THROUGH STATE LEGALIZATION IMPACT ASSISTANCE GRANT

40 TAC §§63.1, 63.3, 63.5, 63.7, 63.9, 63.11, 63.13, 63.15, 63.17

The Texas Department of Human Services (DHS) adopts the repeal of §§63.1, 63.3, 63.5, 63.7, 63.9, 63.11, 63.13, 63.15, and 63.17 without changes to the proposed text published in the April 21, 2000, issue of the *Texas Register* (25 TexReg 3507).

Justification for the repeals is deletion of Chapter 63, a result of the Legislature transferring this program to the Texas Department of Health effective September 1, 1993.

The department received no comments regarding adoption of the repeal.

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 8, 2000.

TRD-200004055
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 2000
Proposal publication date: April 21, 2000
For further information, please call: (512) 438-3108

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance, at a public hearing under Docket No. 2449 scheduled for July 25, 2000 at 10:00 a.m., Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in the Second Supplemental Petition filed by Motors Insurance Company (MIC). In its latest petition, MIC seeks an amendment to the Texas Automobile Rules and Rating Manual (the Manual), Rule 125, to allow automobile floor plan coverage to be written optionally as provided by Rule 125 or as inland marine insurance as proposed in MIC's two previously filed petitions. The notification for that proposal has been published pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The petition (Ref. No. A-0699-10) was filed on March 7, 2000.

An exhibit attached to MIC's latest petition illustrates the proposed amendment to Rule 125. MIC proposes the addition to Section D of Rule 125 the following provision: "A wholesale floor plan may also be written pursuant to 28 TAC §5.5002 entitled 'Texas Definition of Inland Marine Insurance' as provided in paragraph (5)(K)." The amendment to the Manual is necessary for clarification of the two options currently available to insurers writing automobile floor plan coverage. Insurers can continue to provide coverage of automobile floor plans pursuant to Rule 125 or pursuant to newly amended 28 TAC §5.5002(5)(K).

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.10, 5.96, and 5.98.

A copy of the petition, including an exhibit with the full text of the proposed amendment to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to Ref. No. A-0699-10.

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted simultaneously to Marilyn Hamilton, Deputy Commissioner, Property & Casualty Program, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas, 78714-9104.

This notification is made pursuant to the Insurance code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200004151
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 13, 2000

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.

Agency Rule Review Plan

Texas Education Agency (Revised Agency Rule Review Plan)

Title 19, Part 2

Filed: June 13, 2000

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Texas Board of Occupational Therapy Examiners

Title 40, Part 12

Filed: June 8, 2000

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Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 20, concerning Cotton Pest Control, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (Section 9-10.13). Section 9-10.13 and §2001.039 require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Title 4, Part 1,§§20.1 and 20.22, new §20.23, and the repeal of §§20.4. These may be found in the proposed rule section of this publication of the *Texas Register*. The assessment of Title 4, Part 1, Chapter 20, by the department at this time indicates that with the exception of sections proposed for amendment or repeal, the reason for adopting or readopting without changes all remaining sections in Chapter 20 continues to exist.

The department is accepting comment on the review of Chapter 20. Comments on the review may be submitted within 30 days following the publication of this notice in the *Texas Register* to Ed Gage, Coordinator for Pest Management, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711.

TRD-200004068
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 9, 2000

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Department of Information Resources

Title 1, Part 10

The Department of Information Resources (DIR) files this notice of intention to review and consider for readoption, revision, or repeal, Title 1, Texas Administrative Code, Chapter 201, Section 201.13, subsection (c), " Use of TEX-AN Network", and subsection (d), "Standards for Data Transport Networks for Computers." This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, 76th Legislature, Article IX, Section 9-10.13. The review will include, at a minimum, as assessment by DIR as to whether the reasons for adopting or readopting these rules continue to exist.

Any questions or written comments pertaining to this rule review may be submitted to C.J. Brandt, Jr., General Counsel, P.O. Box 13564, Austin, Texas 78711, via facsimile at (512) 475-4759, or via e-mail at cj.brandt@dir.state.tx.us. The deadline for comments is thirty (30) days after publication in the *Texas Register*. Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule section of the *Texas Register*. The proposed rule changes will be open for public comment prior to final adoption or repeal by the department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

1 TAC §201.13, subsection (c) Use of TEX-AN Network and subsection (d), Standards for Data Transport Networks for Computers.

TRD-200004139
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Filed: June 13, 2000

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Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners proposes to review Chapter 183 (§§183.1-183.23), concerning Acupuncture, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §§183.1-183.5, repeal of §§183.6-183.23 and new §§183.6-183.21 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§183.1. Purpose.

§183.2. Definitions

§183.3. Meetings

§183.4. Licensure

§183.5. Annual Renewal of License

§183.6. Schedule of Fees

§183.7. Denial of License; Discipline of Licensee

§183.8. Investigations

§183.9. Procedure–General

§183.10. Procedure–Prehearing

§183.11. Procedure–Hearing

§183.12. Procedure–Posthearing

§183.13. Patient Records

§183.14. Complaint Procedure Notification

§183.15. Medical Board Review and Approval

§183.16. Construction

§183.17. Acudetox Specialist

§183.18. Automatic Licensure

§183.19. Use of Professional Titles

§183.20. Texas Acupuncture Schools

§183.21. Acupuncture Advertising

§183.22. Continuing Acupuncture Education

§183.23. Continuing Auricular Acupuncture Education for Acudetox Specialists

TRD-200004108
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 12, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 185 (§§185.1-185.29), concerning Physician Assistants, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §§185.2, 185.4-185.7, 185.14, 185.16, 185.17, repeal of §§185.18-185.29 and new §§185.18-185.28 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§185.1. Purpose

§185.2. Definitions

§185.3. Meetings

§185.4. Licensure

§185.5. Relicensure

§185.6. Annual Renewal of License

§185.7. Temporary License

§185.8. Schedule of Fees

§185.9. Inactive License

§185.10. Reinstatement of License Following Cancellation for Cause

§185.11. Physician Assistant Scope of Practice

§185.12. Tasks Not Permitted To Be Delegated of a Physician Assistant

§185.13. Identification Requirements

§185.14. Notification of Intent to Practice and Supervise

§185.15. Physician Supervision

§185.16. Supervising Physician

§185.17. Employment Guidelines

§185.18. Exceptions

§185.19. Grounds for Denial of Licensure and for Disciplinary Action

§185.20. Discipline of Physician Assistants

§185.21. Administrative Penalty

§185.22. Complaint Procedure Notification

§185.23. Investigations

§185.24. Procedure–General

§185.25. Procedure–Prehearing

§185.26. Procedure–Hearing

§185.27. Procedure–Posthearing

§185.28. Medical Board Review and Approval

§185.29. Construction

TRD-200004107
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: June 12, 2000

♦ ♦ ♦

Executive Council of Physical Therapy and Occupational Therapy Examiners

Title 22, Part 28

The Executive Council of Physical Therapy and Occupational Therapy Examiners files this notice of intention to review the rules as listed below, pursuant to the General Appropriations Act, House Bill 1, Article IX, §167, passed by the 75th Legislature (1997), and the revised review plan published in this issue of the *Texas Register*.

The board's reasons for adopting the rules in these chapters continue to exist, and it proposes to readopt them all. Any rule amendments determined to be necessary during the review will be formally proposed at a subsequent board meeting, and will not be submitted simultaneously with the Notice of Readoption.

The board encourages comments regarding the readoption of the rules. The deadline for comments is 30 days after the publication of this notice in the *Texas Register.*

Any questions or comments regarding whether the reason for adopting these rules continues to exist must be received at the agency by 5:00 p.m. on July 23, 2000. All questions or comments should be directed to Jennifer J. Jones, Executive Assistant, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701. Phone: 512/305-6900. E-mail: jennifer.jones@mail.capnet.state.tx.us

Chapter 651, Fees. Sections 651.1, 651.2, 651.3.

TRD-200004057
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Filed: June 8, 2000

♦ ♦ ♦

Texas State Board of Podiatric Medical Examiners

Title 22, Part 18

In accordance with 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas State Board of Podiatric Medical Examiners will review the following rules for readoption, repeal or amendment beginning immediately. The rules to be reviewed are located at 22 Tex. Admin. Code Chapter 371. Examination, Chapter 373. Identification of Practice, Chapter 375. Rules Governing Conduct, Chapter 376. Violations and Penalties and Chapter 377. Procedure Governing Grievances, Hearings, and Appeals.

The Board will consider comments received in response to this notice at its next meeting following the publication of this notice. Changes to the rules proposed by the Board after considering comments received in response to this notice will appear in the "Rules Proposed" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Tex. Gov't Code Ann, Ch. 2001. Comments must be received no later than August 1, 2000.

Comments of the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Janie Alonzo, Staff Services Officer I, Texas State Board of Podiatric Medical Examiners, 333 Guadalupe, Suite 2-320, Austin, Texas 78701 or e-mail to janie.alonzo@foot.state.tx.us.

TRD-200004012
Janie Alonzo
Staff Services Officer I
Texas State Board of Podiatric Medical Examiners
Filed: June 7, 2000

♦ ♦ ♦

Polygraph Examiners Board

Title 22, Part 19

The Polygraph Examiners Board proposes to review the following sections from Chapter 391, concerning Polygraph Examiner Internship, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

§391.1. Authority

§391.2. Procedure and Qualifications

§391.3. Internship Training Schedule

§391.4. State Examinations for Polygraph Examiner License

§391.5. Intern Supervision

§391.6. Intern Sponsor Reporting

§391.7. Appearance Before the Board

§391.8. Applicant With Out-of-State License

§391.9. Intern Licensure Requirements for Preceptor Trainees

The agency finds that the need for the rules contained in this chapter continues to exist.

Comments on the review of these proposed rules may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

TRD-200004054
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Filed: June 8, 2000

♦ ♦ ♦

The Polygraph Examiners Board proposes to review the following sections from Chapter 401, concerning Grievance Review of Disciplinary Action, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

§401.1. Grievance Policy.

The agency finds that the need for the rules contained in this chapter continues to exist.

Comments on the review of these proposed rules may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001.

TRD-200004053
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Filed: June 8, 2000

♦ ♦ ♦

Adopted Rule Reviews

Texas Motor Vehicle Board

Title 16, Part 6

The Texas Motor Vehicle Board of the Texas Department of Transportation readopts 16 TAC Chapter 105, Advertising Rules, relating to the guidelines for regulation of advertising by motor vehicle dealers, manufacturers, distributors and converters, pursuant to the Board's Rule Review Plan required by and adopted under the Appropriations Act of 1997, House Bill 1, Article IX, § 167. Notice of the proposed review was published in the March 3, 2000 issue of the *Texas Register* (25 TexReg 1883). The Board finds that the reasons for adopting Chapter 105, Advertising Rules, continue to exist.

No comments were received related to the rule review requirement as to whether the reason for adopting the rules continue to exist. As a result of the review process, the Board will propose amendments to chapter 105 and new § 105.18. The proposals will be published in the Texas Register in accordance with the Administrative Procedure Act.

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

TRD-200004063
Brett Bray
Director
Texas Motor Vehicle Board
Filed: June 9, 2000

♦ ♦ ♦

Texas Department of Public Safety

Title 37, Part 1

The Texas Department of Public Safety (DPS) has completed the review of Chapter 18 - Driver Education. Pursuant to the requirements of §167 of the Appropriations Act, the DPS readopts the following: §§18.2-18.4, and §18.33.

The proposed review was published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2406).

The DPS received no comments as to whether the reason for adopting the rules continues to exist. The DPS finds that the reason for adopting these rules continues to exist.

As part of this review process, the DPS proposed amendments to the following sections as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2305). Amendments to Chapter 18 included §§18.1, 18.21-18.24, 18.31, and 18.32.

The DPS received no comments on the proposed amendments. The DPS finds that the reason for adopting these rules continues to exist.

TRD-200004073
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: June 9, 2000

♦ ♦ ♦

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §183.7(g)(9)

TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS

P.O. Box 2018
Austin, Texas 78768-2018

PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT ACUPUNCTURIST.

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer:

_____

_____

2. Defendant acupuncturist:

_____

License number:_____

3. Plaintiff's name:

_____

4. Policy number:

_____

5. Date claim reported to insurer/self-insured acupuncturist:

_____

6. Type of complaint:_____ claim only _____ lawsuit

7. Initial reserve amount after investigation:

_____

(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with T.S.B.A.E.)

_____	_____
Person completing this report	Phone number

PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH T.S.B.A.E. WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.

8. Date of disposition:_____

9. Type of Disposition:

_____ (1) Settlement

_____ (2) Judgment after trial

_____ (3) Other (please specify)

_____

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

$ _____. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: $100,000/3)

11. Appeal, if known: _____Yes _____ No. If yes, which party:

_____

_____ _____

Person completing this report Phone number

Figure: 22 TAC §183.8(f)(5)

SOAH Docket No. _____

X-OOOO

IN THE MATTER OF THE BEFORE THE	)(	
COMPLAINT AGAINST BOARD	)(	TEXAS STATE
_____, RESPONDENT EXAMINERS	)(	OF ACUPUNCTURE

NAME OF PLEADING

Form to be Completed by Patient, Notifying the Acupuncturist of Whether He/She Has Been Evaluated by a Physician, and Other Information.

(Pursuant to the requirements of section 183.6(e) ~~183.7(e)~~ of this title (relating to Denial of License; Discipline of Licensee) and section 6.11, subsections (b) through (d), V.A.C.S., article 4495b, governing the practice of acupuncture.)

I (patient's name) _____, am notifying the acupuncturist (practitioner's name), _____ of the following:

___ Yes ___ No I have been evaluated by a physician or dentist for the condition being treated within 12 months before the acupuncture was performed. I recognize that I should be evaluated by a physician for the condition being treated by the acupuncturist.

_____ (initials of patient) Date: _____

___ Yes ___ No I have received a referral from my chiropractor within the last 30 days for acupuncture.

After being referred by a chiropractor, if after 120 days or 30 treatments, whichever comes first, no substantial improvement occurs in the condition being treated, I understand that the acupuncturist is required to refer me to a physician. It is my responsibility and choice whether to follow this advice.

Signature _____ Date _____

Optional Form to be Completed by Patient,

Attesting that the Acupuncturist Has Referred Him/Her

(Pursuant to the requirement of section 183.6(e) ~~183.7(e)~~ of this title and section 6.11, subsection (d), V.A.C.S., article 4495b, governing the practice of acupuncture.)

The acupuncturist has referred me to see a physician. It is my responsibility and choice whether to follow his advice.

Patient's signature _____ Date _____

Acupuncturist's signature _____ Date _____

Figure: 22 TAC §183.13(b)

NOTICE CONCERNING

COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants and acupuncturists, may be reported for investigation at the following address:

Texas State Board of Medical Examiners Attention: Investigations

333 Guadalupe, Tower 3, Suite 610

P.O. Box 2018, MC-263

Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353

Figure: 22 TAC §183.13(c)

AVISO SOBRE QUEJAS

Se pueden presentar quejas acerca de médicos, así también como de otras personas autorizadas y registradas por la Junta de Examinadores Médicos del Estado de Texas (Texas State Board of Medical Examiners), incluyendo a ayudantes médicos y acupunturistas, para su investigación, en la siguiente dirección:

Texas State Board of Medical Examiners Attention: Investigations

333 Guadalupe, Tower 3, Suite 610

P.O. Box 2018, MC-263

Austin, Texas 78768-2018

Se puede obtener ayuda para presentar una queja llamando al siguiente número telefónico: 1-800-201-9353

Figure: 22 TAC §183.18(b)

ACUPUNCTURE TRAINING ADVISORY STATEMENT

You are advised that the practice of acupuncture in Texas requires licensure by the Texas State Board of Acupuncture Examiners and is governed by the Medical Practice Act (the Act), Texas Civil Statutes, Article 4495b, subchapter F, and the rules of the Texas State Board of Medical Examiners, 22 TAC 183.1 et. seq.

You are further advised that for an acupuncture school located in the United States or Canada to be considered to be an approved acupuncture school by the Texas State Board of Acupuncture Examiners for purposes of meeting the educational requirements for obtaining an acupuncture license, the school must comply and must meet the requirements set forth below:

Acceptable approved acupuncture school - Effective January 1, 1996, with the exception of the provisions outlined in section 183.4(h) of this title (relating to Exceptions),

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM), offered no more than a certificate upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modification/variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by ACAOM, offered a masters degree upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a school defined in subparagraph (B) of this paragraph through an evaluation by a board-approved credential evaluation service; and

(D) the requirements of this section shall be in addition to the requirements of the Medical Practice Act, section 6.07, subsection (c), and shall be construed and applied so as to be consistent with the Act.

You are additionally advised that _____ (name of institution) is not currently a candidate for accreditation by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) and is not currently accredited by ACAOM. If such candidate status or accreditation is not obtained by this institution by the time of your graduation, under the current rules of the Texas State Board of Acupuncture Examiners you will not be eligible for a Texas acupuncture license based on training received at this institution.

Figure: 22 TAC §185.21(b)

NOTICE CONCERNING COMPLAINTS

Complaints about physicians, as well as other licensees and registrants of the Texas State Board of Medical Examiners, including physician assistants and acupuncturists, may be reported for investigation at the following address:

Texas State Board of Medical Examiners Attention: Investigations

333 Guadalupe, Tower 3, Suite 610

P.O. Box 2018, MC-263

Austin, Texas 78768-2018

Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353

Figure: 22 TAC §185.21(c)

AVISO SOBRE QUEJAS

Se pueden presentar quejas acerca de médicos, así también como de otras personas autorizadas y registradas por la Junta de Examinadores Médicos del Estado de Texas (Texas State Board of Medical Examiners), incluyendo a ayudantes médicos y acupunturistas, para su investigación, en la siguiente dirección:

Texas State Board of Medical Examiners Attention: Investigations

333 Guadalupe, Tower 3, Suite 610

P.O. Box 2018, MC-263

Austin, Texas 78768-2018

Se puede obtener ayuda para presentar una queja llamando al siguiente número telefónico: 1-800-201-9353

TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS

P.O. Box 2018, MC-263
Austin, Texas 78768-2018

PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN ASSISTANT

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer:

   _____

   _____

   _____

2. Defendant physician assistant:

   _____

   License number:_____

3. Plaintiff's name:

   _____

4. Policy number:

   _____

5. Date claim reported to insurer/self-insured physician assistant:

   _____

6. Type of complaint:_____ claim only _____ lawsuit

7. Initial reserve amount after investigation:

   _____
   (If this is not determined within 30 days, report this data within 105 days of filing the Part I report with the board)

   _____
   Person completing this report (SIGNATURE)

   _____ _____

Person completing this report (PRINT NAME) Phone number

PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE TEXAS STATE BOARD OF PHYSICIAN ASSISTANT EXAMINERS WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF A COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.

8. Date of disposition:_____

9. Type of Disposition:

_____ (1) Settlement

_____ (2) Judgment after trial

_____ (3) Other (please specify)

_____

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

$ _____. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: $100,000/3)

11. Appeal, if known: _____Yes _____ No. If yes, which party:

_____

_____
Person completing this report (SIGNATURE)

_____ _____
Person completing this report (PRINT NAME) Phone number

Figure: 22 TAC §185.23(f)(5)

SOAH Docket No. _____

X-OOOO

IN THE MATTER OF THE	)(	BEFORE THE TEXAS STATE BOARD OF
COMPLAINT AGAINST EXAMINERS	)(	PHYSICIAN ASSISTANT
_____, RESPONDENTNAME OF PLEADING	)(	

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Ark-Tex Council of Governments

Legal Notice

Notice of opportunity to make comments or request a public hearing is hereby given by Ark-Tex Council of Governments on the continuation of rural public transportation services within Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River and Titus Counties in Texas. Financial assistance to provide this service is being sought from the Federal Transit Administration through the Texas Department of Transportation. Service will be for the general public, will be demand response, and deviated fixed route and fares will be charged for this service. Written comments or a written request for a public hearing are being accepted at P. O. Box 5307, Texarkana, Texas 75505-5307, until July 16, 2000. Further information can be found at the Ark-Tex Council of Governments located at 122 Plaza West, Texarkana, Texas.

TRD-200004096

Genevieve Burtchell

Director of Regional Planning and Development

Ark-Tex Council of Governments

Filed: June 12, 2000

♦ ♦ ♦

Office of the Attorney General

Notice of Extension of Deadline for Access and Visitation Grant Request for Letters of Intent

The Office of the Attorney General (OAG), Child Support Division (CSD) published the notice for Access and Visitation Grant Request for Letters of Intent in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3321). The Office of the Attorney General is amending the original deadline date published in the April 14, 2000, issue. The deadline for receiving applications and written expressions of interest has been extended from June 16, 2000 to July 7, 2000.

The original notice, with the exception of the extended date, reads:

Pursuant to 42 U.S.C. 669b, the U.S. Department of Health and Human Services is providing grant funding to the State of Texas for non-custodial parent access and visitation programs. The Office of the Attorney General is responsible for the administration of the program in Texas. The Office of the Attorney General intends to award grants to eligible entities for the purposes of the program.

These grants may be used to establish and administer programs to support and facilitate non-custodial parent's access to and visitation with their children. Eligible activities include: mediation, counseling, education, development of parenting plans, visitation enforcement (including judicial enforcement, monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements. Projects funded under this program do not have to run on a statewide basis. Entities eligible for funding include: courts, local public entities, and private non-profit organizations. Matching funds (cash or in-kind) are required.

The Office of the Attorney General, as the state's Title IV-D agency, invites written expressions of interest in this grant program from eligible entities postmarked no later than 5:00 p.m. CDST, July 7, 2000. The deadline for application submission has been extended to 5:00 p.m. CDST, July 7, 2000. Respondents will be sent a complete application package. Letters of interest must be sent to:

Regular Mail

Arlene Pace

Office of the Attorney General

Child Support Division

P. O. Box 12017

Mail Code 058-4

Austin, Texas 78711-2017

Express Services (non-U.S. Postal Service)

Arlene Pace

Office of the Attorney General

Child Support Division

5500 East Oltorf

Mail Code 058-4

Austin, Texas 78741

Letters of interest may be sent via E-mail to arlene.pace@oag.state.tx.us and for additional information you may call (512) 460-6993.

For further information, please call A. G. Younger at (512) 463-2110.

TRD-200004171
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: June 14, 2000

♦ ♦ ♦

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 May 31, 2000, through June 8, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Texas Parks and Wildlife Department; Location: The project is located on the southern shoreline of West Bay (Jumbilee Cove), near Bob Smith Road, in Jamaica Beach, Galveston County, Texas. CCC Project No.: 00-0182-F1; Description of Proposed Action: The applicant proposes to conduct a marsh restoration and protection project by placing fill material in 36 acres of shallow open water. Approximately 98,125 cubic yards of material would be hydraulically dredged from an on-site shallow-water borrow area and would be used to create 625 marsh mounds. Also proposed is the construction of a 6,000-foot levee to protect the planted mounds and the existing marsh from wind-driven erosion and provide a bird resting area. Type of Application: U.S.A.C.E. permit application #22015 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: Coastal Oil & Gas Corporation; Location: The project is located approximately 2.5 miles south of Smith Point in State Tracts 139 and 195 in East Bay, Galveston County, Texas. CCC Project No.: 00-0183-F1; Description of Proposed Action: The applicant proposes to abandon in place 1,688 feet of 2-7/8 inch natural gas pipeline. The pipeline is buried a minimum of 2 feet below the bay bottom. The applicant states that removing the pipeline from the waterway would impact numerous oyster reefs in the area that are located on and near the pipeline. Type of Application: U.S.A.C.E. permit application #11999 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Timothy DeSandro; Location: The project site is located on Galveston Bay on the south side of the Texas City Dike, across from the public boat ramp, approximately 4.75 miles east of the landward end of the dike in Texas City, Galveston County, Texas. CCC Project No.: 00-0185-F1; Description of Proposed Action: The applicant proposes to spud a 200-foot by 40-foot by 6-foot barge for use as a loading/unloading dock for an excursion vessel. The water depth at the project site will be approximately -5 to -6 feet mean low tide (MLT). A hinged gangway will also be constructed to transport passengers to and from the dock. No dredging or fill activities will be performed in association with the proposed project. Type of Application: U.S.A.C.E. permit application #22005 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Tom Benson; Location: The project is located in Aransas Bay, southwest of the end of Shell Ridge Road, near Rockport, Aransas County, Texas. CCC Project No.: 00-0186-F1; Description of Proposed Action: The applicant proposes to mechanically/hydraulically dredge a channel and a boat basin, and construct a boathouse, a double boat slip, piers and walkways. The channel would be 70 feet wide and 400 feet long and dredged to a depth of -6 feet mean low tide. A 100-foot by 33-foot basin would contain a double boat slip and walkways, and one of the slips would be covered with an 18-foot by 35-foot boathouse. Type of Application: U.S.A.C.E. permit application #21820 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Taylor Lake Development, Ltd.; Location: The project site is located on the east bank of Taylor Lake, southwest of the Red Bluff Road and Lakeside Lane intersection in southeast Harris County, Texas. CCC Project No.: 00-0187-F1; Description of Proposed Action: The applicant proposes to retain an outfall structure that was constructed without a Department of the Army (DA) permit. The applicant also requests authorization to retain designated areas that were either filled or dredged without a DA permit. In addition, the applicant proposes to amend their permit to include the construction of two additional outfall structures, a boat ramp, and a dock and the installation of navigation buoys. The applicant proposes to compensate for impacts to waters of the United States, including wetlands, both after-the-fact and proposed, by performing on-site mitigation. The total mitigation area will be 2.48 acres. Type of Application: U.S.A.C.E. permit application #21055(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Occidental Chemical Corporation; Location: The project site is located on the La Quinita Ship Channel in Corpus Christi Bay near Ingleside, Nueces County, Texas. CCC Project No.: 00-0188-F1; Description of Proposed Action: The applicant requests a 10-year extension of time for maintenance dredging at their facility. Approximately 56,000 cubic yards of material would be hydraulically dredged during each dredge occurrence within the 10-year period. All dredged material would be placed in Dredged Material Placement Area 13. Type of Application: U.S.A.C.E. permit application #10088(04) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Davis Petroleum; Location: The project site is located in State Tract 252 of Galveston Bay at Latitude 29o34’22.804" and Longitude 94o45’23.419", Chambers County, Texas. CCC Project No.: 00-0189-F1; Description of Proposed Action: The applicant proposes to construct a 240-foot by 100-foot pad of shell, gravel or crushed rock and a drill rig for exploration and production or oil and gas under Oil Field Development Permit 21364(001). Type of Application: U.S.A.C.E. permit application #21364(01)/006 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: Davis Petroleum; Location: The project site is located in State Tract 251 of Galveston Bay at Latitude 29o33’38.834" and Longitude 94o55’45.147", Chambers County, Texas. CCC Project No.: 00-0190-F1; Description of Proposed Action: The applicant proposes to construct a 8.625-inch pipeline, 50 feet in length, to serve Well No. 2 in State Tract 251, for exploration and production of oil and gas under Oil Field Development Permit 21364(01). Type

of Application: U.S.A.C.E. permit application #21364(01)/005 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: Davis Petroleum; Location: The project site is located in Galveston Bay at Latitude 29o41'00.808" and Longitude 94o46'47.548", Chambers County, Texas. CCC Project No.: 00-0191-F1; Description of Proposed Action: The applicant proposes to install a 240-foot by 100-foot shell, gravel, or crushed rock pad and a platform for the exploration and production of oil and gas under Oil Field Development Permit 12815(01). Type of Application: U.S.A.C.E. permit application #12815(01)/002 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: Prolithic Energy Company, L.P.; Location: The project site is located in State Tract 175A of East Galveston Bay at UTM coordinates 347053.138E and 3267650.298N, Galveston County, Texas. CCC Project No.: 00-0192-F1; Description of Proposed Action: The applicant proposes to construct a structure for exploration and production of oil and gas under Oil Field Development Permit 20104(01). Type of Application: U.S.A.C.E. permit application #20104(01)/004 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: Oiltanking Beaumont, Inc.; Location: The project site is located on the descending right bank of the Neches River approximately 0.5 mile upstream from the upper end of the McFadden Bend Cutoff at the Oiltanking Beaumont facility at 6275 Highway 347, in Beaumont, Jefferson County, Texas. CCC Project No.: 00-0193-F1; Description of Proposed Action: The applicant proposes a minor amendment to Permit 21826, issued in March 2000, authorizing installation of two new ship breasting dolphins and two new ship mooring dolphins, hydraulic dredging of approximately 35,000 cubic yards of sediment to deepen the existing docking facility to allow berthing of deeper draft vessels, and hydraulic maintenance dredging for 10 years to maintain the facility at the new proposed depth. The estimated annual dredging volume range is 5,000 to 10,000 cubic yards. Type of Application: U.S.A.C.E. permit application #21826(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: King Fisher; Location: The project site is located on the Fisher Channel & Dock, City of Port Lavaca, Calhoun County, Texas. CCC Project No.: 00-0194-F1; Description of Proposed Action: The applicant proposes to modify his existing Department of the Army Permit Number 13436(04) to improve an existing commercial marina, known as Fisher Channel Dock. The applicant proposes to construct an earthen levee on the outside of the marina that will be approximately 1,900 feet long on the eastern side and approximately 2,000 feet long on the west side of the project. The applicant proposes to construct a bulkhead approximately 2,841 feet long along the inside of the harbor. The applicant plans to deposit approximately 92,000 cubic yards of material excavated from the channel and basin in the area between the bulkhead and levees. The applicant has also asked permission to perform maintenance dredging for 10 years. The revised proposal will fill 2.18 acres of shallow water and approximately 0.47 acres of wetland. The applicant will construct the levee approximately 25 feet inside his property line on the east and west sides, and 125 feet from the property line on north side of the project. Type of Application: U.S.A.C.E. permit application #13436(05) Revised 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-200004162
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: June 14, 2000

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Comptroller of Public Accounts

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 54, Subchapter F, Texas Education Code, the Comptroller of Public Accounts (Comptroller), as chairman and executive director of the Texas Prepaid Higher Education Tuition Board (Board) and on behalf of the Board, announces the issuance of its Request for Proposals (RFP) from qualified advertising and marketing firms. The purpose of the RFP is to solicit the services of a marketing agent to successfully develop and conduct a comprehensive strategic advertising and marketing campaign to promote increased participation in the Prepaid Higher Education Tuition Program for Texas students. The successful proposer will be expected to begin performance of the contract on or about September 1, 2000.

Contact: Parties interested in submitting a proposal should contact Rose-Michel Munguía, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, June 23, 2000, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the complete RFP available electronically on the Texas Marketplace after Friday, June 23, 2000, 2:00 p.m. (CZT). The address of the Texas Marketplace is http://www.marketplace.state.tx.us.

Questions, Mandatory Letters of Intent, and Mandatory Pre-Proposal Conference: All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Wednesday, July 12, 2000. Prospective proposers are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to Rose-Michel Munguía, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Wednesday, July 19, 2000, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP. A mandatory Pre-Proposal Conference will be held on Monday, July

10, 2000, beginning at 10:00 a.m. (CZT) at the LBJ State Office Building, 111 E. 17th St., Austin, Texas, 78774, in Room 212B.

Closing Date: Proposals must be delivered to the Deputy General Counsel for Contracts Office at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, July 28, 2000. Proposals received in ROOM G24 after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Board will make the final award decision.

The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - June 23, 2000, 2:00 p.m. CZT; Mandatory Pre-Proposal Conference July 10, 2000, 10:00 a.m. CZT; Mandatory Notice of Intent Form and Questions Due - July 12, 2000, 2:00 p.m. CZT; Proposals Due - July 28, 2000, 2:00 p.m. CZT; Contract Execution -August 25, 2000, or as soon thereafter as practical; Commencement of Project Activities -September 1, 2000.

TRD-200004192
David R. Brown
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 14, 2000

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Office of the 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 Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 06/19/00 - 06/25/00 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 06/19/00 - 06/25/00 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200004136
Leslie L. Pettijohn
Commissioner
Office of the Consumer Credit Commissioner
Filed: June 13, 2000

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Texas Education Agency

Correction of Error

The Texas Education Agency proposed amendments to 19 TAC §74.11, concerning graduation requirements. The rule appeared in the June 2, 2000, issue of the *Texas Register* (25 TexReg 4997). Due to an error by the Texas Education Agency in §74.11(c) on page 25 TexReg 4997, the word "grade" should be capitalized in the first sentence.

TRD-200004322

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Request for Applications Concerning Prekindergarten and Kindergarten Grant Program, 2000-2001 school year

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-00-035 from school districts, shared services arrangements (formerly cooperatives) of school districts, and/or open-enrollment charter schools to expand their existing half-day prekindergarten programs to full-day programs.

Description. The 2000-2001 funding cycle of the grant program will be used to award funds for the expansion of existing half-day prekindergarten programs to full-day programs and to provide continuing operating funds for programs that were converted to full-day programs in the 1999-2000 school year.

Dates of Project. The Prekindergarten and Kindergarten Grant Program (Cycle 3, Prekindergarten Expansion Grants) will be implemented during the 2000-2001 school year. Cycle 3 expansion grants may be renewed for the 2001-2002 school year depending on legislative appropriations, provided all terms and conditions of 2000-2001 funding awards have been met.

Project Amount. The Texas Legislature appropriated $100 million per year to the Prekindergarten and Kindergarten Grant Program for the 1999-2000 and 2000-2001 school years, representing a total of $200 million in state funds. Cycle 3 grants to expand existing half-day prekindergarten programs to full-day programs will be funded based on the additional attendance in the same manner as current Foundation School Program (FSP) funding.

Selection Criteria. Applications must address each requirement as specified in the RFA to be considered for funding. Priority will be given to school districts and open-enrollment charter schools where student performance on the Grade 3 Texas Assessment of Academic Skills (TAAS) tests falls below the state average. Additional priority will be given to school districts and open-enrollment charter schools that serve the highest percentages of eligible (limited English proficient, educationally disadvantaged, and homeless) children. "Educationally disadvantaged" is defined as those children eligible to participate in the national free or reduced-price lunch program.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-00-035, Prekindergarten and Kindergarten Grant Program, will automatically be mailed by TEA to every school district and open-enrollment charter school in the state. Additional copies of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number (701-00-035) and title (Prekindergarten and Kindergarten Grant Program) in your request. Provide your name, complete mailing address, and telephone number including area code. This announcement letter and complete RFA will also be posted on

the TEA web site at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA or the Prekindergarten and Kindergarten Grant Program, contact the School Finance and Fiscal Analysis Department, TEA, telephone (512) 463-8994. Questions regarding prekindergarten curriculum and programs should be addressed to Cami Jones, Curriculum and Professional Development, TEA, telephone (512) 463-9501.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of TEA by 5:00 p.m. Central Time, Friday, July 21, 2000, to be considered.

TRD-200004168
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 14, 2000

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Request for Applications Concerning Reading Excellence and Academic Development for Texas (READ for Texas) Local Reading Improvement Grant, 2000-2001

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications concerning the second round of the Reading Excellence and Academic Development for Texas (READ for Texas) Local Reading Improvement Grant under Request for Applications (RFA) # 701-00-032 from eligible public school districts or shared services arrangements of eligible public school districts in Texas. To be eligible, applicants must meet at least one of the following three requirements and not be a recipient of READ for Texas Local Reading Improvement funds:

1) School Improvement status - A Local Education Agency (LEA) that has at least one campus (elementary or secondary) that has been identified for school improvement under the Elementary and Secondary Education Act (ESEA), Title I, Section 1116(c), based on 1998-1999 data. A Title I campus is identified for school improvement status based on the Texas Title I State Plan if it has been rated as Low Performing by the Texas Academic Excellence Indicator System (AEIS) after one academic year.

2) High poverty numbers - A LEA with the largest or the second largest number of children in the state counted for the Title I formula under ESEA, Section 1124(c).

3) High poverty rate - A LEA with the highest or second highest poverty rate of school-age children in comparison to other LEAs in the state of Texas. The LEA's poverty rate is the number of children counted under ESEA, Title I, Section 1124(c), divided by the total number of children aged 5-17 residing in the LEA expressed as a percentage.

An eligible LEA will be permitted to submit only one application for funding and must select eligible campuses within its district to participate in the program. Education Service Centers are eligible to apply as fiscal agents of shared services arrangements comprised entirely of eligible public school districts.

Participating campuses within eligible LEAs that have met one of the criteria listed previously must meet at least one of the following criteria: 1) School Improvement status - The campus must be a Title I campus identified for school improvement status as defined by the Texas Title I State Plan; 2) High poverty numbers - The campus must serve the highest or second highest number of poor children in the LEA; or 3) High poverty rate - The campus must have the highest or second highest percentage of poor children in the LEA.

Description. The READ for Texas program is designed to increase the capacity of eligible LEAs to improve elementary school reading instruction consistent with scientifically based reading research. The program supports professional development for the classroom teacher and other instructional staff on the teaching of reading; the selection of one or more programs of reading instruction; a focus on family literacy services to enable parents to be their child's first and most important teacher; transition programs for kindergarten children who are experiencing difficulty with reading skills; the use of supervised individuals (including tutors) who have been trained using scientifically based reading research; and additional support to children preparing to enter kindergarten and children in kindergarten through Grade 3 who are experiencing difficulty reading. The goal of the program is to provide children in the greatest need with structured support in early childhood and the early grade levels in school so they become proficient readers. This goal complements that of the Texas Reading Initiative to ensure that all children are reading on grade level or higher by the end of the Grade 3 and continue to read on grade level or higher throughout their schooling.

READ for Texas Local Reading Improvement programs must be designed to improve reading instruction in participating schools and include improving the reading instruction practice of teachers and other instructional staff through professional development based on scientifically based reading research, carry out family literacy services, provide extended learning (tutorial and after school programs), and provide early literacy intervention to children experiencing reading difficulties including kindergarten transition programs. A strong evaluation design must measure the extent to which participating students have improved their reading skills, direct benefits to teachers, the effectiveness of professional development activities, and the effectiveness of the program offered. Applicants should propose a plan to evaluate the most essential components of the program at the district level for all campuses.

Dates of Project. The READ for Texas Local Reading Improvement Grant project will be implemented as a two- year project with the first year's implementation occurring during the 2000-2001 school year. Applicants should plan for a starting date of no earlier than August 31, 2000, and an ending date of no later than August 30, 2001.

Project Amount. Each project will receive a maximum of approximately $1.3 million for the 2000-2001 school year. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities, approval by the commissioner of education, and appropriations by the federal government. The funding level for the second year will be the same as the first year. This project is funded 100% from federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is

approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-00-032 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code.

Further Information. For clarifying information about the RFA, contact Hellen R. Bedgood, Office of Statewide Initiatives, TEA, (512) 463-9027.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of TEA by 5:00 p.m. (Central Time), Thursday August 3, 2000, to be considered for funding.

TRD-200004172
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 14, 2000

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Request for Applications Concerning Reading Excellence and Academic Development for Texas (READ for Texas) Tutorial Assistance Grant, 2000-2001

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications concerning the second round of the Reading Excellence and Academic Development for Texas (READ for Texas) Tutorial Assistance Grant under Request for Applications (RFA) # 701-00-033 from public school districts, open-enrollment charter schools, shared services arrangements of eligible public school districts and/or open-enrollment charter schools in Texas. To be eligible, applicants must meet at least one of the following five requirements and not be a recipient of first round READ for Texas Tutorial Assistance Grant funds: 1) Enterprise Community - A Local Education Agency (LEA) that has at least one campus that is located in the geographic area designated as an enterprise community under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 2) Empowerment Zone - A LEA that has at least one campus that is located in the geographic area designated as an empowerment zone under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 3) School Improvement status - A LEA that has at least one campus (elementary or secondary) that has been identified for school improvement under the Elementary and Secondary Education Act (ESEA), Title I, Section 1116(c). A Title I campus is identified for school improvement status according to the Texas Title I State Plan if it has been rated as Low Performing by the Texas Academic Excellence Indicator System (AEIS) for the previous school year; 4) High poverty numbers - A LEA with the largest or the second largest number of children in the state counted for the Title I formula under ESEA, Title I, Section 1124(c); or 5) High poverty rate - A LEA with the highest or second highest poverty rate of school-age children in comparison to other LEAs in the state of Texas. The LEA's poverty rate is the number of children counted under ESEA, Title I, Section 1124(c) divided by the total number of children aged 5-17 residing in the LEA expressed as a percentage. An eligible LEA will be permitted to submit only one application for the Tutorial Assistance Grant.

Participating campuses within eligible LEAs that have met one of the criteria listed previously must meet at least one of the following criteria: 1) Enterprise Community - The campus must be located in the geographic area designated as an enterprise community under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 2) Empowerment Zone - The campus must be located in the geographic area designated as an empowerment zone under the Internal Revenue Code of 1986, Chapter 1, Subchapter U, Part I; 3) School Improvement status - The campus must be identified for Title I School Improvement status that is described, for the purposes of this grant, as having been rated Low Performing by the Texas AEIS for one year; 4) High poverty numbers - The campus must serve the highest or second highest number of poor children in the LEA; or 5) High poverty rate - The campus must have the highest or second highest percent of poor children in the LEA.

Description. The READ for Texas program is designed to increase the capacity of eligible LEAs to improve elementary school reading instruction consistent with scientifically based reading research; to provide professional development for the classroom teacher and other instructional staff on the teaching of reading; to provide for the selection of one or more programs of reading instruction; to provide family literacy services to enable parents to be their child's first and most important teacher; to provide a transition program for kindergarten children who are experiencing difficulty with reading skills; to provide for use of supervised individuals (including tutors) who have been trained using scientifically based reading research; and to provide additional support to children preparing to enter kindergarten and children in kindergarten through Grade 3 who are experiencing difficulty reading. The goal of the program is to provide children in the greatest need with structured support in early childhood and the early grade levels in school so they become proficient readers. This goal complements that of the Texas Reading Initiative to ensure that all children are reading on grade level or higher by the end of the Grade 3 and continue to read on grade level or higher throughout their schooling.

The primary goal of the READ for Texas Tutorial Assistance Grant is to ensure that all children enrolled in kindergarten through Grade 3 who are identified as having difficulty reading are provided tutorial assistance based on scientific research based reading instruction before or after school, on weekends, or during the summer. These extended learning opportunities should complement the daily classroom instruction provided by teachers and should also provide for individual diagnosis and planned extension of the core-reading program. A strong evaluation design must be included in each application. All Tutorial Assistance Grant recipients will be required to measure the extent to which students who are the intended beneficiaries have improved their reading skills, to measure the direct benefits to teachers and tutors of all professional development activities, and to measure the effectiveness of the tutorial programs offered through the Tutorial Assistance Grant. Applicants should propose plans to evaluate the most essential components of the program at the district level for all campuses included in the Tutorial Assistance Grant.

Dates of Project. The READ for Texas Tutorial Assistance Grant project will be implemented as a two-year project with the first year's implementation occurring during the 2000-2001 school year. Applicants should plan for a starting date of no earlier than August 31, 2000, and an ending date of no later than August 30, 2001.

Project Amount. The anticipated funding range for projects awarded is between $25,000 and $75,000, not limited thereto for the 2000-2001 school year. Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities, approval by the commissioner of education, and appropriations by the federal government. The funding level for the second year will

be the same as the first year. This project is funded 100% from federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-00-033 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code.

Further Information. For clarifying information about the RFA, contact Hellen R. Bedgood, Office of Statewide Initiatives, TEA, (512) 463-9027.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, August 10, 2000, to be considered for funding.

TRD-200004173
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: June 14, 2000

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General Land Office

Texas General Land Office Administrative Penalty Policy for Violations of the Oil Spill Prevention and Response Act of 1991

General

The goal of the Texas General Land Office (Land Office) is to protect and preserve Texas coastal waters in as pristine a condition as possible, while at the same time partnering with the oil production and transportation industries to promote strong local and regional economies. To that end, the Land Office's Oil Spill Prevention and Response Division implements programs designed to reap positive contributions to the health of the Texas Coast. The basic philosophy of the Land Office is that all oil spills are preventable and that repeat oil spills are an indication of process or procedural failure on the part of the repeat offender. This Administrative Penalty Policy for Violations of the Oil Spill Prevention and Response Act of 1991 was developed to further that philosophy and will be reviewed annually to determine its effectiveness in reducing the number of oil spills and repeat offenders. Written comments regarding the policy should be sent to: Greg Pollock, Deputy Commissioner, Texas General Land Office, Oil Spill Prevention and Response Program, 1700 North Congress Avenue, Austin, TX 78701.

The penalty provisions detailed in the *Unauthorized Discharge Matrix* are focused on repeat violations of the Oil Spill Prevention and Response Act of 1991 (OSPRA) by the same operation or organization within the twelve-month period immediately preceding a spill event. These violations represent the nucleus around which the Oil Spill Prevention and Response Program was developed. Consistent with the goal of the Land Office, implementation of this matrix is designed to provide an incentive to the regulated community to decrease the number of repeat spills by application of a graduated penalty assessment that is tempered when an effective and recognized Sound Management Practices Program is in place. Naturally coincidental with the implementation of such a program, organizations that are successful in preventing oil spills over a twelve month period are assessed the smallest penalties when they are the responsible parties for an accidental unauthorized discharge.

A program by which an entity is deemed to have in place a Sound Management Practice Program includes at a minimum the following items:

a. A written statement dated prior to a spill from the owner/operator submitted to the Land Office committing to an SMP program. b. Written policies and procedures to be utilized by company personnel in the handling of oil in a location where a spill could threaten Texas coastal waters, a description of the methods or processes to ensure that personnel adhere to the policies and procedures, and the mechanism to conduct quality assurance of initial and refresher training. c. Written documentation of Spill Prevention and Response Training identified in (b) above including the subjects presented, the dates of training, and a list of attendees. d. Post spill auditing process.

The *Unauthorized Discharge Matrix* in this document supports the OSPRA regarding the assessment of administrative penalties in that the following factors are considered:

1. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused. 2. The degree of cooperation and quality of response. 3. The degree of culpability and history of previous violations of the responsible party. 4. The amount necessary to deter future violations. 5. Any other matter that justice requires including the existence of a Sound Management Practice, Responsible Carrier, or other like programs. 6. The degree to which the responsible party has implemented prevention practices or corrective actions as a result of previous spill incidents.

The *Prevention and Response Penalty Matrices* are designed to provide guidance for assessment of penalties for specific violations of the OSPRA not directly attributable to unauthorized discharge or failure to notify violations. Most of the violations listed in these matrices, though generally associated with a spill event, are distinctly identified in the OSPRA or the implementing regulation and are considered as either prevention or response actions. Penalties for violations identified in this matrix may be increased for multiple violations within the preceding twelve-month period dependent on a review of the circumstances.

Penalty Matrix Statement

The Land Office will use these matrices as guidance in assessing penalties with the intention to assess penalties at the minimum levels. Aggravating circumstances, however, may cause the penalty assessed to be higher.

The following are examples of circumstances where penalty assessments may be increased from the baseline. This list represents some common considerations and is not meant to be inclusive of all possible circumstances.

1. The responsible party fails to respond to a spill with the appropriate resources within a reasonable time frame. 2. The responsible party fails to modify identified deficient procedures that contribute to subsequent spills. 3. The responsible party fails to fulfill the duties of the responsible person in accordance with the OSPRA. 4. The responsible party is the subject of repeat unauthorized discharges of a similar nature or oil handling, storage or transfer process failure.

Unauthorized Discharge Matrix

The following matrix applies to all unauthorized discharges where oil has entered Texas coastal waters. The time period for determining the number of spills appropriate to this matrix is the twelve-month period immediately preceding the spill in question. For example, an unauthorized discharge that occurred on January 31st will require the inclusion of the responsible party's history of unauthorized discharges since February 1st of the previous year to determine the appropriate penalty box to enter.

Repeat unauthorized discharge violations may subject the responsible party to a comprehensive review of spill history and pollution prevention processes including, if appropriate, a review of the responsible party's Sound Management Practices Program.

When discharges are small, the Land Office may elect to issue an "on the spot" ticket if no other aggravating factors require an increase in an assessed penalty amount.

Unauthorized discharges where the amount entering coastal waters is greater than 1 gallon requires a calculation of a per barrel penalty equal to the multiplication of the number of whole barrels (42 U. S. gallons) by the amount indicated by the appropriate penalty box. For example, if an unauthorized discharge of 5.5 barrels was the 3rd spill during the preceding twelve-month period, and it occurred at a location where a Sound Management Practices Program was in place, the responsible party would be assessed a $900 penalty.

EX: $400 (base penalty) plus 5 bbls (5.5 rounded to the lowest whole barrel) X $100 equals $900.

Sound Management Practice (SMP) in place-

	1st Spill	2nd Spill	3rd Spill	4th Spill	5th Spill**
≤ 1 gal	$250	$250	$250	$250	$250
> 1 gal	$300 plus $100 per bbl	$350 plus $100 per bbl	$400 plus $100 per bbl	$450 plus $100 per bbl	$500 plus $100 per bbl

Sound Management Practice (SMP) not in place-

	1st Spill	2nd Spill	3rd Spill	4th Spill	5th Spill**
≤ 1 gal	$250	$250	$250	$250	$250
> 1 gal	$350 plus $200 per bbl	$400 plus $200 per bbl	$450 plus $200 per bbl	$500 plus $200 per bbl	$550 plus $200 per bbl

** Figure applies to all spills greater than the 4th spill in the twelve months immediately preceding the spill in question.

Prevention and Response Penalty Matrix

Violation Category	Cite	Description	Base Penalties
Failure to Notify	31TAC19.32(b)	Failure to notify the GLO of an unauthorized discharge	$500 - Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
Failure to cooperate with SOSC	31TAC19.34(c) 31TAC19.34(d)	Failure to comply with orders from SOSC and failure to give written reasons for non-compliance	$1,000
	31 TAC 19.3(a)	Denying access to property	$1,000
	31 19.32(f)	Failure to report material changes that occur prior to arrival of SOSC	$1,000
Insufficient Response Actions	31TAC19.34(a)	Immediately initiate response actions	$500
	40.251(d)	Take reasonable action to abate, contain, and remove pollution	$1,000
	31TAC19.34(a)	Not consistent with plan or deviates from plan	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
	31TAC19.34(e) 31TAC19.34(f)	No site safety plan or not consistent with NCP or ACP	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
	31TAC19.35(a)	Unauthorized DCO	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill
	31TAC19.32(g) 31TAC19.32(h)	Failure to notify adjacent property owners or local responders	$500 - Penalty to be determined based on a review of the circumstances and mitigating factors regarding the time, size, and environmental impacts of the spill

Disposal	6(d)	Failure to inform SOSC about location for waste disposal	$100
	31TAC19.36(c)	Failure to remove waste from spill site within 14 days after cleanup complete	$100
	31TAC19.36(d)	Failure to provide documentation of waste disposal as directed	$100
Paperwork	31TAC19.37(b)	Failure to file completion report	$100 assuming that reasonable requests for extensions were granted
	40.251(e)	Making a material false statement with fraudulent intent in application or report	Criminal referral
	40.251(a)(2)	Operating a facility or vessel without required certificate of financial responsibility	Penalty to be determined based on a review of the circumstances and mitigating factors regarding the failure to comply with regulations
Operating	40.251(a)(1)	Operating a facility or vessel without an approved plan	$1,000
Vessel	40.251(a)(5)	Removing a vessel from which a spill has emanated from jurisdiction without showing proof of financial responsibility	$500

TRD-200004153
Larry Soward
Chief Clerk
General Land Office
Filed: June 13, 2000

♦ ♦ ♦

Texas Department of Health

Notice of Emergency Cease and Desist Order on David E. Monty, D.C.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered David E. Monty, D.C. (registrant-R23973) of Grand Saline to cease and desist performing cervical spine (AP) procedures with the Litton x-ray unit (Model Number Profexray J-550-2; Serial Number 0120-1273-009) until the exposure at skin entrance is within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200004092
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 12, 2000

♦ ♦ ♦

Notice of Emergency Cease and Desist Order on Johnson Chiropractic Clinic, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Johnson Chiropractic Clinic, Inc. (registrant-R03297) of Rosenberg to cease and desist performing lumbo- sacral spine (AP) procedures with the Universal x-ray unit (Model Number 3402; Serial Number DF2001-301) until the exposure at skin entrance is within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200004093
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 12, 2000

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Notice of Emergency Order on R & D Long, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered R & D Long, Inc., doing business as Sherry Lane Imaging Center (registrant-R25381) of Dallas to immediately allow a bureau representative to inspect the registrant's facility. The inspection is necessary to determine compliance with Texas Health and Safety Code, Chapter 401, radiation control rules and the conditions of the registrant's certificate of registration. The bureau determined that an emergency exists that requires immediate action to protect the public

health and safety. The order will remain in effect until it is rescinded by the bureau.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200004091
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 12, 2000

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Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following certificates of registration: Spohn Investment Corporation, Corpus Christi, R17092, May 30, 2000; Advanced Chiropractic Group, Longview, R20798, May 30, 2000; Spectrographic Engineering Services, Pittsburgh, Pennsylvania, R22096, May 30, 2000; Hillcroft X-Ray Center, Houston, R22780, May 30, 2000; Nancy M. Yeo, D.O., Dallas, R22879, May 30, 2000; Kevin F. Murphy, M.D. & Associates, P.A., Dallas, R23017, May 30, 2000; Wylie Hospital Partners, Ltd, Wylie, R23681, May 30, 2000; Lunar, Inc., Garland, R23699, May 30, 2000; Southwest Clinica Familiar, PA., Houston, R23811, May 30, 2000; Yxlon International, Duluth, Georgia, R24273, May 30, 2000; CMA Health Rehabilitation Institute, Mesquite, R24502, May 30, 2000.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200004095
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 12, 2000

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Notice of Revocation of the Radioactive Material License of Knight Engineering Services Corporation

The Texas Department of Health, having duly filed complaints pursuant to 25 Texas Administrative Code §289.205, has revoked the following radioactive material license: Knight Engineering Services Corporation, Humble, L05081, May 30, 2000.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200004094
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 12, 2000

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Texas Health and Human Services Commission

Notice of Proposed Medicaid Provider Payment Rates

Proposal. As single state agency for the state Medicaid program, the Texas Health and Human Services Commission proposes new per diem payment rates for the nursing facilities program operated by the Texas Department of Human Services. Payment rates are proposed to be effective September 1, 2000, as follows:

Rates by TILE (Texas Index for Level of Effort) class:

[figure]

TILE	Facilities Participating in the Enhanced Direct Care Staff Rate	Facilities not Participating in the Enhanced Direct Care Staff Rate
201	$138.89	$138.21
202	$123.98	$123.40
203	$117.35	$116.80
204	$98.22	$97.81
205	$91.26	$90.89
206	$92.28	$91.90
207	$83.89	$83.56
208	$81.06	$80.75
209	$75.67	$75.39
210	$66.01	$65.80
211	$63.64	$63.45
212 (default)	$63.64	$63.45
Supplemental Payments:		
Ventilator - Continuous	$74.75	$74.26
Ventilator - Less than Continuous	$29.90	$29.70
Pediatric Tracheostomy	$44.85	$44.56

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 and (relating to Enhanced Direct Care Staff Rate), §355.308. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A (relating to Cost Determination Process), §355.101 and §355.109.

Participating facilities requesting to staff above the minimum staffing requirements included in the rates in the above chart may receive one of the following payment rates per day in addition to the above payment rates (within available funds):

Minutes Associated with Proposed Rate	Proposed Rate Per Diem
1 LVN Minute = 1.93 Aide Minutes = 0.67 RN Minutes	$0.29
2 LVN Minutes = 3.87 Aide Minutes = 1.35 RN Minutes	$0.58
3 LVN Minutes = 5.80 Aide Minutes = 2.02 RN Minutes	$0.87
4 LVN Minutes = 7.73 Aide Minutes = 2.70 RN Minutes	$1.16
5 LVN Minutes = 9.67 Aide Minutes = 3.37 RN Minutes	$1.45
6 LVN Minutes = 11.60 Aide Minutes = 4.05 RN Minutes	$1.74
7 LVN Minutes = 13.53 Aide Minutes = 4.72 RN Minutes	$2.03
8 LVN Minutes = 15.47 Aide Minutes = 5.40 RN Minutes	$2.32
9 LVN Minutes = 17.40 Aide Minutes = 6.07 RN Minutes	$2.61
10 LVN Minutes = 19.33 Aide Minutes = 6.74 RN Minutes	$2.90
11 LVN Minutes = 21.27 Aide Minutes = 7.42 RN Minutes	$3.19
12 LVN Minutes = 23.20 Aide Minutes = 8.09 RN Minutes	$3.48
13 LVN Minutes = 25.13 Aide Minutes = 8.77 RN Minutes	$3.77
14 LVN Minutes = 27.07 Aide Minutes = 9.44 RN Minutes	$4.06
15 LVN Minutes = 29.00 Aide Minutes = 10.12 RN Minutes	$4.35

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 Texas Administrative Code (TAC) Chapter 355, Subchapter C (relating to Enhanced Direct Care Staff Rate), §355.308.

TRD-200004169
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 14, 2000

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Public Notice

The Texas Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-02, Amendment Number 567.

The amendment adds services performed by Licensed Marriage and Family Therapists as covered Medicaid services. The amendment is effective April 1, 2000.

If additional information is needed, please contact Kathy Wills, Texas Department of Health, at (512) 794-5140.

TRD-200004167
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: June 14, 2000

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of AMERIHEALTH OF TEXAS, INC. to AMCARE HEALTH PLANS OF TEXAS, INC., a domestic Basic Health Care Service (Health Maintenance Organization). The home office is in Houston, Texas.

Application for incorporation to the State of Texas by METHODIST HEALTH INSURANCE COMPANY, a domestic life company. The home office is in Houston, Texas.

Application for admission to the State of Texas by THE MAYFLOWER INSURANCE COMPANY, LTD., a foreign fire and casualty company. The home office is in Carmel, Indiana.

Application for admission to the State of Texas by NATIONAL-BEN FRANKLIN INSURANCE COMPANY OF ILLINOIS, a foreign fire and casualty company. The home office is in Chicago, Illinois.

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-200004163
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 14, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by GEICO Indemnity Company proposing to use rates that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(g). They are proposing various rates for private passenger automobile insurance for all classes and territories ranging from +63% above the benchmark for Property Damage; +69% above the benchmark for Personal Injury Protection and Collision; +95% above the benchmark for UIM/PD; +30 above the benchmark for Bodily Injury, Medical Payments, UIM/BI, Comprehensive, Rental Reimbursement, and CB Radio.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-200004048
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 8, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by American National Property and Casualty Company proposing to use a rating manual different than that promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(l). They are proposing to increase their companion policy discount from 5% to 10%. The discount provides a reduction in premium on certain personal auto policy coverages when the named insured or a member of the named insured's immediate family who resides in the same household, is also the named insured on a Homeowners policy issued by one of the American National Financial Group affiliated companies. The discount is applicable to premiums for bodily injury, property damage, personal injury protection, medical payments and collision coverages for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Senior Associate Commissioner for Property & Casualty, Mr. C. H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-200004049
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 8, 2000

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual request submitted by Highlands Insurance Group proposing to use a rating manual different than that promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art 5.101, 3(l). They are proposing to adopt a companion policy discount. The discount would provide a 10% reduction in premium on certain personal auto policy coverages when the insured is also the named insured on a homeowners policy issued by a Highlands Insurance Group Company. The discount is applicable to bodily injury, property damage liability, personal injury protection, medical payments, collision, other than collision and specified causes of loss coverages for private passenger automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, 3(h), is made with the Senior Associate Commissioner for Property & Casualty, Mr. C. H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-200004149
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 13, 2000

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Notice of Open Meeting

Docket No. 454-99-1332.G: In the Matter of Rates for Private Passenger and Commercial Automobile Insurance Provided Through the Texas Automobile Insurance Plan Association (TAIPA)

Please be advised that the Commissioner of Insurance will hold an open meeting to permit the parties in the above-referenced docket number to make oral argument in connection with exceptions and replies to the proposal for decision. The meeting will be held on Wednesday, June 28, 2000 at 1:30 p.m. at the Texas Department of Insurance, William P. Hobby Building, 333 Guadalupe, Room 100, Austin, Texas.

Each party to the proceeding will be allotted twenty minutes to present its position on the proposal for decision. The parties' order of presentation will track that followed in the evidentiary proceeding. The Commissioner respectfully requests your presence at the hearing to address questions that may arise.

TRD-200004071
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 9, 2000

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Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2449 scheduled for July 25, 2000, at 10:00 a.m., Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in the Second Supplemental Petition filed by Motors Insurance Company (MIC). In its latest petition, MIC seeks an amendment to the Texas Automobile Rules and Rating Manual (the Manual), Rule 125, to allow automobile floor plan coverage to be written optionally as provided by Rule 125 or as inland marine insurance as proposed in MIC's two previously filed petitions. The notification for that proposal has been published pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The petition (Ref. No. A-0699-10) was filed on March 7, 2000.

An exhibit attached to MIC's latest petition illustrates the proposed amendment to Rule 125. MIC proposes the addition to Section D of Rule 125 the following provision: "A wholesale floor plan may also be written pursuant to 28 TAC §5.5002 entitled 'Texas Definition of Inland Marine Insurance' as provided in paragraph (5)(K)." The amendment to the Manual is necessary for clarification of the two options currently available to insurers writing automobile floor plan coverage. Insurers can continue to provide coverage of automobile floor plans pursuant to Rule 125 or pursuant to newly amended 28 TAC §5.5002(5)(K).

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.10, 5.96, and 5.98.

A copy of the petition, including an exhibit with the full text of the proposed amendment to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to Ref. No. A-0699-10.

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted simultaneously to Marilyn Hamilton, Deputy Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200004150
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 13, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Affinity Group Underwriters, Inc., a foreign third party administrator. The home office is Glen Allen, Virginia.

Application for admission to Texas of Matrix Absence Management, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200004124
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 12, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Texas Managed Care Administrative Services, Inc., a domestic third party administrator. The home office is Houston, Texas.

Application for incorporation in Texas of PCT Operations, Inc., (using the assumed name of Partnercare), a domestic third party administrator. The home office is Lubbock, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas, 78714-9104.

TRD-200004164
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: June 14, 2000

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission proposed amendments to 30 TAC §334.2, and §334.402, concerning underground storage tanks. The rules were published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5152). Due to errors in the agency's submission, the following corrections are noted.

In the preamble's "Section by Section Discussion" in the discussion of §334.2 on page 25 TexReg 5156 the agency inadvertently omitted the word "necessary" from the reference to the definition for "necessary cost". The sentence should read as follows.

"The existing definition "Necessary cost" is proposed to be deleted as an outdated auditing term."

In §334.2(27)(C), in the definition for "Corrosion technician" on page 25 TexReg 5191, the word "testor" was misspelled as "test or". The subparagraph should read as follows. "(C) has been officially qualified as a cathodic protection testor, in strict accordance...."

At the end of §334.402(2)(D)(i), the word "or" was show with strikethrough marks, as proposed for deletion. The word "or" is not being deleted.

TRD-200004321

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Enforcement Orders

An agreed order was entered regarding RON LANEY OIL COMPANY, INC. AND JAMES PEEK DBA PEEK SERVICE STATION, Docket No. 1998-1026-PST-E; Facility No. 08313 on June 6, 2000, assessing $9,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Scott McDonald, Staff Attorney at (512) 239-6005, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding SYED GHOUSE DBA 3 M GAS AND FOOD, Docket No. 1998-0718-PST-E on June 8, 2000, assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512) 239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DAVID AGUERO, Docket No. 1998-0741-OSI- E; Enforcement ID No. 3502 on June 8, 2000, assessing $2,031 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-6257, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES RAY EATHERLY, Docket No. 1999- 1149-OSI-E; TNRCC ID No. OS7095 on June 6, 2000, assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joshua Olszewski, Staff Attorney at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WAYNE E. BARNES, Docket No. 1999-1401- OSI-E; OSS Facility Installer No. OS4473 on June 6, 2000, assessing $3,125 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512) 239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALFRED FELLER, Docket No. 1999-1191- OSI-E; Installer No. OS3339 on June 6, 2000, assessing $675 in administrative penalties with $135 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RUDY L. RAMIREZ, Docket No. 1999-1572- OSI-E; Registration No. 1836; Enforcement ID No. 3626 on June 6, 2000, assessing $5,906 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHILLIP G. DOZIER, Docket No. 1999-1445- OSS-E; Installer Certification No. OS133 on June 6, 2000, assessing $875 in administrative penalties with $175 deferred.

Information concerning any aspect of this order may be obtained by contacting Corey Burke, Enforcement Coordinator at (512) 239-5259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AFREEN ENTERPRISES, INC., Docket No. 1999-1100-PST-E; PST Facility ID No. 0017143 on June 6, 2000, assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PETRON, INC., Docket No. 1999-1576-PST-E; PST Facility ID No. 34431 on June 6, 2000, assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RACETRAC PETROLEUM, Docket No. 1998- 0674-PST-E; TNRCC PST Facility ID No. 12591 on June 6, 2000, assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mohammed Issa, Enforcement Coordinator at (512) 239-2545, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. CLYDE GACHTER DBA GACHTER'S CAR CARE/PHILLIPS 66, Docket No. 1999-1348-PST-E; Facility ID No. 0044114 on June 6, 2000, assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mohammed Issa, Enforcement Coordinator at (512) 239-1445, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DENNIS DICKERSON, INDIVIDUALLY, AND KAT SAV-MOR, INC., Docket No. 1999-0718-PST-E; Facility ID No. 0003137; Leaking PST ID No. 112878; Enforcement ID No. 13801on June 6, 2000, assessing $10,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H. MUEHLSTEIN & COMPANY, INC., Docket No. 1999-1353-IWD-E; NPDES Permit No. TX0079561; WQ Permit No. 0002294 on June 6, 2000, assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at (512) 239-6673, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G & C INVESTMENT COMPANY L.L.P., Docket No. 1999-1287-IWD-E; NPDES Permit No. 0075078; TNRCC Permit No. 11923- 001 on June 6, 2000, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Johnson, Enforcement Coordinator at (512) 239-2555, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAKTANK CORPORATION, Docket No. 1999- 0814-IWD-E; TNRCC WQ Permit No. 01662; NPDES Permit No. TX0030929 on June 6, 2000, assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PEWITT CONSOLIDATED INDEPENDENT SCHOOL DISTRICT; Docket No. 1999-0738-MWD-E; No WQ Permit No. on June 6, 2000, assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Victor Simonds; SEP Coordinator (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS WATER SERVICES, INC., Docket No. 1999-1211-MWD-E; Expired Water Quality Permit No. 0003063-000 on June 6, 2000, assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512) 239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COLORADO COUNTY WCID NO. 2, Docket No. 1999-1354-MWD-E; WQ Permit No. 10152-001; NPDES Permit No.TX0023329 on June 6, 2000, assessing $3,600 in administrative penalties with $720 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF RANGER, Docket No. 1999-0798- MWD-E; Expired Water Quality Permit No. 11557-001; NPDES Permit No.TX0071064 on June 6, 2000, assessing $8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Victor Simonds, SEP Coordinator at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF HILLSBORO, Docket No. 1999-1205- MWD-E; WQ Permit No. 0010630-001 on June 6, 2000, assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Victor Simonds, SEP Coordinator at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF DENTON, Docket No. 1999-1122- MWD-E; WQ Permit No. 0001992 on June 6, 2000, assessing $4,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MILDRED INDEPENDENT SCHOOL DISTRICT, Docket No. 1999-0950-MWD-E; WQ Permit No. 11646-001 on June 6, 2000, assessing $26,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Victor Simonds, SEP Coordinator at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF PALMER, Docket No. 1999-0951- MWD-E; WQ Permit No. 13620-001 on June 6, 2000 assessing $16,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Victor Simonds, SEP Coordinator at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF CORSICANA, Docket No. 2000- 0005-MSW-E; MSW Facility ID No. 1467 on June 6, 2000, assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RESORT WATER SERVICES, INC., Docket No. 2000-0001-PWS-E; PWS TNRCC ID No. 1110060 on June 6, 2000, assessing $300 in administrative penalties with $60 deferred.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PAXTON WATER SUPPLY CORPORATION, Docket No. 1999-1185-PWS-E; Public Water Supply Nos. 2100012 and 2100031 on June 6, 2000, assessing $6,588 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Victor Simonds, SEP Coordinator at (512) 239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS PARKS & WILDLIFE DEPARTMENT, Docket No. 1999-1324-PWS-E; PWS No. 0140159 on June 6, 2000, assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512) 239-3400, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LILLIAN HOPKINS DBA STEPHENS CREEK CAMPING, Docket No. 1999-1570-PWS-E; PWS No. 2040028 on June 6, 2000, assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STARWARD REALTY AND DEVELOPMENT, INC. DBA SUNCHASE SUBDIVISION WATER SUPPLY, Docket No. 1999-1459-PWS-E; PWS ID No. 1230083 on June 6, 2000, assessing $1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOBIL CHEMICAL, Docket No. 1999-1416- AIR-E; Air Account No. JE-0062-S on June 6, 2000, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. MYRL HERRING DBA BRAZOS BODY SHOP, Docket No. 1999-1470-AIR-E; Air Account No. HQ-0109-D on June 6, 2000, assessing $1000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRIFINERY PETROLEUM SERVICES, Docket No. 1999-1367-AIR-E; TNRCC Air Account No. NE-0195-W on June 6, 2000, assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF BARTLETT, Docket No. 1999-1366- AIR-E; Air Account No. BF-0221-T on June 6, 2000, assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INTERSTATE FORGING INDUSTRIES, INC., Docket No. 2000-0074-AIR-E; Air Account No. GK-0016-C on June 6, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COLORADO INTERSTATE GAS COMPANY, Docket No. 1999-1534-AIR-E; Air Account No. MR-0121-W on June 6, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONTINENTAL CARBON COMPANY, Docket No. 2000-0029-AIR-E; Air Account No. MR-0003-G on June 6, 2000, assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ABC-NACO INC., Docket No. 1999-1002-AIR- E; Air Account No. FG-0044-H on June 6, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. BOB FARRAR DBA RIDE-ON MOTORS, Docket No. 1999-1228-AIR-E; Air Account No. DB-1741-O on June 6, 2000, assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VINTAGE PETROLEUM, INC., Docket No. 1999-0977-AIR-E; TNRCC Air Account Nos. JB-0016-M and JB-0049-U on June 6, 2000, assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GROVES WOODWORKS, INC., Docket No. 1999-0852-AIR-E; Air Account No. TH-0721-O on June 6, 2000, assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CAPITOL AGGREGATES, LTD., Docket No. 1999-1217-AIR-E; Air Account No. TH-0015-V on June 6, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HEARTLAND RIG INTERNATIONAL, INC., Docket No. 1999-0315-IHW-E; Registration No. 35046 on June 6, 2000, assessing $36,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIVER CITY METAL FINISHING, INC., Docket No. 1999-1105-IHW-E; SWR No. 82605 on June 6, 2000, assessing $9,350 in administrative penalties with $1,870 deferred.

Information concerning any aspect of this order may be obtained by contacting Karen Santiesteban, Enforcement Coordinator at (512) 239-4467, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GENERAL CABLE INDUSTRIES, INC., Docket No. 1999-1045-IHW-E; SWR No. 30403 on June 6, 2000, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RUSSELL WORTHEN DBA F & W INDUSTRIES LTD., INC., Docket No. 1999-1045-IHW-E; Air Account No. EB-0422-A on June 6, 2000, assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200004157
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 13, 2000

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Notice of Availability

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of availability of the draft Solid Waste Management in Texas - Strategic Plan (2001-2005) and a period for public comment.

Notice is hereby given that the draft update to the state's solid waste management plan entitled, "Solid Waste Management in Texas - Strategic Plan (2001-2005)", is available for public review and comment. The Texas Health and Safety Code, Chapter 361, requires the TNRCC to prepare a state solid waste management plan every four years. The plan is to consider all of the solid wastes under the TNRCC's jurisdiction, including hazardous wastes and nonhazardous solid wastes from industrial and municipal sources.

Public hearings on the plan will also be held on the following dates: July 19, 2000, 1:30 p.m., Texas Natural Resource Conservation Commission, Building F, Room 2210, 12100 Park 35 Circle, Austin, TX 78753, telephone number (512) 239-0683 for detailed directions; July 20, 2000, 1:30 p.m., Permian Basin Regional Planning Commission, 2910 LaForce, Midland, TX 79711, telephone number (915) 563-1061 for detailed directions; and July 21, 2000, 1:30 p.m., North Central Texas Council of Governments, 2nd Floor, 616 Six Flags Drive, Arlington, TX 76011, telephone number (817) 640-3300 for detailed directions.

The public is invited to submit comments on the draft plan to TNRCC. Comments must be received by July 31, 2000. Please address comments to: Mr. David Gellner, Strategic Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, MC 206, Austin, TX 78711-3087; or send an e-mail to dgellner@tnrcc.state.tx.us. Comments may also be faxed to (512) 239-6166.

Copies of the draft Solid Waste Management in Texas - Strategic Plan (2001-2005) can be obtained by contacting Mr. Gellner at (512) 239-0683 or by submitting an e-mail to dgellner@tnrcc.state.tx.us. An electronic copy of the document can also be viewed at http://home.tnrcc.state.tx.us/homepgs/draftdoc.html

TRD-200004102
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 12, 2000

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC staff proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code (the Code), §7.075, this notice of the proposed order and the opportunity to comment is published

in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 24, 2000**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that a proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 24, 2000**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1) COMPANY: J. Marshall Corporation dba Used Car Factory; DOCKET NUMBER: 1999- 0616-AIR-E; TNRCC IDENTIFICATION (ID) NUMBER: TA3129P; LOCATION: 2438 West Division, Arlington, Tarrant County, Texas; TYPE OF FACILITY: car dealership; RULES VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code, §382.085(b) by offering for sale a vehicle with missing or inoperable vehicle emission control devices; PENALTY: $375; STAFF ATTORNEY: Joshua Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2) COMPANY: Derek T. Williams and Larry Williams; DOCKET NUMBER: 1999-1239-OSI- E; TNRCC ID NUMBER: OS4948 and OS4949; LOCATION: 230 Oak Lane, Vidor, Orange County, Texas; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.7(h) and §285.91(4) by failing to submit three maintenance reports; one total suspended solids sample, one biochemical oxygen demand sample for each contract and fecal coliform or chlorine residual testing information for each contract in the three maintenance reports that were submitted; PENALTY:$313; STAFF ATTORNEY: Joshua Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703- 1892, (409) 898-3838.

TRD-200004104
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: June 12, 2000

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (the Code), §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **July 24, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 24, 2000**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: Clifton J. Bergeron; DOCKET NUMBER: 1996-1356-MWD-E; TNRCC IDENTIFICATION (ID) NUMBER: NONE; LOCATION: Track 46 of the C. Teal Survey, Abstract 204, Jefferson County, Texas; TYPE OF FACILITY: waste water treatment system; RULES VIOLATED: the Code, §26.121 by discharging septic system effluent into or adjacent to waters of the state; PENALTY: $27,600; STAFF ATTORNEY: Robin Houston, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703- 1892, (409) 898-3838.

(2) COMPANY: Hampshire-Fannett Independent School District; DOCKET NUMBER: 1997- 0218-MWD-E; TNRCC ID NUMBER: 12098-001; LOCATION: Second Street, 0.2 miles west of the intersection of State Highway 124 and Hamshire Road, Hamshire Community, Jefferson County, Texas; TYPE OF FACILITY: waste water treatment system; RULES VIOLATED: the Code, §26.121(a) by discharging waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any state water; PENALTY:$19,360; STAFF ATTORNEY: Robin Houston, Litigation Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Kessler Foundry and Machinery L.C.; DOCKET NUMBER: 1999-0698-MLM- E; TNRCC ID NUMBER: EE-0021-M; LOCATION: 7500 Doniphan, Canutillo, El Paso County, Texas; TYPE OF FACILITY: foundry; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a) by failing to obtain a permit, or alternatively, to satisfy the conditions of a standard exemption, prior to conducting outdoor painting using lacquer-based coatings; 30 TAC §115.426 and THSC, §382.085(b) by failing to maintain records of the amount of coatings and solvents used in its outside painting operation; 30 TAC §335.4 and the Code, §26.121 by failing to prevent an unauthorized discharge of industrial wastewater from the sink in the topshop; 30 TAC §335.62 by failing to perform a waste determination on the lacquer thinner contaminated with spent urethane generated in the topshop; and 30 TAC §335.6 by failing to notify the TNRCC of the generation and treatment of hazardous wastes at the foundry; PENALTY: $7,500; STAFF ATTORNEY: Mary R. Risner, Litigation

Division, MC 175, (512) 239-6224; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901- 1206, (915) 834-4949.

(4) COMPANY: Prime Time Enterprises, Incorporated; DOCKET NUMBER: 1999-0811-PST- E; TNRCC ID NUMBER: 0006400; LOCATION: 13334 Chiswick, Houston, Harris County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §115.241 and THSC, §382.085(b) by failing to install a Stage II vapor recovery system; PENALTY: $6,250; STAFF ATTORNEY: I-Jung Chiang, Litigation Division, MC 175, (512) 239-3400; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Douglas J. Smith, Sr.; DOCKET NUMBER: 1999-1506-OSI-E; TNRCC ID NUMBER: OS4458; LOCATION: HCR 02 Box 467-A, Bay City, Texas; TYPE OF FACILITY: on- site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.58(a)(3) and (10) and THSC, §366.051(c) and §366.054 by installing two OSSF systems on properties that had no permits issued and no authorizations to construct and by failing, without just cause, to perform work for thirty or more consecutive days an OSSF installation site; PENALTY:$1,125; STAFF ATTORNEY: Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Martin Steele dba Steele Lawn Sprinklers; DOCKET NUMBER: 1999-0740- LII-E; TNRCC ID NUMBER: NONE; LOCATION: 410 East Springdale, Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: irrigation systems installer; RULES VIOLATED: 30 TAC §344.57(d) and the Code, §34.007(a) by selling, designing, and installing a landscape irrigation system without a license; PENALTY: $625; STAFF ATTORNEY: Joshua Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7) COMPANY: Roden Dairy, Incorporated; DOCKET NUMBER: 1999-0721-AGR-E; TNRCC ID NUMBER: 03258; LOCATION: 9500 County Road 1006, Godley, Johnson County, Texas; TYPE OF FACILITY: dairy; RULES VIOLATED: the Code, §26.121 and Water Quality Permit Number 03258, Special Provision Number 2.2.1 by failing to prevent the discharge of irrigated wastewater into waters in the state; the Code, §26.121 and Water Quality Permit Number 03258, Special Provision Number 2.2.5 by failing to properly maintain irrigation equipment in order to prevent any unauthorized discharge into waters in the state; and the Code, §26.039 and Water Quality Permit Number 03258, Standard Provision Number 2 by failing to report an unauthorized discharge of wastewater to the local TNRCC district office within 24 hours of the discharge; PENALTY: $8,500; STAFF ATTORNEY: John Sumner, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200004103

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: June 12, 2000

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Notice of Proposed Selection of Remedy

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) is issuing this public notice of a proposed selection of remedy for the Texas American Oil (TAO) State Superfund site. In accordance with 30 TAC §335.349(a) concerning requirements for the remedial action, and the Texas Health and Safety Code, §361.187 of the Solid Waste Disposal Act concerning the proposed remedial action, a public meeting regarding the TNRCC's selection of a proposed remedy for the Texas American Oil State Superfund site shall be held. Section 361.187 requires that the TNRCC shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice also appears in the June 22, 2000, publication of the *Midlothian Mirror* newspaper.

The public meeting is scheduled on July 31, 2000, at the City Hall Chambers, located at 104 West Avenue E, Midlothian, Texas. The public meeting will be legislative in nature and is not a contested case hearing under the Texas Government Code, §2001.

The site for which a remedy is being proposed, the Texas American Oil state Superfund site, was proposed for listing on the state registry of superfund sites in the October 16, 1987, edition of the *Texas Register* (12 TexReg 3858). The TAO site is located three miles north of Midlothian on Old State Highway 67, Ellis County, Texas. The site covers eight acres, and land use in the vicinity of the site is primarily rural. Old Highway 67 borders the eastern site boundary. Residential areas are located south and west of the site, and commercial properties are present along the northern site boundary. The property is currently inactive. No buildings are present, however, several large concrete slabs are located on-site.

Prior to 1970, the TAO site was used as a limestone quarry. From 1970 to 1978, the site was a used crankcase and transmission oil refinery. During the operation, the used wastes were placed in three unlined pits located on the western portion of the site. The Texas Air Control Board received numerous complaints about the facility. When the refinery closed, the waste pits were pumped out, and the sludge remaining in the pits was mixed with soil. Reportedly, the pits were then covered with a three inch layer of asphalt in compliance with an order from the Texas Department of Water Resources.

A site inspection was conducted for the Texas Water Commission (predecessor agency of the TNRCC) in 1987. Soil and sediment samples were collected and analyzed for total metals (barium, lead, and chromium) and volatile organic compounds. Results indicated elevated levels of metals. A remedial investigation (RI) of the TAO site was conducted between 1992 and 1994, and the RI identified barium, chromium, lead, chloroform and polychlorinated bi-phenyls (PCB) as potential chemicals of concern (COC) at the site. Based on the RI data, a risk assessment (RA) study was performed on the site. The objective of the RA was to characterize potential human risks that might result from exposures to site-related contaminants under current and expected future land-use scenarios. The risk calculations indicated a cumulative risk for on-site residents and workers. Prior to the beginning of a treatability study in December 1998, additional sampling and analyses of soil and groundwater at the site were completed and confirmed lead, PCBs, and chloroform as the appropriate COCs for the site. In May 2000, the presumptive remedy document (PRD) was prepared, describing the remedy selection process for closure of the site. The PRD evaluated three containment options and an off-site disposal option. The TNRCC prepared a proposed remedial action document in June 2000. This document presented the proposed remedy and justification for how this remedy demonstrated compliance with the relevant cleanup standards.

Based on the calculated volume of contaminated soil and the requirement for protection of groundwater, the recommended remedial alternative from the TNRCC's *Presumptive Remedies Guidance for Soils at Texas State Superfund Sites* is on-site containment with stabilization. The recommended alternative is the most cost effective,

reasonable and appropriate remedy to address the site. Containment with in-situ stabilization will significantly reduce the mobility and toxicity of the contaminants, which will reduce the threat to groundwater from the treated soil as well as reduce seepage from the stabilized materials from the pit area. In addition to stabilization, the construction of a clay cap will prevent direct contact with potential receptors to the impacted soil and will provide a barrier to the infiltration of storm-water and surface water. In-situ stabilization is also most cost effective.

A small volume of soil having PCB concentrations of more than 100 mg/kg will be excavated and disposed of off-site. The area surrounding the waste pits will be fenced and groundwater monitoring wells will be installed. After closure, the cap area and remaining site areas with constituents exceeding background concentrations will be deed recorded. Long-term maintenance and groundwater monitoring of the cap system will be conducted.

Persons desiring to make comments on the proposed remedial action or the identification of potentially responsible parties may do so at the meeting or in writing prior to the public meeting. Comments may be submitted to Michael Garrigan, Project Manager, Superfund Cleanup Section, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087. All comments must be received by the close of the public meeting on July 31, 2000.

The executive director of the TNRCC prepared a brief summary of the TNRCC's records regarding this site. This summary and a portion of the records for this site, including documents pertinent to the proposed remedy, are available for review during regular business hours at the A. H. Meadows School Library, 921 South 9th Street, Midlothian, TX, telephone number (972) 775-3417. Copies of the complete public record file may be obtained during regular business hours at the TNRCC Records Management Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 (within Texas only) or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Questions regarding the public meeting may be directed to Ms. Janie Montemayor, Community Relations Coordinator, telephone number (800) 633-9363 or (512) 239-3844.

TRD-200004101
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 12, 2000

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Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit

APPLICATION. The Applerock Group, LLC, 313 Genoa Red Bluff Road, Houston, Texas 77034, a landfill disposal facility, has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Type IV Municipal Solid Waste Permit to authorize the disposal of brush, construction-demolition waste, and/or rubbish that are free of putrescible and free of household wastes. The facility is located at 313 Genoa Red Bluff Road, 1/4 mile east of the intersection of State Highway 3 (Old Galveston Highway) and Genoa Red Bluff Road (Fuqua) within the City of Houston in Harris County, Texas. Parts I and II of the application were submitted to the TNRCC on March 18,1999. Parts III and IV of the application were submitted to the TNRCC on April 3, 2000. Parts III and IV of the permit application are available for viewing and copying at the Pasadena City Hall located at 1211 E. Southmore Ave., Pasadena, Texas , Phone: (713) 477-1511. The application is subject to the goals and policies of the Texas Coastal Management Program and must be consistent with the applicable Coastal Management Program goals and policies. The TNRCC executive director has determined the application is administratively complete and will conduct a technical review of the application. After completion of the technical review, the TNRCC will issue a Notice of Application and Preliminary Decision. MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk, at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TNRCC permits in the county. PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments on this application. Written public comments should be submitted to the Office of the Chief Clerk, at the address provided below. The TNRCC will hold a public meeting on this application at the following date, time and location: DATE: July 13, 2000 TIME: 7:00PM LOCATION: 313 Genoa Red Bluff Road, Houston, Texas 77034 The purpose of the public meeting is to provide the opportunity to submit comments or ask questions about the application. A public meeting is not a contested case hearing. Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. ADDITIONAL NOTICE. After technical review of the application is complete, the executive director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain the final deadline for submitting public comments. OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material, or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who is on the mailing list for this application. The mailing will also provide instructions for requesting reconsideration of the executive director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court. A contested case hearing will only be granted based on issues relevant and material to the executive directors preliminary decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Any hearings held on this application will only relate to Parts III and IV of the application, relating to the Site Development Plan and the Site Operating Plan. No hearing will be held on Parts I and II of the application, because the Commission has already approved that portion of the application. The Site Development Plan and the Site Operating contains information required in 30 TAC §§330.54, 330.55 and 330.56. This includes the solid waste data, identifying the nature, type and quality of the waste proposed for disposal at the facility, the proposed landfill method, liner construction, cell construction sequences, closure phases, all weather operations, access controls, solid waste deposition and operating life, groundwater protection design and operation, rainfall run-on and run-off controls, drainage structures, drainage calculations, erosion controls, contaminated water controls, final cover design and landfill markers. The Site Operating Plan consists of information required in 30 TAC §330.57 and §330.114. The Site Operating Plan describes the operating procedures to be undertaken to conduct day to day operations. INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1 (800) 687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Further information may also be obtained

from The Applerock Group at the address stated above or by calling Mr. William Anthony Koby at (713) 944-4253.

TRD-200004158
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 13, 2000

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Notice of Water Rights Application

SOUTHERLAND PROPERTIES, INCORPORATED, c/o Charles Patterson , President, 9670 Ranch Road 12, Wimberly, Texas 78676 (applicant) seeks a permit pursuant to §11.138, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. Applicant seeks authorization to divert and use not to exceed a total of 700 acre-feet of water during a two-year period, from the Guadalupe River, at a maximum diversion rate of 2.0 cfs (900 gpm) to be stored in an off channel reservoir for subsequent irrigation use in Comal County, approximately 19.5 miles northwest of New Braunfels, Texas. The applicant has indicated that they will also have groundwater that can be used for irrigation. Pursuant to an upstream water supply contract, the applicant also has a pending §11.121 Water Use Permit Application (A-5647) for use of 350 acre-feet of water per annum for irrigation at the same location included in this application. Should the temporary permit be granted, the Executive Director would recommend that diversions during the months of March through June be limited to times when the flow at the Guadalupe river at U.S.G.S. gage no. 08167500 near Big Spring was at least 121 cfs and during the remaining months only when this flow was at least 77 cfs. In addition, the Executive Director would include a condition that would make the temporary permit null and void upon any issuance of Water Use Permit Application No. 5647.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by July 3, 2000. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by July 3, 2000. The Executive Director may approve the application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit your proposed adjustments to the application/permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the TNRCC will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1 (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200004159
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: June 13, 2000

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Public Notice

The Texas Natural Resource Conservation Commission's Office of Environmental Policy, Analysis and Assessment has submitted a State of Texas Visibility Protection Periodic Review and Report to the United States Environmental Protection Agency (EPA). This report is submitted to meet requirements of 40 Code of Federal Regulations, Part 51, Subpart P, Protection of Visibility, §51.306, Long-Term Strategy and to fulfill the commitment in the State Implementation Plan for Visibility Protection in Class I Areas Phase I.

Under the provisions of the state implementation plan, and to comply with the federal requirements, the state must conduct a periodic review and report on the provisions and effectiveness of the long-term strategy for Big Bend and Guadalupe Mountains National Parks, the state's two Federal Class I areas. The report was submitted to the EPA on April 5, 2000. A public meeting was held in Alpine, Texas on April 27, 2000, where copies of the report were made available.

The report can be obtained from the Texas Natural Resource Conservation Commission's website at the following address: **www.tnrcc.state.tx.us/oprd/whatsnew.html**. To receive a copy by mail, please contact: Mr. Brian Foster, Program Specialist, MC 206, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711.

If additional information is needed, please contact Mr. Foster at telephone number (512) 239- 1930.

TRD-200004155
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: June 13, 2000

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Public Utility Commission of Texas

Amended Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 15, 2000, 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 Quality Telephone for a Service Provider Certificate of Operating Authority, Docket Number 22452 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

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, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than June 28, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200004036
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2000

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 12, 2000, Communications Systems Development, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60220. Applicant intends to reflect the merger into Metromedia Fiber Network Services, Inc., a wholly-owned subsidiary of Metromedia Fiber Network, Inc.

The Application: Application of Communications Systems Development, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22658.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than June 28, 2000. You may contact the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22658.

TRD-200004148
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Application for Authority to Increase Fixed Fuel Factors and Implement Interim Surcharge of Fuel Cost Under- Recoveries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for authority to increase fixed fuel factors and implement an interim surcharge of fuel cost under-recoveries on June 5, 2000, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §36.203 (Vernon 1998 & Supp. 2000).

Docket Style and Number: Application of Texas New-Mexico Power Company for Authority to Increase Fuel Factors and to Implement an Interim Surcharge of Fuel Cost Under-Recoveries. Docket Number 22636.

The Application: Texas New-Mexico Power Company (TNMP) requests authority to increase its fixed fuel factors and implement an interim surcharge of fuel cost under-recoveries, pursuant to the Public Utility Regulatory Act §36.203 and P.U.C. Substantive Rule §25.237. TNMP requests approval to implement its proposed fuel factor (Rider FC) on an interim basis effective July 5, 2000. TNMP also requests authority to implement an interim surcharge in the amount of $24,671,304 effective September 1, 2000 on bills of its Texas retail customers, consisting of the under-recovered fuel and purchased power costs as of the end of March 2000 and interest through the period the surcharge is made. TNMP proposes to make the surcharge during the period from September 1, 2000 through December 31, 2001 for all customers.

The proposed fuel factor is calculated to recover fuel and purchased power costs for a projected rate year of July 2000 through June 2001. The proposed revised fixed fuel factors, differentiated by voltage level, are as follows per kilowatt-hour: Overall Fuel Cost Factor $0.0221612/kWh; Distribution Voltage Fuel Cost Factor $0.0222951/kWh; and Transmission Voltage Fuel Cost Factor $0.0210306/kWh.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477 no later than June 29, 2000. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989.

TRD-200004146
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Application for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission), on May 26, 2000, for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Docket Title and Number: Application of Cumby Telephone Cooperative, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Docket Number 22592.

The Application: Under 47 U.S.C. §214(e), a common carrier designated as an ETC in accordance with that subsection shall be eligible to receive federal universal service support under 47 U.S.C. §254. Cumby Telephone Cooperative, Inc. (Cumby) seeks designation for GTE's Southwest Inc.'s Brashear exchange. Cumby holds Certificate of Operating Authority Number 50017.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by July 3, 2000. Requests for further information should be mailed to the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is July 3, 2000, and all correspondence should refer to Docket Number 22592.

TRD-200004141

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Application for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 26, 2000, for designation as an eligible telecommunications provider pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Cumby Telephone Cooperative, Inc. for Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 22593.

The Application: Cumby Telephone Cooperative, Inc. (Cumby) filed an application for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417. Cumby is requesting ETP designation in order to be eligible to receive funds from the Texas Universal Service Fund (TUSF) under the Texas High Cost Universal Service Plan (THCUSP). Cumby seeks ETP designation for GTE's Southwest Inc.'s Brashear exchange under Certificate of Operating Authority Number 50017.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by July 3, 2000. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. The deadline for comment is July 3, 2000, and all correspondence should refer to Docket Number 22593.

TRD-200004140
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 7, 2000, 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 EXP Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22640 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than June 28, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200004088
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 7, 2000, 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 TenantConnect LLC for a Service Provider Certificate of Operating Authority, Docket Number 22642 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Austin and San Antonio Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than June 28, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200004090
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 9, 2000, 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 Telergy Network Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22654 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1- Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than June 28, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200004143
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 12, 2000, 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 Edge Connections, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22660 before the Public Utility Commission of Texas.

Applicant intends to provide voice, data, video and other applications through Digital Subscriber Line technology, including but not limited to high-speed Internet access, voice services, data services, virtual private networks, IP fax, voice over IP, IP video, and IP/PBX services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than June 28, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200004147
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 9, 2000, to amend a certificated service area boundary in Kendall County 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 & Supp. 2000) (PURA). A summary of the application follows.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. (PEC) to Amend Certificated Service Area Boundaries Within Kendall County. Docket Number 22651.

The Application: PEC requests the boundary change for one area, the Cordillera Ranch Subdivision. A small portion of the proposed subdivision would be served by Bandera Electric Cooperative, Inc. (Bandera Electric). PEC will be able to efficiently provide service to all of the land in the Cordillera Ranch Subdivision by transferring Bandera Electric's service area with the subdivision, to PEC. The service boundary change application is being made at the request of the property owners that are developing the subdivision. Bandera Electric has consented to this request. Copies of the application and additional associated maps are available for review at the PEC office, Johnson City, Texas. Persons with questions about this project should contact Bennie Fuelberg, PEC at (830) 868-7155 or Lambeth Townsend with Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C., at (512) 322-5830.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention.

TRD-200004144
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on May 1, 2000, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Hilltop Lakes Exchange for Expanded Local Calling Service, Project Number 22483.

The petitioners in the Hilltop Lakes Exchange request ELCS to the exchanges of Centerville, Jewett, and Marquez.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than June 28, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200004142
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Notice of Petition for Rulemaking and Request for Comments

The Public Utility Commission of Texas (commission) received a petition for rulemaking and draft rule from the Texas Health and Human Services Commission on behalf of the Texas Information and Referral (I&R) Network and its partners. The Texas I&R Network was established by the 75th Legislature for the development, coordination and implementation of a statewide information and referral system. The petition was filed on June 8, 2000, and has been designated as Project Number 22643, *Petition by the Texas Information & Referral Network for Assignment of 211 Dialing Code*

for use by the Public to Access Health and Human Service Information and Referral. Under the Administrative Procedure Act §2001.021 the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

The petition requests that the commission amend Substantive Rule §26.127 relating to Abbreviated Dialing Codes to allocate the 211 dialing code for use by the public to access services providing free information and referrals regarding community resources. N11 codes are recognized as a scarce resource with priority given for public interest use. The petition states that: (1) I&R organizations providing community resource services are daily presented with requests for assistance from individuals facing serious threats to health, mental and social well- being; (2) there is a precedent for the use of the 211 dialing code for social service information and referral as other states have implemented this service; (3) a uniform approach is missing for efficiently bringing together those in need with those who can best meet that need; (4) 911 and 311 services are not set up to resolve problems and issues (i.e., food, clothing, housing, child care, aging and hospice services, support groups, legal assistance, counseling, transportation, physical and mental health care, financial assistance programs, job placement and training, and educational opportunities) that are best resolved by the I&R entities; (5) establishment of 211 for these services would alleviate congestion on 911 and 311 entities; and (6) 800, 877, 888 numbers and local numbers are not an efficient means for meeting these needs.

Comments on the petition and draft amendment may be filed not later than 3:00 p.m. on Friday, July 14, 2000. Copies of the petition and draft rule amendment may be obtained from the commission's Central Records, William B. Travis Building, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 22643.

TRD-200004145
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 13, 2000

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Public Notice of Amendment to Interconnection Agreement

On June 2, 2000, Southwestern Bell Telephone Company and Jato Operating Corporation, 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 22618. 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 22618. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22618.

TRD-200004023
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Amendment to Interconnection Agreement

On June 2, 2000, Southwestern Bell Telephone Company and Allegiance Telecom of Texas, 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 22619. 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 22619. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22619.

TRD-200004024
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Amendment to Interconnection Agreement

On June 2, 2000, @Link Networks, Inc. formerly known as Dakota Services Limited 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 22623. 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 22623. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22623.

TRD-200004028
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Amendment to Interconnection Agreement

On June 2, 2000, Southwestern Bell Telephone Company and BasicPhone, 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 22625. 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 22625. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22625.

TRD-200004030
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Amendment to Interconnection Agreement

On June 6, 2000, Southwestern Bell Telephone Company and Millennium One Communications, 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 22637. 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 22637. 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 July 7, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22637.

TRD-200004044
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2000

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Public Notice of Interconnection Agreements

On June 2, 2000, Southwestern Bell Telephone Company and Time Warner Telecom of Texas, LP, 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 22620. 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 22620. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22620.

TRD-200004025
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Interconnection Agreements

On June, 2, 2000, MPower Communications Corporation 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 22621. 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 22621. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22621.

TRD-200004026
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: June 7, 2000

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Public Notice of Interconnection Agreements

On June, 2, 2000, Snappy Phone of Texas, 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 22622. 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 22622. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22622.

TRD-200004027
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Interconnection Agreement

On June 2, 2000, Highland Digital Paging, Inc. doing business as Highland Communications 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 22624. 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 22624. 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 July 5, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22624.

TRD-200004029

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 7, 2000

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Public Notice of Interconnection Agreement

On June 5, 2000, Koyote Telephone, 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 22629. 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 22629. 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 July 6, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22629.

TRD-200004047
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2000

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Public Notice of Interconnection Agreements

On June 5, 2000, Winstar Wireless Incorporated and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interim 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 22630. The joint application and the underlying interim interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interim 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 interim 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 22630. 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 July 6, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at

(512) 936-7136. All correspondence should refer to Docket Number 22630.

TRD-200004046
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2000

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Public Notice of Interconnection Agreement

On June 5, 2000, Southwestern Bell Telephone Company and FamilyTel of Texas, LLC, 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 22635. 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 22635. 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 July 6, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22635.

TRD-200004045
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2000

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Public Notice of Interconnection Agreement

On June 6, 2000, Southwestern Bell Telephone Company and Nationwide Communication, 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 22639. 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 22639. 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 July 7, 2000, 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 commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22639.

TRD-200004043
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2000

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Public Notice of Interconnection Agreement

On June 7, 2000, Southwestern Bell Telephone Company and Universal Telecom, 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, Supplement 2000) (PURA). The joint application has been designated Docket Number 22641. The joint application and the underlying interconnection agreement is 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 22641. 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 July 7, 2000, 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 22641.

TRD-200004089
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 2000

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Public Notice of Workshop on Provisions of PURA Addressing Telecommunications Affiliate Matters and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss the rulemaking to implement §§54.102, 60.164, and 60.165 of the Public Utility Regulatory Act (PURA) concerning affiliate issues for telecommunications service providers. Project Number 21164, *Rulemaking to Address Affiliate Issues for Telecommunications Services Providers Pursuant to PURA §§54.102, 60.164, and 60.165,* has been established for this proceeding. This rulemaking is an expansion of the original project which only addressed the requirements in PURA §54.102 concerning a holder of a certificate of convenience and necessity (CCN) and its affiliated telecommunications service providers applying for a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA). This expanded rulemaking will also address joint marketing of a local exchange company and its affiliates pursuant to PURA §60.164 and general affiliate issues as discussed in PURA §60.165. All comments previously filed under Project Number 21164 are incorporated into this expanded proceeding.

The workshop will be held on Thursday, July 27, 2000, beginning at 9:30 a.m. in the Commissioners' Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The agenda for the workshop will be filed in Central Records and made available through the commission's website no later than July 24, 2000. Copies of the agenda will also be made available at the workshop. The workshop agenda will not be confined solely to questions proposed by the commission staff; a portion of the workshop will be reserved for open discussion of general or specific issues of interest to attendees. Before the workshop commences, the commission requests interested persons to file comments addressing the questions below and invites commenters to propose drafts of rule language.

QUESTIONS

PURA §54.102 Relating to Application for Certificate

1. What specifically could a commission affiliate rule clarify for market participants concerning the requirements and restrictions imposed upon CCN holders and affiliated COA or SPCOA holders pursuant to PURA §54.102? In response to this request, you may refer to the draft rule proposed by staff for discussion at the February 23, 2000 workshop in Project Number 21164, which is available for review on the commission's Internet site at http://www.puc.state.tx.us/ rules/ rulemake/21164/21164.cfm.

PURA§60.164 Relating to Permissible Joint Marketing

2. What specific federal law and Federal Communication Commission (FCC) rules and orders permit local exchange companies to jointly market or sell its products and services with the products and services of an affiliate? What limits are set by federal law and FCC rules and orders regarding this joint marketing?

3. In what ways could a commission affiliate rule clarify the permissible joint marketing activities or restrictions against joint marketing as prescribed in PURA Chapter 61 relating to Information Technology Services, Chapter 62 relating to Broadcaster Safeguards, and Chapter 63 relating to Electronic Publishing?

4. In what ways could a commission affiliate rule clarify the provisions of PURA §60.164?

PURA §60.165 Relating to Affiliate Rule

5. In what ways could a commission affiliate rule clarify the provisions of PURA §60.165?

Sixteen copies of comments may be filed with the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 20 days of the date of publication of this notice. All comments should reference Project Number 21164.

Questions about Project Number 21164 may be referred to Bridget Rabel, Office of Policy Development, (512) 936-7156, bridget.rabel@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200004072
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 9, 2000

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Texas Council on Purchasing from People with Disabilities

Proposed Memorandum of Agreement Between the Texas Council on Purchasing from People with Disabilities and TIBH Industries, Inc.

September 1, 2000 - August 31, 2001 MEMORANDUM OF AGREEMENT BETWEEN The Texas Council on Purchasing from People with Disabilities ("the Council") And The Designated Central NonProfit Agency, TIBH Industries, Inc. ("TIBH")

ARTICLE I.

A. PURPOSE OF AGREEMENT

The purpose of this agreement is to define the relationship between the Council and a CNA in the implementation of this program, to further the State's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive work. (Human Resources Code, 122.001)

B. DESIGNATION AS A CENTRAL NONPROFIT AGENCY

The Council under its statutory authority hereby designates TIBH as a Central NonProfit Agency (CNA) for the purposes of this agreement subject to the terms and conditions of the contract and in accordance with 122.019 of the Human Resources Code.

As a designated CNA, TIBH shall carry out the duties of this agreement.

C. CONFLICT OF INTEREST

1. No member of this CNA Board of Directors or staff shall receive any personal or financial benefit from any vendor or manufacturer or manufacturer's representative that sells a product used by a Community Rehabilitation Program (CRP); nor shall any Board or staff member derive any benefit directly or indirectly from materials or supplies used by a CRP or any product or service produced by a CRP. It shall not be a conflict of interest or violation of the foregoing policy for a CNA Board member to receive normal and reasonable compensation or salary for actual services as director or employee of a CRP.

2. This CNA shall disclose any financial or family relationships which may create the appearance of a conflict of interest. Board members may not appoint or vote for any person related to that individual within the third degree of consanguinity (related by blood) or the second degree of affinity (related by marriage) to any paid position at the CNA. All actual or potential conflicts shall be disclosed to the Council at the next regular meeting of the Council.

D. NONDISCRIMINATION

It is agreed that the Council and this CNA shall not discriminate and shall not permit discrimination in the provision of services, benefits, or products either by them or by any participant in this program on the basis of race, sex, color, national origin, age, religion, or disability.

E. CONFIDENTIALITY OF INFORMATION

The Council and this CNA agree that all duties and activities performed under this agreement shall conform with any applicable confidentiality and statutory requirements, subject to Article V of this Agreement.

ARTICLE II.

A. DUTIES OF THE COUNCIL

1. The Council shall determine the fair market price of all products and services manufactured or provided by persons with disabilities for sale to the State. (Human Resources Code, 122.003)

2. The Presiding Officer of the Council shall appoint a three member Pricing Subcommittee to review data used to determine the fair market price. The subcommittee shall make recommendations to the full Council concerning fair market price for products and services. (Human Resources Code, 122.007 (b))

3. The Council shall revise prices as necessary to reflect changes in the market place. Such revisions may be upward or downward to reflect changing market conditions. (Human Resources Code, 122.007 (c))

4. The Council may make rules regarding other matters related to the State's use of products and services of persons with disabilities. (Human Resources Code, 122.013)

5. The Council shall adopt the form for reporting of any products or services which are purchased under the exception provisions of Human Resources Code 122.016.

6. The Council shall prepare information of consumer interest about the Council and describe the procedures by which complaints are filed and resolved with the Council. The information shall be made available to the general public and State agencies. (Human Resources Code, 122.020 (a))

7. The Council shall keep an information file about each complaint filed relating to a product or service of a CRP. (Human Resources Code, 122.020 (b))

8. The Council shall notify all parties of the status of any complaint at least quarterly until resolution unless such notice would jeopardize an undercover investigation. (Human Resources Code, 122.020 (c))

9. The Council shall on or before November the 1st, of each year, file a report with the Governor, the Speaker of the House, and the LT. Governor. The report shall include:

a. Accounting of all funds received and disbursed by the Council;

b. The number of persons with disabilities, according to their type of disability, participating in the program;

c. The amount of annual wages paid to person participating in the program, including disabled and nondisabled persons;

d. Summary of the sale of products and services offered by CRPs;

e. List of products and services offered by CRPs; and

f. The geographic distribution of the CRPs. (Human Resources Code, 122.022)

10. The Council may cooperate with the Texas Department of Criminal Justice Institutional Division to accomplish the purposes of the program. (Human Resources Code, 122.010)

11. The Council may adopt procedures, practices, and standards used for Federal programs similar to the State program. (Human Resources Code, 122.011)

12. The Council shall review all applications for selection of suitable products or services for sale to the State. It shall be the duty of the General Services Commission to develop or adopt specifications for the products or services determined by the Council to be feasible for production or delivery by persons with disabilities. (Human Resources Code, 122.014)

13. The Council may suspend awarded contracts for nonperformance by CRPs in accordance with 40 TAC Texas Administrative Code 189.10.

14. The Council shall obtain from this CNA a list of suitable products and services offered for sale to the state which shall contain at least - 1. delivery schedule, 2. freight, and 3. packaging, and cause the same to be published in the Texas Register at least semiannually.

15. The Council shall cause the publication and distribution of a catalog of all products and services produced and/or provided by persons with disabilities.

16. The Council shall annually review this CNA's budget and programmatic performance and objectives in accordance with rules adopted by the Council. (Human Resources Code 122.019(c))

17. The Council shall annually establish management fees to be paid to this CNA or their services to participating CRPs. (Human Resources Code, 122.019 (c))

18. The Council shall set the percentage of the management fee paid to it in the amount necessary to reimburse the general revenue fund for direct and usable costs, including all expenses of the Council, and other costs incurred by the General Services Commission in administering its duties to the Council. (Human Resources Code, 122.019(e))

ARTICLE III.

A. DUTIES OF THE CENTRAL NONPROFIT AGENCY

1. This CNA shall facilitate the distribution of orders among CRPs assisting persons with disabilities. (Human Resources Code, 122.019 (a)(2))

2. No later than September 15th of each year, this CNA shall submit a draft of the Annual Report to the Council for review and comment. The reporting period covered shall be September 1 through June 30. This CNA shall provide such information as necessary for the Council to submit its required report to the Governor, Lt. Governor, and Speaker of the House. The presiding officer of the Council shall execute the final report sent to the Governor, Lt. Governor and Speaker of the House. (Human Resources Code, 122.022(a))

3. This CNA shall be responsible for the publication of catalogs and/or updates of products and services available for sale to the state. This catalog will be utilized to fulfill the Council's requirement for publication of a list of products and services in the Texas Register. The catalog shall be distributed to all interested parties.

4. This CNA shall assist the CRPs in the research and development of suitable products and services and submit them to the Pricing Subcommittee for review and recommendation to the Council. No product or service shall be considered without obtaining specifications which have been developed or approved by the General Services Commission as required by 122.014, Human Resources Code. (Human Resources Code,122.019(a)(1), (b)(3))

5. This CNA shall be responsible for the overall marketing of the selected products and services to the state and its political subdivisions for the purpose of promoting the program. (Human Resources Code, 122.019 (b)(2))

6. This CNA shall obtain or assist with contracts for qualified products and services for participating CRPs. (Human Resources Code, 122.019(b)(1))

7. This CNA shall provide administrative, educational, marketing and accounting assistance to CRPs when requested by the CRP or when such assistance is directed by the Council or when the need for such assistance is obvious to this CNA and acceptable to the CRPs. (Human Resources Code, 122.019 (b)(6) and (7))

8. This CNA shall submit its budget to the Council for review and approval of its management fee. In accordance with Human Resources Code 122.019(c) and (d), the designated central nonprofit agency will provide to the Council, subject to the Texas Public Information Act, (Government Code, Chapter 522) the following for services provided herein:

(1) quarterly reports of sales of products or services, wages paid and hours worked by people with disabilities;

(2) at least once a year, and prior to any review and/or renegotiation of the contract;

(a) an updated marketing plan.

(b) a proposed annual budget with estimated sales, commissions, and expenses.

(c) a program budget with details on how the expected revenue and expenses will be allocated to directly support and expand the state use program and other programs that expand direct services and/or the enhancement of employment opportunities for people with disabilities.

(d) latest audited annual financial statement.

(3) records in accordance with Human Resources Code, 122.009(a) for audit purposes.

ARTICLE IV

The Council shall approve the management fee annually. The Council shall base the management fee using the financial document

referenced in Article III, paragraph 8. The Council shall establish a management fee schedule on products and services as follows: 1. New products, 2. New services, 3. Renewal contracts for products and services, 4. Warehouse fees.

ARTICLE V.

A. ADDITIONAL DUTIES OF THE CNA AND THE AUTHORITY TO CARRY OUT THESE DUTIES DELEGATED BY THE COUNCIL

1. After screening for suitability, the CNA shall approve or reject CRP product or service applications prior to presentation to the Pricing Subcommittee. CRPs whose applications are not adopted will be advised of the appeal process.

2. This CNA shall provide assistance to CRPs regarding the solicitation and negotiation of contracts.

3. This CNA shall require annual reports from the participating CRPs detailing the actual costs to produce the product/service provided in terms directly comparable to the initial cost estimates.

4. This CNA may temporarily suspend any CRP contract due to poor quality, non-performance, delivery problems, noncompliance, or any other breach of contract or violation of the rules applicable to this program subject to appeal by the CRP to the Council.

5. This CNA is authorized to receive payments from the agencies for products and services provided by the CRPs. This CNA shall pay CRPs within 14 to 21 days for products and services delivered or performed according to their contracts.

6. This CNA shall assist CRPs in resolving any complaints filed with regard to quality, quantity, timeliness, or delivery regarding products or services.

7. This CNA shall assist the CRPs in the continued development and improvement of products and services offered for sale to the state.

8. This CNA shall notify the Council quarterly of any additions or deletions to the current listing of recognized and participating CRPs.

9. This CNA shall provide the Council information relating to completed contracts, approval, suspension or reinstatement proceedings, summary data of CRP audits to ensure program compliance, and any other relevant data so requested by the Council which is required to carry out the expressed or implied legislated intent of the program.

10. This CNA shall administer and coordinate the normal day-today operations of the program by acting as the central facilitating agency between the CRPs, the Council, and all purchasers of products and services available in the program.

11. This CNA shall recruit such new CRPs as may be required to continue the existing program or provide for its expansion.

12. This CNA shall cooperate with the Texas Department of Criminal Justice Institutional Division in the implementation and operation of this program.

13. This CNA shall use all reasonable effort to insure that all data presented to the Council to establish a fair market price reflects the true and accurate costs to produce the proposed or existing product or service.

14. This CNA shall support out placement services and supported employment services.

ARTICLE VI.

A. ENTIRE AGREEMENT

The agreement and executed amendments, if any, constitute the entire agreement of the parties concerning the subject matter hereof and all prior and contemporaneous understandings, whether written, or oral are merged herein.

B. AMENDMENTS

The terms and conditions of the contract, amendments, modifications, or other documents submitted by either party which conflict with, or in any way purport to amend or add to any of the terms and conditions of the contract are specifically objected to by the other party and shall be of no force or effect, nor shall govern in any way the subject matter hereof, unless set forth in writing and signed by both parties.

C. CONTRACT ADMINISTRATORS

1. The Contract Administrator for the Council shall be the Coordinator to the Council. TIBH may direct all questions and requests to the Administrator. The address and fax number is as follows: ______________________ ___________ ______________________________ __ ______________________________ __

2. The Contract Administrator for TIBH shall be ________________. The Council may direct all questions and requests to the Administrator. The address and fax number is as follows: ______________________ ___________ ______________________ ___________ ______________________ ___________

D. CONTRACT TERM

The agreement shall commence, September 1, 2000 and shall end on August 31, 2001

E. EFFECTIVE DATE

This agreement is effective as of the date when the last party executes the agreement.

TRD-200004161
Julie King
Legal Counsel
Texas Council on Purchasing from People with Disabilities
Filed: June 14, 2000

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Texas Savings and Loan Department

Notice of Application for Rebuttal of Control of a State Savings Bank

Notice is hereby given that on June 5, 2000, application was filed with the Savings and Loan Commissioner of Texas for rebuttal of rebuttable determination of control of FirstCapital Bank, ssb, Victoria, Texas by: Falcon Seaboard Investment Company, L.P., FSI Management Company, L.L.C., The David Dewhurst Investment Partnership, Ltd. and David Dewhurst Trust (collectively, "Falcon").

This application is filed pursuant to 7 TAC §§75.121-127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas, Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas, 78705.

TRD-200004050
James L. Pledger
Commissioner
Texas Savings and Loan Department
Filed: June 8, 2000

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Texas Department of Transportation

Public Notice

Public Notice: Municipal Restriction on Use of State Highway: Pursuant to Transportation Code, §545.0651 and 43 TAC §§25.601-25.603, the City of Houston has proposed an ordinance establishing lane use restrictions for certain trucks on a portion of Interstate Highway 10 within the city.

The proposed ordinance would apply to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined by Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed ordinance would prohibit those vehicles from using any traffic lane on Interstate Highway 10, between the center line of Waco Street at the Waco Street interchange (also known as Exit 771A eastbound and westbound) and the center line of Uvalde Road at the Market Road or Street/Uvalde Road interchange (also known as Exit 780 eastbound and Exit 779B westbound), other than the two controlled access lanes on each side of Interstate Highway 10 that are most immediately to the right of the left hand (or inner) controlled access lane.

The proposed restriction would apply between the hours of 6:00 a.m. and 8:00 p.m., Monday through Friday, holidays observed by the closure of City of Houston offices excepted, and would allow the operation of such a truck in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

The intent of this ordinance is to establish a demonstration project within the Houston metropolitan region to evaluate the effectiveness of a truck lane restriction in affecting traffic volumes and flow rates and in reducing truck accidents within an urban freeway corridor.

Pursuant to 43 TAC §25.603(f), the Texas Department of Transportation will evaluate the impact of the proposed restriction and the proposed ordinance's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601-25.603. Interested persons are requested to submit comments concerning the proposed ordinance. Written comments may be submitted to Mr. Carlos Lopez, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of comments is 5:00 p.m. on July 24, 2000.

TRD-200004160
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 14, 2000

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Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Availability of Final Environmental Impact Statement

The Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation hereby issues this notice to advise the public that a Final Environmental Impact Statement (FEIS) has been prepared and approved for the proposed extension of Loop 1 in Travis and Williamson Counties. The proposed project would extend Loop 1 from FM 734 (Parmer Lane) north and northeast approximately 7 miles to Interstate Highway 35 south of Round Rock. Alternatives being considered for the Loop 1 project include two route alternatives and a no-build alternative. The route alternatives generally follow existing FM 1325 north, but diverge from the existing roadway at different points following new location right-of-way before turning east to intersect with Interstate Highway 35. The FEIS evaluates the two route alternatives as well as the no-build alternative.

As currently proposed, the ultimate facility design is anticipated to be a controlled access four to six lane roadway within a usual right-of-way of 400 feet. Frontage roads, grade separations and direct connection ramps will be constructed at varying locations, depending on the final alignment and design.

The proposed Loop 1 project is being developed as a toll road candidate. Accordingly, in conjunction with other project development related activities, TTA is conducting a study to evaluate the feasibility of developing the proposed project as a toll road and financing it, in whole or in part, through the issuance of revenue bonds.

The Loop 1 FEIS is available for review at the offices of the TTA, 125 East 11th Street, Austin, Texas, 78701. Copies of the FEIS may be purchased from TTA for the actual cost of reproduction.

Copies of the FEIS have also been filed with and are available for public review at the Austin Public Library/Austin History Center (Reading Room, 810 Guadalupe Street, Austin, Texas) and the Round Rock Public Library (Reference Desk, 216 East Main Street, Round Rock, Texas).

Comments on the FEIS may be submitted to Ms. Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas, 78701-2483. For additional information contact Ms. Benningfield at the address listed in this notice or by telephone at (512) 936-0983.

TRD-200004166
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: June 14, 2000

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Notice of Intent to Issue a Request for Proposal for Turnpike Traffic and Revenue Modeling and Forecasting Services (#86-0rfp5012–Revised)

This is a revised version of the notice of intent for Request for Proposal (RFP) #86-0RFP5012 which was originally published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5750). The description of the services requested has been revised, as have they dates for submittal of letters of request, release of the RFO, and submittal of RFP responses.

This notice represents the first step in the process of soliciting traffic and revenue modeling and forecasting services for projects under consideration statewide by the Texas Turnpike Authority, a division of the Texas Department of Transportation ("TTA"). Through this notice the TTA is seeking Letters of Request ("LOR") from parties interested in receiving a request for proposal ("RFP"). The TTA anticipates issuing the RFP, receiving and analyzing RFP responses, conducting interviews (if necessary), and negotiating a contract for traffic and revenue modeling and forecasting services (the "Services.") This procurement is being conducted pursuant to Chapter 361 of the Texas Transportation Code and 43 Texas Administrative Code, §53.20, et. seq.

Description of the Project. The Services may be performed for potential turnpike projects statewide. The TTA is seeking one or more professional engineering firms experienced in generating work product acceptable to and recognized by the major investment banking firms, debt instrument rating agencies, major institutional investors, and the turnpike industry. The firm(s) should possess the experience and expertise to provide the Services and have a verifiable record of accuracy in producing traffic and revenue forecasts for new and operating turnpikes.

Release of RFP. The TTA currently anticipates that the RFP will be available on or about June 30, 2000. Copies of the RFP will be mailed or provided on or about that date to those parties who have submitted a LOR. The TTA is under no obligation to mail RFPs to parties submitting LORs after June 30, 2000. The deadline for RFP responses is currently anticipated to be July 20, 2000. Details concerning deadlines, responses and content will be contained in the RFP.

Deadline for Letters of Request. A LOR notifying the TTA of a party's request for a copy of the RFP 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, an address to which the RFP should be sent, a telephone number for the contact person, and a fax number. LORs will be received until 5:00 p.m. C.S.T. on June 30, 2000.

TRD-200004174
Phillip Russell
Director
Texas Turnpike Authority Division of the Texas Department of Transportation
Filed: June 14, 2000

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Texas Water Development Board

Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at: 10:00 a.m., August 10, 2000, Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 on the proposed Fiscal Year 2001 Intended Use Plan for the Drinking Water State Revolving Fund (DWSRF). The Intended Use Plan (IUP) contains a combined list of projects for large and small communities, including projects for privately owned water systems and projects for entities which have qualified as disadvantaged communities. Projects are listed in priority order. The Intended Use Plan describes the sources and uses of funds for projects as well as for set-aside activities. The proposed Intended Use Plan has been prepared pursuant to rules for the Drinking Water State Revolving Fund as adopted by the Texas Water Development Board in 31 T.A.C. Chapter 371.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Intended Use Plan. In addition, persons may participate in the hearing by mailing written comments before the above date to Helen Dean, Manager, Grant Administration and Special Reporting, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711. Written comments will also be accepted for thirty (30) days following the August 10, 2000 hearing. Copies of the proposed 2001 Intended Use Plan will be available in Room 543 of the Stephen F. Austin Building or may be obtained from the Grants Administration and Special Reporting Section, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711.

The hearing is being conducted pursuant to 31 Texas Administrative Code, §371.11 and 40 C.F.R. §25.5.

TRD-200004099
Gail L. Allan
Director, Administration and Northern Legal Services
Texas Water Development Board
Filed: June 12, 2000

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Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at: 10:00 a.m., August 15, 2000, Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711 on the proposed Fiscal Year 2001 Intended Use Plan ("IUP") for the Clean Water State Revolving Fund ("CWSRF"). The Intended Use Plan contains a listing of treatment works projects in prioritized order which will be considered for funding in FY 2001 through the CWSRF program. The proposed IUP has been prepared pursuant to rules for the CWSRF as adopted by the Texas Water Development Board in 31 T.A.C. Chapter 375.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Intended Use Plan. In addition, persons may participate in the hearing by mailing written comments before the above date to Helen Dean, Manager, Grant Administration and Special Reporting, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711. Copies of the proposed 2001 Intended Use Plan will be available in Room 543 of the Stephen F. Austin Building or may be obtained from the Grants Administration and Special Reporting Section, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711.

The hearing is being conducted pursuant to 31 Texas Administrative Code §375.11 and 40 CFR §25.5.

TRD-200004137
Gail L. Allan
Director, Administration and Northern Legal Services
Texas Water Development Board
Filed: June 13, 2000

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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).

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