
TEXAS REGISTER

Volume 25 Number 31 August 4, 2000

Pages 7265-7432



This month's front cover artwork:

Artist: *Maricela Lopez*
12th grade
Universal Goyal

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

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

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

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

Material in the **Texas Register** is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the **Texas Register** Director, provided no such republication shall bear the legend **Texas Register** or "Official" without the written permission of the director.

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

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



a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 22607199
(512) 463-5561
FAX (512) 463-5569

<http://www.sos.state.tx.us>

Secretary of State - Elton Bomer

Director- Dan Procter

Texas Administrative Code

Dana Blanton
Roberta Knight

Texas Register

Leah Billingsley
Carla Carter
Melissa Dix
Ann Franklin
Kris Hogan
Diana Muniz-Franklin
Crystal Richey

Circulation/Marketing

Jill S. Ledbetter

ATTORNEY GENERAL

Open Records Request7271

TEXAS ETHICS COMMISSION

Advisory Opinion Requests7273

Opinions7273

PROPOSED RULES

GENERAL SERVICES COMMISSION

CENTRAL PURCHASING DIVISION

1 TAC §113.157275

1 TAC §113.136, §113.1377275

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID REIMBURSEMENT RATES

1 TAC §355.5037276

CREDIT UNION DEPARTMENT

CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

7 TAC §91.1017277

7 TAC §91.1027279

7 TAC §91.3027279

COMMISSION POLICIES AND ADMINISTRATIVE RULES

7 TAC §97.1137280

7 TAC §97.2057281

STATE SECURITIES BOARD

TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.77281

DEALERS AND SALESMEN

7 TAC §115.17282

7 TAC §115.37282

FORMS

7 TAC §133.97284

EXEMPTIONS BY RULE OR ORDER

7 TAC §139.207285

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.2147286

TEXAS DEPARTMENT OF LICENSING AND REGULATION

ARCHITECTURAL BARRIERS

16 TAC §68.807287

ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §74.807288

TALENT AGENCIES

16 TAC §78.807289

16 TAC §78.817289

TEXAS MOTOR VEHICLE BOARD

GENERAL RULES

16 TAC §103.147290

ADVERTISING

16 TAC §§105.2, 105.3, 105.7, 105.9, 105.10, 105.13, 105.18-105.21, 105.24, 105.26, 105.28, 105.317291

TEXAS LOTTERY COMMISSION

BINGO REGULATION AND TAX

16 TAC §402.5507294

GENERAL ADMINISTRATION

16 TAC §§403.201 - 403.2237295

16 TAC §403.3017300

TEXAS HIGHER EDUCATION COORDINATING BOARD

AGENCY ADMINISTRATION

19 TAC §§1.40 - 1.477301

PROPRIETARY SCHOOLS

19 TAC §§12.1 - 12.37307

19 TAC §§12.21-12.247308

19 TAC §§12.21 - 12.397309

19 TAC §§12.41-12.577313

19 TAC §§12.71 - 12.857314

19 TAC §§12.41 - 12.467315

19 TAC §§12.91 - 12.937316

STUDENT SERVICES

19 TAC §21.9067317

TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

QUALITY REVIEW

22 TAC §527.47317

TEXAS DEPARTMENT OF INSURANCE

TRADE PRACTICES

28 TAC §§21.3001, 21.3010, 21.3011, 21.3020 - 21.30237318

GENERAL LAND OFFICE

OIL SPILL PREVENTION AND RESPONSE	1 TAC §251.9.....7349
31 TAC §19.13, §19.14.....7321	
31 TAC §19.36, §19.37.....7322	
31 TAC §§19.60-19.64.....7323	
TEXAS DEPARTMENT OF HUMAN SERVICES	
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION	
40 TAC §19.1926.....7330	
MEDICAID HOSPICE PROGRAM	
40 TAC §30.2, §30.4.....7332	
40 TAC §§30.10, 30.12, 30.14, 30.16, 30.18, 30.20.....7332	
40 TAC §§30.30, 30.32, 30.34, 30.36.....7334	
40 TAC §30.40.....7336	
40 TAC §§30.50, 30.52, 30.54.....7336	
40 TAC §30.60, §30.62.....7338	
40 TAC §30.70.....7339	
40 TAC §§30.80, 30.82, 30.84.....7339	
40 TAC §30.90, §30.92.....7340	
40 TAC §30.100.....7342	
40 TAC §30.101, §30.103, §30.105.....7342	
COMMUNITY CARE FOR AGED AND DISABLED	
40 TAC §48.2703.....7343	
TEXAS REHABILITATION COMMISSION	
GENERAL RULES	
40 TAC §101.24.....7343	
TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING	
GENERAL RULES OF PRACTICE AND PROCEDURE	
40 TAC §181.55.....7344	
40 TAC §181.56.....7344	
40 TAC §181.57.....7345	
40 TAC §181.58.....7345	
40 TAC §181.830.....7346	
TEXAS WORKFORCE COMMISSION	
COMMUNITIES IN SCHOOLS PROGRAM	
40 TAC §827.34.....7347	
WITHDRAWN RULES	
COMMISSION ON STATE EMERGENCY COMMUNICATIONS	
REGIONAL PLANS--STANDARDS	
	TEXAS DEPARTMENT OF LICENSING AND REGULATION
	ARCHITECTURAL BARRIERS
	16 TAC §68.34, §68.102.....7349
	ADOPTED RULES
	TEXAS SAVINGS AND LOAN DEPARTMENT
	MORTGAGE BROKER AND LOAN OFFICER LICENSING
	7 TAC §80.10.....7351
	7 TAC §80.19.....7352
	TEXAS HIGHER EDUCATION COORDINATING BOARD
	PROGRAM DEVELOPMENT
	19 TAC §§5.68 - 5.73.....7352
	19 TAC §§5.68 - 5.74.....7352
	STUDENT SERVICES
	19 TAC §21.901, §21.909.....7353
	19 TAC §21.910, §21.911.....7354
	TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY
	REGISTRATION
	22 TAC §513.5.....7354
	TEXAS DEPARTMENT OF INSURANCE
	LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES
	28 TAC §3.3806.....7354
	GENERAL LAND OFFICE
	LAND RESOURCES
	31 TAC §13.79, §13.81.....7355
	TEXAS WATER DEVELOPMENT BOARD
	FINANCIAL ASSISTANCE PROGRAMS
	31 TAC §363.613.....7357
	TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING
	GENERAL RULES OF PRACTICE AND PROCEDURE
	40 TAC §181.491.....7357
	SPECIALIZED TELECOMMUNICATIONS DEVICES ASSISTANCE PROGRAM
	40 TAC §182.4.....7357
	40 TAC §182.21.....7358

40 TAC §182.27	7358	Notice of Request for Proposals for Human Immunodeficiency Virus Prevention in Dallas, Texas	7374
RULE REVIEW		Texas Department of Housing and Community Affairs	
Agency Rule Review Plan		Announcement of the Request for Proposals for the Development and Implementation of a Rental Housing Pilot Program to Expand Long-Term Care Options for Elderly Residents of Texas	7374
Texas Workers' Compensation Commission	7359	Notice of Administrative Hearing (MHD1998000607UI).....	7376
Agency Rule Review Plan--Revised		Notice of Public Hearing for the Low Income Home Energy Assistance Program.....	7376
Texas Youth Commission	7359	Texas Department of Human Services	
Proposed Rule Reviews		Notice of Amendment to One Consultant Contract.....	7377
Commission on State Emergency Communications	7359	Notice of Contract Award - Food Stamp Education Campaign.....	7377
Texas Natural Resource Conservation Commission	7359	Public Notice for Proposed Title XX Intended Use Report.....	7377
Texas Board of Occupational Therapy Examiners	7360	Request for Proposal for CLASS Case Management Services Statewide.....	7377
Texas Workers' Compensation Commission	7361	Request for Proposal for CLASS Direct Services Statewide.....	7378
Adopted Rule Reviews		Texas Department of Insurance	
Texas Higher Education Coordinating Board.....	7361	Notice	7378
TABLES AND GRAPHICS		Notice of Public Hearing	7379
Tables and Graphics		Third Party Administrator Applications	7379
Tables and Graphics	7363	Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association	
IN ADDITION		Request for Proposal.....	7379
Texas Department of Agriculture		Texas Lottery Commission	
Request for Proposals - Urban Schools Grant Program.....	7367	Instant Game No. 179 - "Chili Pepper Payoff"	7379
Coastal Coordination Council		Instant Game No. 191 - "Winmill"	7384
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program.....	7367	Instant Game No. 194 - "Raceway Riches"	7389
Comptroller of Public Accounts		Instant Game No. 197 - "Heads Or Tails"	7395
Notice of Amendment to Existing Consultant Contract	7368	Instant Game No. 199 - "Run For The Money"	7399
Notice of Request for Proposals	7368	Instant Game No. 211 - "24K"	7405
Notice of Request for Proposals	7368	Instant Game No. 212 - "WILD WILD WINNINGS"	7410
Notice of Request for Proposals	7369	Texas Department of Mental Health and Mental Retardation	
Office of Consumer Credit Commissioner		Notice of Medicaid State Plan Amendment for Case Management Rate Setting	7416
Notice of Rate Ceilings.....	7369	Notice of Medicaid State Plan Amendment for ICF/MR Rate Setting	7416
Edwards Aquifer Authority		Notice of Medicaid State Plan Amendment for Institutions for Mental Diseases Rate Setting	7416
Notice of Public Hearings.....	7370	Notice of Medicaid State Plan Amendment for Rehabilitative Services Rate Setting.....	7417
Golden Crescent Workforce Development Board		Public Hearing Notice - Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation Notice of Joint Public Hearing on Reimbursement Rates for Service Coordination	7417
Public Notice.....	7370		
Governor's Office of Budget and Planning			
Request for Proposals	7370		
Texas Department of Health			
Licensing Action for Radioactive Materials	7371		
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Castle Dental Centers of Houston	7374		

Texas Natural Resource Conservation Commission

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions7417
Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions7418
Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit7422
Notice of Water Rights Application.....7422

Public Utility Commission of Texas

Notice of Application for Emergency Revision of Fixed Fuel Factors and Related Good-Cause Waivers.....7423
Notice of Application for Service Provider Certificate of Operating Authority.....7423
Notice of Application to Amend Certificate of Convenience and Necessity.....7423
Notice of Application to Amend Certificated Service Area Boundaries7424
Public Notice of Amendment to Interconnection Agreement7424
Public Notice of Interconnection Agreement7425

Public Notice of Interconnection Agreements7425
Public Notice of Interconnection Agreements7426
Public Notice of Interconnection Agreement7426
Public Notice of Interconnection Agreement7427
Public Notice of Interconnection Agreements7427
Public Notice of Interconnection Agreement7428

Sul Ross State University

Solicitation for Consultant Services.....7428

Texas Department of Transportation

Public Notice.....7429

Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Availability of Final Environmental Impact Statement..7429
Notice of Receipt of Unsolicited Proposal.....7429

Texas Workforce Commission

Request for Proposals Mentoring Initiative7430

OFFICE OF THE ATTORNEY GENERAL

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

Open Records Request

ORQ-55.ID#139312.

No requestor. Pursuant to section 552.011 of the Texas Government Code, in order to maintain uniformity in the application, operation and interpretation of the Public Information Act, this office will prepare and publish a formal decision on the following issue.

Re: If a governmental body believes that requested information comes within an exception to the Act, and if the governmental body believes that the information should be withheld from the requestor, then section 552.301 of the Government Code requires the governmental body to seek a ruling from the attorney general with respect to the responsive information **unless** there is a previous determination. In other words, a previous determination allows a governmental body to withhold responsive information from a requestor without seeking a ruling from the attorney general.

Which attorney general decisions are "previous determinations" and which are not? When can a court decision function as a previous determination? When does a previous determination expire or become

invalid? To which documents does a previous determination apply? To which governmental bodies does a previous determination apply? What is the result if a governmental body does not seek an attorney general ruling because it believes that it has a previous determination, but in fact the governmental body does not have a previous determination? (ORQ-55)

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than August 25, 2000.

For further information, please contact Michael Garbarino at (512) 936-6736.

TRD-200005132

Susan Gusky

Assistant Attorney General

Office of the Attorney General

Filed: July 25, 2000



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-472. The Texas Ethics Commission has been asked to consider whether a judicial candidate’s repayment of a campaign loan counts toward the candidate’s expenditure limit under the Judicial Campaign Fairness Act.

AOR-473. The Texas Ethics Commission has been asked to consider the following question: Is it permissible, under the laws subject to interpretation by the Texas Ethics Commission, for a member of the Texas Legislature to serve as a commissioned sales representative for a pharmaceutical company?

AOR-474. A member of the legislature has asked whether he may use political contributions to pay certain expenses in connection with a vehicle used for personal purposes and for campaign and officeholder purposes. The legislator’s specific proposal is to use political contributions to pay a portion of the principal and interest payments, maintenance costs and insurance premiums. The amount paid from political contributions would be based on a comparison of total mileage to the mileage attributable to campaign and officeholder purposes.

AOR-475. A member of the legislature has asked if it is permissible, under the laws subject to interpretation by the Texas Ethics Commission, for a member of the Texas Legislature who is also a member of the Senate Economic Development Committee:

1) to use officeholder funds to accompany a trade mission organized and led by the Texas Department of Economic Development’s Office of International Business for the purpose of establishing business interests between foreign interests and Texas businessmen. The role of the member would be to observe the agency’s activities and facilitate its efforts by dialoging with comparable government officials and dignitaries;

2) to accept payment of the member’s travel and lodging expenses from one or several of the companies who will be participating in the trade mission to fulfill the role stated in item 1); or

3) to accept compensation and travel expenses, as a private citizen, for actively participating in the trade mission as a company representative charged with establishing specific business relationships, rather than simply dialoguing with comparable government officials and dignitaries as a representative of the state as a whole.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15,

Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200005005
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: July 20, 2000



Opinions

EAO-428. Whether a legislator is subject to any reporting requirements or restrictions in connection with gifts and invitations to the legislator’s child. (AOR-471)

SUMMARY. The expenditure reporting requirements in the lobby law apply only to expenditures made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

The expenditure restrictions in the lobby law apply regardless of whether an expenditure is made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

EAO-429. Whether a judicial candidate’s repayment of a campaign loan counts toward the candidate’s expenditure limit under the Judicial Campaign Fairness Act. (AOR-472)

SUMMARY. A disbursement made to repay all or part of the principal of a campaign loan does not count as an expenditure for purposes of the expenditure limits in the Judicial Campaign Fairness Act.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200005004
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: July 20, 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 113. CENTRAL PURCHASING DIVISION
SUBCHAPTER A. PURCHASING
1 TAC §113.15

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

The General Services Commission proposes the repeal of Title 1, T.A.C. §113.15 concerning Identifying Recycled, Remanufactured or Environmentally Sensitive Commodities or Services for Procurement by State Agencies. The repeal is proposed in order to reorganize the rules under a new subchapter.

Paul Schlimper, Director of Central Procurement, has determined for the first-five year period the repeal is in effect, there will be no adverse effect to state or local government as a result of enforcing these rules.

Paul Schlimper, Director of Central Procurement, further determines that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing these rules will be more efficient and well-organized rules. There will be no effect on small or large businesses and/or persons.

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

The repeal is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003 and 2155.448 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following codes are affected by these rules: Texas Government Code, Title 10, Subtitle D, §2152.003 and Texas Government Code, Chapter 2155.

§113.15. Identifying Recycled, Remanufactured or Environmentally Sensitive Commodities or Services for Procurements by State Agencies

This 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 July 18, 2000.

TRD-200004943

Ann Dillon

General Counsel

General Services Commission

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 463-3960



SUBCHAPTER H. RECYCLING MARKET DEVELOPMENT BOARD

1 TAC §113.136, §113.137

The General Services Commission proposes new Title 1, T.A.C., Subchapter H, §§113.136 and 113.137 concerning the Recycling Market Development Program pursuant to the Health and Safety Code §361.423. The new rules are being proposed in order to provide definitions and list preferences for state agencies to purchase recycled, remanufactured or environmentally sensitive commodities.

Paul Schlimper, Director of Central Procurement, has determined for the first five year period the rules are in effect, there will be no adverse effect to state or local government as a result of enforcing these rules.

Paul Schlimper, Director of Central Procurement, further determines that for each year of the first five-year period the amendments are in effect, the public benefit anticipated as a result of

enforcing these rules will be definitions and a list of recycled, re-manufactured, or environmentally sensitive commodities or services that state agencies shall give preferences to in procurement. There will be no effect on small or large businesses and/or persons.

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

The new rules are proposed under the authority of the Texas Government Code, Title 10, Subtitle D, §§2152.003 and 2155.448 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following codes are affected by these rules: Texas Government Code, Title 10, Subtitle D, Chapter 2155 and Texas Health and Safety Code, Chapter 361, Subchapter N.

§113.136. Definitions.

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

(1) First choice- Designated recycled, remanufactured, and environmentally sensitive commodities or services that state agencies shall give a preference for when purchasing in accordance with Texas Government Code, §2155.448(b).

(2) Recycling Market Development Board -- The Board authorized by the Health and Safety Code, §361.423 which provides support and coordinates the recycling activities of member agencies. The Recycling Market Development Board pursues an economic development strategy that focuses on the state's waste management priorities established by the Health and Safety Code, §361.022, including the development of recycling industries and markets as an integrated component.

§113.137. Identifying Recycled, Remanufactured or Environmentally Sensitive Commodities or Services for Procurements by State Agencies.

(a) Each state fiscal year, the commission, in coordination with the Recycling Market Development Board (RMDB), may designate as "first choice" certain recycled, remanufactured or environmentally sensitive commodities or services, as those terms are defined in §113.136 of this title (relating to Definitions).

(b) Effective September 1, 2000 state agencies shall prefer the following commodities or services which have been designated as "first choice" products:

(1) Re-refined oils and lubricants.

(2) Recycled-content toilet paper, toilet seat covers and paper towels; and

(3) Recycled-content printing, computer and copier paper, and business envelopes.

(c) A state agency shall purchase commodities and services in accordance with Texas Government Code, §2155.448 (b).

(d) The commission, in coordination with RMDB, may at least annually consider the recommendations of the RMDB when updating the list of identified commodities or services and purchasing goals for procurements by state agencies.

(e) A state agency shall report annually to the commission in accordance with Texas Government Code §2155.448 (c).

This 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 July 18, 2000.

TRD-200004942

Ann Dillon

General Counsel

General Services Commission

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 463-3960

◆ ◆ ◆
PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503

The Texas Health and Human Services Commission (HSSC) proposes an amendment to §355.503, concerning reimbursement methodology for the Community-based Alternatives Waiver Program--a 1915(c) Medicaid Home and Community-based waiver for aged and disabled adults who meet criteria for alternatives to nursing facility care, in its Medicaid Reimbursement Rates chapter. The purpose of the proposal is to provide a waiver of the requirement that all contracted Community-based Alternatives (CBA) providers must submit a cost report. The proposal would allow CBA Assisted Living/Residential Care (AL/RC) providers to receive a waiver of the cost reporting requirement if they had DHS AL/RC or Residential Care client days of service of 365 days or fewer during their fiscal year.

Don Green, Chief Financial Officer, 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 section.

Commissioner Don Gilbert has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that providers who serve fewer than one client, on average, during their fiscal year will not be required to complete a cost report. There will be no adverse economic effect on small or micro businesses; because no changes in practice are required of any business, except to reduce reporting requirements of AL/RC providers who serve fewer than one client, on average, during their fiscal year.

Questions about the content of this proposal may be directed to Carolyn Pratt (512) 438-4057 in DHS's Rate Analysis Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-252, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas, 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department

is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the 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 amendment implements the Government Code, §531.033 and §531.021(b).

§355.503. *Reimbursement Methodology for the Community-based Alternatives Waiver Program--a 1915(c) Medicaid Home and Community-based Waiver for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care.*

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

(f) Reporting of cost.

(1) (No change.)

(2) Excused from submission of cost reports. If required by DHS, all contracted providers must submit a cost report unless the number of days between the date the first DHS client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving DHS AL/RC or Residential Care residents are 365 or fewer during their fiscal year. Requests to be excused from submitting a cost report must be received by DHS's Rate Analysis Department before the due date of the cost report.

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

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

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

Filed with the Office of the Secretary of State, on July 19, 2000.

TRD-200004956

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Texas Credit Union Commission proposes new §91.101 relating to general definitions. The proposed rule, if adopted, would replace existing rule §91.102 which is proposed for repeal as published elsewhere in this issue.

The Government Code and the General Appropriations Act require each state agency to review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. After conducting a preliminary review of §91.102, the Commission determined that because of the number of changes required to update the definitions, it would be less confusing to credit unions and to the general public to repeal the existing rule and to adopt a new rule.

Lynette Pool, Deputy Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rule.

Lynette Pool has determined that for each year of the first five years the rule is in effect, the public benefit anticipated will be that the definitions for terms used throughout the statutes and rules (1) will be clearer, and (2) provide credit unions with definitions of terms that were ambiguous or simply undefined in the past. There is no anticipated economic cost to entities that are currently required to comply with this section.

Written comments on the proposal must be submitted within 45 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The new rule is proposed under the provisions of §15.402 of the Texas Finance Code, which is interpreted as authorizing the Credit Union Commission to reasonable rules necessary for administering Chapter 15 and Subtitle D, Title 3, of the Texas Finance Code.

The specific sections affected by this proposed rule are contained in Chapter 15 and Subtitle D, Title 3, of the Texas Finance Code pertaining to the Credit Union Commission and Department and to the supervision, regulation and operating powers of credit unions.

§91.101. Definitions and Interpretations.

(a) Words and terms used in this chapter that are defined in finance code §121.002, have the same meanings as defined in the finance code. 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 Credit Union Act (Texas Finance Code, Subtitle D).

(2) Allowance for loan and lease losses (ALLL)--A general valuation allowance that has been established through charges against earnings to absorb losses on loans and lease financing receivables. An ALLL excludes the regular reserve and special reserves.

(3) Applicant--An individual or credit union that has submitted an application to the commissioner .

(4) Application--A written request filed by an applicant with the department seeking to incorporate, amend articles of incorporation or bylaws, deviate from standard bylaws, obtain a certificate of authority to do business in the state of texas or to obtain other relief for which the commission is authorized by the act to issue a final decision or order subject to judicial review.

(5) Automated teller machine (ATM)--An automated, unstaffed credit union facility owned by or operated exclusively for the credit union at which deposits are received, cash dispensed, or money lent.

(6) Community of interest--A unifying factor among persons that by virtue of its existence, facilitates the successful organization of a new credit union or promotes economic viability of an existing credit union. The types of factors included are:

(A) Employment by or a work-related relationship with an enterprise;

(B) Membership in an organization with a primary purpose of other than making credit union services available to its members;

(C) Residence, employment, or attending school within a certain geographic area; or

(D) Such other factor that creates an identifiable affinity among the persons to be included within a credit union's field of membership.

(7) Construction or development loan--A financing arrangement for the purpose of acquiring property or rights to property, including land or structures, with the intent of converting the property into income-producing property, including residential housing for rental or sale, commercial, industrial or similar use.

(8) Core capital--Has the same meaning as "tier one capital" as set forth in the capital regulations adopted by the appropriate federal banking regulatory agency.

(9) Corporate credit union--A credit union whose field of membership consists primarily of other credit unions.

(10) Day--Whenever periods of time are specified in this title in days, calendar days are intended. When the day, or the last day fixed by statute or under this title for taking any action falls on Saturday, Sunday, or a state holiday, the action may be taken on the next succeeding day which is not a Saturday, Sunday, or a state holiday.

(11) Department newsletter--The monthly publication that serves as an official notice of all applications, and by which procedures to protest applications are described.

(12) Field of membership (FOM)--Refers to the totality of persons a credit union may accept as members. The FOM may consist of one group, several groups with a related community of interest, or several unrelated groups with each having its own community of interest.

(13) Imminent danger of insolvency--A circumstance or condition in which a credit union is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities; or the credit union has a positive net worth ratio equal to two percent or less of its assets.

(14) Improved residential property--Real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include a one to four unit dwelling occupied in whole or in part by the owner on a seasonal basis.

(15) Indirect financing--A program in which a credit union makes the credit decision in a transaction where the credit is extended by the vendor and assigned to the credit union or a loan transaction that generally involves substantial participation in and origination of the transaction by a vendor.

(16) Loan-to-value ratio--The aggregate amount of all sums owed on an item of collateral securing a loan divided by the value of the collateral.

(17) Loan and extension of credit--A direct or indirect advance of funds to a member, or on that member's behalf, that is conditioned upon the repayment of the funds by the member or the application of collateral. The terminology also includes the purchase of a member's loan or other obligation, a lease financing transaction, a credit sale, a line of credit or loan commitment under which the credit union is contractually obligated to advance funds to or on behalf of a member, an advance of funds to honor a check or share draft drawn on the credit union by a member, or any other indebtedness not classified as an investment security.

(18) Manufactured home--A HUD-code manufactured home as defined by the Texas Manufactured Housing Standards Act.

(19) Metropolitan Statistical Area (MSA)--A geographic area as defined by the director of the U. S. Office of Management and Budget.

(20) Mobile office--A branch office that does not have a single, permanent site, including a vehicle that travels to various public locations to enable members to conduct their credit union business.

(21) Office--Includes any branch office, service facility or place of business established by a credit union at which deposits are received, checks or share drafts paid, or money lent. A branch does not include an automated teller machine (ATM), a shared service center, or a remote service facility.

(22) Overlap--The situation which exists when a group of persons is eligible for membership in two or more state, foreign, or federal credit unions doing business in this state. Notwithstanding this provision, no overlap exists if eligibility for credit union membership results solely from a family relationship.

(23) Person--An individual, partnership, corporation, association, government, governmental subdivision or agency, business trust, estate, trust, or any other public or private entity.

(24) Principal office--The home office of a credit union.

(25) Protestant--A credit union that opposes or objects to the relief requested by an applicant.

(26) Remote service facility--An automated, unstaffed credit union facility owned or operated by, or operated for, the credit union, such as an automated teller machine, cash dispensing machine, point-of-sale terminal, or other remote electronic facility, at which deposits are received, cash dispensed, or money lent.

(27) Reserves--Allocations of retained earnings and includes regular and special reserves, except for any allowances for loan, lease or investment losses.

(28) Resident of this state--A person physically located in, living in or employed in the state of Texas.

(29) Respondent--A credit union or other person against whom a disciplinary proceeding is directed by the department

(30) Shared service center--A facility which is connected electronically with two or more credit unions so as to permit the facility, through personnel at the facility and the electronic connection, to provide a credit union member at the facility the same credit union services that the credit union member could lawfully obtain at the principal office of the member's credit union

(31) Secured credit--A loan made or extension of credit given upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the debtor or promisor. Any assignment may include an interest in personal property or real property or a combination thereof.

(32) Title--Title 7, Part VI of the Texas Administrative Code (TAC), Banking and Securities, which contains all of the department's rules.

(33) Underserved area--A geographic area, which could be described as one or more contiguous metropolitan statistical areas (MSA) or one or more contiguous political subdivisions, including counties, cities, and towns, that satisfy any one of the following criteria:

(A) A majority of the residents earn less than 80 percent of the average for all wage earners as established by the U. S. Bureau of Labor Statistics;

(B) The annual household income for a majority of the residents falls at or below 80 percent of the median household income for the nation; or

(C) The commission makes a determination that the lack of available or adequate financial services has adversely effected economic development within the specified area.

(34) Uninsured membership share--Funds paid into a credit union by a member that constitute uninsured capital under conditions established by the credit union and agreed to by the member including possible reduction under section 122.105 of the act, risk of loss through operations, or other forfeiture. Such funds shall be considered an interest in the capital of the credit union upon liquidation, merger, or conversion.

(35) Unsecured credit--A loan or extension of credit based solely upon the general credit financial standing of the borrower. The term shall include loans or other extensions of credit supported by the signature of a co-maker, guarantor, or endorser.

(b) The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in the Act and in Government Code §2001.003, and the definitions in subsection (a) of this section govern the interpretation of this title. If any section of this title is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this title.

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

Filed with the Office of the Secretary of State, on July 24, 2000.

TRD-200005070

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 837-9236



7 TAC §91.102

(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

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

The Texas Credit Union Commission proposes the repeal of §91.102 pertaining to general definitions.

The Government Code and the General Appropriations Act require each state agency to review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re-adopting the rule continues to exist. After conducting a preliminary review of §91.102, the Commission determined that because of the number of changes required to update the definitions, it would be less confusing to credit unions and to the general public to repeal the existing rule and to adopt a new rule, proposed §91.101, which is published elsewhere in this issue of the *Texas Register*.

Lynette Pool, Deputy Commissioner, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal of this section.

Lynette Pool has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be that the new rule adopted in its place would (1) be clearer, and (2) provide credit unions with definitions of terms that were ambiguous or simply undefined in the past. There is no anticipated economic cost to entities that are currently required to comply with this section as result of its repeal.

Written comments on the proposed repeal must be submitted within 45 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The repeal is proposed under the provisions of §15.402 of the Texas Finance Code, which authorizes the commission to adopt reasonable rules for administering the Texas Credit Union Act.

The specific sections affected by this proposed repeal are contained in Chapter 15 and Subtitle D, Title 3, of the Texas Finance Code pertaining to the Credit Union Commission and Department and to the supervision, regulation, and operating powers of credit unions.

§91.102. Definitions.

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

Filed with the Office of the Secretary of State, on July 24, 2000.

TRD-200005068

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 837-9236



SUBCHAPTER C. MEMBERS

7 TAC §91.302

The Texas Credit Union Commission proposes amendments to §91.302 relating to election by electronic device, absentee or mail ballots. The proposed amendments authorize additional options for conducting member elections, including by electronic means or absentee ballot. Currently, the rule only addresses mail ballots.

The Government Code and the General Appropriations Act require each state agency to review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. After conducting a preliminary review of §91.302, the Commission determined that other methods of conducting elections or voting are necessary given the diverse fields of membership of some credit unions and recent technological innovations.

Lynette Pool, Deputy Commissioner, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Lynette Pool has determined that for each year of the first five years the rule is in effect, the public benefit anticipated will be that a greater number of credit union members will participate in the democratic election process for the betterment of the credit unions as a whole. There is no anticipated economic cost to entities that are currently required to comply with this section as result of its proposed adoption.

Written comments on the proposal must be submitted within 45 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The amendment is proposed under the provisions of §122.052 of the Texas Finance Code, which is interpreted as authorizing the Credit Union Commission to establish rules for the balloting process.

The specific section affected by these proposed amendments to this rule is §122.052 of the Texas Finance Code relating to meetings of members; voting.

§91.302. Election By Electronic Device, Absentee, or Mail Ballots.

(a) The use of electronic device, absentee or mail ballots by any credit union shall ensure fair and equitable opportunity for any qualified member to seek office, including a provision for nomination by petition, and providing the appropriate notice and information to all members.

(b) Any elections held by electronic device, absentee, or mail ballot are subject to the following conditions:

(1) The election tellers shall be appointed by the board of directors;

(2) At least 30 days prior to the annual meeting, the board of directors will cause either a printed ballot or notice of a ballot, along with appropriate instructions, to be mailed to all members eligible to vote;

(3) Ballots must be received no later than midnight 5 calendar days prior to the annual meeting;

(4) The votes will be tallied by the tellers and the results of the vote will be made public at the annual meeting.

(c) In the event of a malfunction of the electronic balloting system, the board of directors may in its discretion order elections to be

held by mail ballot only. The board may make reasonable adjustments to the voting time frames in subsection (b) of this section, or postpone the annual meeting if necessary, to complete the elections prior to the annual meeting.

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

Filed with the Office of the Secretary of State, on July 24, 2000.

TRD-200005066

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 837-9236



CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES

SUBCHAPTER B. FEES

7 TAC §97.113

The Texas Credit Union Commission proposes to amend existing §97.113 concerning operating fees. The amendment is correcting a Texas Administrative Code cite that no longer exists as a result of the Credit Union Commission repealing §91.211 and adopting §91.210 in its place.

Lynette Pool, Deputy Commissioner, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Miss Pool has determined that for each year of the first five years the rule is in effect, the public benefit anticipated will be that the statutory cite contained in the rule will be correct, therefore preventing future confusion on the part of those referencing the Commission's rules. There will be no effect on small businesses as a result of amending this section. There is no anticipated economic cost to entities that are currently required to comply with these sections as result of the proposed amendments adoption.

Written comments on the proposed amendment must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The amendment is proposed under the provisions of §15.402 of the Texas Finance Code, which authorizes the commission to set, by rule, reasonable supervision fees, charges, and revenues required to be paid by credit unions authorized to do business under the Texas Credit Union Act.

The specific section affected by the proposed amendment is §15.402 of the Texas Finance Code.

§97.113. Operating Fees.

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

(f) Out of state branches. Credit unions operating branch offices in Texas as authorized by §91.210 [~~§91.211~~] of this title (relating [Relating] to [Application for a] Certificate of Authority to do [Fø Dø] Business in the State of Texas) shall pay an annual operating fee of \$200 per branch office.

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

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

Filed with the Office of the Secretary of State, on July 24, 2000.

TRD-200005072

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 837-9236



SUBCHAPTER C. DEPARTMENT OPERATIONS

7 TAC §97.205

The Texas Credit Union Commission proposes new §97.205 pertaining to the use of historically underutilized businesses (HUB). Section 97.205 is being proposed to provide to comply with §2161.003 of the Texas Government Code, and states that the Credit Union Department shall comply, to the extent applicable, with the requirements of the HUB rules adopted by the General Services Commission when purchasing goods and services that are paid for with State appropriated money.

Lynette Pool, Deputy Commissioner, 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 enforcing or administering the rule.

Ms. Pool has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be the continued support of the local economy. Small businesses, in particular those woman- or minority-owned, will continue to see new business as a result of adopting this section. There is no anticipated impact on local employment.

Written comments on the proposed rule must be submitted within 30 days after its publication in the *Texas Register* to Lynette Pool, Deputy Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

The new section is proposed under the provisions of Texas Government Code §2161.003, which require state agencies to adopt the General Service Commission's rules relating to the use of HUBs, which were adopted/modified based on the Disparity Study mandated by House Bill 2626. The Commission interprets this section as authorizing it to adopt rules for purchasing goods and services in compliance with Chapter 111, Subchapter B of Title 1, Texas Administrative Code.

The specific section affected by the proposed rule is Texas Finance Code §15.402 pertaining to the general authority of the Commission.

§97.205. Use of Historically Underutilized Businesses.

Pursuant to Chapter 2161 of the Government Code, the Department hereby incorporates by reference the rules of the General Services Commission, 1 TAC §§111.11-111.28, or any successor rules, regarding historically underutilized businesses. The Department shall comply, to the extent applicable, with the requirements of these rules when purchasing goods and services that are paid for with State appropriated money.

This 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 July 24, 2000.

TRD-200005071

Harold E. Feeney

Commissioner

Credit Union Department

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 837-9236



PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The State Securities Board proposes an amendment to §109.7, concerning secondary trading exemptions. The amendment notes that the various "Moody's" manuals listed have been renamed as "Mergent's" manuals and clarifies that electronic versions of the print manuals are also acceptable.

Micheal Northcutt, Director, Securities Registration Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt 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 that registered dealers seeking reliance upon the exemption contained in §5.O of the Texas Securities Act will have notice of the manuals included among the Board's "recognized securities manuals" for purposes of the exemption. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendment affects Texas Civil Statutes, Article 581-5.O.

§109.7. Secondary Trading Exemptions.

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

(e) The term "recognized securities manual" used in the Texas Securities Act, §5.O(9)(c), is limited to the following and includes any electronic publication format that is as readily available to the general public as the printed version, including, without limitation, CD-Rom and electronic dissemination over the Internet:

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

(3) Mergent's [~~Moody's~~] Bank and Finance Manual and News Reports;

(4) Mergent's [~~Moody's~~] Industrial Manual and News Reports;

(5) Mergent's [~~Moody's~~] Public Utility Manual and News Reports;

(6) Mergent's [~~Moody's~~] Transportation Manual and News Reports;

(7) Mergent's [~~Moody's~~] Municipal and Government Manual and News Reports;

(8) Mergent's [~~Moody's~~] International Manual and News Reports; and

(9) Mergent's [~~Moody's~~] OTC Industrial Manual and News Reports, provided however, that Mergent's [~~Moody's~~] OTC Industrial News Reports are recognized solely for the purpose of updating a current listing in the OTC Industrial Manual. A registered dealer who, between the date of the last publication of Mergent's [~~Moody's~~] OTC Industrial Manual and the effective date of this rule, relies upon a listing in the Mergent's [~~Moody's~~] OTC Industrial News Reports to comply with §5.0 of the Act may continue to rely upon such listing until the publication date of the next Mergent's [~~Moody's~~] OTC Industrial Manual, which follows the effective date of this rule.

(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 July 17, 2000.

TRD-200004931

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-8300



CHAPTER 115. DEALERS AND SALESMEN

7 TAC §115.1

The State Securities Board proposes an amendment to §115.1, concerning dealer registration requirements for discount brokerage service networks. The amendment would delete references to discount brokerage service networks in light of a new conditional exemption for third party brokerage arrangements on financial entities premises. This new exemption is being concurrently proposed as §139.20.

Michael S. Gunst, Director, Dealer Registration Division, and Tom Spradlin, Director of Information Resources and Planning, have determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gunst and Mr. Spradlin also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to eliminate a provision that would duplicate another. There will be no effect

on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Articles 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§115.1. General Provisions.

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

(e) Multiple registration.

(1) (No change.)

(2) The undertaking in paragraph (1)(A) of this subsection shall not be required for the following:

~~[(A) affiliated state or national banks and/or their subsidiaries; or affiliated state or federal savings and loan associations and/or their subsidiaries, where the securities-related activity consists of the following:]~~

~~[(i) acting as a correspondent in a discount brokerage service network coordinated with an unaffiliated general dealer;]~~

~~[(ii) acting as a municipal and government securities dealer; and/or]~~

~~[(iii) acting as an investment adviser through a bona fide trust department;]~~

~~[(A) [(B)] issuer-dealer bank holding companies and affiliated banks offering discount brokerage services, investment advisory services, municipal, and/or government securities;~~

~~[(B) [(C)] a salesman who makes application in order to reflect transfer from one employer to another or seeks multiple registration and does not own 10% or more of the voting control of the subject dealers or investment advisers.~~

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

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

Filed with the Office of the Secretary of State, on July 17, 2000.

TRD-200004932

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-8300



7 TAC §115.3

The State Securities Board proposes an amendment to §115.3, concerning dealer and agent examinations. The amendment to subsection (b) makes the examination requirements easier to understand by setting them out in outline format rather than narrative format. The change to subsection (b) does not make any substantive changes to the existing examination requirements. The deletions from subsection (c)(2)(E) correspond with a new conditional exemption for third party brokerage arrangements on financial entity premises. This new exemption is being concurrently proposed as §139.20.

Michael S. Gunst, Director, Dealer Registration Division, and Tom Spradlin, Director of Information Resources and Planning, have determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gunst and Mr. Spradlin also have determined that for each year of the first five years the rule is in effect the public benefits anticipated as a result of enforcing the rule will be to make the examination requirements easier for industry to understand and to a eliminate provision that duplicates another. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The new rule affects Texas Civil Statutes, Articles 581-12 and 581-13.

§115.3. Examination.

(a) (No change.)

(b) Content. Each applicant must satisfy examination requirements.

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

(3) Each applicant for registration as an investment adviser or investment adviser agent must pass: ~~[the Uniform Investment Adviser Law Examination (Series 65), or the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66). Each of these examinations is administered by the NASD. In lieu of the Series 66, a person may pass the examination on the Texas Securities Act administered by this Agency. A person who was registered as an investment adviser or investment adviser agent on or before December 31, 1999, is not required to pass the examination(s) previously described in this paragraph, provided the person has maintained a registration as an investment adviser or investment adviser agent with any state securities administrator that has not lapsed for more than two years from the date of the last registration. An applicant for registration as an investment adviser or investment adviser agent who is in one of the following classes of persons is not required to pass the Series 65 examination:]~~

(A) ~~the Uniform Investment Adviser Law Examination (the new entry level competency examination, Series 65, administered after December 31, 1999); or [applicants who are certified by the Association for Investment Management and Research, or its predecessors the Federation of Chartered Financial Analysts or the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);]~~

(B) ~~the following combination of examinations: [applicants who are certified by the Certified Financial Planner Board of Standards, Inc., to be certified financial planners (CFP);]~~

~~(i) a general securities representative examination as described in paragraph (1)(A) of this subsection or a limited examination as described in paragraph (1)(B) of this subsection; and~~

~~(ii) the Uniform Combined State Law Examination (Series 66), the Uniform Investment Advisers State Law Examination (Series 65, as it existed and was administered on or before December 31, 1999), or an examination on the Texas Securities Act administered by this Agency.~~

(C) ~~Each of these examinations (except the Texas Securities Act examination) is administered by the NASD and can be scheduled by submitting a Form U-10 to the NASD. [applicants who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists (PFS);]~~

(D) ~~The following persons are not required to pass any examination for registration as an investment adviser or as an investment adviser agent upon submission of proof of registration, certification, or designation, as follows: [applicants who are designated by the Investment Counsel Association of America, Inc., as chartered investment counselors (CIC); or]~~

~~(i) persons who were registered as an investment adviser or investment adviser agent on or before December 31, 1999, provided the person has maintained a registration as an investment adviser or investment adviser agent with any state securities administrator that has not lapsed for more than two years from the date of the last registration;~~

~~(ii) applicants who are certified by the Association for Investment Management and Research, or its predecessors the Federation of Chartered Financial Analysts or the Institute of Chartered Financial Analysts, to be chartered financial analysts (CFA);~~

~~(iii) applicants who are certified by the Certified Financial Planner Board of Standards, Inc., to use the mark "CERTIFIED FINANCIAL PLANNER" (CFP);~~

~~(iv) applicants who are designated by the American Institute of Certified Public Accountants as accredited personal financial specialists (PFS);~~

~~(v) applicants who are designated by the Investment Counsel Association of America, Inc., as chartered investment counselors (CIC); or~~

~~(vi) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC).]~~

~~[(E) applicants who are designated by the American College, Bryn Mawr, Pennsylvania, as chartered financial consultants (ChFC).]~~

(E) ~~[(4)]~~ The Association for Investment Management and Research, the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Counsel Association of America, Inc., are

required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.

(c) Exemptions from examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

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

(C) issuers restricting distribution of securities to security holders of an affiliate company, a subsidiary, or a parent of the issuer, provided the registration certificate is issued on a temporary basis and terminated immediately after the offering; and

(D) officers and employees whose firms restrict their officers' and employees' securities activities to acting as brokers between and among principals for the sale of a majority of the stock or equity securities of a privately held business pursuant to a privately negotiated purchase agreement, where the managerial control of the business will devolve upon the purchaser(s) and where compensation received by the firm will be payable for the brokerage activities only.

~~{(E) officers and employees of financial institutions whose securities-related activity consists solely of acting as a correspondent in a discount brokerage service network coordinated with a separate general dealer. For purposes of this subparagraph, the following terms have the following meanings:}~~

~~{(i) "financial institutions" shall include state or national banks; state or federal savings and loan associations as defined in §109.17 of this title (relating to Banks under The Securities Act, §5.L); and credit unions;}~~

~~{(ii) "acting as a correspondent" means that the activities of the officers and employees are limited to advertising the discount brokerage service, assisting customers in completing application forms, and referring customers to a representative of the separate general dealer; and}~~

~~{(iii) "separate general dealer" means an entity registered as a general securities dealer; the term does not encompass a requirement that the general dealer be unaffiliated with the financial institution.}~~

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

(d)-(f) (No change.)

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

Filed with the Office of the Secretary of State, on July 17, 2000.

TRD-200004933

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-8300



CHAPTER 133. FORMS

7 TAC §133.9

The State Securities Board proposes a new form §133.9, concerning a notice filing to claim the conditional exemption in §139.20 for third party brokerage arrangements on financial entity premises. The new section adopts by reference a form that is to be used in conjunction with the new conditional exemption contained in §139.20, which is being concurrently proposed. Financial entities coming within the purview of the new §139.20 exemption would file Form 133.9, instead of a complete dealer application package.

Michael S. Gunst, Director, Dealer Registration Division, and Tom Spradlin, Director of Information Resources and Planning, have determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gunst and Mr. Spradlin also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to provide the form for a notice filing to claim a conditional exemption from dealer registration. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§133.9. Notice Filing for Third Party Brokerage Arrangements on Financial Entity Premises.

The State Securities Board proposes to adopt by reference the notice filing for third party brokerage arrangements form. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

This 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 July 17, 2000.

TRD-200004935

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-8300



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.20

The State Securities Board proposes a new §139.20, concerning third party brokerage arrangements on financial entity premises. The new section creates a conditional exemption for financial entities which provide brokerage services on their premises through an arrangement with a third party registered dealer. Officers and employees of the financial entity are also exempted from registration as agents. Currently, financial entities engaged in such arrangements are required to register as a dealer in a discount brokerage service network. This requires the entity to file a complete application package. When the activities of officers and employees of the financial entity is limited to making referrals to the registered dealer and providing ministerial functions relative to the arrangement, the new exemption from registration would be available and would maintain sufficient investor protection. A filing would be required to claim the conditional exemption and would be made on new Form 133.9, a notice filing for third party brokerage arrangements on financial entity premises, which is being concurrently proposed. Existing provisions in the Board's rules addressing these types of activities, contained in §115.1(e) and §115.3(c), are being concurrently proposed for deletion.

Michael S. Gunst, Director, Dealer Registration Division, and Tom Spradlin, Director of Information Resources and Planning, have 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 enforcing or administering the rule.

Mr. Gunst and Mr. Spradlin also have 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 to provide for a simplified filing when only certain limited activities that involve ministerial types of functions are involved. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal to be considered by the Board should be submitted in writing within 60 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new rule is proposed under Texas Civil Statutes, Article 581-28-1 and 581-12.B. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 12.B provides the Board with the authority to prescribe new dealer/agent registration exemptions by rule.

The new rule affects Texas Civil Statutes, Articles 581-12, 581-13, and 581-18.

§139.20. Third Party Brokerage Arrangements on Financial Entity Premises.

(a) The State Securities Board, pursuant to the Texas Securities Act, §12.B, exempts a financial entity from the dealer registration requirements of the Texas Securities Act, when such financial entity is engaging in securities-related activity consisting solely of acting as a correspondent in a third party brokerage arrangement coordinated with a registered dealer on the premises of the financial entity. For purposes

of this section, the following words and terms shall have the following meanings:

(1) "financial entity" shall include any state or national bank, any federal savings and loan association or savings and loan association organized and subject to the laws and regulation of this State as defined in §109.17 of this title (relating to Banks Under The Securities Act, §5.L), any credit union, insurance company, bank holding company, or financial holding company;

(2) "acting as a correspondent in a third party brokerage arrangement" means that the activity of the financial entity is limited to providing an area on the financial entity premises for the dealer's brokerage activities, advertising the brokerage service, referring customers to a representative of the dealer, and performing clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with agents of the dealer and transferring customer funds or securities.

(b) The State Securities Board, pursuant to the Texas Securities Act, §12.B, exempts officers and employees of a financial entity from the agent registration requirements of the Texas Securities Act, when such employee or officer is engaging in securities-related activity consisting solely of referring customers to a representative of the registered dealer. For the purposes of this subsection, the officers and employees of a financial entity may receive a referral fee for this activity provided that:

(1) the fee is a nominal, one time fee of a fixed dollar amount per referral;

(2) the payment of such referral fee is not contingent on whether the referral results in a transaction; and

(3) such payment is made directly by the registered dealer to the financial entity which, as a condition of this exemption, upon request agrees to provide the Securities Commissioner, or representative of the Commissioner, a statement or internal records itemizing such payments including, but not limited to, the date, amount of payment, the name of each person for whom a referral payment was made and the name of the person receiving the payment.

(c) The filing and fee requirements for dealers and agents exempted from registration pursuant to this section are preserved.

(1) Initially, the exemptions provided by subsections (a) and (b) of this section are available after the filing of:

(A) a Form 133.9;

(B) a consent to service of process (if the financial entity is domiciled outside of Texas);

(C) a copy of the agreement with the third party dealer;
and

(D) an initial fee equal to the amount that would have been paid had the financial entity and designated officer of the financial entity filed for registration in Texas.

(2) Upon amendment to its Form 133.9, the financial entity files an amended Form 133.9 and an amendment fee of \$25, as provided in the Texas Securities Act, §35.C.

(3) Annually, the financial entity files renewal fees which would have been paid had the financial entity been registered in Texas.

(d) Any financial entity relying on this exemption shall, upon written request, furnish to the Securities Commissioner any information relative to the third party brokerage arrangement that the Commissioner deems relevant, including, but not limited to, records regarding referral fee payments to employees and officers of the financial entity,

agreements between the financial entity and the registered dealer, and customer complaints regarding the brokerage activities.

This 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 July 17, 2000.

TRD-200004934

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-8300



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

The Public Utility Commission of Texas (commission) proposes new §25.214, relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities. The proposed new rule will implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.203 (Vernon 1998, Supplement 2000) (PURA), as it relates to the establishment of non-discriminatory terms and conditions of retail distribution service, including the service provided to a retail customer at transmission voltage, provided by a transmission and distribution utility. Project Number 22187 has been assigned to this proceeding.

The proposed rule is intended to incorporate a standard tariff (pro-forma tariff), which is the document containing the terms and conditions of retail distribution service. This document will be adopted by reference and can only be changed through the rulemaking process. Each transmission and distribution utility (TDU) operating in Texas shall file with the commission a tariff to govern its retail distribution service, using pro-forma tariff chapters 1, 3, 4, and 5 as written, but with the ability to modify chapters 2 and 6 to reflect individual utility characteristics. The pro-forma tariff is divided into five chapters as follows: Chapter 1 defines various terms used throughout the pro-forma tariff; Chapter 2 involves descriptions of the TDU's certified service area; Chapter 3 sets forth rules and regulations applicable to both the TDU/Retail Electric Provider (REP) relationship and the TDU/Retail Customer relationship; Chapter 4 sets forth the rules

and regulations governing the REPs' access to the TDU's delivery system; Chapter 5 sets forth the rules and regulations governing the TDU's provision of delivery service and conditions of service to the retail customer; and Chapter 6 involves TDU specific rate schedules.

As part of the drafting process, commission staff conducted workshops in Austin to receive input from potentially affected persons. Following the first workshop, commission staff received proposed rules (straw-rules) from both the investor owned utilities, representing the TDUs, and the REPs. After consideration of these proposals, commission staff issued its first draft rule upon which it received informal comments. Commission staff then held a second workshop at which it received further input from the parties and attempted to work towards a consensus document. Commission staff later issued a second draft rule upon which further informal comments were received.

Damayanti Ghosh, Director of Costing and Pricing, Electric Industry Analysis Division, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ghosh has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased competition in the sale of electric power to retail customers, thus resulting in lower electric energy prices for those customers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

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

The commission seeks comments on the proposed rule from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rule. When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. Are the provisions of this rule consistent with the protocols of the relevant independent organizations (as defined in PURA §39.151) in Texas? If not, please identify which provisions are inconsistent and explain why. Also explain how these provisions need to be modified, if at all, to make them consistent with those protocols.

2. Are the provisions of this rule consistent with the commission's customer protection rules as proposed in Project Number 22255? If not, please identify which provisions are inconsistent and explain why. Also explain how these provisions need to be modified, if at all, to make them consistent with the proposed customer protection rule. (Note: The commission plans to consider the Project Number 22255 customer protection rules for publication at the August 10, 2000 Open Meeting. The rules as approved for publication should be available in Central Records and on the commission's web site no later than August 17, 2000. If for some reason there is a delay in Project 22255, staff will attempt to make a draft available for your review no later than August 17, 2000.)

3. The proposed rule incorporates certain provisions (e.g., provisions relating to line extension, service connection) of the existing customer protection rules §§25.21 - 25.31. What other provisions, if any, of the existing customer protection rules, should be incorporated in this rule assuming that the existing §§25.21 - 25.31 will be replaced with new rules (viz., new customer protection rules to be adopted in Project Number 22255 and the present rule dealing with the terms and conditions of retail delivery service provided by a TDU) in the restructured market in Texas?

4. Are the standard electronic transaction (SET) protocols and testing procedures referenced in Section 4.3.1, Eligibility, sufficient to ensure accurate data transfer between competitive retailers and TDUs, or does there need to be an Electronic Trading Agreement to supplement those protocols? If so, what are the elements and provisions needed for that agreement?

In conjunction with their comments filed in this rulemaking, interested persons may append sworn affidavits in support of their positions. The commission will consider any comments and affidavits submitted in determining whether to receive further evidence at the public hearing held pursuant to the Administrative Procedure Act, Texas Government Code Annotated §2001.029.

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 28 days after publication. Reply comments may be submitted within 42 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 22187.

The commission staff will conduct a public hearing on this rule-making pursuant to Texas Government Code §2001.029 on Friday, September 29, 2000, at 9:30 a.m. in the Commissioner's Hearing Room located on the seventh floor of William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

This new rule is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2000) (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. The commission also proposes this rule pursuant to PURA §39.203, which grants the commission authority to establish reasonable and comparable terms and conditions for open access on distribution facilities for all retail electric utilities offering customer choice, and comparable rates for open access for all retail electric utilities offering customer choice.

Cross Reference to Statutes: PURA §14.002 and §39.203.

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a retail customer at transmission voltage, provided by a transmission and distribution utility (TDU). A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those retail customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all retail customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to retail customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all transmission and distribution utilities in Texas.

(c) Tariff. Each TDU in Texas shall file with the Public Utility Commission of Texas (commission) a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written; these chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3-5, the provision found in Chapters 1, 3-5 shall apply, unless otherwise specified in Chapters 1, 3-5.

(d) Pro-forma Retail Delivery Tariff. The commission adopts by reference the form "Tariff for Retail Delivery Service", revision date of July 20, 2000. This form is available in the commission's Central Records division and on the commission's website at www.puc.state.tx.us.

This 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 July 20, 2000.

TRD-200005003
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 3, 2000

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



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 68. ARCHITECTURAL BARRIERS

16 TAC §68.80

The Texas Department of Licensing and Regulation proposes amendments to §68.80 concerning the fees for the Architectural Barriers program.

The amendment to §68.80 proposes to increase the contract provider filing fee from \$75 to \$100 and the contract provider

inspection filing fee from \$50 to \$75. The amendment also proposes to delete the Technical Deviations-Built Condition fee.

The fee rate stated herein was set by the Texas Department of Licensing and Regulation Commission, and not mandated by the Legislature. The Department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are below the amount required by the Department to cover costs. Without the increase it could adversely affect the administration and enforcement of the Architectural Barriers program. The Technical Deviations-Built Condition fee is being deleted because the prior proposed rule submission regarding technical deviations was not adopted.

George Ferrie, Director of Code Review and Inspections, has determined that for each year of the first five years the section is in effect there may be some fiscal implications for state and local governments where the governmental entities hire design professionals to review plans and perform the inspections. The fee increase will allow the Department to cover costs in administering the Architectural Barriers program.

Mr. Ferrie has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater access to buildings for citizens with disabilities.

The anticipated economic effect on small businesses or building owners who are required to comply with this section and who hire an Independent Contract Provider, will be an additional \$25 for building plan reviews or inspections.

Comments on the proposal may be submitted to George Ferrie, Director of Code Review and Inspections, P.O. Box 12157, Austin, Texas, 78711 or facsimile (512) 463-1376 or electronically: george.ferrie@license.state.tx.us. The deadline for comments is August 18, 2000--5:00 p.m.

The amendments are proposed under Texas Revised Civil Statutes Annotated, article 9102 (Vernon 1999) which authorizes the Texas Commission of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The amendments affect Texas Revised Civil Statutes Annotated, article 9102 (Vernon 1999) and the Texas Occupations Code, Chapter 51 (Vernon 1999).

§68.80. Fees

(a) (No change.)

(b) Fee Schedule:

Figure: 16 TAC §68.80(b)

(c)-(g) (No change.)

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

Filed with the Office of the Secretary of State, on July 20, 2000.

TRD-200004996

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 463-7348

◆ ◆ ◆
CHAPTER 74. ELEVATORS, ESCALATORS,
AND RELATED EQUIPMENT

16 TAC §74.80

The Texas Department of Licensing and Regulation proposes amendments to §74.80 concerning the fees for the Elevators, Escalators, and Related Equipment program.

The amendment to §74.80 proposes to raise the waiver/delay application fee from \$100 to \$200 per application. The fee rate stated herein was set by the Texas Department of Licensing and Regulation Commission, and not mandated by the Legislature. The Department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are below the amount to cover costs. Without the increase it could adversely affect the administration and enforcement of the Elevators, Escalators, and Related Equipment program.

George Ferrie, Director, Code Review and Inspection, has determined that for the first five-year period the section is in effect there will be an additional \$100 fiscal implication for governmental entities that request a waiver/delay for elevator equipment that does not meet the state standards. The fee increase will allow the Department to cover costs in administering the Elevators, Escalators, and Related Equipment program.

Mr. Ferrie also has determined that for each year of the first five years the section is in effect the public will benefit from enhanced safety through increased enforcement.

The anticipated economic effect on small businesses or buildings owners who are required to comply with this section as proposed will be an additional \$100 to request a waiver/delay for an elevator, escalator, or related equipment.

Comments on the proposal may be submitted to George Ferrie, Director, Code Review and Inspection, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas, 78711 or facsimile (512) 463-1376, or electronically: george.ferrie@license.state.tx.us. The deadline for comments is August 18, 2000--5:00 p.m.

The amendments are proposed under Texas Health and Safety Code Annotated, Chapter 754 (Vernon 1997) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The amendments affect Texas Health and Safety Code Annotated, Chapter 754 (Vernon 1997) and the Texas Occupations Code, Chapter 51 (Vernon 1999).

§74.80. Fees

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

(d) Waiver/delay application fee: \$200 [~~\$100~~] fee per application for each waiver or delay.

(e) (No change.)

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

Filed with the Office of the Secretary of State, on July 20, 2000.

TRD-200004997

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 463-7348



CHAPTER 78. TALENT AGENCIES

16 TAC §78.80

The Texas Department of Licensing and Regulation proposes amendments to §78.80 concerning the fees for the Talent Agencies program.

The amendment to §78.80 proposes to decrease the fee for original registration and renewal from \$500 to \$300. The amendment also proposes to delete the payment schedule because it will no longer be necessary with the decrease in fees. The Department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are above the amount required by the Department to cover costs. The decrease would not adversely affect the administration or enforcement of the talent agencies program.

Jimmy G. Martin, Director of Enforcement, has determined that for each year of the first five years the section is in effect there will be minimal fiscal implications for state government and no fiscal implications on local governments.

Mr. Martin has also determined that for each year of the first five years the section is in effect the public will benefit from a reduction in cost.

The anticipated economic effect on small businesses and person who are required to comply with this section as proposed will be a \$200 reduction in their annual certificate fee.

Comments on the proposal may be submitted to Jimmy G. Martin, Director of Enforcement, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas, 78711 or facsimile (512) 475-2872 or by e-mail: jimmy.martin@license.state.tx.us. The deadline for comments is August 18, 2000--5:00 p.m.

The amendments are proposed under the Texas Occupations Code, Chapter 2105 (Vernon 1999) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The amendments affect the Texas Occupations Code, Chapter 2105 (Vernon 1999) and Chapter 51 (Vernon 1999).

§78.80. Fees--Original Registration and Renewal.

(a) Annual certificate of registration filing fee--\$100

(b) Annual certificate of registration fee--\$300

(c) All fees are non-refundable.

(d) A late fee of \$50 will be charged for renewal applications postmarked between midnight of the day the current certificate of registration expires and midnight of the 30th day after the expiration.

~~{(a) The fee for filing an original talent agency certificate of registration is \$100.}~~

~~{(b) The fee for registration and administration is \$500.}~~

~~{(c) The filing fee and registration and administration fees may be paid in full at the time of registration or in three equal payments of \$200 each as follows:}~~

~~{(1) \$200 at registration;}~~

~~{(2) \$200 on the first day of the fourth month after registration; and}~~

~~{(3) \$200 on the first day of the eighth month after registration.}~~

~~{(d) Failure to remit the second or third payment to the department by the 10th day of the month due will be grounds for action to suspend or revoke the license.}~~

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

Filed with the Office of the Secretary of State, on July 20, 2000.

TRD-200004998

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 463-7348



16 TAC §78.81

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

The Texas Department of Licensing and Regulation proposes the repeal of §78.81 of the Talent Agencies administrative rules.

The repeal is proposed because this section has been combined with another section for clarity.

Jimmy G. Martin, Director of Enforcement, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government.

There will be no fiscal effect on small businesses and persons.

Mr. Martin also has determined that for each year of the first five years the section is repealed the public benefit anticipated is less redundancy and better clarification of the rules.

Comments on the proposal may be submitted to Jimmy G. Martin, Director of Enforcement, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas, 78711 or facsimile (512) 475-2872 or by e-mail: jimmy.martin@license.state.tx.us. The deadline for comments is August 18, 2000--5:00 p.m.

The repeal is proposed under the Texas Occupations Code, Chapter 2105 (Vernon 1999) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The repeal affects the Texas Occupations Code, Chapter 2105 (Vernon 1999) and Chapter 51 (Vernon 1999).

§78.81. Fees--Renewal Registration.

This 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 July 20, 2000.

TRD-200004999

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 463-7348

◆ ◆ ◆
PART 6. TEXAS MOTOR VEHICLE BOARD

CHAPTER 103. GENERAL RULES

16 TAC §103.14

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes new §103.14, concerning the procedures for manufacturers to establish ownership of franchised dealerships in Texas under certain specific conditions enumerated in the Texas Motor Vehicle Commission Code §5.02C.

This new rule defines procedures for manufacturers to own an interest in a dealership and apply for a motor vehicle dealer's license on behalf of the dealership for a limited period of time. Under the language of Texas Motor Vehicle Commission Code §5.02C(e), manufacturers may own an interest or operate a franchised dealership provided the manufacturer intends to sell the dealership to another person not associated with the manufacturer within twelve months. New §103.14 provides a procedure to allow manufacturers to apply for extensions after the initial twelve month period if certain conditions are met, and further defines how local dealers can protest the application for an extension under §5.02C(f). The rule describes what a manufacturer must show to obtain a motor vehicle dealer's license or extension. The rule also describes the documentation required to obtain approval for manufacturer ownership under §5.02C(e), which allows ownership by a manufacturer for the purpose of developing dealer candidates who have historically been underrepresented in the manufacturer's dealer body.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bray has also determined that for each year of the first five years the new rule is in effect the anticipated public benefit will be a formal procedure to allow the temporary ownership of franchised dealerships by manufacturers, which could reduce financial failures in the industry and increase representation of individuals who are historically underrepresented in the franchised dealership body. In addition, establishment of a formal procedure to implement §5.02C(f) will allow a continual dealer presence to serve a trade area or community. There will be no effect on small businesses and no anticipated significant economic cost to persons required to comply with the rule as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the section.

Comments (15 copies) may be submitted to Brett Bray, Director, Motor Vehicle Division, Texas Department of Transportation, P.O. Box 2293, Austin, Texas, 78767, (512) 416-4910. The Motor Vehicle Board will consider adoption of this proposed rule at its meeting on September 28, 2000. The deadline for receipt of comments on the proposed new rule is 5:00 p.m. on September 8, 2000.

The new rule is proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules as necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

Motor Vehicle Commission Code §5.02C is affected by the proposed new rule.

§103.14. *Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.*

(a) An application for a new motor vehicle dealer's license in which a manufacturer or distributor, as those terms are defined in the Texas Motor Vehicle Commission Code, owns any interest in or has control of the dealership entity must be submitted to the Motor Vehicle Division no later than 60 days before the opening of the dealership, close of the buy-sell agreement, or the expiration of the current license, whichever is the case.

(b) If a manufacturer or distributor applies for a new motor vehicle dealer's license in which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity under the terms of Texas Motor Vehicle Commission Code §5.02C(d), the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership.

(c) A request for an extension of the initial 12 month period for manufacturer or distributor ownership or control of a new motor vehicle dealership in accordance with Texas Motor Vehicle Commission Code §5.02C(d) must be submitted in accordance with subsection (a) of this section, along with a complete application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12 month period. The Director of the Motor Vehicle Division, or the director's designee, will evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor will be afforded an opportunity to request a hearing on the denial and, if requested, a hearing will be initiated in accordance with Texas Motor Vehicle Commission Code §3.08.

(d) Requests for extensions after the first extension is granted, as provided in Texas Motor Vehicle Commission Code §5.02C(f), must be submitted at least 120 days before the expiration of the current license. Upon receipt of a subsequent request, the Board will initiate a hearing in accordance with Texas Motor Vehicle Commission Code §3.08 at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The Board will give notice of the hearing described in subsection (d) of this section to all other dealer licensees holding franchises for the sale and service or service only of the same line-make of new

motor vehicles who are located in the same county in which the dealership owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right to protest under §5.02C(f) of the Texas Motor Vehicle Commission Code must be filed with the Docket Clerk within 15 days of the date of mailing of the notice of hearing, with a copy provided to the manufacturer or distributor. Failure to file a formal notice of intervention within the specified time period will result in the disallowance of the intervention.

(f) A hearing under subsections (d) and (e) of this section will be conducted as expeditiously as possible, but not later than 120 days after receipt of the subsequent request for extension from the manufacturer or distributor. A hearing officer will prepare a written decision and proposed order as soon as possible, but not later than 60 calendar days after the hearing is closed. The new motor vehicle dealer's license that is the subject of the hearing will continue in effect until a final decision is rendered on the request for a subsequent extension.

(g) The procedure described in subsections (d)-(f) of this section will be followed for all extensions requested by the manufacturer or distributor after the initial extension.

(h) An application for a new motor vehicle dealer's license in which a manufacturer or distributor owns any interest in the dealership entity under the terms of Texas Motor Vehicle Commission Code §5.02C(e) must contain sufficient documentation to show the following:

(1) that the dealer development candidate is part of a group of persons who historically have been underrepresented in the manufacturer's or distributor's dealer body or is an otherwise qualified person who lacks the resources to purchase a dealership outright;

(2) that the manufacturer or distributor is in a bona fide relationship with the dealer development candidate;

(3) that the dealer development candidate has made a significant investment in the dealership, subject to loss;

(4) that the dealer development candidate has an ownership interest in the dealership; and

(5) that the dealer development candidate operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

This 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 July 19, 2000.

TRD-200004964

Brett Bray

Director

Motor Vehicle Board

Proposed date of adoption: September 28, 2000

For further information, please call: (512) 416-4899



CHAPTER 105. ADVERTISING

16 TAC §§105.2, 105.3, 105.7, 105.9, 105.10, 105.13, 105.18-105.21, 105.24, 105.26, 105.28, 105.31

The Motor Vehicle Board of the Texas Department of Transportation proposes amendments to §§105.2, 105.3, 105.7, 105.9, 105.10, 105.13, 105.19-105.21, 105.24, 105.26, 105.28, and 105.31 of Chapter 105, Advertising Rules. The Board also proposes new §105.18, Licensee Identification, requiring licensees to include license numbers in advertising. The sections set guidelines for truthful and accurate practices in the advertisement of motor vehicles.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider re adoption of each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Such reviews include an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. The Board conducted a review of Title 16, Chapter 105, relating to Advertising, at its June 29, 2000 meeting. As a result of its review, the Board proposes these changes to Chapter 105.

General changes to rule language.

The Motor Vehicle Commission was renamed the Motor Vehicle Board in 1992. The amendments change all references from "Commission" to "Board" throughout the chapter. Other proposals correct grammar and simplify language so it is more easily understood.

Other changes specific to each section.

Proposed changes to §105.2 state that any false, misleading or deceptive advertising may be found a violation of the Texas Motor Vehicle Commission Code, regardless of whether the misleading or deceptive advertising is specifically enumerated in Chapter 105. The proposed amendment to §105.3 eliminates redundant concepts already contained in §105.2.

Proposed amendments to §105.7 prohibit advertising greater allowances for trade-ins or better deals because of large sales volumes unless the dealer can show such is the case. Proposed changes to §105.9 more clearly describe the types of taxes and fees that may be excluded from the advertised price of a vehicle.

In accordance with a request from the Texas Automobile Dealers Association, the proposed amendment to §105.10 changes the wording regarding the featured price of a vehicle from "full cash price" to "a cash price for which a dealer is willing to sell" a vehicle to a retail buyer. Subsection (c) changes the phrase "full cash price" to a "cash price".

Proposed changes to §105.13 clarify the intent of the subchapter by exchanging the word "used" (in advertising) for the word "featured" (in advertising).

Proposed new §105.18, Licensee Identification, requires that a dealer licensee include its General Distinguishing Number and a lease facilitator or lessor include its license number, clearly and conspicuously, in the advertisement. The proposed section includes a limited exclusion for dealer groups and/or co-op advertisements.

Section 105.20, Manufacturer and Distributor Rebates, is proposed to be rewritten for clarity without changing the substance of the rule. Manufacturers and distributors must still disclose any dealer contributions to rebates, or interest or finance charge reductions. Section 105.21 is also rewritten for clarity without making substantive changes. Dealers must disclose if a dealer's contribution to a manufacturer's rebate, interest or finance charge reduction might affect the final negotiated price of a vehicle.

Proposed changes to §105.24 include rewriting for clarity and adding more examples of acceptable advertising concerning dealer discounts, savings claims and rebates. A proposed change to §105.26(a) clarifies payment information to be included when advertising a vehicle available for lease. Proposed amendments to §105.28 clarify the section by adding additional examples of lowest price claims.

Brett Bray, Director, Motor Vehicle Division, has determined that for the first five-year period the amendments and new section are in effect there will be no fiscal implication for state or local government as a result of enforcing or administering the amendments and new rule.

Mr. Bray has also determined that for each of the first five years the amendments and new section are in effect, the public benefit anticipated from enforcement of the proposed amendments will be stronger protection of the public and dealers from those dealers who engage in false, deceptive or misleading practices, as well as better understanding by licensees required to comply with the rules.

Anticipated economic cost to persons who are required to comply with new §105.18 as proposed is indeterminate, since licensees who advertise will have to pay more for advertising space to include license numbers. There is no other anticipated economic cost to persons who are required to comply with the amendments as proposed. Mr. Bray has also certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the sections.

Comments on the proposed amendments and new section may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas, 78768. Please submit fifteen copies. The Texas Motor Vehicle Board will consider the adoption of the proposed amendments and new section at its meeting on September 28, 2000.

The amendments and new section are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt and amend rules as necessary and convenient to effectuate the provisions of this act.

Texas Motor Vehicle Commission Code §3.05(b) is affected by the proposed amendments and new section.

§105.2. General Prohibition.

A person advertising motor vehicles shall not use false, deceptive, unfair, or misleading advertising. In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the Board to be false, deceptive, or misleading, whether or not enumerated herein, shall be deemed violations of the Code, and shall also be considered violations of the general prohibition.

§105.3. Specific Rules.

The violation of an advertising rule shall be considered by the Board ~~[commission]~~ as a prima facie violation of the Texas Motor Vehicle Commission Code. [In addition to a violation of a specific advertising rule, any other advertising or advertising practices found by the commission to be false, deceptive, or misleading shall be deemed violations of the Code, and shall also be considered violations of the general prohibition.]

§105.7. Untrue Claims.

The following statements are prohibited.

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

- (3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless the dealer can show such is the case.

- (4) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless the dealer can show such is the case.

§105.9. Manufacturer's Suggested Retail Price.

The suggested retail price of a new motor vehicle when advertised by a manufacturer or distributor shall include all costs and charges for the vehicle advertised, except that destination and dealer preparation charges, and any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by County Road and Bridge Act, §4.202(g); any taxes; and any other fees or charges that are allowed or prescribed by law [state and local taxes, title, deputy fees, documentary fees, and license fees] may be excluded from such price, provided that the advertisement clearly and conspicuously states that such costs and charges are excluded. However, with respect to advertisements placed with local media in Texas by a manufacturer or distributor which include the names of the local dealers for the vehicles advertised, if the price of a vehicle is stated in the advertisement, such price must include all costs and charges for the vehicle advertised, including destination and dealer preparation charges and may exclude only any registration, certificate of title, license fees, or an additional registration fee, if any, charged by a full service deputy as provided by County Road and Bridge Act, §4.202(g); any taxes; and any other fees or charges that are allowed or prescribed by law [state and local taxes, license, title fees, deputy fees, and documentary fees].

§105.10. Dealer Price Advertising.

- (a) The featured price of a new or used motor vehicle, when advertised, must be a ~~[the full]~~ cash price for which a dealer is willing to sell the advertised vehicle ~~[will be sold]~~ to a retail buyer ~~[any and all members of the buying public]~~. The only charges that may be excluded from the advertised price are:

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

- (b) (No change.)

- (c) If a price advertisement discloses a rebate cash back, discount savings claim, or other incentive, a ~~[the full]~~ cash price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive. The following is an acceptable format for advertising a price with rebates and other deductions.

Figure: 16 TAC §105.10(c) (No change.)

- (d)-(e) (No change.)

§105.13. Trade-in Allowances.

No guaranteed trade-in amount or range of amounts shall be used [featured] in advertising.

§105.18. Licensee Identification.

- (a) A licensee advertising motor vehicles shall state the licensee's name in the advertisement. A dealer licensee shall also include its General Distinguishing Number. A lease facilitator or lessor shall also include its license number. All representations shall be clearly and conspicuously set forth in the advertisement.

- (b) With respect to co-op or dealer group advertisements, dealer license names are not required to appear in the advertisement. However, if dealers' names are listed individually, then each dealer's General Distinguishing Number shall also be included with the dealer's name in the advertisement.

§105.19. *Authorized Dealer.*

The term "authorized dealer" or a similar term shall not be used unless the advertising dealer holds both a franchise and a Texas Motor Vehicle Board [Commission] license to sell those vehicles he is holding himself out as "authorized" to sell.

§105.20. *Manufacturer and Distributor Rebates.*

It is unlawful for a manufacturer or distributor to advertise any offer of a rebate, interest or finance charge reduction, [refund, discount,] or other financial inducement or incentive, [which is either payable to or] for the benefit of the purchaser of a vehicle if [or which reduces the amount to be paid for the vehicle, whether the amount is the vehicle purchase price, the interest or finance charge expense, or any other cost accruing to the purchaser any portion of such rebate, refund, discount, or other financial incentive or inducement is paid or financed or in any manner contributed to by] the [dealer] selling dealer contributes in any manner to that program [the vehicle], unless the advertisement discloses that the dealer's contribution may affect the final negotiated price of the vehicle. [With respect to interest or finance charge expense programs, an advertisement shall disclose that participating dealers contribute to the reduction of the financing rate and that the dealer's contribution may affect the final negotiated price of the vehicle.]

§105.21. *Rebate and Financing Rate Advertising by Dealers.*

[(a)] It is unlawful for a dealer to advertise an offer of a manufacturer's or distributor's rebate, interest or finance charge reduction, [refund, discount,] or other financial inducement or incentive if the dealer contributes to the [manufacturer's or distributor's] program, unless such advertising discloses that the dealer's contribution may affect the final negotiated price of the vehicle. [With respect to interest or finance charge expense programs, if a participating dealer contributes to the reduction of a financing rate, then a disclosure must state that the dealer's contribution may affect the final negotiated price of the vehicle.]

[(b)] An advertisement containing an offer of an interest or finance charge incentive that is paid for or financed by the dealer rather than the manufacturer or distributor, shall disclose that the dealer pays for or finances the interest or finance charge rate reduction, the amount of the dealer's contribution in either a dollar or percentage amount, and that such arrangement may affect the final negotiated price of the vehicle.]

[(c)] An offer to pay, promise to pay, or tender cash to a buyer of a motor vehicle as in a rebate or cash back program may not be advertised, unless it is offered and paid in part by the motor vehicle manufacturer or distributor directly to the retail purchaser or assignee of the retail purchaser and unless the advertisement sets forth the disclosures required by this rule.]

§105.24. *Savings Claims; Discounts.*

(a) A savings claim or discount offer is prohibited except to advertise a new motor [or demonstrator] vehicle, and the advertisement must show the difference between the dealer's sale price and the manufacturer's or distributor's total suggested list or retail price.

(1) If a savings claim or discount offer includes only a dealer discount, the advertisement shall disclose that the discount is from the MSRP. The following is an acceptable format for advertising a dealer discount: "\$2,000 discount off MSRP".

(2) A savings claim or discount offer that includes a manufacturer's customer rebate must disclose the amount of the rebate as well as the amount of the dealer's discount. The following is an acceptable format for advertising a savings claim with a rebate and a dealer

discount: "\$2,000 savings off MSRP (\$1,500 dealer discount and \$500 rebate).".

(3) If a savings claim discloses a manufacturer's option package discount, then that discount must be disclosed prior to the discount off MSRP. The savings claim shall be advertised as a total savings. The following is an acceptable format for advertising a total savings claim: "Total Savings \$3,000 (\$1,000 option package discount, \$1,500 dealer discount off MSRP, and \$500 rebate)".

(b) The featured savings claim or discount offer for a new motor vehicle, when advertised, must be the savings claim or discount which is available to any and all members of the buying public.

(c) [(b)] If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle. If a dealer has added an option obtained from the manufacturer or distributor of the motor vehicle [on which it is installed] and disclosed the option and its factory suggested retail price [of the option] on a dealership addendum [sticker prior to offering the vehicle for sale at retail], the dealer may advertise a savings claim on that vehicle as long as the option is listed, and the difference is shown between the dealer's sale [selling] price and the factory suggested retail [total selling] price of the vehicle including [as disclosed on the dealership addendum sticker and discloses] the factory available option [options added in the advertisement. If an option that is added by a dealer is not a factory-available option, a savings claim may not be advertised on that vehicle].

(d) [(e)] Statements such as "up to," "as much as," "from," shall not be used in connection with savings or discount claims.

(e) [(d)] No person may advertise a savings claim or discount offer on used motor vehicles.

§105.26. *Payment Disclosure--Lease.*

(a) An advertisement that promotes a consumer lease and contains the amount of any payment; or a statement of any capitalized cost reduction or other payment or that no payment is required prior to or at consummation or by delivery, if delivery occurs after consummation, must clearly and conspicuously include the following:

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

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

§105.28. *Lowest Price Claims.*

Representing a lowest price claim, best price claim, best deal claim or other similar superlative claims [claim] shall not be used in advertising.

§105.31. *Finding of Violation.*

No person shall be held to be in violation of the rules, including the general prohibition, except upon a finding thereof made by the Board [commission] after notice and hearing as provided in the Texas Motor Vehicle Commission Code.

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

Filed with the Office of the Secretary of State, on July 19, 2000.

TRD-200004965

Brett Bray

Director

Motor Vehicle Board

Proposed date of adoption: September 28, 2000

For further information, please call: (512) 416-4899

◆ ◆ ◆

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. BINGO REGULATION AND TAX

16 TAC §402.550

The Texas Lottery Commission proposes new rule 16 TAC §402.550, concerning a Bingo Training Program. The purpose of the new rule is to establish the procedures and requirements of the training program for persons designated by organizations licensed to conduct bingo. Specifically, the new rule identifies the person who must complete the training and establishes the content of the training course, information concerning training to be reported to the Texas Lottery Commission, and other training program requirements that the Commission determines to be necessary to promote the fair conduct of bingo and compliance with the Bingo Enabling Act. The new rule also sets out disciplinary sanctions for failure to comply with the provisions of the rule.

Rick Sookiasian, Budget Analyst, Texas Lottery Commission has determined that for each year of the first five-year period the section is in effect there will no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Sookiasian has also determined that for each year of the first five-year period the section is in effect there will be no cost to small businesses. There may be some cost to persons complying with the proposed new section, such as travel to and from the training site. However, the travel costs will be minimal because the scheduled training sessions will be held in locations where the majority of all licenses are issued. There will be no impact on local employment.

William L. Atkins, Charitable Bingo Operations Director, Texas Lottery Commission has determined that for each year of the first five-year period the new section is in effect, the public benefit anticipated as a result of enforcing or administering the section will be to enhance the knowledge and understanding by persons designated by licensed authorized organizations of the statutory and regulatory requirements as it relates to charitable bingo in Texas.

Comments on the proposal may be submitted to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, or by e-mail to kimberly.kiplin@mail.capnet.state.tx.us.

The new section is proposed under the Government Code, §467.102 and the Occupations Code, §2001.054 which provide the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The new section implements Occupations Code, §2001.107.

§402.550. Training Program.

(a) Notice of Registration and Training

(1) Notice of the training program will be provided to a licensed authorized organization at the address provided to the Commission by the licensed authorized organization as part of the licensed authorized organization's license file.

(2) The notice will inform the licensee of the training offered in the licensee's geographic area and the process to register for the training. Pre-registration is required in order to attend training. Persons pre-registering must provide, at a minimum, the name of the individual, name of organization, eleven-digit taxpayer identification number of the organization, person's position within the organization, and information on how to contact pre-registrant, such as telephone number, facsimile number, mailing address, and, if applicable, E-mail address.

(3) The training may be cancelled for good cause. In the event the Charitable Bingo Division cancels the training, notice will be provided to licensees who have pre-registered for training.

(b) Persons Required to Complete Training.

(1) At all times, at least one of the persons designated by each licensed authorized organization under Occupations Code §2001.102(b)(10) must be an individual who has completed the training. The training must be completed biannually.

(2) Multiple persons from a licensed authorized organization may attend training. However, the Charitable Bingo Division may limit the number of persons attending for a licensed authorized organization in order to ensure persons for other licensed authorized organizations have the opportunity to attend training.

(3) Each individual attending the training program must complete an affidavit of attendance, on a form prescribed by the Commission, which will include, at a minimum, the legible name, signature, organization name and eleven-digit taxpayer identification number.

(4) Each individual attending the training shall, prior to the beginning of the training, submit on a form prescribed by the Commission, which will include, at a minimum, the legible name, signature, organization name and eleven-digit taxpayer identification number, a statement that he/she has read the Bingo Enabling Act and Charitable Bingo Administrative Rules in their entirety in preparation for the training. The total number of hours credited for reading these materials shall be three (3) hours.

(5) Only licensed authorized organizations holding an annual license to conduct bingo are required to have an individual attend training.

(6) Persons who satisfactorily complete the training, as determined by the Charitable Bingo Division, will receive a Certificate of Completion. The Certificate of Completion shall, at a minimum, include: the name of the individual completing the training, the date and location of the training, and eleven-digit taxpayer identification number of the licensed authorized organization.

(7) A person may complete training for one licensed authorized organization only.

(8) All expenses or costs of attendance by any member of the licensed authorized organization may be paid from the licensed authorized organization's bingo bank account. Expenses and costs are limited to travel, lodging, meals, and materials. Documentation must be maintained by the licensed authorized organization supporting the payment of all costs or expenses. All costs and expenses must be reasonable and necessary.

(c) The training instructor may remove a person or persons from the training for good cause.

(d) Content of the Training. The training program will cover, at a minimum, the following areas:

(1) General information about the Bingo Enabling Act and Bingo rules;

- (2) Conducting a bingo game;
- (3) Record keeping requirements;
- (4) Administration and operation of charitable bingo;
- (5) Promotion of a bingo game;
- (6) Bingo Advisory Committee; and,
- (7) General information about the license application process.

(e) Time requirements.

(1) For the individuals required to complete training, each individual must complete the training every two years.

(2) A licensed authorized organization is subject to disciplinary action if at least one of the persons designated under Occupations Code Section 2001.102(b)(10) has not completed the training by September 1, 2001. After September 1, 2001, at least one of the persons designated under Occupations Code Section 2001.102(b)(10) must have completed the training within 24 months prior to the date of expiration of the license.

(3) After September 1, 2001, an organization that is issued an annual license to conduct bingo based on the filing of an original application shall have at least one of the persons designated under Occupations Code Section 2001.102(b)(10) complete the training within 12 months of the issuance of the license.

(f) Reporting requirements.

(1) Each licensed authorized organization must submit to the Charitable Bingo Division the name(s) of the trained individuals. Any change in this information must be submitted to Charitable Bingo Division within 10 days after the date of the change.

(2) Each licensed authorized organization shall maintain for a period of four years the Certification of Completion in its records.

(3) Failure to maintain documentation relating to the training program or failure to timely furnish information requested by the Commission may subject the licensee to disciplinary action.

(4) Altering or falsifying any information required to be submitted or maintained in connection with the training program identified in this rule may subject the licensee to disciplinary action.

This 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 July 21, 2000.

TRD-200005018

Ridgely C. Bennett

Deputy General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 3, 2000

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



CHAPTER 403. GENERAL ADMINISTRATION
16 TAC §§403.201 - 403.223

The Texas Lottery Commission (Commission) proposes new §§403.201-403.223, relating to procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas pursuant to §9 of House

Bill 826, 76th, Legislature, Regular Session, Chapter 68 (1999) (codified at Government Code, Chapter 2260). Historically, the State of Texas has been immune from suit on a contract on the basis of sovereign immunity. Contractors seeking to assert and recover damages on a breach of contract claim had to obtain legislative consent to sue and a legislative appropriation to satisfy any resulting judgment. With the enactment of Chapter 2260, the legislature has established a new and exclusive administrative process by which a contractor who enters into a written contract with a unit of state government for goods, services or projects, may pursue a breach of contract claim for damages. Chapter 2260 requires a contractor who asserts a breach of contract claim and the Commission to attempt to resolve the contractor's claim and any counterclaim through negotiation, and authorizes, but does not require, the parties to mediate their dispute. If the contractor's claim is not resolved in its entirety within the statutory time frame, the contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH"). Chapter 2260 authorizes the SOAH administrative law judge to render a non-appealable decision ordering the Commission to pay damages up to \$250,000. If the contractor's claim exceeds \$250,000, Chapter 2260 requires the administrative law judge to issue a written report of his or her findings to the legislature, recommending that the legislature either appropriate money to pay all or part of a valid claim or deny such appropriation and withhold consent to sue.

Section 2260.052(c) requires that the Commission adopt rules to establish negotiation and mediation provisions. An interagency dispute resolution working group, co-sponsored by the Office of the Attorney General ("OAG") and the Center for Public Policy Dispute Resolution at the University of Texas School of Law and consisting of representatives of state agencies, legislative offices, and institutions of higher education and representatives of contractors and vendors who do business with the state, assisted the OAG and SOAH with the development of both sets of rules.

The rules provide a process sufficiently flexible to permit the parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of such variables as the size or organization of the contracting unit of state government, or the contract's complexity, subject matter, dollar amount, or method and time of performance.

Section 403.201 defines terms as they relate to this chapter. Section 403.202 provides that the procedures are prerequisites to filing suit under Civil Practice and Remedies Code, Chapter 107 and Government Code, Chapter 2260. Section 403.203 advises that the state has not waived sovereign immunity to suit or to liability. Section 403.204 sets out the requirements and procedures of the notice of claim of breach of contract that contractor must assert. Section 403.205 sets out the requirements and procedures of the counterclaim that the unit of state government must assert. Section 403.206 addresses the disclosure of additional information. Section 403.207 announces that the parties must negotiate to settle the dispute. Section 403.208 provides a timetable as it relates to the negotiations between the contractor and the Commission. Section 403.209 describes how the parties may conduct the negotiation. Section 403.210 addresses the parties' settlement approval procedures. Section 403.211 announces the requirements of any resulting settlement agreement. Section 403.212 states how the costs of negotiations shall be handled by the parties. In the event, the breach of contract claim is not resolved in its entirety, §403.213 specifies

the process by which a contractor may seek resolution of the dispute by SOAH. Section 403.214 set out the mediation timetable. Section 403.215 describes the conduct of the mediation. Section 403.216 discusses the qualifications, immunities, and duties of a mediator. Section 403.217 pertains to the confidentiality of a mediation and any resulting final settlement agreement. Section 403.218 states how the costs of mediation shall be handled by the parties. Section 403.219 addresses the parties settlement approval procedures. Section 403.220 details the handling of any resulting settlement agreement. Section 403.221 states that a final settlement agreement must comply with the provisions of §403.211 of this chapter. Section 403.222 provides that if mediation does not resolve the dispute the contractor may request that the claim be referred to SOAH in accordance with §403.213 of this chapter. Section 403.223 identifies the use of assisted negotiation processes.

Richard Sookiasian, Budget Analyst, Texas Lottery Commission, has determined that for each year of the first five years that the proposed rules are in effect that the additional estimated cost to the Commission expected as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone. The estimated reductions in costs to the Commission as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone. The estimated loss or increase in revenue to the Commission as a result of enforcing or administering the rules will be zero because the rules impose no additional burden on anyone. Enforcement of the rules will not result in an increase in workload for Commission staff.

Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, has determined that for each year of the first five years that the proposed rules are in effect, the benefit to the public will be the more timely and efficient resolution of contract disputes between contractors and the Commission. The legislature by enacting Chapter 2260 has determined that such process, with the potential to recover monetary damages for proven contractual breaches, is of public benefit.

Mr. Sookiasian has also determined that the proposed rules will have no adverse economic effect on small or large businesses and/or persons that contract with the Commission. In the past, sovereign immunity prevented breach of contract claims against the Commission and the only process available to the public for resolution of such a claim was to seek and obtain legislative consent to sue. Chapter 2260 and these proposed rules will provide a process by which claims for breach of contract and counterclaims can be asserted and resolved.

The negotiation provisions themselves will impose no economic cost to persons required to comply with the proposed rules because they do not require the use of any particular negotiation mode or method. The proposed rules require only that the parties negotiate to resolve their dispute, and the mode or method of negotiation can be as simple or as complex as the parties decide. The proposed rules specify that absent an agreement to the contrary, the parties are responsible for costs they individually incur in a negotiation or other alternative dispute resolution process.

Similarly, the mediation provisions themselves will impose no economic cost to persons required to comply with the proposed rules unless the parties choose to mediate. If the parties do so, the rules specify that, absent an agreement to the contrary, the parties will share the costs of the mediator and each will be responsible for whatever additional costs they decide to incur for

items such as document reproduction, attorneys' fees, experts' fees and consultants' fees.

The Commission requests comments on the proposed rules from any interested person. Comments may be submitted, in writing, to Kimberly L. Kiplin, General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas, 78761-6630.

The new sections are proposed under Government Code, Chapter 2260, Resolution of Certain Contract Claims against the State, §2260.052, which authorizes the Commission to adopt rules deemed necessary or advisable to effectuate Chapter 2260.

There is no other code, article, or statute affected by these new sections.

§403.201. Definitions.

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

(1) Executive Director--The chief administrator of the Commission.

(2) Claim--A demand for damages by a contractor based upon the Commission's alleged breach of the contract.

(3) Commission--The Texas Lottery Commission.

(4) Contract--A written contract between the Commission and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for the Commission; or

(B) to perform a project as defined by Government Code, §2166.001.

(5) Contractor--An independent contractor who has entered into a contract directly with the Commission. The term does not include:

(A) the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) an employee of the Commission.

(6) Counterclaim--A demand by the Commission based upon the contractor's claim.

(7) Day--A calendar day. If an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days shall be counted as the required day.

(8) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services:

(i) the failure of the Commission to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the Commission for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation, or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by the Commission, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor;

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(C) The lists in subparagraphs (A) and (B) of this paragraph should not be considered exhaustive but are merely illustrative in nature.

(9) Goods--Supplies, materials or equipment.

(10) Mediation--A consensual process in which a neutral third person facilitates communication to promote reconciliation, settlement, or understanding.

(11) Negotiation--A consensual bargaining process in which the parties attempt to resolve a claim and/or counterclaim.

(12) Parties--The designation of the Commission and a contractor after a claim of breach of contract has been filed under this chapter.

(13) Project--A building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(14) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the Commission.

§403.202. Prerequisites to Suit.

The procedures contained in this chapter are exclusive and required prerequisites to suit under the Civil Practice and Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

§403.203. Sovereign Immunity.

This chapter does not waive the Commission's sovereign immunity to suit or liability.

§403.204. Notice of Claim of Breach of Contract.

(a) A contractor asserting a claim for breach of contract shall file notice as provided by this section.

(b) The notice of claim shall:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the Commission's representative designated in the contract to receive a notice of claim of breach of contract. If no person is designated in the contract, the notice shall be delivered to the executive director, and

(3) state in detail:

(A) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(B) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(C) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(c) In addition to the mandatory contents of the notice of claim, the contractor may submit supporting documentation or other tangible evidence to facilitate the Commission's evaluation of the contractor's claim.

(d) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

§403.205. Agency Counterclaim.

(a) The Commission shall file notice of a counterclaim as provided by this section.

(b) The notice of counterclaim shall:

(1) be in writing;

(2) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(3) state in detail:

(A) the nature of the counterclaim;

(B) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(C) the legal theory supporting the counterclaim.

(c) In addition to the mandatory contents of the notice of counterclaim, the Commission may submit supporting documentation or

other tangible evidence to facilitate the contractor's evaluation of the Commission's counterclaim.

(d) The Commission shall delivered the notice of the counterclaim to the contractor no later than 90 days after the Commission's receipt of the contractor's notice of claim.

(e) Nothing herein precludes the Commission from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

§403.206. Request for Voluntary Disclosure of Additional Information.

(a) Upon the filing of a claim or counterclaim, the parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(1) accounting records;

(2) correspondence, including, without limitation, correspondence between the Commission and outside consultants it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, material men, and vendors;

(3) schedules;

(4) the parties' internal memoranda;

(5) documents created by the contractor in preparing its offer and documents created by the Commission in analyzing the offers it received in response to the solicitation.

(b) This section applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(c) The parties may seek additional information directly from third parties, including, without limitation, the Commission's third party consultants and the contractor's subcontractors.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas law.

(e) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

§403.207. Duty to Negotiate.

The parties shall negotiate in accordance with the timetable set forth in §403.214 of this title (relating to Mediation Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle as a result of the negotiation.

§403.208. Timetable.

(a) Following receipt of a contractor's notice of claim, the Commission's executive director or the executive director's designated representative(s) shall review the contractor's claim(s) and the counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(b) Subject to subsection (c) of this section, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(1) the date of termination of the contract;

(2) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(3) the date the Commission receives the contractor's notice of claim.

(c) The Commission may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(1) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(2) delivering written notice to the contractor when the Commission is ready to begin negotiations.

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in subsections (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties shall complete the negotiations that are required by this chapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Commission receives the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Commission receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to §403.213 of this title (relating to Request for Contested Case Hearing) after the 270th day after the Commission receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before the 270th day after the Commission receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section.

(i) Nothing in this section is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§403.209. Conduct of Negotiation.

(a) A negotiation under this subchapter may be conducted by any method, technique, or procedure agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with this chapter.

(c) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(d) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

§403.210. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§403.211. Settlement Agreement.

(a) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by the parties or their authorized representatives.

(c) A partial settlement does not waive a parties' rights under the Government Code, Chapter 2260, as to remaining claims or counterclaims.

§403.212. Costs of Negotiation.

Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

§403.213. Request for Contested Case Hearing.

(a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this chapter on or before the 270th day after the Commission receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §403.208(f) of this title (relating to Timetable), the contractor may file a request with the Commission for a contested case hearing before SOAH.

(b) A request for a contested case hearing shall state the legal and factual basis for the claim and shall be delivered to the executive director or other person designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §403.208(f) of this title.

(c) The Commission shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Commission if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

§403.214. Mediation Timetable.

(a) The contractor and Commission may agree to mediate the dispute at any time before the 270th day after the Commission receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(b) A contractor and the Commission may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

§403.215. Conduct of Mediation.

(a) A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(c) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who

are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

§403.216. Qualifications and Immunity of the Mediator.

The mediator shall possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

§403.217. Confidentiality of Mediation and Final Settlement Agreement.

(a) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(b) The confidentiality of a final settlement agreement that is reached as a result of the mediation is governed by Government Code, Chapter 552.

§403.218. Costs of Mediation.

Unless the contractor and the Commission agree otherwise, each party is responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

§403.219. Settlement Approval Procedures.

The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§403.220. Initial Settlement Agreement.

Any settlement agreement reached during the mediation shall be signed by authorized representatives of the parties and shall describe any procedures required to be followed in connection with the approval of a final settlement agreement.

§403.221. Final Settlement Agreement.

(a) A final settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim shall be in writing and signed by the authorized representatives of the parties.

(b) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the unresolved issues.

(c) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to unresolved claims.

§403.222. Referral to the State Office of Administrative Hearings.

If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH.

§403.223. Use of Assisted Negotiation Processes.

Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they should agree in writing to a detailed description of the process prior to engaging in the process.

(1) Mediation.

(2) Early evaluation by a third-party neutral.

(A) This a confidential conference where the parties and their counsel present the factual and legal bases of their claim and receive a non-binding assessment by an experienced neutral with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentations, the third-party neutral identifies areas of agreement for possible stipulations, assesses the strengths and weaknesses of each party's position, and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to him or her.

(C) This is a less complicated procedure than the mini-trial, described in paragraph (4) of this section. It may be appropriate for only some issues in dispute, for example, where there are clear-cut differences over the appropriate amount of damages.

(3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties.

(4) Mini-trial.

(A) A mini-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases: a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information exchange stage shall be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, the parties shall exchange key exhibits, introductory statements, and a summary of witness's testimony.

(C) At the hearing, representatives of the parties shall present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may put on abbreviated direct and cross-examination testimony.

(D) Settlement discussions, facilitated by the third-party neutral, shall take place after the hearing. The parties may ask the neutral to formally evaluate the evidence and arguments and give an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to resolve the dispute by other means.

This 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 July 21, 2000.
TRD-200005019

Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 344-5113

◆ ◆ ◆
16 TAC §403.301

The Texas Lottery Commission ("Commission") proposes new §403.301, relating to Historically Underutilized Businesses. The new rule will incorporate by reference the rules adopted by the General Services Commission for historically underutilized businesses. The new rule conforms to Senate Bill 178, 76th Legislature, which amended Chapter 2161 of the Texas Government Code and directed state agencies to adopt the General Services Commission's rules regarding historically underutilized businesses (HUB) as the agency's own rules. The General Services Commission's rules appear in 1 Texas Administrative Code §§111.11-111.28. The Commission's proposed rule adopts by reference General Services Commission's rules as amended.

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

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated reductions in costs to the state or to local governments as a result of administering the proposed section.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated increases in revenue to the state or to local governments as a result of administering the proposed section. Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated decreases in revenue to the state or to local governments as a result of administering the proposed section.

Linda Cloud, Executive Director, has also determined that for each year of the first five-year period the proposed section will be in effect, the public benefits anticipated as a result of administering the proposed rule will be a more uniform and consistent approach for procuring goods and services from HUB vendors.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no probable economic cost to persons required to comply with the proposed section.

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

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

Comments on the proposed section may be submitted to Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The new section is proposed under §466.105, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules governing the establishment and operation of the lottery, §466.101, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules requiring any person seeking to contract for goods or services relating to the implementation and administration of the State Lottery Act to submit to competitive bidding procedures in accordance with the rules adopted by the Commission, §467.102, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the State Lottery Act and the laws under the Commission's jurisdiction, §2161.003, Government Code, which directs state agencies to adopt the General Services Commission's rules regarding historically underutilized businesses and Chapter 2001, Government Code, which provides for the adoption of administrative rules.

Chapter 466, Government Code, Chapter 467, Government Code and Chapter 2161, Government Code are affected by the proposed section.

§403.301. Historically Underutilized Businesses.

The Texas Lottery Commission adopts by reference the rules promulgated by the General Services Commission regarding historically underutilized businesses, which are set forth in 1 TAC §§111.11-111.28.

This 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 July 21, 2000.

TRD-200005017

Ridgely C. Bennett

Deputy General Counsel

Texas Lottery Commission

Earliest possible date of adoption: September 3, 2000

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER C. BREACH OF CONTRACT CLAIMS

19 TAC §§1.40 - 1.47

The Texas Higher Education Coordinating Board proposes new §§1.40 - 1.47 concerning Agency Administration (Breach of Contract Claims). Specifically, these new sections provide procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against the Coordinating Board and counterclaims asserted by the Coordinating Board against contractors. The new sections substantially conform to the Model Rules published by the Office of the Attorney General in the March 31, 2000, issue of the *Texas Register* (25 TexReg 2833).

James McWhorter, Assistant Commissioner for Administration has determined that for the first five-year period the rules are in

effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. McWhorter has also determined that for the first five years the rules are in effect, the public benefit will be the more timely and efficient resolution of contract disputes between contractors and the Board. In the past, sovereign immunity prevented breach of contract claims against the state and the only process available to the public for resolution of such a claim was to seek and obtain legislative consent to sue. These proposed rules will provide a process by which claims for breach of contract and counterclaims can be asserted and resolved. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under the Texas Government Code, §2260.052(c), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Agency Administration (Breach of Contract Claims).

The proposed new sections affect Texas Government Code, Chapter 2260.

§1.40. Scope and Purpose.

(a) This subchapter shall govern the procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against the Texas Higher Education Coordinating Board.

(b) The purpose of this subchapter is to implement the provisions of Texas Government Code, Chapter 2260.

§1.41. Applicability.

(a) This subchapter does not apply to an action of the Board for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(b) This subchapter does not apply to contracts:

(1) between the Board and the federal government or its agencies, another state or another nation;

(2) between the Board and two or more units of state government;

(3) between the Board and a local governmental body, or a political subdivision of another state;

(4) between a subcontractor and a contractor;

(5) subject to §201.112 of the Transportation Code;

(6) within the exclusive jurisdiction of state or local regulatory bodies;

(7) within the exclusive jurisdiction of federal courts or regulatory bodies; or

(8) that are solely and entirely funded by federal grant monies other than for a project defined in 1.32(10) of this title (relating to Definitions).

§1.42. Definitions.

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

(1) Commissioner - The Commissioner of Higher Education.

(2) Claim - A demand for damages by the contractor based upon the Board's alleged breach of the contract.

(3) Contract - A written contract between the Board and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for the Board; or

(B) to perform a project as defined by Government Code, §2166.001.

(4) Contractor - Independent contractor who has entered into a contract directly with the Board. The term does not include:

(A) The contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) An employee of the Board; or

(C) A student at an institution of higher education.

(5) Counterclaim - A demand by the Board based upon the contractor's claim.

(6) Day - A calendar day. If an act is required to occur on a day falling on a Saturday, Sunday, or holiday, the first working day that is not one of these days should be counted as the required day for purpose of this act.

(7) Event - An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services:

(i) the failure of the Board to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the Board for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation, or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(vi) withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the Board for work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by the Board, in whole or in part, of the "work", as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor;

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(C) The lists in subparagraphs (A) and (B) of this subsection should not be considered exhaustive but are merely illustrative in nature.

(8) Goods - Supplies, materials or equipment.

(9) Parties - The contractor and the Board under a contract in connection with which a claim of breach of contract has been filed under this chapter.

(10) Project - As defined in Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(11) Services - The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the Board.

(12) Board - The Texas Higher Education Coordinating Board.

§1.43. Prerequisites to Suit.

The procedures contained in this subchapter chapter are exclusive and required prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260.

§1.44. Sovereign Immunity.

This subchapter does not waive the Board's sovereign immunity to suit or liability.

§1.45. Negotiation of Contract Disputes.

(a) Notice of Claim of Breach of Contract.

(1) A contractor asserting a claim of breach of contract under the Government Code, Chapter 2260, shall file notice of the claim as provided by this section.

(2) The notice of claim shall:

(A) be in writing and signed by the contractor or the contractor's authorized representative;

(B) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the Board designated in the contract to receive a notice of claim of breach

of contract under the Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the Assistant Commissioner for Administration, and

(C) state in detail:

(i) the nature of the alleged breach of contract, including the date of the event that the contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(ii) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and

(iii) the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

(3) In addition to the mandatory contents of the notice of claim as required by paragraph (2)(C) of this subsection, the contractor may submit supporting documentation or other tangible evidence to facilitate the unit's evaluation of the contractor's claim.

(4) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

(b) Board Counterclaim.

(1) If the Board asserts a counterclaim under the Government Code, Chapter 2260, notice of the counterclaim shall be filed as provided by this section.

(2) The notice of counterclaim shall:

(A) be in writing;

(B) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of claim of breach of contract; and

(C) state in detail:

(i) the nature of the counterclaim;

(ii) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(iii) the legal theory supporting the counterclaim.

(3) In addition to the mandatory contents of the notice of counterclaim required by paragraph (C) of this subsection, the Board may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the Board's counterclaim.

(4) The notice of counterclaim shall be delivered to the contractor no later than 90 days after the Board's receipt of the contractor's notice of claim.

(5) Nothing herein precludes the Board from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(c) Request for Voluntary Disclosure of Additional Information.

(1) Upon the filing of a claim or counterclaim, the parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(A) accounting records;

(B) correspondence, including, without limitation, correspondence between the Board and outside consultants it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(C) schedules;

(D) the parties' internal memoranda; and

(E) documents created by the contractor in preparing its offer to the Board and documents created by the Board in analyzing the offers it received in response to a solicitation.

(2) Paragraph (1) of this subsection applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(3) The contractor and the Board may seek additional information directly from third parties, including, without limitation, the unit's third-party consultants and the contractor's subcontractors.

(4) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas law.

(5) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(d) Duty to Negotiate. The parties shall negotiate in accordance with the timetable set forth in subsection (e) of this section, to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

(e) Timetable.

(1) Following receipt of a contractor's notice of claim, the Commissioner's representative designated in the contract shall review the contractor's claim(s) and the Board's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(2) Subject to paragraph (3) of this subsection, the parties shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

(A) the date of termination of the contract;

(B) the completion date, or substantial completion date in the case of construction projects, in the original contract; or

(C) the date the unit of state government receives the contractor's notice of claim.

(3) The Board may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(A) delivering written notice to the contractor that the commencement of negotiations will be delayed; and

(B) delivering written notice to the contractor when the Board is ready to begin negotiations.

(4) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in paragraphs (2) or (3) of this section, whichever is applicable.

(5) Subject to paragraph (6) of this subsection, the parties shall complete the negotiations that are required by this section as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the Board receives the contractor's notice of claim.

(6) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the Board receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(7) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to subsection (j) of this section after the 270th day after the unit receives the contractor's notice of claim, or the expiration of any extension agreed to under paragraph (6) of this subsection.

(8) The parties may agree to mediate the dispute at any time before the 270th day after the Board receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to paragraph (6) of this subsection. The mediation shall be governed by §1.36 of this title (relating to Mediation of Contract Disputes).

(9) Nothing in this subsection is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in paragraphs (2) and (3) of this subsection, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

(f) Conduct of Negotiation.

(1) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(2) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with §1.36 of this title. Parties may choose an assisted negotiation process other than mediation, including without limitation, processes such as those described in §1.37 of this title (relating to Assisted Negotiation Process).

(3) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(4) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Public Information Act.

(g) Settlement Approval Procedures. The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

(h) Settlement Agreement.

(1) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(2) To be enforceable, a settlement agreement must be in writing and signed by representatives of the contractor and the unit of state government who have authority to bind each respective party.

(3) Partial settlement does not waive a party's rights under the Government Code, Chapter 2260, as to the parts of the claims or counterclaims that are not resolved.

(i) Costs of Negotiation. Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

(j) Request for Contested Case Hearing.

(1) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this subchapter on or before the 270th day after the Board receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to subsection (e)(6) of this section, the contractor may file a request with the unit of state government for a contested case hearing before SOAH.

(2) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the Commissioner or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to subsection (e)(6) of this section.

(3) The Board shall forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(4) The parties may agree to submit the case to SOAH before the 270th day after the notice of claim is received by the Board if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

§1.46. Mediation of Contract Disputes.

(a) Mediation Timetable.

(1) The contractor and the Board may agree to mediate the dispute at any time before the 270th day after the Board receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(2) A contractor and the Board may mediate the dispute even after the case has been referred to SOAH for a contested case. SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(b) Conduct of Mediation.

(1) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(2) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.

(3) To facilitate a meaningful opportunity for settlement, the parties shall, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

(c) Agreement to Mediate.

(1) Parties may agree to use mediation as an option to resolve a breach of contract claim at the time they enter into the contract and include a contractual provision to do so. The parties may mediate a breach of contract claim even absent a contractual provision to do so if both parties agree.

(2) Any agreement to mediate should include consideration of the following factors:

(A) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under §154.052, Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties should contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties should use the qualifications set forth in subsection (d) of this section.

(B) The time period for the mediation. The parties should allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(C) The location of the mediation.

(D) Allocation of costs of the mediator.

(E) The identification of representatives who will attend the mediation on behalf of the parties, if possible, by name or position within the governmental unit or contracting entity.

(F) The settlement approval process in the event the parties reach agreement at the mediation.

(d) Qualifications and Immunity of the Mediator.

(1) The mediator shall possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053, and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(2) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(3) The parties should obtain from the prospective mediator the ethical standards that will govern the mediation.

(e) Confidentiality of Mediation and Final Settlement Agreement.

(1) A mediation conducted under this section is confidential in accordance with Government Code, §2009.054.

(2) The confidentiality of a final settlement agreement to which the Board is a signatory that is reached as a result of the mediation is governed by Government Code, Chapter 552.

(f) Costs of Mediation. Unless the contractor and Board agree otherwise, each party shall be responsible for its own costs incurred in

connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

(g) Settlement Approval Procedures. The parties' settlement approval procedures shall be disclosed by the parties prior to the mediation. To the extent possible, the parties shall select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

(h) Initial Settlement Agreement. Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the unit of state government, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

(i) Final Settlement Agreement.

(1) A final settlement agreement reached during, or as a result of mediation, that resolves an entire claim or any designated and severable portion of a claim shall be in writing and signed by representatives of the contractor and the Board who have authority to bind each respective party.

(2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(3) A partial settlement does not waive a contractor's rights under the Government Code, Chapter 2260, as to the parts of the claim that are not resolved.

(j) Referral to the State Office of Administrative Hearings. If mediation does not resolve all issues raised by the claim, the contractor may request that the claim be referred to SOAH by the Board. Nothing in these rules prohibits the contractor and the Board from mediating their dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.

§1.47. Assisted Negotiation Processes.

(a) Parties to a contract dispute under Government Code, Chapter 2260, may agree, either contractually or when a dispute arises, to use assisted negotiation (alternative dispute resolution) processes in addition to negotiation and mediation to resolve their dispute.

(b) Factors Supporting the Use of Assisted Negotiation Processes. The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

(1) The parties recognize the benefits of an agreed resolution of the dispute;

(2) The expense of proceeding to contested case hearing at SOAH is substantial and might outweigh any potential recovery;

(3) The parties want an expedited resolution;

(4) The ultimate outcome is uncertain;

(5) There exists factual or technical complexity or uncertainty that would benefit from expertise of a third-party expert for technical assistance or fact-finding;

(6) The parties are having substantial difficulty communicating effectively;

(7) A mediator third party could facilitate the parties' realistic evaluation of their respective cases;

(8) There is an on-going relationship that exists between parties;

(9) The parties want to retain control over the outcome;

(10) There is a need to develop creative alternatives to resolve the dispute;

(11) There is a need for flexibility in shaping relief;

(12) The other side has an unrealistic view of the merits of their case;

(13) The parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(c) Use of Assisted Negotiation Processes. Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they should agree in writing to a detailed description of the process prior to engaging in the process.

(1) Mediation. See §1.35 of this title (relating to Negotiation of Contract Disputes).

(2) Early evaluation by a third-party neutral.

(A) This a confidential conference where the parties and their counsel present the factual and legal bases of their claim and receive a non-binding assessment by an experienced neutral with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentations, the third-party neutral identifies areas of agreement for possible stipulations, assesses the strengths and weaknesses of each party's position, and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to him or her.

(C) This is a less complicated procedure than the mini-trial, described in paragraph (4) of this subsection. It may be appropriate for only some issues in dispute, for example, where there are clear-cut differences over the appropriate amount of damages. This process may be particularly helpful when:

(i) The parties agree that the dispute can be settled;

(ii) The dispute involves specific legal issues;

(iii) The parties disagree on the amount of damages;

(iv) The opposition has an unrealistic view of the dispute; or

(v) The neutral is a recognized expert in the subject area or area of law involved.

(3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery in the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

(i) Factual issues requiring expert testimony may be dispositive of liability or damage issues;

(ii) The use of a neutral is cost effective; or

(iii) The neutral's findings could narrow factual issues for contested case hearing.

(4) Mini-trial.

(A) A mini-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases: a limited information exchange phase, the actual hearing, and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information exchange stage should be brief but it must be sufficient for each party to understand and appreciate the key issues involved in the case. At a minimum, parties should exchange key exhibits, introductory statements, and a summary of witness's testimony.

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. The hearing generally takes no longer than 1-2 days.

(D) Settlement discussions, facilitated by the third-party neutral, take place after the hearing. The parties may ask the neutral to formally evaluate the evidence and arguments and give an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to resolve the dispute by other means.

(E) Mini-trials may be appropriate when:

(i) The dispute is at a stage where substantial costs can be saved by a resolution based on limited information gathering;

(ii) The matter justifies the senior executive time required to complete the process;

(iii) The issues involved include highly technical mixed questions of law and fact;

(iv) The matter involves trade secrets or other confidential or proprietary information; or

(v) The parties seek to narrow the large number of issues in dispute.

This 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 July 21, 2000.

TRD-200005065

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



CHAPTER 12. PROPRIETARY SCHOOLS SUBCHAPTER A. PURPOSE, AUTHORITY, AND DEFINITIONS

19 TAC §§12.1 - 12.3

The Texas Higher Education Coordinating Board proposes New §§12.1 - 12.3 concerning Proprietary Schools (Purpose, Authority, and Definitions). Specifically, the new sections eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Purpose, Authority, and Definitions).

The proposed new sections affect Texas Education Code, Chapter 132, §132.063 and Chapter 61,

§12.1. Purpose.

The purpose of this chapter is to assure the quality and integrity of associate degree programs offered by proprietary institutions by establishing minimum standards and operating requirements, encouraging continuous improvement of degree programs, and promoting institutional accountability.

§12.2. Authority.

The Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, authorize the Board to adopt policies, enact regulations, and establish rules to enforce minimum standards for the approval and on-going assessment of programs of study leading to associate degrees offered by proprietary institutions.

§12.3. Definitions.

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

(1) Agent--Proprietary institution owner, partner, stockholder, officer, recruiter, administrator, faculty member, financial aid counselor, academic counselor or other person who represents the institution in an official capacity. Persons employed in clerical, custodial, or similar positions, or shareholders with no direct relationship to the institution, are not considered agents of an institution.

(2) Associate degree program--A grouping of courses designed to lead the individual directly to employment in a specific career, or to transfer to an upper-level baccalaureate program. This specifically

refers to the associate of arts, the associate of science, the associate of applied arts, the associate of applied science, and the associate of occupational studies degrees.

(3) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(4) Certificate of Authority--The document provided to a proprietary institution to certify that it has met the standards set forth in the rules of the Board and that, pursuant to the Texas Education Code, Chapter 132 and Chapter 61, Subchapter G, it is authorized to conduct courses and grant the degrees specified on the certificate.

(5) Change of ownership or control--Any change in ownership or control of a proprietary institution or an agreement to transfer control of such institution. The ownership or control of a proprietary institution is considered to have changed:

(A) In the case of ownership by an individual, when more than 50 percent of the institution has been sold or transferred;

(B) In the case of ownership by a partnership or a corporation, when more than 50 percent of the institution or of the owning partnership or corporation has been sold or transferred;

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

(D) A change of ownership or control does not include a transfer which occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse or child; spouse's parent or sibling; or sibling's or child's spouse.

(6) Cited--Any reference to an institution in a negative finding or action by an accreditor.

(7) Classification of Instructional Programs (CIP) Code--The 4- or 6-digit code assigned to an approved associate degree program in accordance with the CIP manual published by the U. S. Department of Education, National Center for Education Statistics. CIP codes define the authorized teaching field of the specified degree program, based upon the occupation(s) for which the program is designed to prepare its graduates.

(8) Commissioner or Commissioner of Higher Education--The chief executive officer of the Texas Higher Education Coordinating Board.

(9) Concurrent instruction--Students enrolled in different classes, courses, and/or subjects being taught, monitored, or supervised simultaneously by a single faculty member.

(10) Contract instruction--Specifically targeted instruction designed by a proprietary institution and a contracting entity.

(11) Degree--Any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's, master's, doctor's and their equivalents, which signify, purport to signify, or are generally taken to signify satisfactory completion of the requirements of all or part of a program of study which is generally regarded and accepted as an academic/occupational degree-level program among Texas postsecondary institutions.

(12) Exempt institution--A degree-granting institution exempt from the Texas Education Code, Chapter 132.

(13) Guidelines for Instructional Programs in Workforce Education--Board-approved publication of policies and guidelines for

the effective design, development, operation, and evaluation of workforce education programs, in two-year associate degree-granting institutions, including the elements of applied associate degree programs in proprietary institutions.

(14) Institution--A proprietary institution.

(15) Owner--The proprietor of a proprietary institution including an individual; a partnership including all full, silent, and limited partners; a corporation or corporations including directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares.

(16) Private postsecondary institution--An institution of higher education that:

(A) Is not a public junior college, public senior college, or university, medical or dental unit or other agency as defined in the Texas Education Code, §61.003;

(B) Is incorporated under the laws of this state, or maintains a place of business in this state, or has a representative present in this state, or solicits business in this state; and

(C) Furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or provides or offers to provide credits alleged to be applicable to a degree.

(17) Program approval--The process whereby a proprietary institution requests approval from the Board to implement a technical or vocational program of study leading to an applied associate degree.

(18) Program or program of study--Any course or grouping of courses which entitles a student to an applied associate degree or to credits which are applicable to an applied associate degree.

(19) Proprietary institution--Any business enterprise operated for a profit, or on a nonprofit basis, that maintains a place of business in the State of Texas or solicits business within the State of Texas, and that is not specifically exempted by this chapter, and:

(A) That offers or maintains a course or courses of instruction or study; or

(B) At which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

(20) Prospective student--An individual who expresses interest in a program of study and who is provided with written information about the institution or any of the institutions' programs.

(21) Target market area--The local, regional, statewide, and/or national area from which the proprietary institution's students are drawn and in which employment opportunities have been identified for graduates of that institution's associate degree programs.

(22) Teach-out agreement--A formal arrangement between a closed proprietary institution and another institution authorized by the Board to grant the associate degree, which provides for student transfer, completion of degree requirements, and awarding degrees to students transferred from the closed proprietary institution.

(23) Teach-out institution--An institution authorized by the Board to grant the associate degree and has formally accepted the transfer of students from a closed proprietary institution.

(24) Texas Academic Skills Program (TASP) Test--The test required under the Texas Education Code, §51.306, that is uniformly administered statewide on days prescribed by the Board and is scored by the testing contractor. The test measures college readiness in reading, writing, and mathematics and includes a written essay and is administered under secure conditions and for which each student is provided diagnostic information regarding test performance.

This 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 July 21, 2000.

TRD-200005061

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



19 TAC §§12.21-12.24

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

The Texas Higher Education Coordinating Board proposes the repeal of §§12.21 - 12.24 concerning Proprietary Schools (Purpose and Authority). Specifically, the repeal of the rules eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules is proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Purpose and Authority).

The proposed repeal of the rules affect Texas Education Code, Chapter 132, §132.063 and Chapter 61, Subchapter G.

§12.21. *Purpose.*

§12.22. *Authority.*

§12.23. *Degree Titles Authorized.*

§12.24. *Definitions.*

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

Filed with the Office of the Secretary of State, on July 21, 2000.

TRD-200005057

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



SUBCHAPTER B. GENERAL PROVISIONS

19 TAC §§12.21 - 12.39

The Texas Higher Education Coordinating Board proposes new §§12.21 - 12.39 concerning Proprietary Schools (General Provisions). Specifically, the new sections eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (General Provisions).

The proposed new sections affect Texas Education Code, Chapter 132, §132.063 and Chapter 61, Subchapter G.

§12.21. *Degree Titles Authorized.*

(a) Associate of Applied Science (AAS), Associate of Applied Arts (AAA), and Associate of Occupational Studies (AOS) degrees shall be the only associate degrees authorized under this chapter.

(b) A private postsecondary institution seeking authority to offer a baccalaureate or higher degree shall seek approval from the Board and is subject to the provisions outlined under Chapter 5, Subchapter K, of this title (relating to Private and Out-of- State Public Degree-Granting Institutions Operating in Texas).

§12.22. *Fees and Expenses.*

(a) The Board is authorized to establish and collect fees from institutions to offset the costs of associate degree program coordination and administration for proprietary institutions. The Commissioner is authorized by the Board to set these fees in an amount not to exceed the actual cost incurred for the service or services provided by the staff. The current fee schedule and the nature of the fees are outlined in the Guidelines for Instructional Programs in Workforce Education.

(b) Travel expenses for Board staff to conduct pre-application site visits and/or follow-up visits to verify compliance with Board standards and policies in applicant institutions shall be borne by the institution.

(c) Travel expenses for all on-site review team members, except Board staff, shall be borne by the institution.

(d) In addition to payment of travel expenses, fees shall be assessed and collected for:

- (1) an Application for New Workforce Education Program;
- (2) a Program Revision; and
- (3) annual administration and oversight.

§12.23. *Application for a Certificate of Authority.*

(a) Prior to submission of an initial request for approval to offer an associate degree program, a proprietary institution shall submit to the Board an Application for a Certificate of Authority.

(b) A proprietary institution may submit an Application for a Certificate of Authority to the Board if it:

- (1) has been in operation enrolling students and conducting classes in Texas and has complied with state law as a non degree-granting institution for a minimum of two years; or
- (2) has been legally operating as a degree-granting institution in another state for a minimum of four years and can verify compliance with all applicable rules in that state.

(c) The Application for a Certificate of Authority shall contain the following:

- (1) a description of the purpose of the institution;
- (2) names of sponsor or owners of the institution;
- (3) regulations, rules, constitutions, bylaws, or other regulations established for the governance and operation of the institution;
- (4) the names and addresses of the chief administrative officer, and the principal administrators and each member of the board of trustees or other governing boards;
- (5) a full description of the admission requirements; and
- (6) a description of the facilities and equipment utilized by the institution.

§12.24. *Standards for Associate Degree-Granting Proprietary Institutions.*

The decision to grant a Certificate of Authority to a proprietary institution shall be based upon its compliance with the following 16 standards.

(1) Qualifications of Institutional Officers. The character, education, and experience in higher education of governing board members, administrators, supervisors, counselors, agents, and other institutional officers shall be such as may reasonably ensure that students will receive education consistent with the objectives of the course or program of study. All administrators of an institution shall meet the qualifications outlined in the Guidelines for Instructional Programs in Workforce Education.

(2) Instructional Assessment. Provisions shall be made for the continual assessment of the program of study, including the evaluation and improvement of instruction.

(3) Curriculum. The quality, content, and sequence of each course, curriculum, or program of instruction, training, or study shall be appropriate to the purpose of the institution and shall be such that the institution may reasonably and adequately achieve the stated objectives of the course or program. Substantially all of the courses in the program of study shall be offered in organized classes by the institution. All curricula shall meet the standards and criteria outlined in the Guidelines for Instructional Programs in Workforce Education.

(4) Facilities and Equipment. The institution shall have adequate space, equipment, and instructional materials to provide good quality education and training. All facilities and equipment shall meet the standards outlined in the Guidelines for Instructional Programs in Workforce Education.

(5) Financial Resources and Stability. The institution shall have the adequate financial resources and financial stability to satisfy the financial regulations of the Texas Workforce Commission, the U. S. Department of Education if the institution participates in Title IV financial aid programs, and the institution's accrediting agency. The institution shall furthermore have sufficient financial reserves so that it would be able to teach-out currently enrolled students if it were unable to admit any new students.

(6) Financial Records. Financial records and reports of the institution shall be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports shall be in accordance with generally accepted accounting practices.

(7) Administrative Resources. The director of a proprietary institution having a Certificate of Authority shall have daily access to electronic communication, including e-mail and a connection to the Internet/World Wide Web. All institutions must be able to receive time-sensitive information about Board rules and policies via electronic media.

(8) Faculty, Academic Freedom, and Faculty Security. All faculty shall meet the qualifications outlined in the Guidelines for Instructional Programs in Workforce Education. The institution shall adopt and distribute to all members of the faculty a statement assuring freedom in teaching, scholarly inquiry, and dissemination of knowledge. This requirement in no way limits an institution's legitimate evaluation of faculty member performance.

(A) All policies concerning promotion, non-renewal or termination of appointments, including for cause, shall be described in writing and furnished to all faculty members.

(B) The specific terms and conditions of employment of each faculty member shall be clearly described in writing and furnished to each faculty member.

(9) Academic Records. A system of record keeping shall be established and maintained in a manner consistent with accepted and professional practice in higher education. Records shall be securely maintained at all times. Contents of records shall, at minimum, include attendance and progress or grades. Two copies of the information necessary to generate student transcripts shall be maintained at separate locations. At least one copy shall be secured in a manner which is resistant to destruction by fire and natural disaster. In addition,

(A) transcripts shall be issued upon request of students or former students; and

(B) an institution may withhold a student transcript as allowed in the Texas Education Code, §132.062.

(10) Catalog. The information described by subparagraphs (A) - (Q) of this paragraph shall be provided to prospective students prior to enrollment. The institution shall provide students and other interested persons with a catalog or brochure. If any of the information is provided to students in the form of a supplement or addendum to a printed and bound catalog, the institution shall retain documentation on file to verify that every enrolled student received a copy of the addendum or supplement along with the catalog. The institution shall, on an annual basis, furnish the Board with a copy of its most current catalog and a current roster of all faculty members including names, addresses, teaching assignments, and highest degree earned. The institution shall provide students and other interested persons with a catalog or brochure containing, at minimum, the following information:

(A) the mission of the institution;

(B) a statement of admissions policies;

(C) information describing the purpose, length, and objectives of the program(s) offered by the institution;

(D) the schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study;

(E) cancellation and refund policies;

(F) a definition of the unit of credit as it applies at the institution;

(G) an explanation of satisfactory progress as it applies at the institution; an explanation of the grading or marking system;

(H) the institution's calendar including the beginning and ending dates for each instructional term, holidays, and registration dates;

(I) a listing of full-time faculty members showing highest earned degree and identifying the institution which awarded the degree;

(J) areas of faculty specialization;

(K) names and titles of administrators;

(L) a statement of legal control with the names of the trustees, directors, and officers of the corporation;

(M) a complete listing of all scholarships offered, if any;

(N) a statement describing the nature and extent of available student services;

(O) a statement of transfer credit policy;

(P) a statement of TASP requirements; and

(Q) any disclosures specified by the Board or defined in Board rules.

(11) Refund Policy. The institution shall adopt, publish, and adhere to a fair and equitable cancellation and refund policy.

(12) Program Award Credentials. Upon completion of an approved program of study, students shall be awarded appropriate credentials by the institution indicating that the program undertaken has been satisfactorily completed.

(13) Student Rights and Responsibilities. A handbook, catalog, or other publication listing the student's rights and responsibilities shall be published and supplied to the student upon enrollment in the institution. The institution shall establish a clear and fair policy regarding due process in disciplinary matters and shall inform each student of these policies in writing.

(14) Housing. Student housing owned, maintained, or approved by the institution, if any, shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(15) Legal Compliance. The institution shall be maintained and operated in compliance with all applicable rules and regulations of the Texas Workforce Commission.

(16) Library/Library Resource Center. The institution shall have a library or learning resource center available to all students. The library facilities, equipment, and personnel shall meet the requirements and qualifications outlined in the Guidelines for Instructional Programs in Workforce Education.

§12.25. Commissioner Action on an Application for a Certificate of Authority.

(a) The Commissioner or his/her designee shall approve or disapprove the Application for a Certificate of Authority. Approval of the Application grants the proprietary institution the authority to grant associate degrees. However, separate program approval shall be required for all associate degree programs in accordance with this chapter.

(b) Authority for each specified associate degree program granted under the Certificate of Authority continues in effect until withdrawn by the Commissioner for the institution's failure to comply with the rules and regulations of the Board or the institution's license to operate is revoked by the Texas Workforce Commission. The Certificate remains the property of the Board, and must be returned in the event of withdrawal of authorization or voluntary termination of all associate degree programs by the institution or closure of the institution.

§12.26. Change of Ownership or Control.

(a) In the event of a change in ownership or control of a proprietary institution, the Certificate of Authority is automatically withdrawn.

(b) Authorization to retain the Certificate of Authority during the term of a change of ownership or control may be granted by the Commissioner provided that Board staff are notified of the impending transfer and that the following conditions are met:

(1) presentation of acceptable evidence that the new owner is complying with all Texas Workforce Commission requirements regarding the purchase or transfer of ownership of a proprietary institution;

(2) submission of an acceptable written statement of assurance that the new owner understands and shall fully comply with all applicable Board rules, regulations, and policies; and

(3) submission of satisfactory evidence of financial ability to adequately support and conduct all approved programs. Documentation must include but may not be limited to independently audited financial statements and auditors reports;

(c) If the conditions outlined under subsection (b) of this section are not met prior to completion of transfer of ownership or control and the institution loses its Certificate of Authority, the new owner(s) shall submit a new Application for a Certificate of Authority as outlined under §12.23 of this title (relating to Application for a Certificate of Authority).

(d) Any modification of an approved associate degree program which results from a change of ownership or control constitutes a program revision. Requests for approval of program revisions shall conform to the procedures and requirements contained in the Guidelines for Instructional Programs in Workforce Education.

(e) If the ownership or control of a proprietary institution is transferred within, among, or between different subsidiaries, branches, divisions, or other components of a corporation and if said transfer in no way diminishes the proprietary institution's administrative capability or educational program quality, the Commissioner may permit the school to retain its Certificate of Authority during the transfer period. In such cases, the proprietary institution shall fully comply with all provisions outlined in subsection (b) of this section.

§12.27. Closure of a Proprietary Institution.

(a) The governing board, owner, or chief executive officer of a proprietary institution which plans to cease operation shall provide the Board with written notification of intent to close at least 90 days prior to the planned closing date.

(b) If a proprietary institution closes or intends to close before all currently enrolled students have completed all requirements for graduation, the institution shall assure the continuity of students' education by entering into a teach-out agreement with another proprietary institution authorized by the Board holding a Certificate of Authority or with a public community or technical college. The agreement shall be in writing and shall contain provisions for student transfer and specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

(c) The Certificate of Authority for a proprietary institution is automatically withdrawn when the institution closes.

§12.28. Institutional Evaluation.

(a) The institution shall establish adequate procedures for planning and evaluation, define in measurable terms its expected educational results, and describe how those results will be achieved.

(b) The evaluation criteria shall include the following: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance each program of study, facilities and equipment, instructional practices, student services, public and private linkages, and qualifications of faculty and administrative personnel.

§12.29. Accreditation.

(a) Proprietary institutions having a Certificate of Authority and authorized to grant an associate degree must make available, upon request by the Board, all accrediting agency reports and any findings and institutional responses to such reports and findings.

(b) If cited by an accreditor, a proprietary institution authorized to grant the associate degree shall, within 30 days of receipt of the accrediting agency's final report, provide the Board with a copy of the citation, the accreditor's final report, and a complete report to all subsequent actions by both the accreditor and the institution.

(c) A proprietary institution shall operate all associate degree programs in compliance with the standards of its institutional and/or

program-level accreditation or with membership in a trade or professional association.

§12.30. Texas Academic Skills Program (TASP).

Any individual who enrolls in an associate degree program at a proprietary institution on or after September 1, 1997, shall pass all sections of the Texas Academic Skills Program (TASP) Test at the level established by the Board before the degree may be awarded.

§12.31. Transfer of Credit.

A proprietary institution holding a Certificate of Authority to grant the associate degree shall publish in a prominent place in the institution's catalog complete and clearly stated information about the transferability of credit to other postsecondary institutions including community and technical colleges and four-year institutions.

§12.32. Graduation and Job Placement Rates.

A proprietary institution authorized to grant the associate degree shall provide to each prospective student, newly-enrolled student, and returning student, complete, clearly presented information indicating the institution's current graduation rate by program and job placement rate by program.

§12.33. The Associate of Occupational Studies (AOS) Degree.

Granting of the AOS degree shall only occur according to the following terms:

(1) The policy regarding all AOS degrees as adopted by the Board on April 29, 1993, and policies outlined under this section shall guide all proceedings of the Board, staff, and affected institutions.

(2) The State of Texas has four proprietary schools awarding the AOS degree: MTI College of Business and Technology (known as Microcomputer Technology Institute when the policy was adopted), Universal Technical Institute, Southwest School of Electronics, and Western Technical Institute. The AOS degree shall be awarded in only the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of the four schools may continue to award the AOS degree for those fields listed above and shall be restricted to those fields.

(3) No new AOS degrees shall be offered by any proprietary institution.

(4) Subspecialties within the authorized fields outlined under paragraph (2) of this subsection at the six-digit CIP code level, and under the present degree titles, may be offered and advertised upon approval as a program revision by Board staff. Specialties designed to prepare students for careers in products, services, or technologies not authorized by the Board as of April 29, 1993, shall not be accepted as permissible program revisions and shall not be offered under existing AOS degree umbrellas. Any such program of study shall be submitted to the Board as a new program request.

(5) A proprietary institution authorized to grant the AOS degree shall not represent such degree by using the terms "associate" or "associates" without including the words "occupational studies." An institution authorized to grant the AOS degree shall not represent such degree as being the equivalent of the AAS or AAA degrees.

§12.34. Concurrent Instruction.

(a) Concurrent instruction of students enrolled in an associate degree program or in any component of a degree program is prohibited.

(b) The following activities do not constitute concurrent instruction:

(1) voluntary participation in laboratory and/or skill-building activities outside of required lecture and laboratory class sessions;

(2) voluntary participation in study and/or review sessions outside of required lecture and laboratory class sessions;

(3) sitting for proctored examinations;

(4) field trips; or

(5) extracurricular activities.

§12.35. Credit for Prior Learning.

(a) If a proprietary institution awards credit for prior learning obtained outside a formal collegiate setting, the institution shall establish and adhere to a systematic method for evaluating that prior learning, equating it with course content appropriate to the institution's authorized degree program(s).

(b) The method of evaluating prior learning shall be subject to ongoing review and evaluation by the institution's teaching faculty. In no instance shall course credit be awarded solely on the basis of life experience or years of service in a position or job. Recognized evaluative examinations such as the advanced placement program or the college level examination program may be used to evaluate prior learning.

§12.36. Complaints.

(a) The Board may investigate a written complaint about a proprietary institution.

(b) If the allegations in the complaint, if found to be true, do not appear to violate Board rules, standards, and/or guidelines, the Board shall, within 10 days of receipt of the complaint:

(1) notify the institution and the complainant in writing that the allegations, if true, do not appear to violate Board rules, standards, and/or guidelines and that the matter is concluded with the Board; or

(2) refer the complainant to any other agency or organization that may assist in resolving the complaint and provide to that agency or organization any relevant information in the possession of the Board and notify the institution of the referral and that the matter is concluded with the Board.

(c) If the allegations in the complaint, if found to be true, constitute a violation of Board rules, standards, and/or guidelines, the Board shall, within 10 days of receipt of the complaint:

(1) notify the institution and the complainant in writing that a complaint was received and that, if found to be true, would constitute a violation of Board rules, standards, and/or guidelines;

(2) advise the institution and the complainant of the particular rules, standards, and/or guidelines that appear to have been violated;

(3) provide the proprietary schools section at the Texas Workforce Commission with a copy of the complaint and copies of all relevant correspondence; and/or

(4) refer the complainant to any other agency or organization.

(d) Upon receipt of written notification from the Board under subsection (c) of this section, a proprietary institution shall, within 15 days, provide the Board with a written response and any necessary supporting documentation. The response shall bear the original signature of the institution's chief executive officer or his/her designee.

(e) The Board shall examine and evaluate the response to a complaint under subsection (c) of this section and determine whether or not further investigation is warranted. If, in the opinion of the Board, further investigation is warranted, the Board may conduct interviews of

students, faculty, and/or any other persons who may possess relevant information, examine institutional documents, files, and/or other records, examine course materials, observe institutional activities, inspect facilities, and/or review any other institutional activity that is relevant to the allegations in the complaint.

(f) If, at the conclusion of any investigation, the Board determines that Board rules, standards, and/or guidelines have been violated, the complainant and the institution shall be notified in writing of the specific violations and any corrective action, if warranted, required by the Assistant Commissioner for Community and Technical Colleges.

(g) If, at the conclusion of any investigation, the Board determines that Board rules, standards, and/or guidelines have not been violated, the Board shall notify the institution and the complainant in writing of its findings and that the matter is concluded with the Board.

§12.37. Legal Proceedings.

(a) A proprietary institution with a Certificate of Authority must notify the Board if it becomes a defendant in any administrative, civil, or criminal legal proceeding.

(b) Notification shall be in writing and shall be delivered to the Board not less than seven days after an agent of the institution is served with process.

(c) The institution shall furnish the Board with copies of the original petition and response as soon as they become available.

(d) At the conclusion of proceedings, the institution shall, within 15 days, report the outcome to the Board in writing. The institution may be required to furnish copies of all pleadings in the case.

§12.38. Exemption from the Texas Education Code, Chapter 132.

(a) A proprietary institution that requests and is granted an exemption by the Texas Workforce Commission from the Texas Education Code, Chapter 132, shall not operate under the provisions of this chapter. Upon becoming exempt, a degree-granting proprietary institution shall immediately:

(1) apply for a certificate of authority to operate as a private postsecondary educational institution according to the provisions of Chapter 5, Subchapter K, of this title (relating to Private Degree-Granting Institutions Operating in Texas); or

(2) cease granting degrees and relinquish the Certificate of Authority to the Board.

(b) If an exempt institution relinquishes its exempt status and becomes licensed by the State of Texas to operate as a proprietary institution, the institution shall apply for a Certificate of Authority as outlined under §12.23 of this title (relating to Application for a Certificate of Authority).

§12.39. Withdrawal of a Certificate of Authority.

(a) A Certificate of Authority may be withdrawn by the Commissioner if an agent of a proprietary institution with an approved associate degree program:

(1) knowingly violates one or more of the Board rules, regulations, or policies;

(2) after being notified of the violation, unknowingly violates one or more of the Board rules, regulations, or policies, and fails to take satisfactory corrective action;

(3) fails to conduct all academic, technical, and administrative matters pertaining to an approved associate degree program in a manner consistent with Board rules, regulations, or policies;

(4) is found to have engaged in any deceptive practice, misrepresentation of fact, and/or fraud relating to the operation of the proprietary institution or in dealing with students or the public;

(5) is found to have engaged in any activity, conduct, and/or behavior relating to the operation of the proprietary institution or in dealing with students which is found by a court of law to be illegal and/or improper;

(6) intentionally inhibits, obstructs, or interferes with, either directly or indirectly, the official duties and/or activities of a member of the Board staff and/or a person who has been appointed to represent the Board for the purpose of conducting an on-site inspection of a proprietary institution and/or inquiring into a complaint against that institution; or

(7) intentionally harasses, causes to be harassed, or permits harassment of a member of the Board staff and/or a person who has been appointed to represent the Board while such individual(s) is/are on any property under the control of the proprietary institution and is/are engaged in official duties.

(b) Upon receipt of satisfactory evidence, the Commissioner may withdraw a Certificate of Authority for a cause other than those outlined under subsection (a) of this section.

(c) A Certificate of Authority is automatically withdrawn if after receiving 60 days advance notification of the annual fee amount and the date upon which the fee is due, a proprietary institution fails to remit the annual fee by the due date.

(d) The Commissioner shall provide notice to the institution of any adverse decision under this subchapter. The decision of the Commissioner shall be final unless the affected institution requests reconsideration of the decision within 30 days of receipt of notice from the Commissioner. The decision of the Commissioner upon reconsideration shall be the final decision of the Board.

(e) An institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B of this title (relating to Hearings and Appeals).

This 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 July 21, 2000.

TRD-200005062

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



SUBCHAPTER B. BASIC STANDARDS

19 TAC §§12.41-12.57

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

The Texas Higher Education Coordinating Board proposes the repeal of §§12.41-12.57 concerning Proprietary Schools (Basic

Standards). Specifically, the repeal of the rules eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules is proposed under Texas Education Code, Chapter 132, Section 132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Basic Standards).

The proposed repeal of the rules affect Texas Education Code, Chapter 132, Section 132.063 and Chapter 61, Subchapter G.

§12.41. *Minimum Standards for Applied Associate Degrees.*

§12.42. *Demonstration of Program Need.*

§12.43. *Administrator Qualifications.*

§12.44. *Faculty Qualifications.*

§12.45. *Full-Time Faculty.*

§12.46. *Curriculum Requirements.*

§12.47. *General Education Requirements.*

§12.48. *Length of Programs.*

§12.49. *Facilities and Equipment.*

§12.50. *Library/Learning Resources.*

§12.51. *Student Services.*

§12.52. *Texas Academic Skills Program (TASP).*

§12.53. *Transfer of Credit.*

§12.54. *Graduation and Job Placement Rates.*

§12.55. *Representation of the A.O.S. Degree.*

§12.56. *Concurrent Instruction.*

§12.57. *Credit for Prior Learning.*

This 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 July 21, 2000.

TRD-200005058

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162

SUBCHAPTER C. OPERATIONAL PROVISIONS

19 TAC §§12.71 - 12.85

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

The Texas Higher Education Coordinating Board proposes the repeal of §§12.71 - 12.85 concerning Proprietary Schools (Operational Provisions). Specifically, the repeal of the rules eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules is proposed under Texas Education Code, Chapter 132, Section 132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Operational Provisions).

The proposed repeal of the rules affect Texas Education Code, Chapter 132, Section 132.063 and Chapter 61, Subchapter G.

§12.71. *Multiple Site Program Approval.*

§12.72. *Program, Revision, Deactivation, and Closure.*

§12.73. *Contract Instruction.*

§12.74. *Institutional Evaluation.*

§12.75. *Evaluation of Program Effectiveness.*

§12.76. *Appeals Procedure.*

§12.77. *Accreditor Reports.*

§12.78. *School Closure.*

§12.79. *Change of Ownership.*

§12.80. *Exemption from Texas Education Code, Chapter 132.*

§12.81. *Withdrawal of Authorization to Grant Degrees by Board Action.*

§12.82. *Acknowledgment of Accreditation*

§12.83. *Assessment of Annual Fees.*

§12.84. *Complaints.*

§12.85. *Legal Proceedings.*

This 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 July 21, 2000.

TRD-200005059

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



SUBCHAPTER C. ASSOCIATE DEGREE PROGRAMS

19 TAC §§12.41 - 12.46

The Texas Higher Education Coordinating Board proposes new §§12.41- 12.46 concerning Proprietary Schools (Associate Degree Programs). Specifically, the new sections eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The new rules are proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Associate Degree Programs).

The proposed new sections affect Texas Education Code, Chapter 132, §132.063 and Chapter 61, Subchapter G.

§12.41. New Program Application.

In accordance with the Guidelines for Instructional Programs in Workforce Education, each proprietary institution wishing to offer a new associate degree program shall complete the following items and submit them to the Board's Community and Technical Colleges Division:

(1) Letter of Intent. The Letter of Intent shall be submitted no less than 30, and not more than 180, days prior to the submission of the Application for Approval of a New Workforce Program.

(2) Application for Approval of a New Workforce Program (for Proprietary Institutions). The Application shall be approved by the chief executive officer and, if applicable, the governing board of the proprietary institution. The Application shall be received by the Board staff no less than three calendar months prior to the intended implementation date or approval deadline for external accreditation, whichever occurs first.

(3) Statement of Assurances (for Proprietary Institutions). The Statement shall be approved by the chief executive officer and, if applicable, the governing board of the proprietary institution, and submitted with the Application for Approval of a New Workforce Program. The following criteria are included in the Statement:

(A) The institution has documented need for the proposed program based on national, regional, and/or local economic forecasts applicable to its target market area.

(B) The institution has identified sufficient employment opportunities within its target market area for the projected number of graduates, taking into consideration the numbers of graduates of similar programs within its target market area.

(C) Instruction in basic workforce skills has been integrated into the curriculum for the proposed program.

(D) Each program award offers at least one of the following: a capstone, an external learning experience, or eligibility to sit for a certification or licensure examination.

(E) All course and program prerequisites are identified on the proposed curriculum outline and included in the credit/contact hour totals for the program.

(F) An enrollment management plan for the program is in place.

(G) If applicable, the program satisfies all requirements of relevant licensing authorities.

(H) An advisory committee composed of representatives from business and industry has been directly involved in the creation of the proposed program.

(I) Adequate funding is available to cover all program costs for the first three years.

(J) The institution is in good standing with its accreditor and the Texas Workforce Commission.

(K) The institution is not currently a defendant in a legal proceeding or has notified the Board according to provisions in this chapter.

(L) Written notice that the proposed program has been sent to the appropriate Higher Education Regional Council(s).

(4) Fee. The fee as outlined in the Guidelines for Instructional Programs for Workforce Education for an Application for a New Workforce Education Program must be submitted with the Application.

§12.42. New Program Approval.

(a) The Board staff shall review the Application and accompanying documentation for satisfactory fulfillment of the new program requirements and procedures as outlined in the Guidelines for Instructional Programs in Workforce Education. The staff shall confer with the proprietary institution when additional information or clarification is needed.

(b) The Assistant Commissioner for the Community and Technical Colleges Division shall recommend associate degree programs to the Commissioner for approval or disapproval or referral to the Board.

(c) The Board delegates to the Commissioner final approval authority for all associate degree programs that meet Board policies for approval as outlined in the Guidelines for Instructional Programs in Workforce Education.

(d) The Commissioner shall forward a program to the Board for consideration at an appropriate quarterly meeting if either of the following conditions is met:

(1) proposed program is the subject of an unresolved grievance or dispute between institutions.

(2) The Commissioner has disapproved the proposed program and the institution has requested a Board review at the next quarterly Board meeting.

§12.43. Program Revision and Closure.

(a) Each proprietary institution requesting a program revision must submit a completed Application for Program Revision and comply with the Guidelines for Instructional Programs in Workforce Education.

(b) A proprietary institution may close a program voluntarily in accordance with evaluation procedures provided in the Guidelines for Instructional Programs in Workforce Education.

(c) Approval shall be automatically withdrawn by the Commissioner for any associate degree program not implemented in accordance with Board rules, regulations, or policies within 18 months of the date of approval.

§12.44. Contract Instruction.

Proprietary institutions may contract for specific instruction. All contract instruction shall have education as its primary purpose. In addition,

(1) courses offered under contractual agreements shall be consistent with the educational purpose, mission, and goals of the program and institution; and

(2) courses offered under a contractual agreement shall remain the responsibility of the contracting proprietary institution and shall be of the same quality as other approved courses.

§12.45. Evaluation of Program Effectiveness.

(a) Every program in which an associate degree is offered shall be evaluated periodically according to procedures established by the Board.

(b) The following evaluation elements shall be assessed in terms of both quantitative and qualitative factors: mission, labor market need, curriculum, enrollment, graduates, student placement, follow-up results, facilities and equipment, instructional practices, student services, public and private linkages, and qualifications of faculty and administrative personnel.

(c) Board staff shall use the results of the program evaluation to identify associate degree programs to be continued or recommended for closure.

(d) Institutional agents shall develop a plan to correct the deficiencies identified in the report of the on-site review team. Time limits for correcting deficiencies shall be determined by the Assistant Commissioner for Community and Technical Colleges. Board staff shall reevaluate the program at the end of the established time period. If the identified deficiencies have not been adequately and/or appropriately corrected as determined by the Board staff, action may be taken

to withdraw the institution's Certificate of Authority as outlined under §12.39 of this title (relating to Withdrawal of a Certificate of Authority).

§12.46. Appeals Procedure.

(a) Contested decisions regarding program approval or revision shall be reviewed with Board staff.

(b) In instances where agreement is not achieved, the institution may request a review by the Assistant Commissioner. The Assistant Commissioner shall notify the institution of his or her decision within 30 working days of receipt of the request for the review.

(c) Within 30 days of receipt of the decision of the Assistant Commissioner, the institution may appeal that decision to the Commissioner. The decision of the Commissioner shall be the final decision of the Board.

(d) An institution affected by any final decision under this subchapter may appeal that decision as provided in Chapter 1, Subchapter B, of this title (relating to Hearings and Appeals).

This 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 July 21, 2000.

TRD-200005063

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



SUBCHAPTER D. APPROVAL OF APPLIED ASSOCIATE DEGREE PROGRAMS

19 TAC §§12.91 - 12.93

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

The Texas Higher Education Coordinating Board proposes the repeal of §§12.91 - 12.93 concerning Proprietary Schools (Approval of Applied Associate Degree Programs). Specifically, the repeal of the rules eliminate unnecessary definitions; eliminate duplication between the rules and the Guidelines for Instructional Programs in Workforce Education given the institutions for implementation of the rules; clarify the provisions governing institutional eligibility as different from approval and revision of associate degree programs; include the complaint procedure; align appeal procedures for any decision made by Board staff, the Commissioner, or the Board itself with Chapter 1 of Board rules.

Glenda Barron, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for the first five years the rules are in effect, the public benefit will be more precise and clearer rules for proprietary institutions resulting in more efficient

and effective oversight of proprietary institutions. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rules as proposed.

Comments on the proposed repeal of the rules may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas 78711.

The repeal of the rules is proposed under Texas Education Code, Chapter 132, §132.063, and Chapter 61, Subchapter G, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Proprietary Schools (Approval of Applied Associate Degree Programs).

The proposed repeal of the rules affect Texas Education Code, Chapter 132, §132.063 and Chapter 61, Subchapter G.

§12.91. *Purpose.*

§12.92. *New Program Approval.*

§12.93. *Action and Order of the Board.*

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

Filed with the Office of the Secretary of State, on July 21, 2000.

TRD-200005060

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER AA. RECIPROCAL EDUCATIONAL EXCHANGE PROGRAM

19 TAC §21.906

The Texas Higher Education Coordinating Board proposes amendments to §21.906 concerning Reciprocal Educational Exchange Program. Specifically, these amendments will accommodate the situation of a nonresident student attending a Texas institution (or the foreign institution with whom the exchange is made) participating in an exchange. In such cases, the student participating in the exchange would be paying the nonresident tuition rate.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Cobb has also determined that for the first five years the rule is in effect, the public benefit will be the increased number of students participating in enriching study-abroad programs. There will be no effect on state and local government or small businesses. There is no anticipated economic cost to the persons who are required to comply with the rule as proposed.

Comments on the proposed amendments to the rule may be submitted to Dr. Don W. Brown, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P.O. Box 12788, Capitol Station, Austin, Texas, 78711.

The amendments to the rule is proposed under Texas Education Code, §54.060(c), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Reciprocal Educational Exchange Program.

The proposed amendments to the rules affect Texas Education Code, §54.060.

§21.906. *Tuition Rate to be Paid.*

(a) If a reciprocal exchange program requires a tuition payment, the tuition rate to be paid by participants will be either the relevant [resident] rate normally paid at Texas institutions or the rate normally charged nationals or residents of other nations by their institutions. Tuition [Resident] rates paid by participants will be defined by the agreements entered into by the participating institutions. The method of charging and collecting tuition is to be negotiated between the two institutions involved in the exchange. The tuition rate and payment may be any of the following methods:

(1) pay the relevant tuition [resident] rate of receiving institution, paid to the receiving institution;

(2) pay the relevant tuition [resident] rate of the originating institution, paid to the receiving institution; or

(3) pay the relevant tuition [resident] rate of the originating institution, paid at the originating institution.

(b) A participant no longer participating in the exchange program, but continuing to enroll in the receiving institution will be expected to pay the rate charged other nonresident students beginning with the first enrollment period after the participant discontinues his/her participation in the exchange 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.

Filed with the Office of the Secretary of State, on July 21, 2000.

TRD-200005064

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2000

For further information, please call: (512) 427-6162



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 527. QUALITY REVIEW

22 TAC §527.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.4 concerning Quality Review Program.

The amendment to §527.4 will clarify that the Board requires a quality review every three years or sooner if the quality review organization so requires, adopts "system reviews and engagement reviews" as promulgated by the American Institute of Certified Public Accountants (AICPA) and does not recognize "report reviews" as promulgated by the AICPA.

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

A. The additional estimated cost to the state expected as a result of enforcing or administering the rule will be zero because the amendment does not impose an additional burden to anyone.

B. The estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule will be zero because the amendment does not impose an additional burden to anyone.

C. The estimated loss or increase in revenue to the state as a result of enforcing or administering the rule will be zero because the amendment does not impose an additional burden to anyone.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be that the rule will clarify that the Board requires a quality review every three years or sooner, that "system reviews and engagements reviews" will be adopted but "report reviews" will not be adopted.

The probable economic cost to persons required to comply with the rule will be zero because the amendment does not impose an additional burden to anyone.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the amendment does not impose an additional burden to anyone.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 25, 2000. Comments should be addressed to Amanda G. Birrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed rule will not have an adverse economic effect on small businesses because the amendment requires nothing of anyone or of any small businesses. The Board specifically invites comments from the public on the issues of whether or not the proposed rule will have an adverse economic effect on small business; if the rule is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the rule is to be adopted; and if the rule is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the rule under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

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

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

§527.4. *Quality Review Program*

The following operations of the program shall be conducted by the board. This section shall not require any firm to become a member of any sponsoring organization.

(1) (No change.)

(2) Operation.

(A) Each firm registered with the board shall enroll in the program of an approved sponsoring organization in accordance with paragraph (6) of this section within one year from its initial licensing date or the performance of services that require a review. The firm shall adopt the review due date assigned by the sponsoring organization, and must notify the board of the date within 30 days of its assignment. In addition, the firm shall schedule and begin an additional review within three years of the previous review's due date, or earlier as may be required by the sponsoring organization.

(B) (No change.)

(3) Standards [Minimum standards]. The board [hereby] adopts system reviews and engagement reviews described in "Standards for Performing and Reporting on Peer Reviews" promulgated by the American Institute of Certified Public Accountants, Inc., as its minimum standards for review of firms. The board does not recognize "report reviews" performed under the AICPA Standards.

(4)-(10) (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 July 21, 2000.

TRD-200005021

William Treacy

Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 3, 2000

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

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER V. PHARMACY BENEFITS

28 TAC §§21.3001, 21.3010, 21.3011, 21.3020 - 21.3023

The Texas Department of Insurance proposes new §§21.3001, 21.3010 - 21.3011, and 21.3020 - 21.3023, concerning pharmacy benefits. These new sections are necessary to implement the provisions of Article 21.52J and 21.53M, as added by Acts 1999, 76th Legislature, in Senate Bill (SB) 1030 and House Bill (HB) 2061, respectively. The proposed sections of this rule are necessary to allow certain prescription drugs to be available for off-label use for health benefit plan enrollees that suffer from chronic, disabling, or life-threatening illnesses; to permit group health benefit plan enrollees to continue to use prescribed formulary drugs until their group health benefit plan's renewal date, even if a prescribed drug has been removed from the formulary; and to permit a group health benefit plan enrollee to appeal, using the independent review process, if a physician prescribes a medically necessary nonformulary drug, and the group health benefit plan refuses to provide coverage for such drug.

Proposed §21.3001 sets forth the scope and purpose of this subchapter, and contains a severability clause. Proposed §21.3010

contains definitions relating to coverage of off-label drugs. Proposed §21.3011 requires health benefit plans to provide coverage for a drug prescribed for an off-label use to treat a covered chronic, disabling, or life-threatening illness or condition if the drug meets certain requirements. The proposed section also requires coverage for any services, and in some instances, supplies, that are medically necessary to administer such a drug. The section also sets forth when a health benefit plan may deny coverage for such drugs.

Proposed §21.3020 contains definitions relating to use of a prescription drug formulary by a group health benefit plan. Proposed §21.3021 requires group health benefit plans using one or more drug formularies to provide the disclosures required by Insurance Code Article 21.52J. This proposed section also sets forth the time limit by which an issuer of a group health benefit plan must respond to a written or oral request from any individual as to whether a specific prescription drug is on a formulary of the group health benefit plan. Proposed §21.3022 addresses continued coverage of a drug after it has been removed from a group health benefit plan's drug formulary, or if the plan uses a multi-tier formulary, when the drug has been removed from one formulary tier and placed on another formulary tier. The proposed section also addresses group health benefit plans that implement a multi-tier formulary after an enrollee becomes covered for prescription drug benefits. §21.3023 permits an enrollee of a group health benefit plan to use the appeal process provided by Insurance Code Article 21.58A, when the issuer of a group health benefit plan refuses to provide coverage for a prescription drug not included in a drug formulary.

The department will consider the adoption of amendments to §§21.3001, 21.3010 - 21.3011, and 21.3020 - 21.3023 in a public hearing under Docket Number 2454, scheduled for 10:00 a.m. on September 7, 2000, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. In addition, under Docket No. 2453, scheduled for the same date and time, the department will consider the proposal of amendments to §§21.3002 - 21.3005, which was published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6649).

Kim Stokes, Senior Associate Commissioner, Life, Health and Licensing, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Stokes has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be increased access to certain prescription drugs and drug uses by enrollees with chronic, disabling, or life-threatening illnesses or conditions; increased consumer protection to individuals needing certain information about prescription drug coverage by their group health benefit plans, including the use of drug formularies by those plans; and continued access to certain prescription drugs for enrollees of group health benefit plans until the group health benefit plan renewal date. The probable economic cost to persons required to comply with the sections for each year of the first five years the sections are in effect, are the result of the legislative enactment of Insurance Code Articles 21.52J and 21.53M, and are not the result of the adoption, enforcement, or administration of the proposed new sections. As such, there will also be no adverse

economic effect on small or micro businesses. Additionally, because the requirements of this rule are mandated by the underlying state statutes, and considering the statutes' purposes, it is neither legal nor feasible to waive or modify the requirements of these sections for small and micro businesses, as doing so would result in a disparate effect on enrollees and other persons affected by these proposed sections.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2000, to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Diane Moellenberg, Chief Director, Regulatory Development, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed under the Insurance Code Articles 21.52J and 21.53M and §36.001. Insurance Code Articles 21.52J and 21.53M provide that the commissioner may adopt rules to implement these articles. Section 36.001 provides that the Commissioner of Insurance may adopt rules for the conduct and execution of the powers and duties of the department only as authorized by statute.

The following articles are affected by this proposal: Insurance Code Articles 21.52J and 21.53M.

§21.3001. Scope and Severability.

(a) Scope. This subchapter implements the provisions of Insurance Code Articles 21.07-6, Sec. 19A; 21.52J; 21.53L; and 21.53M as follows:

(1) Sections 21.3002 - 21.3005 of this subchapter implement the provisions of Insurance Code Articles 21.07-6, Sec. 19A, and 21.53L, and relate to pharmacy identification cards.

(2) Sections 21.3010 - 21.3011 of this subchapter implement the provisions of Insurance Code Article 21.53M, and relate to coverage of off-label drugs.

(3) Sections 21.3020 - 21.3023 of this subchapter implement the provisions of Insurance Code Article 21.52J, and relate to the use of a drug formulary by a group health benefit plan.

(b) Severability. If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the remaining provisions shall remain in full effect. If a court of competent jurisdiction holds that the application of any provision of this subchapter to particular persons, or in particular circumstances, is inconsistent with any statutes of this state, is unconstitutional, or for any other reason is invalid, the provision shall remain in full effect as to other persons or circumstances.

§21.3010. Definitions; Coverage of Off-Label Drugs.

The following words and terms, when used in §§21.3010 - 21.3011 of this subchapter (relating to off-label drugs) shall have the following meanings, unless the context clearly indicates otherwise:

(1) Chronic illness -- A disease, syndrome, or condition of expected long duration, showing little change or slow progression.

(2) Contraindication -- As defined in Insurance Code Article 21.53M.

(3) Disabling illness -- A disease, syndrome, or condition determined by an enrollee's health care practitioner to have caused or have the potential to cause:

(A) a physical or mental impairment that substantially limits, or may limit, one or more of the activities of daily living of the enrollee including, but not limited to, eating, bathing, dressing, grooming, routine hair and skin care, meal preparation, exercising, toileting, and transfer and ambulation;

(B) an impairment substantially limiting an enrollee's cognitive acuity;

(C) an impairment substantially limiting an enrollee's ability to work, home-make, or engage in leisure or educational activities; or

(D) a condition regarded as an impairment by an enrollee's licensed health care practitioner.

(4) Drug -- As defined in the Texas Pharmacy Act, Occupations Code §551.003.

(5) Enrollee -- A person covered by a health benefit plan.

(6) Health benefit plan -- As described in Insurance Code Article 21.53M. This term includes health benefit plans providing coverage for pharmacy benefits only.

(7) Health care practitioner -- An advanced practice nurse, doctor of medicine, doctor of dentistry, physician assistant, doctor of osteopathy, doctor of podiatry, or other licensed person with prescriptive authority.

(8) Impairment -- Any loss or abnormality of psychological, physiological, or anatomical structure or function.

(9) Indication -- As defined in Insurance Code Article 21.53M.

(10) Life-threatening illness -- A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(11) Off-label drug use -- The use of a drug that is approved by the Food and Drug Administration for the treatment of one medical condition, but is used to treat another medical condition, or at different dosage forms, dosage regimens, populations, or other parameters not mentioned in the approved labeling.

(12) Peer-reviewed medical literature -- A published scientific study in a journal or other publication in which original manuscripts are published only after they have been critically reviewed by unbiased independent experts in the same field, for scientific accuracy, validity, and reliability, and have been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

(13) Standard drug reference compendia --

(A) The American Hospital Formulary Service-Drug Information;

(B) The American Medical Association Drug Evaluation; or

(C) The United States Pharmacopoeia-Drug Information.

§21.3011. *Minimum Standards of Coverage for Off-Label Drug Use.*

(a) Health benefit plans that provide coverage for drugs shall provide coverage for any drug prescribed to treat an enrollee for a covered chronic, disabling, or life-threatening illness if the drug:

(1) has been approved by the Food and Drug Administration for at least one indication; and

(2) is recognized for treatment of the indication for which the drug is prescribed in:

(A) a standard drug reference compendium; or

(B) substantially accepted peer-reviewed medical literature.

(b) Coverage of a drug required under subsection (a) of this section:

(1) shall include services medically necessary to administer the drug, including any supply medically necessary to administer the drug, if the supply is a covered benefit under the health benefit plan;

(2) may be denied based on a finding that the use of the drug is not medically necessary to treat the enrollee's disease, syndrome, or condition, so long as the finding is not based on the fact that the drug is being prescribed for an off-label use;

(3) may not be denied solely on the basis that the drug does not appear on the formulary. If a health benefit plan refuses to provide an off-label drug that is not included in a drug formulary, and the enrollee's physician or provider has determined is medically necessary for an off-label use, the refusal constitutes an adverse determination for purposes of Insurance Code Article 21.58A, §2. An enrollee may appeal the adverse determination under §§6 and 6A of Article 21.58A.

(4) may be denied for a drug prescribed to treat any disease or condition that is excluded from coverage under the health benefit plan; or

(5) may be denied for a drug that the Food and Drug Administration has determined to be a contraindication for treatment of the current disease or condition.

§21.3020. *Definitions; Prescription Drug Formulary.*

The following words and terms, when used in §§21.3020-21.3023 of this subchapter (relating to prescription drug formulary benefits), shall have the following meanings, unless the context clearly indicates otherwise:

(1) Adverse determination -- A determination upon utilization review that the health care services furnished or proposed to be furnished to an enrollee are not medically necessary or not appropriate.

(2) Contracted benefit level -- The copayment amount or coinsurance percentage established at the beginning of the current plan year and set forth in the coverage documentation.

(3) Coverage documentation -- A policy, certificate of coverage, evidence of coverage, enrollee handbook, or a plan document distributed by an issuer, or its delegated entity, to an enrollee or to the master contract holder, for distribution to enrollees.

(4) Delegated entity -- An entity, which by itself or through one or more entities, including but not limited to third-party administrators and pharmacy benefit managers, as those terms are defined in Insurance Code Article 21.07-6, which provides reimbursement for covered services or undertakes to arrange for or provide benefits or services to an enrollee under a group health benefit plan, and which performs on behalf of the issuer of a group health benefit plan, any function regulated by §§21.3020 - 21.3023 of this subchapter.

(5) Drug formulary - A list of drugs for which a health benefit plan provides coverage, approves payment, or encourages or offers incentives for physicians or other health care providers to prescribe.

(6) Enrollee -- As defined in Insurance Code Article 21.52J.

(7) Group health benefit plan -- As described in Insurance Code Article 21.52J. This term includes group health benefit plans providing coverage for pharmacy benefits only.

(8) Issuer -- Those entities identified in Insurance Code Article 21.52J, Sec. 2(a)(1)-(8).

(9) Multi-tier formulary -- A drug formulary with benefit levels in addition to generic and brand name prescription drug benefit levels.

(10) Plain language -- As prescribed in §3.602 of this title (relating to Plain Language Requirements).

(11) Plan year -- A 365-day period that begins on the date the group health benefit plan's coverage commences, or a period of one full calendar year as defined in the group health benefit plan's coverage documentation.

(12) Prescription drug -- As defined in Insurance Code Article 21.52J.

(13) Renewal date -- For each group health benefit plan, the earlier of the date specified in the coverage documentation for renewal or the policy anniversary date. In determining the renewal date for association or multiple employer trust group health benefit plans, issuers may use the date specified for renewal or the policy anniversary date of either the master contract, plan document, or certificate of coverage of each group in the association or trust. Issuers shall use the same method of determining renewal dates for all group health benefit plans.

§21.3021. Required Disclosure of Drug Formulary.

(a) An issuer of a group health benefit plan that covers prescription drugs and that uses one or more drug formularies, or its delegated entity, shall provide, in plain language, the disclosures required by Insurance Code Article 21.52J, §3.

(b) The plain language notice provided to the enrollee shall include the address and telephone number where the enrollee may contact the issuer of the group health benefit plan, or its delegated entity, to determine if a specific prescription drug is on the drug formulary.

(c) An issuer of a group health benefit plan, or its delegated entity, shall disclose to any individual upon written or oral request, not later than the third business day after the request is initially received, whether a specific prescription drug is on the drug formulary of the group health benefit plan.

§21.3022. Continuation of Benefits.

(a) A group health benefit plan that offers prescription drug benefits shall make a prescription drug that was approved or covered for a medical condition or mental illness available to each enrollee at the contracted benefit level until the group health benefit plan renewal date, regardless of whether the prescribed drug has been removed from the group health benefit plan's drug formulary.

(b) Continuation of benefits for those group health benefit plans that utilize a multi-tier formulary, regardless of whether the prescription drug has been moved to another formulary tier, shall be the same as that specified in subsection (a) of this section.

(c) An issuer of a group health benefit plan, or its delegated entity, that provides coverage for prescription drugs, and did not utilize a multi-tier formulary at the time an enrollee became covered for prescription drug benefits, but which later adopts a multi-tier formulary, shall continue to make a prescription drug that was approved or covered for a medical condition or a mental illness, available to each enrollee

at the same contracted benefit level before the multi-tier formulary was adopted, until the group health benefit plan's renewal date.

§21.3023. Nonformulary Prescription Drugs; Adverse Determination.

If the issuer of a group health benefit plan, its delegated entity, or their employees or agents, refuses to provide coverage for a prescription drug that is not included in a drug formulary, and the enrollee's physician or other health care provider with prescriptive authority has determined the prescription drug is medically necessary, the refusal to provide coverage for the prescription drug constitutes an adverse determination for the purpose of Insurance Code Article 21.58A, §2. An enrollee may appeal the adverse determination under Insurance Code Article 21.58A, §§6 and 6A, and the issuer of the group health benefit plan, and its employees or agents, shall review and resolve the appeal in accordance with those sections.

This 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 July 24, 2000.

TRD-200005076

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 463-6327

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE

SUBCHAPTER B. SPILL PREVENTION AND PREPAREDNESS

31 TAC §19.13, §19.14

The General Land Office ("GLO") proposes amendments to 31 TAC §19.13 relating to Applications for Small Commercial Facilities, Underground Storage Facilities and Small Facilities and §19.14 relating to Applications for Major Facilities. The amended sections concern facility response plans that must be prepared by small commercial, underground storage, small, and major facilities. New §19.13(c) specifies that small commercial, underground storage, and small facilities must comply with all federal regulations that apply to the storage, handling, and transfer of oil. Section 19.14 has been reformatted, with a new §19.14(b) added to require major facilities to comply with these federal regulations. The GLO believes compliance with federal regulations concerning the storage, handling, and transfer of oil helps prevent accidental discharges from covered facilities. Additionally, requiring compliance with federal regulations is consistent with the legislative intent of the Oil Spill Prevention and Response Act of 1991 ("OSPRA"), which is meant "to support and complement the Oil Pollution Act of 1990 (Pub. L. 101-380) and other federal law." (OSPRA §40.002(d)). Finally, the two new subsections will further the cooperative efforts of the GLO and the Coast Guard, which were signatories to a 1999 memorandum of agreement

that memorialized their commitment to work together to prevent and respond quickly and effectively to accidental discharges of oil into Texas coastal waters.

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the sections as proposed are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Pollock has determined that the proposed amendments do not contain any additional regulatory requirements, so there will be no additional economic costs to persons required to comply with the rule. There will be no effect on the public or small businesses.

In accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., the GLO has determined that this proposed rulemaking concerns an action subject to the Texas Coastal Management Program ("CMP"). Because the proposed rule governs aspects of the prevention of, response to, or remediation of a coastal oil spill, 31 TAC §505.11(b)(1) requires the rule to be consistent with the goals and policies of the CMP. The proposed amendments will increase awareness of the federal regulations that pertain to oil storage, handling, and transfer. Greater awareness of these regulations should lead to increased attention to preventing oil spills into Texas coastal waters, which is consistent with the goals and policies of the CMP. The proposed amendments are consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA and the National Contingency Plan adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, Chapter 26. The GLO invites the public to submit comments on the consistency of the proposed rules with the CMP during the public comment period.

Comments may be submitted within 30 days of the publication date in the *Texas Register* to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873.

The amended sections are proposed under OSPRA, Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

OSPRA, Natural Resources Code, Title 2, Chapter 40 is affected by the proposed amendments.

§19.13. *Applications for Small Commercial Facilities, Underground Storage Facilities, and Small Facilities.*

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

(c) Small commercial facilities, underground storage facilities, and small facilities shall comply with all federal regulations that apply to the storage, handling, and transfer of oil.

§19.14. *Applications for Major Facilities.*

(a) All major facility applications must contain the following information:

(1)-(11) (No change.)

(b) Major facilities shall comply with all federal regulations that apply to the storage, handling, and transfer of oil.

This 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 July 20, 2000.

TRD-200005008

Larry Soward

Chief Clerk

General Land Office

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-9129



SUBCHAPTER C. SPILL RESPONSE

31 TAC §19.36, §19.37

The General Land Office ("GLO") proposes amendments to 31 TAC §19.36 relating to Disposal and §19.37 relating to Completion of Response. The amended sections concern the disposal of waste generated during an oil spill cleanup and the requirement for responsible persons to file a written report after all response operations are completed. The amendments to §19.36 delete the requirement for informing the GLO of the disposal location where waste will be disposed of and for providing documentation that the waste was disposed of within 30 days of the completion of all response operations. The GLO has determined that the regulatory requirements administered by other state and federal agencies have proven adequate for ensuring that waste generated during an oil spill is disposed of in accordance with those regulations. The GLO will no longer routinely require submittal of disposal information, but the agency will retain discretionary authority under amended §19.36(d) to require the responsible person to provide documentation of the disposal facility and when the waste was transported to it.

The amendments to §19.37(b) modify the responsible person's reporting requirements after an unauthorized discharge of oil. The required information to be reported is specified in amended §19.37(b). The requirement in current §19.37(b) to list known damages to natural resources has been deleted because the GLO has determined that this information has not assisted the natural resource trustees in their damage assessments. After a significant accidental discharge of oil, the trustees conduct an on-site investigation to determine whether natural resources have been impacted, so there is no need for the responsible party to investigate independently and list known damages to natural resources. If the trustees determine that a natural resource damage assessment is required, the responsible person is routinely invited to participate cooperatively in the assessment with the trustees.

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the sections as proposed are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Pollock has determined that the amendments will positively impact the public, since persons responsible for unauthorized discharges will devote increased attention to post-spill analysis of ways to prevent unauthorized discharges. The public will be afforded the same level of protection from illegal waste disposal, because the substantive disposal regulations of other agencies will still be effective. Small businesses and other persons will be positively affected by the amendments, since their reporting requirements will be reduced.

In accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., the GLO has determined

that this proposed rulemaking concerns an action subject to the Texas Coastal Management Program (CMP). Because the proposed rule governs aspects of the prevention of, response to, or remediation of a coastal oil spill, 31 TAC §505.11(b)(1) requires the rule to be consistent with the goals and policies of the CMP. The GLO has determined these rules are consistent with the goals and policies of the CMP because they require persons responsible for unauthorized discharges to devote increased attention to post-spill analysis. This should decrease the number of unauthorized discharges into Texas coastal waters. Minimizing submission of waste disposal information will not have an adverse effect on preventing coastal oil spills, since the substantive waste disposal regulations of other agencies will still be effective. The GLO does, however, retain discretionary authority under the proposed amended rule to request disposal information as circumstances dictate. The proposed amendments are consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA and the National Contingency Plan adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, Chapter 26. The GLO invites the public to submit comments on the consistency of the proposed rules with the CMP during the public comment period.

Comments may be submitted within 30 days of the publication date in the *Texas Register* to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873.

The amended sections are proposed under OSPRA, Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

OSPRA, Natural Resources Code, Title 2, Chapter 40 is affected by the proposed amendments.

§19.36. *Disposal.*

(a) Waste from unauthorized discharges must be disposed of only at sites that have all necessary permits to accept the type of waste discharged. [Each responsible person or discharge cleanup organization removing waste shall inform the on-scene coordinator in writing of the name and location of the site where the waste will be disposed.]

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

(d) When waste is generated in connection with spill response activities, the state on-scene coordinator may require the responsible person to provide copies of manifests, run tickets, invoices, or other written documentation that shows the name and address of the waste disposal facility and the date the waste was transported to it. This request will be made in writing and include a deadline for submittal of the disposal information to the state on-scene coordinator. [When waste generated in connection with spill response activities is disposed of, the responsible person shall provide the on-scene coordinator with copies of documentation, such as manifests, run tickets, or invoices, identifying the waste hauler and the disposal facility to which such waste was delivered within 30 days of the completion of all response operations.]

§19.37. *Completion of Response.*

(a) (No change.)

(b) In addition to reporting an unauthorized discharge immediately after it occurs, the responsible person must file a written report with the GLO. A reporting form will be provided to the responsible person by the state on-scene coordinator. The report is due 60 days after being directed by the state on-scene coordinator to complete the

report or 60 days after the response actions have been declared complete by the state on-scene coordinator, whichever date is earlier. The report must contain the following information: [In addition to reporting an unauthorized discharge at the time it occurs, the responsible person must file a written report of any such discharge with the GLO within 30 days of the response actions being declared complete. The report must contain details of the information listed in §19.32(e) of this title (relating to Reporting an Unauthorized Discharge) and must state the known extent of the damages to and loss of real and personal property. The report must also contain a listing of known damages to natural resources. Reporting forms are available from the GLO.]

(1) incident date;

(2) amount of oil spilled;

(3) product spilled;

(4) areas that were impacted by the spill;

(5) description of incident;

(6) summary of response activity;

(7) a description of the following actions which will be taken to prevent spills of a similar nature, including their effective implementation date:

(A) conducting an analysis of the cause of the unauthorized discharge;

(B) training to be implemented;

(C) equipment operation and maintenance;

(D) revised procedures;

(E) revised inspection schedules; and

(F) organizational changes.

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

Filed with the Office of the Secretary of State, on July 20, 2000.

TRD-200005009

Larry Soward

Chief Clerk

General Land Office

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-9129



SUBCHAPTER E. VESSELS

31 TAC §§19.60-19.64

The General Land Office ("GLO") proposes amendments to 31 TAC §19.60 relating to Definitions and Correspondence for Vessels, §19.61 relating to Response Plans, §19.62 relating to Financial Responsibility and §19.63 relating to Entry into Port. The proposed amendments concern vessel response plans, financial responsibility, and entry into port and movement. The GLO also proposes a new §19.64 relating to Vessel Operations be added to this subchapter.

The title of §19.60 relating to Definitions and Correspondence for Vessels has been renamed "Applicability, Definitions, Exemptions." Section 19.60(a) is a general applicability provision that

mirrors the language of OSPRA §40.114. The new general applicability provision replaces the three-tiered classification of vessels in current §19.60. Section 19.60(b) gives definitions for terms applicable to this subchapter. Definitions have been added for "authorized person," "official number," and "qualified individual." The amended definition of "vessel" no longer includes the categorizations for "OPA," "IMO," and "OSPRA" vessels. Under amended §19.60(c), the GLO can grant an exemption from compliance with any requirement in Subchapter E, if the owner or operator of a vessel makes a request of and provides appropriate supporting documentation to the GLO. Exemptions, which should only be sought for vessels involved in highly unusual or emergency situations, are not meant for vessels involved in their normal activities in Texas coastal waters.

Under amended §19.61 relating to Response Plans, which has been renamed "Vessel Response Plans," owners or operators of a vessel to which these regulations apply must prepare and maintain a vessel response plan, but they are no longer required to submit the plan to the GLO. The GLO has determined that submitting complete plans is an unnecessary burden to the regulated community and to GLO staff, because the complete plans have not helped the agency in its efforts to prevent and respond to spills from vessels. Instead of complete plans, some regulated vessels will be required to submit to the GLO limited information that will be useful to the GLO if the vessel is involved in an actual or threatened unauthorized discharge.

Section 19.61(a) specifies the minimum information that must be included in all vessel response plans. Vessel response plans that have been approved by the U.S. Coast Guard or under the authority of Regulation 26 of MARPOL satisfy the requirements of this section. Manned vessels are required to maintain the plan aboard the vessel. Owners and operators of unmanned vessels can maintain the plan at a primary business location, so long as the information on spill prevention and response procedures in §19.61(a)(1)(G) is kept aboard the vessels.

Section 19.61(b) requires owners or operators of vessels to submit information to the GLO if they are either: 1) required by the Oil Pollution Act, 33 U.S.C.A. §§2701-2761 ("OPA"), to maintain a vessel response plan, or 2) in excess of 400 gross tons and required by the International Maritime Organization to maintain a vessel response plan. The information required, specified in §19.61(b)(2), will assist the GLO in planning for and responding to accidental discharges from these vessels. Section 19.61(b)(3) allows the information to be submitted to the GLO in writing, by facsimile, or by using the oil spill division's link on the GLO's website (<http://glo.state.tx.us/oilspill>). The GLO strongly encourages owners and operators to submit the information through the GLO's website. Submitting the information in this manner should be quick and easy, and the administrative costs to the GLO are significantly reduced. GLO Form OS-004, which can also be used to submit the information, is published in the miscellaneous section of this edition of the *Texas Register*. Forms OS-001, OS-002, and OS-003 will no longer be used and have been deleted from §19.61.

Amended §19.62 relating to Financial Responsibility no longer has three provisions for financial responsibility for three different vessel classes, since these vessel classes will no longer be used in this subchapter. The amended section requires owners and operators of vessels to establish and maintain evidence of financial responsibility according to the requirements of federal law. Substantively, this is the same requirement as in current §19.62,

and it essentially paraphrases OSPRA §40.201(a), which requires vessel owners and operators to establish and maintain evidence of financial responsibility pursuant to federal law. For example, OPA §2716 requires vessel owners and operators to maintain financial responsibility. Vessel owners and operators that establish and maintain evidence of financial responsibility according to OPA's standards will also satisfy the requirement in amended §19.62.

The title of amended §19.63, Entry into Port, has been changed to "Entry into Port and Movement." Under new §19.63(b)(6), the GLO may require vessels to provide their arrival and departure times before being granted permission to enter a Texas port. Amended §19.63(c) gives the GLO explicit authority to require a vessel to remain at a Texas port or anchorage if the GLO determines that movement of the vessel presents a threat of an unauthorized discharge of oil. If a vessel has a problem that will probably cause an accidental discharge into Texas coastal waters if it moves, the GLO may require the vessel to remain in place until the problem is corrected.

Current §19.63(c)-(d) have been deleted because they concern "OPA" or "IMO Vessels," which are terms no longer used in the revamped subchapter. The requirements for reporting information before entering a Texas port will be encompassed in amended §19.63(b). Current §19.63(e)-(f), which allow exceptions to the subchapter's requirements, are no longer necessary and have been deleted, because new §19.60(c) allows vessel owners and operators to seek an exemption from the GLO for any requirement in this subchapter.

The proposed new §19.64, relating to "Vessel Operations," requires vessels carrying oil as fuel or cargo or vessels transferring oil to comply with federal laws and regulations concerning these operations. Compliance with these federal regulations will help prevent accidental discharges of oil and is in keeping with the intent of OSPRA, which is meant "to support and complement the Oil Pollution Act of 1990 (Pub. L. 101-380) and other federal law." The new section also furthers the cooperative efforts of the GLO and U.S. Coast Guard, which were signatories to a 1999 memorandum of agreement that memorialized their commitment to work together to prevent and respond quickly and effectively to accidental discharges of oil into Texas coastal waters.

Greg Pollock, Deputy Commissioner of the GLO's Oil Spill Prevention and Response Division, has determined that for each year of the first five years the sections as proposed are in effect there will be no fiscal implications for local governments as a result of enforcing or administering the sections. There will be a positive impact on state government, as the GLO will no longer expend agency funds to process, store, and analyze vessel response plans.

Mr. Pollock has determined that the proposed amended rule will not have an effect on the public. Small businesses and persons required to comply with the proposed amended rule will be positively affected, because their requirements for preparing and submitting information to the GLO will be significantly reduced.

In accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., the GLO has determined that this proposed rulemaking concerns an action subject to the Texas Coastal Management Program (CMP). Because the proposed rule governs aspects of the prevention of, response to, or remediation of a coastal oil spill, 31 TAC §505.11(b)(1) requires the rule to be consistent with the goals and policies of the CMP. The GLO has determined that these rules are consistent with

the goals and policies of the CMP, because the vessel information submitted to the GLO under the proposed amended rule will be more accessible and useful to agency personnel if the vessel is involved in an actual or threatened accidental discharge of oil. The new requirement that vessels must comply with all applicable federal regulations concerning the carriage and transfer of oil as fuel or cargo will increase awareness of the federal regulations that pertain to oil storage, handling, and transfer. Greater awareness of these regulations should lead to increased attention to preventing oil spills into Texas coastal waters, which is consistent with the goals and policies of the CMP. The new rule giving the GLO explicit authority to require a vessel to stay at an anchorage or port if the GLO determines any vessel movement poses a threat of an unauthorized discharge will also reduce the likelihood of accidental discharges into coastal waters. The proposed amendments are consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA and the National Contingency Plan adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, Chapter 26. The GLO invites the public to submit comments on the consistency of the proposed rules with the CMP during the public comment period.

Comments may be submitted within 30 days of publication date in the *Texas Register* to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873.

The amended sections are proposed under the OSPRA, Natural Resources Code, Title 2, Chapter 40, Subchapter A, §40.007(a), which gives the commissioner of the GLO the authority to promulgate rules necessary and convenient to the administration of OSPRA.

OSPRA, Natural Resources Code, Title 2, Chapter 40 is affected by the proposed amendments and proposed new section.

§19.60. Applicability, Definitions, Exemptions [Definitions and Correspondence for Vessels].

(a) Applicability. This subchapter applies to any vessel that operates in the coastal waters of the state of Texas and has a total fuel, lube and cargo tank capacity equal to or exceeding 10,000 U.S. gallons.

(b) ~~{(a)}~~ Definitions. The following words, terms and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other terms are defined in §19.2 of this title (relating to Definitions).

(1) MARPOL 73/78--The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended.

(2) Annex I of MARPOL--Regulations for the Prevention of Pollution by Oil.

(3) Oil Tanker--A vessel constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any "chemical tanker" as defined in Annex II of MARPOL 73/78 when it is carrying a cargo or part cargo of oil in bulk.

(4) Regulation 26 of Annex I of MARPOL--The regulation adopted in July of 1991 by the Marine Environment Protection Committee of the International Maritime Organization (IMO), requiring every oil tanker of 150 gross tons and above and every other vessel of 400 gross tons and above to carry on board a shipboard oil pollution emergency plan approved by its flag state, or authorized organization.

(5) Vessel--Every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

~~{(A) OPA vessel~~--Every description of watercraft or other means of artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel as defined by OPA, required to submit to the United States Coast Guard a tank vessel response plan pursuant to §311(j)(5) of the Federal Water Pollution Control Act, as amended by OPA, 33 United States Code, §1321(j)(5) and §2716. Vessels subject to OPA, 33 United States Code, §2701 et seq, and the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §1251 et seq, as amended by OPA, and operating in coastal waters of the State of Texas that are subject to OPA must have response plans pursuant to 33 United States Code, §1321(j)(5) and §2716, whenever required by federal law. Submission of the OPA plan, pursuant to §19.61(a) of this title (relating to Response Plans) constitutes compliance with OSPRA. }

~~{(B) IMO vessel~~--An oil tanker of 150 gross tons and above and any other vessel of 400 gross tons and above required to have a shipboard oil pollution emergency plan pursuant to Regulation 26 of Annex I of MARPOL 73/78. A vessel which has submitted an OPA plan is not required to also submit an IMO plan. }

~~{(C) OSPRA vessel~~--Every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges, and with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operates in coastal waters and not required to have a response plan under either OPA or IMO. Requirements for response plans for OSPRA vessels are under development. }

(6) Authorized Person--The person who is responsible for and in control of all oil spill response operations on behalf of the vessel.

(7) Official Number--The unique number assigned to a vessel for purposes of identification, e.g., the Texas State Registration Number, IMO Number, OPA Plan Number, etc.

(8) Preparedness Manager--As required by MARPOL 73/78, the person responsible for ensuring that personnel aboard an international vessel are properly trained in mitigating and controlling an unauthorized discharge of oil.

(9) Qualified Individual--The person authorized by the owner or operator of a vessel to conduct and assume responsibility for all emergency response operations for the vessel.

~~{(b) All information and correspondence, including requests for forms, relating to this subchapter and vessel compliance with OSPRA shall be submitted to: Texas General Land Office, Oil Spill Prevention and Response Division, 1700 North Congress Avenue, Austin, Texas 78701-1495.}~~

(c) Exemptions.

(1) The GLO may grant an exemption from compliance with any requirement in this subchapter if special circumstances such as those listed below are identified by a vessel owner or operator and a request for exemption is submitted to the GLO as soon as possible before the effective period of the exemption being requested. Requests for exemptions will be considered by the GLO for the following situations, which are not meant to be exclusive of other situations where an exemption may be appropriate.

(A) A vessel with only residual cargo or fuel on board being towed for repair, salvage, or demolition.

(B) Vessels involved in unplanned emergency response or rescue activities.

(C) Vessels involved in an emergency caused by operational malfunctions or the violence of nature.

(2) Depending on the exigency of the situation, a request for exemption can be made either in writing or by telephone.

(A) General exemption requests for non-emergency situations must be made in writing and mailed to: Texas General Land Office, Oil Spill Prevention and Response Program, P.O. Box 12873, Austin, Texas 78711-2873. The written request can also be sent by facsimile to the GLO's Oil Spill Prevention and Response Program at (512) 475-1560.

(B) In the event of an in extremis situation, where a written request for exemption is impractical, a request for an emergency exemption can be made by calling the GLO at 1-800-832-8224. A party making an emergency request by telephone must also send the GLO a written request by mail or facsimile as soon as possible.

(3) All written requests for an exemption must include the following information:

(A) the vessel's name;

(B) the vessel's qualified individual or person in charge;

(C) whether a vessel-specific and approved oil spill prevention and response plan is aboard the vessel;

(D) the specific requirement for which an exemption is being sought;

(E) a summary statement on why the exemption is being sought; and

(F) the expected duration of the situation for which an exemption is sought.

(4) The GLO will respond to requests for exemption as soon as possible. The vessel's owner or operator is responsible for obtaining the exemption before entering Texas coastal waters. If the exemption is denied, the GLO will provide its reasoning for denial.

§19.61. Vessel Response Plans.

(a) Vessel Response Plan Requirements [OPA Vessels.]

(1) Owners and operators of vessels subject to this subchapter are required to prepare and maintain written, vessel-specific discharge prevention and response plans. A vessel response plan approved by the U.S. Coast Guard or a shipboard oil pollution emergency plan (SOPEP) approved under Regulation 26 of MARPOL satisfies the requirements of this section. A current copy of the plan must be maintained aboard each vessel. Owners and operators of unmanned vessels can satisfy the requirements of this section by maintaining the plan at a primary business location and maintaining the information in §19.61(a)(1)(G) aboard the unmanned vessel. The vessel-specific discharge prevention and response plan shall include, at a minimum, the following information: [Vessels subject to OPA, 33 United States Code, §2701 et seq. and the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §1251 et seq. as amended by OPA. Vessels operating in coastal waters of the State of Texas that are subject to OPA must have response plans pursuant to 33 United States Code, §1321(j)(5) and §2716, as required by federal law.]

(A) How to contact the owner and operator, including physical and mailing addresses, a telephone number that is answered 24 hours a day, and a 24-hour fax number. This information must also be provided for agents of the owner or operator who should be contacted initially instead of the owner or operator.

(B) The person(s)-in-charge, qualified individual(s), or authorized person(s).

(C) Procedures for vessel personnel to make required reports to immediately notify regulatory agencies of unauthorized discharges or threatened discharges of oil.

(D) The total vessel capacity for fuel and oil.

(E) The vessel's official number.

(F) If applicable, a copy of the Coast Guard Vessel Response Plan approval letter or SOPEP approval letter under Regulation 26 of Annex I of MARPOL.

(G) Spill prevention and response procedures, including:

(i) shutting down operations;

(ii) securing the source of the spill;

(iii) assessing the spill situation and evaluating for safety hazards to vessel personnel;

(iv) immediate actions for reducing the potential for future spillage;

(v) assessing the condition of the vessel and taking action to prevent further vessel damage;

(vi) notifying regulatory agencies, local officials, and private property owners impacted by an unauthorized discharge; and

(vii) anticipated actions for abating, containing, and cleaning up an unauthorized discharge of oil.

(2) Owners and operators of unmanned vessels subject to this subchapter shall maintain the following information aboard each unmanned vessel: [OPA vessels must submit vessel response plans to the GLO. All owners and operators of OPA vessels that intend to enter the coastal waters of the State of Texas must submit the following English language version sections of their plan or, if they choose, the entire plan to the GLO. The sections must be accompanied by a letter from the person who signed the vessel response plan that was submitted to the United States Coast Guard and the letter must verify that the submissions to the GLO are identical to those submitted to the United States Coast Guard. Compliance with this section constitutes compliance with OSPRA; an OPA vessel is not required to submit any other response plan. The following sections must be submitted:]

(A) How to contact the owner and operator, including physical and mailing addresses, a telephone number that is answered 24 hours a day, and a 24-hour fax number. This information must also be provided for agents of the owner or operator who should be contacted initially instead of the owner or operator. [general information and introduction;]

(B) Qualified individual(s), authorized person(s), or preparedness manager(s). [notification procedures;]

(C) A checklist for notification of appropriate regulatory agencies in the event of an unauthorized or threatened unauthorized discharge and pertinent information and procedures for response personnel to abate and respond to an actual spill. [list of contacts;]

(D) The total vessel capacity for fuel and oil. [geographic-specific appendix for each captain of the port (COTP) zone in Texas in which the vessel intends to operate;]

~~{(E) vessel-specific appendix for each vessel which intends to enter coastal waters of the State of Texas covered by the plan; and}~~

~~{(F) shore-based response activities.}~~

(b) Submission of Information to the GLO.~~[IMO Vessels.]~~

(1) Applicability. This subsection applies to all owners or operators of vessels subject to regulation by Subchapter E that are required by OPA to maintain a vessel response plan or that are in excess of 400 gross tons and required by the International Maritime Organization to maintain a SOPEP. ~~[Compliance with Regulation 26 of Annex I of MARPOL. IMO vessels that enter Texas coastal waters must have onboard a shipboard oil pollution emergency plan pursuant to Regulation 26 of Annex I of MARPOL 73/78. The IMO vessel must be operating in compliance with the approved plan to gain entry into a Texas port, pursuant to §19.63 of this title (relating to Entry into Port). Vessels subject to OPA and to IMO are only required to submit their OPA plan to the GLO.]~~

(2) Owners or operators of vessels to which this subsection applies must submit the following information to the GLO.~~[Submission of Information to GLO. The plan prepared pursuant to Regulation 26 of Annex I of MARPOL is not required to be submitted to the GLO. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall submit to the GLO, 60 days after this amendment becomes final:]~~

(A) the name of the owner and operator; ~~[a copy of its flag state or authorized organization approval of the IMO Regulation 26 Shipboard oil pollution emergency plan; and]~~

(B) the address of the owner and operator; ~~[IMO Vessel Form. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall submit to the GLO the information listed in this subsection. This information is required by Regulation 26, §2.5.4. The information must be submitted on IMO Vessel Form.]~~

~~[Figure 1: 31 TAC 19.61(b)(2)(B)]~~

~~{(i) Vessel Information. The registered name, flag state, port of registry of the vessel, international call sign, official number and issuer of the number, IMO number, gross tonnage, overall length, breadth and summer draught. Any previous registered names of the vessel shall also be provided and if the vessel has not previously been registered under another name, such fact shall be affirmatively stated. The owner, operator or manager of an IMO vessel shall also submit a general arrangement plan showing the location and tank capacities for those tanks which carry oil. }~~

~~{(ii) Notification Information. The name, address, telephone number, and facsimile number of the owner, operator and manager of the vessel. The telephone number provided shall be a 24-hour contact number for the person named as owner, operator and manager. }~~

~~{(iii) Vessel Personnel Information. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall designate a: }~~

~~{(I) Authorized Person: who is responsible for and in control of all oil spill response operations on behalf of the vessel. This person must be available 24 hours a day to ensure prompt response to oil spills in Texas coastal waters. This person need not be onboard the vessel but must have independent authority to deploy response equipment and to expend funds necessary for response actions. This information is required pursuant to Regulation 26, §2.2.4. Further~~

~~responsibilities of the person in charge are delineated at §19.16 of this title (relating to Person in Charge). }~~

~~{(H) Preparedness Manager: who is responsible for ensuring that personnel aboard an IMO vessel are properly trained in mitigation and control of an unauthorized discharge of oil. This information is required pursuant to Regulation 26, §2.5.1. }~~

~~{(iv) Vessel Response Organization. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall maintain onboard the name and telephone numbers of two oil spill response organizations identified as capable of providing a timely response to an unauthorized discharge of oil from the vessel, at her intended port of call and at any portion of the route of said vessel to and from the port of call. }~~

~~(C) the electronic mail (email) address, if applicable;~~~~[Changes in IMO Vessel Form. Any change in any information required pursuant to this section shall be submitted to the GLO as soon as possible when the vessel is entering Texas waters. Vessels not entering Texas waters shall report such changes to the GLO within 30 days of the change.]~~

~~(D) the phone and facsimile number of the owner and operator;~~ ~~[DCO List. The GLO shall provide, upon request, a list of DCOs certified in Texas.]~~

~~(E) the qualified individual(s) or authorized person(s) for each vessel to be covered, and information on how these people can be contacted 24 hours a day;~~

~~(F) the names and official numbers of vessels to be covered by the notification;~~

~~(G) the gross tonnage of all vessels to be covered by the notification; and~~

~~(H) the total capacity for fuel and oil of each vessel to be covered by the notification.~~

(3) Submittal of information. The GLO has established a link on the GLO website (<http://www.glo.state.tx.us/oilspill>) for submittal of the information required in this section. Owners and operators with the capability to use the Internet and access this website should link to "Vessel Response Plans." An account can then be established by following the instructions and ensuring that information submitted is accurate and complete. Owners and operators are strongly encouraged to submit information over the GLO's website. This is the quickest and easiest way to submit the information, and it eliminates the administrative burden of GLO staff who would otherwise have to load the information. Owners or operators of vessels without the capability of submitting this information by using the GLO's website may submit the required information on GLO Form OS-004. Completed Form OS-004 can be sent to the GLO by:

~~Figure: 31 TAC §19.61(b)(3)~~

(A) mail sent to Texas General Land Office, Oil Spill Prevention and Response Program, P.O. Box 12873, Austin, Texas 78711-2873;

(B) facsimile sent to (512) 475-1560; or

(C) electronic mail sent to vesselplan@glo.state.tx.us.

~~{(e) OSPRA Vessels. OSPRA vessels are those vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operate in coastal waters and are not required to have a response plan pursuant to 33 USC §2701 et seq. or Regulation 26 of Annex 1 of MARPOL 73/78.}~~

{{(1) Definitions. The following words, terms and phrases, when used in this subsection only, shall have the following meanings, unless the context clearly indicates otherwise. }

{{(A) Coastal waters—the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo. }

{{(B) Official number—the vessel number as it appears on the vessel's Certificate of Documentation issued by the United States Coast Guard, pursuant to 46 CFR Part 67, or the vessel number issued by the flag state with which the vessel is registered. }

{{(C) Oil—"oil" of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 USC §9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Natural Resource Conservation Commission. }

{{(D) Owner/operator—any person owning, operating, or chartering by demise a vessel. }

{{(E) Person in charge—the person designated by name and job title for purposes of ensuring that the General Land Office is notified of unauthorized discharges of oil from the vessel, who can initiate and direct actions which should be taken in response to an actual or threatened unauthorized discharge of oil and who has independent authority to deploy response equipment and personnel and to expend funds for response actions. }

{{(F) Sound management practices—practices that, when used consistently, help prevent discharges of oil. }

{{(G) State registration number—the vessel number as it appears on the Certificate of Number issued by the Texas Parks and Wildlife Department, pursuant to Texas Parks and Wildlife Code, Title 4 §31.024 or the vessel number as issued by any other state with which the vessel is registered. }

{{(H) Total oil storage capacity—the total capacity, in gallons, of all tanks onboard the vessel designed to carry oil as fuel or cargo. }

{{(I) Vessel name—the name of the vessel as it appears on the vessel's Certificate of Documentation issued by the United States Coast Guard pursuant to 46 CFR Part 67 or the common name of the vessel. }

{{(2) Vessel Information. Owners/operators of OSPRA vessels must maintain vessel information onboard that is readily accessible to the vessel crew. Owners/operators may choose to incorporate OSPRA vessel plans into existing OPA or IMO plans in satisfaction of this subsection. Except for OSPRA vessel plans which are incorporated into existing OPA or IMO plans, vessel information shall include, at a minimum, the information listed in subparagraphs (A)-(E) of this paragraph; any format may be used to include the information listed herein. }

{{(A) the name, address, and 24-hour contact number of the owner/operator;}

{{(B) the vessel name; }

{{(C) the official number or state registration number; }

{{(D) the total oil storage capacity of the vessel; and }

{{(E) the name of the designated "person in charge". }

{{(3) Spill Response Information. Owners/operators of OSPRA vessels must maintain spill response information onboard that is readily accessible to the vessel crew. Spill response information may also be maintained onshore by any person designated by the owner/operator; however, if spill response information is also maintained onshore, the information must include the specific responsibilities of the onshore personnel, vessel crew, and designated "person in charge" both onshore and onboard the vessel. Owners/operators may choose to incorporate OSPRA vessel plans into existing OPA or IMO plans in satisfaction of this subsection. Except for OSPRA vessel plans which are incorporated into existing OPA or IMO plans, spill response information shall contain, at a minimum, the information listed in subparagraphs (A) and (B) of this paragraph; any format may be used to include the information listed herein. }

{{(A) Oil Spill Response Information. Owners/operators of OSPRA vessels must maintain information outlining initial steps that must be taken by vessel personnel to respond to an unauthorized discharge of oil. Owners/operators should prescribe, if necessary, more specificity for this information in order to conform to the particular operations of the vessel and its crew. The oil spill response information shall include, at a minimum, instructions for:

{{(i) shutting down operations; }

{{(ii) securing the source of the spill; }

{{(iii) assessing the spill situation and evaluating for potential safety hazards to vessel personnel; }

{{(iv) taking immediate action for reducing the potential for future spillage; }

{{(v) assessing the condition of the vessel and taking action to prevent further vessel damage; and }

{{(vi) making notifications as described in subparagraph (B) of this paragraph and taking reasonable steps to abate, contain, and remove the unauthorized discharge of oil. }

{{(B) Notification Information. The person in charge shall notify the GLO of an unauthorized discharge of oil and shall include the information required under §19.32 of this title (relating to Reporting an Unauthorized Discharge of Oil). Owners/operators of OSPRA vessels must maintain 24-hour contact numbers for each geographic area in which the vessel operates for each of the following:}

{{(i) person in charge; }

{{(ii) owner/operator; }

{{(iii) cleanup contractors; }

{{(iv) vessel salvage contractors; and }

{{(v) government agencies. }

{{(4) Spill Prevention Information. Owners/operators of OSPRA vessels are encouraged to maintain sound management practices for spill prevention onboard the vessel. In the event of an oil spill, the GLO will consider whether the owner/operator had spill prevention measures in place and whether vessel personnel were familiar with and executed those measures. The following categories are suggested for use by owners/operators in the development of spill prevention measures: }

{{(A) sound management practices to prevent discharges of oily bilge water; }

{(B) sound management practices to prevent discharges from oil transfer operations; }

{(C) sound management practices to prevent discharges from hydraulic system failures; }

{(D) sound management practices to prevent discharges of oil due to improper vessel maintenance; and }

{(E) sound management practices to prevent discharges of oil due to improper handling and disposal of petroleum products. }

{(5) Enforcement. The information required under paragraphs (2) and (3) of this subsection must be presented to GLO personnel upon request. Any owner/operator who violates this subsection is liable to the GLO for civil penalties in accordance with the provisions of OSPRA, §40.251. In the event of an unauthorized discharge of oil, use of spill prevention sound management practices by the owner/operator prior to and during the time of the spill will be considered by GLO personnel in determining whether to assess penalties. Penalties may be reduced or waived if appropriate spill prevention measures were in practice prior to and at the time of the spill.}

{(6) Exception to Compliance With This Subsection. A one-time, one-port only exception from the requirements of this subsection shall be granted by GLO personnel to an owner/operator who is found to have violated the requirements of this subsection. This exception shall be granted once per owner/operator, not per vessel owned. Any owner/operator using this exception shall comply with the requirements of this subsection within 30 days of the date the exception is granted by GLO personnel. Any owner/operator shall be subject to penalties for any violation of this subsection, 30 days after being granted the one-time only exception by GLO personnel.}

§19.62. *Financial Responsibility.*

Owners and operators of vessels shall establish and maintain evidence of financial responsibility for costs and damages from unauthorized discharges of oil pursuant to any applicable federal law.

{(a) OPA vessels are required to have proof of financial responsibility pursuant to OPA, §2716. }

{(b) OSPRA vessels will be required to meet the financial responsibility requirements of OSPRA, §40.202(a)(1) and (2), when rules are adopted under that section. }

{(c) IMO vessels, that are also covered by OPA, are required to have proof of financial responsibility pursuant to OPA, §2716.}

§19.63. *Entry into Port and Movement.*

(a) (No change.)

(b) Before being granted entry into any port in this state, a person in charge of any vessel may be required to report or show the following:

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

(5) that the vessel has evidence of financial responsibility as required by federal law or OSPRA[-];or

(6) arrival and departure times for Texas ports.

(c) The GLO may require any vessel to stay at a berth in a Texas port or at an anchorage location if the GLO determines that any movement of the vessel presents a threat of an unauthorized discharge of oil to Texas coastal waters. [Before being granted entry into port, an OPA vessel may be required to produce, in addition to the information required by subsection (b) of this section, information related to:]

{(1) vessel name; }

{(2) vessel's qualified individual, who can be contacted at any time; }

{(3) the estimated time of arrival and of departure from the port of call; and }

{(4) an approved vessel response plan that is aboard the vessel (except that the vessel making a one time, one port entry need not have a geographic specific appendix); and }

{(5) the availability of sufficient resources to adequately abate, contain and remove any unauthorized discharge of oil from the vessel. }

{(d) Before being granted entry into port, an IMO vessel may be required to produce, in addition to the information required by subsection (b) of this section, information related to:}

{(1) vessel name; }

{(2) person in charge, who can be contacted at any time; }

{(3) the estimated time of arrival and of departure from the port of call; }

{(4) an approved IMO vessel response plan that is aboard the vessel; and}

{(5) identification of two response organizations that can adequately abate, contain and remove any unauthorized discharge of oil from the vessel.}

{(e) Any IMO vessel or OPA vessel, requiring entry into a Texas port due to a change in orders or due to an emergency caused by operational malfunctions or force of nature shall be entitled to entry into a Texas port if the following information is supplied: vessel name; vessel's qualified individual or person in charge, who can be contacted at any time; estimated time of arrival and departure from port; an approved response plan on board the vessel; and identification of two response organizations that can adequately abate, contain and remove an unauthorized discharge of oil from the vessel.}

{(f) Exception to compliance with this subchapter. A one-time, one port only exception from the requirements of this subchapter will be granted pursuant to this subsection. Any IMO vessel or OPA vessel shall be denied entry into port pursuant to this section, after utilizing this one-time, one port exception. An IMO vessel or OPA vessel requesting this exception due to changed orders shall submit to the GLO the IMO Vessel Form or the OPA vessel response plan, required pursuant to §19.61 of this title (relating to Response Plans), as soon as practicable after the one-time, one port entry.}

§19.64. *Vessel Operations.*

Pollution Prevention Requirements. Vessel operators, when carrying oil as fuel or cargo or conducting fuel or oil transfers, shall at all times comply with applicable federal laws and regulations concerning the carriage and transfer of fuel and oil.

This 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 July 20, 2000.

TRD-200005010

Larry Soward

Chief Clerk

General Land Office

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 305-9129

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1926

The Texas Department of Human Services (DHS) proposes new §19.1926, concerning medicaid hospice services, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. DHS is simultaneously filing a related proposal in Chapter 30 in this issue of the *Texas Register*.

The purpose of the new section is to delineate the responsibilities nursing facilities have when they contract with a hospice provider because there has been some confusion in this area. The new section addresses the content of the contract between the nursing facility and hospice, the responsibilities of both providers, the plan of care, and the documentation that must be a part of the nursing facility's clinical records.

Eric M. Bost, commissioner, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Mr. Bost also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be ensured accountability and consistency of service delivery among the hospice and nursing facility providers. Nursing facility providers will be more accountable to the department in that they must ensure that required documentation is on file and that there are joint procedures with the hospice provider regarding the ordering and paying for medications. The economic impact will be minimal and will be the same for large, small, and micro- businesses. Currently, providers must follow the federal Medicaid rules and state licensing rules. This rule will encourage the nursing facility and hospice provider base to communicate and work with each other to ensure that the needs of the recipients are met.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Editing Unit-212, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

The new section is proposed 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 new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1926. Medicaid Hospice Services.

(a) When a nursing facility (NF) contracts for hospice services for residents, the nursing facility must:

(1) have a written contract for the provision of arranged services. Authorized representatives of the NF and hospice must sign the contract. The contract must include the following:

(A) the services to be provided;

(B) a stipulation that hospice-related services performed by NF staff may be provided only with the express authorization of the hospice;

(C) how the contracted services are to be coordinated, supervised, and evaluated by the hospice and the NF;

(D) delineation of the roles of the hospice and the NF in the admission process, recipient and family assessment, and the interdisciplinary team case conferences;

(E) a requirement for documentation of services furnished; and

(F) the qualifications of the personnel providing the services;

(2) provide room and board services, which include the performance of personal care services including: assistance in the activities of daily living, administration of medication, socializing activities, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(3) immediately notify the hospice of any significant changes in the hospice recipient's condition;

(4) have joint procedures with the hospice provider for ordering medications that ensure the proper payor is billed and for reconciling billing between NF and hospice, including:

(A) contacting the hospice prior to filling a new prescription; and

(B) ensuring that drugs unrelated to the terminal illness are ordered through the Vendor Drug program; and

(5) ensure that hospice documentation is a part of the current clinical record. At a minimum, documentation will include the current and past:

(A) Texas Medicaid Hospice Recipient Election/Cancellation form;

(B) Texas Medicaid Hospice - Nursing Facility Assessment form;

(C) Physician Certification of Terminal Illness form;

(D) Medicare Election Statement, if dually eligible;

(E) verification that the recipient does not have Medicare Part A;

(F) hospice interdisciplinary assessments;

(G) hospice plan of care; and

(H) current interdisciplinary notes, which include the following:

- (i) nurses notes and summaries;
- (ii) physician orders and progress notes; and
- (iii) medication and treatment sheets during the hospice certification period.

(b) The NF and hospice must ensure that the coordinated plan of care reflects the participation of the hospice, the NF, the recipient, and the recipient's legal representative to the extent possible. The plan of care must include directives for managing pain and other uncomfortable symptoms, and must be revised and updated as necessary to reflect the individual's current status.

(c) The recipient has the right to refuse any services from the nursing facility and the hospice provider.

(d) The hospice retains overall professional management responsibility for directing the implementation of the plan of care related to the terminal illness and related conditions, which includes:

(1) designation of a hospice registered nurse to coordinate the implementation of the plan of care;

(2) provision of substantially all core services (physician, nursing, medical social work, and counseling services) that must be routinely provided directly by the hospice employees, and cannot be delegated to the NF, as outlined under 42 Code of Federal Regulations §418.80;

(3) provision of drugs and medical supplies as needed for palliation and management of the terminal illness and related conditions; and

(4) involvement of NF personnel in assisting with the administration of prescribed therapies in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient's family or caregiver in the home setting.

(e) The hospice may arrange to have non-core hospice services provided by the NF if the hospice assumes professional management responsibility for the services and assures these services are performed in accordance with the policies of the hospice and the recipient's plan of care.

This 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 July 21, 2000.

TRD-200005032

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Texas Department of Human Services (DHS) proposes the repeal of §30.101, concerning program administration; §30.103, concerning program coverage; and §30.105, concerning eligibility, and proposes new §30.2, concerning program basis; §30.4, concerning definitions; §30.10, concerning eligibility

requirements; §30.12, concerning duration of hospice care coverage-election periods; §30.14, concerning certification of terminal illness; §30.16, concerning election of hospice care; §30.18, concerning revoking the election of hospice care; §30.20, concerning change of the designated hospice; §30.30, concerning requirements for participation as a medicaid hospice provider; §30.32, concerning disclosure requirements for a Medicaid hospice provider; §30.34, concerning change of ownership; §30.36, concerning effective dates of provider contracts; §30.40, concerning condition of participation-physical therapy, occupational therapy, and speech-language pathology; §30.50, concerning requirements for reimbursement; §30.52, concerning waiver requirements for nursing services or occupational, physical, and speech therapies; §30.54, concerning special coverage requirements; §30.60, concerning Medicaid hospice payments and limitations; §30.62, concerning medicaid hospice claims processing requirements; §30.70, concerning procedural requirements; §30.80, concerning enforcement generally; §30.82, concerning sanctions; §30.84, concerning referral to the attorney general; §30.90, concerning utilization review and control activities performed by Texas Health and Human Services Commission (HHSC) utilization review (UR) department; §30.92, concerning Texas index for level of effort (TILE) assessments; and §30.100, concerning additional requirements, in its Medicaid Hospice Program chapter. DHS is simultaneously filing a related proposal in Chapter 19 in this issue of the *Texas Register*.

The purpose of the proposal for both the repeals and new sections is to provide current rules that address Medicaid contracting in the Medicaid Hospice Program. The rules delineate hospice providers' contractual responsibilities when they contract with the department as a Medicaid hospice provider. The rules specifically address eligibility, election periods, certification of terminal illness, election of hospice care, selection of a hospice, Medicaid contracts and applications, reimbursement, payments and limitations, continuous home care, levels of care, claims processing, inspections, enforcement, utilization review, documentation in a nursing facility, and solicitation.

Eric M. Bost, commissioner, has determined that for the first five-year period the repeals and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals and new sections.

Mr. Bost also has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the repeals and new sections will be ensured accountability and consistency of service delivery among the hospice providers. There will be an effect on large, micro, and small businesses. Most of these rules are not additional requirements. Providers are required to follow federal guidelines. The department is putting the federal guidelines into state rules with additional requirements. New requirements that may have a fiscal impact on the businesses are as follows: (1) Providers will be required to conduct a client-specific comprehensive assessment for subsequent physician certifications after the first year on hospice. Additional staff time will be needed to meet this requirement. (2) Continuous Home Care may be provided for up to five days. Additional days may be provided upon approval by the department. Providers may appeal denial to extend continuous home care days. Currently, providers can provide an unlimited amount of continuous home care, assuming that the department will pay for those days. The department may decline to pay for these days. This rule will assure them that at least five days may be paid for and the department will

advise them if additional days will be covered. Additional staff time and money will be spent on copying and overnight expressing the documentation to the department when a waiver request or a request for reconsideration is sought. (3) Providers must chart procedures in the nursing facility clinical record and notify staff of changes in the recipients' conditions. The hospice must have joint procedures with the nursing facility for ordering medications that ensure the proper biller is paid and for reconciling billing between the hospice and nursing facility. The economic impact in this area will be minimal for providers.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Editing Unit-212, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER A. INTRODUCTION

40 TAC §30.2, §30.4

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.2. Program Basis.

The Texas Department of Human Services (DHS) manages the Texas Medicaid Program on behalf of the Texas Health and Human Services Commission. Hospice providers participating in the Medicaid hospice program must comply with all federal and state regulations that govern the Medicaid hospice program, including the federal regulations in 42 Code of Federal Regulations Part 418.

§30.4. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions which are specific to the subchapter.

(1) Adverse action - As defined under §79.1601 of this title (relating to Definitions).

(2) Attending physician - A physician who:

(A) is a doctor of medicine or osteopathy; and

(B) is identified by the individual, at the time the individual elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

(3) Bereavement counseling - Counseling services provided to the individual's family after the individual's death.

(4) Cap period - The 12-month period ending October 31 used in the application of the cap on overall hospice reimbursement specified in §30.60 of this title (relating to Medicaid Hospice Payments and Limitations).

(5) Curative care - Care designed to restore a person to health.

(6) Employee - An employee (defined by the Social Security Act, Section 210(j)) of the hospice or, if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" also refers to a volunteer under the jurisdiction of the hospice.

(7) Hospice - A public agency or private organization or subdivision of either of these that is primarily engaged in providing care to terminally ill individuals.

(8) Palliative care - Care designed to relieve or reduce intensity of uncomfortable symptoms but not to produce a cure.

(9) Physician - As defined in 42 Code of Federal Regulations §410.20.

(10) Representative - An individual who has been authorized under state law to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated.

(11) Social worker - A person who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education.

(12) Terminally ill - The individual has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

(13) Vendor hold - Temporarily withholding a provider agency's payment.

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

Filed with the Office of the Secretary of State, on July 21, 2000.

TRD-200005034

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §§30.10, 30.12, 30.14, 30.16, 30.18, 30.20

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.10. Eligibility Requirements.

(a) In order to be eligible to elect hospice care under Medicaid, an individual must:

(1) be certified as Medicaid eligible by the Texas Department of Human Services (DHS) or the Social Security Administration (SSA);

(2) be certified as being terminally ill in accordance with §30.14 of this title (relating to Certification of Terminal Illness); and

(3) have an identified need documented on the comprehensive assessment for one or more of the following:

(A) medical care;

(B) skilled nursing care related to the management of pain and symptom control;

(C) medical social services; or

(D) emotional or spiritual care.

(b) If dually eligible, the recipient must elect the hospice benefit under both the Medicare and Medicaid programs.

§30.12. Duration of Hospice Care Coverage: Election Periods.

(a) Subject to the conditions set forth in this subchapter, an individual may elect to receive hospice care for a six-month period.

(b) The periods of care are six-month increments of time and may be elected consecutively or separately at different times.

§30.14. Certification of Terminal Illness.

(a) Timing of certification.

(1) Except as provided in paragraph (2) of this subsection, the hospice must obtain the written certification of terminal illness from a physician no later than two calendar days after the period begins.

(2) For the initial period, if the hospice cannot obtain the written certification within two calendar days, it must obtain oral certifications within two calendar days and written certification no later than eight calendar days after the period begins.

(3) Upon receipt of the certification, hospice staff must:

(A) make an appropriate entry in the patient's medical record as soon as they receive an oral certification; and

(B) file written certifications in the medical record.

(b) Content of certification. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

(c) Sources of certification.

(1) For the initial period, the hospice must obtain written certification statements, and oral certification statements if required under subsection (a)(2) of this section, from:

(A) the medical director of the hospice or the physician member of the hospice interdisciplinary group; and

(B) the individual's attending physician if the individual has an attending physician.

(2) For subsequent periods after the first year, the hospice must conduct a client-specific comprehensive assessment that:

(A) identifies the client's need for hospice services in the areas of medical, nursing, social, emotional, and spiritual care. Hospice services include, but are not limited to, the palliation and management of the terminal illness and conditions related to the terminal illness; and

(B) contains a narrative from the physician which clearly identifies the reasons the patient is considered terminally ill; with a prognosis of less than six months to live.

(3) The assessment must be done no earlier than 30 work-days prior to the recertification date. The hospice provider must retain copies of all physician's certification statements, a current Hospice - Nursing Facility Assessment form, if applicable, and the client-specific comprehensive assessment in both the hospice's records for the recipient and the recipient's nursing facility clinical record, if applicable.

§30.16. Election of Hospice Care.

(a) Filing an election statement. An individual who meets the eligibility requirement of §30.10 of this title (relating to Eligibility Requirements) may file an election statement with a particular hospice. If the individual is physically or mentally incapacitated, the individual's representative may file the election statement.

(b) Content of election statement. The election statement must include the following:

(1) identification of the particular hospice that will provide care to the individual;

(2) the individual's or representative's acknowledgment that he has been given a full explanation of the palliative rather than curative nature of hospice care as it relates to the individual's terminal illness;

(3) acknowledgment that certain Medicaid services, as set forth in subsection (d) of this section, are waived by the election;

(4) the effective date of the election, which may be the first day of hospice care or a later date, but must be no earlier than the date of the election statement; and

(5) the signature of the individual or representative.

(c) Duration of election. An election to receive hospice care will continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

(1) remains in the care of a hospice; and

(2) does not revoke the election under the provisions of §30.18 of this title (relating to Revoking the Election of Hospice Care).

(d) Waiver of other benefits. For the duration of an election of hospice care, an individual waives all rights to Medicaid payments for the following services:

(1) hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice); and

(2) any Medicaid services related to the treatment of the terminal condition for which hospice care was elected, or a related condition for which the hospice care was elected, or that are equivalent to hospice care except for services:

(A) provided by the designated hospice;

(B) provided by another hospice under arrangements made by the designated hospice; and

(C) provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services.

(e) Re-election of hospice benefits. If an election has been revoked in accordance with §30.18 of this title (relating to Revoking the Election of Hospice Care), the individual (or the individual's representative, if the individual is mentally or physically incapacitated) may at any time file an election in accordance with this section.

(f) Record Maintenance. The hospice provider must retain copies of all election forms in the hospice records for the recipient and the recipient's nursing facility clinical record, if applicable.

§30.18. Revoking the Election of Hospice Care.

(a) An individual or representative may revoke the individual's election of hospice care at any time during an election period. If the recipient is dually eligible, the individual must revoke the Medicaid and Medicare hospice benefit at the same time.

(b) To revoke the election of hospice care, the individual or representative must file a statement with the hospice that includes the following information:

(1) a signed statement that the individual or representative revokes the individual's election for Medicaid coverage of hospice care for the remainder of that election period; and

(2) the date that the revocation is to be effective. An individual or representative may not designate an effective date earlier than the date that the revocation is made.

(c) An individual, upon revocation of the election of Medicaid coverage of hospice care for a particular election period:

(1) is no longer covered under Medicaid for hospice care;

(2) resumes Medicaid coverage of the benefits waived under §30.16(d)(2) of this title (relating to Election of Hospice Care); and

(3) may at any time elect to receive hospice coverage as long as he meets eligibility requirements.

§30.20. Change of the Designated Hospice.

(a) An individual or representative may change, once in each election period, the designation of the particular hospice from which hospice care will be received.

(b) The change of the designated hospice is not a revocation of the election for the period in which it is made.

(c) To change the designation of hospice programs, the individual or representative must file, with both the hospice from which care has been received and with the newly designated hospice, a statement that includes the following information:

(1) the name of the hospice from which the individual has received care and the name of the hospice from which the individual plans to receive care; and

(2) the date the change is to be effective.

This 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 July 21, 2000.

TRD-200005035

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



SUBCHAPTER C. PROVIDER REQUIREMENTS FOR ENTRANCE INTO THE TEXAS

MEDICAID HOSPICE PROGRAM; DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.32, 30.34, 30.36

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.30. Requirements for Participation as a Medicaid Hospice Provider.

(a) The provider must meet the following conditions to be approved by the Texas Department of Human Services (DHS) for participation in the Medicaid Hospice Program and receive state and federal reimbursement for services to Medicaid recipients:

(1) the provider is currently licensed in Texas as a hospice provider;

(2) the provider has filed a complete application with the Facility Enrollment Section of DHS for participation as a Medicaid hospice provider in the Medicaid Hospice program; and

(3) the provider has a valid certification from DHS that the provider meets the conditions of participation for the Medicaid hospice program.

(b) Only a provider with a fully-executed current contract with DHS may receive state and federal reimbursement for services to Medicaid recipients.

(c) Each hospice provider must comply with the state requirements for participation and the provider's contract on a continuing basis.

(d) The contracting hospice provider agrees to:

(1) comply with the Civil Rights Act of 1964 (Public Law 88-352), Title VI; the Rehabilitation Act of 1973 (Public Law 93-112), §504; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990 (Public Law 101-336); the Safe Medical Devices Act of 1990; and all amendments to each and all requirements imposed by the regulations issued pursuant to these acts. In addition, the contractor agrees to comply with Chapter 73 of this title (relating to Civil Rights). These provide in part that no persons shall, on the grounds of race, color, national origin, sex, age, disability, political beliefs or religion be excluded from participation in, or denied any aid, care, service or other benefits provided by federal and/or state funding, or otherwise be subjected to discrimination.

(2) comply with Texas Health and Safety Code, Chapter 85, Subchapter E (relating to Workplace and Confidentiality Guidelines Regarding AIDS and HIV).

(3) comply with 42 Code of Federal Regulations Part 455.

(e) A provider must not have restrictive policies or practices, including:

(1) requiring the recipient to execute a will, with the provider named as legatee or devisee;

(2) requiring the recipient to assign his life insurance to the provider;

(3) requiring the recipient to transfer property to the provider;

(4) requiring the recipient to pay a lump sum or make any other payment or concession to the provider beyond the recognized Medicaid rate;

(5) controlling or restricting the recipient, the recipient's guardian, or responsible party in the use of the recipient's personal needs allowance while in a nursing facility;

(6) restricting the recipient from transferring or withdrawing from the hospice program at will except as provided by state law;

(7) denying appropriate care to a recipient on the basis of that recipient's race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(8) preventing or requiring the execution of written or un-written directives to reject life-sustaining procedures by adult recipients.

(f) DHS reserves the right to reject the provider's participation or to cancel an existing contract if the provider charges the Medicaid recipient or any member of his family, except as allowed within DHS policies and regulations.

(g) To appeal the termination of a Medicaid hospice contract, a provider must submit a written request for a contract appeals hearing that is received by DHS within 15 days of the provider's receipt of the letter notifying the provider of the proposed action. The provider must send the request for a hearing to the Texas Department of Human Services, P.O. Box 149030, Mail Code W- 613, Austin, Texas 78714-9030. Hearings will be held in Austin, Texas.

(h) DHS's interpretations of the requirements for participation or the contract may not be appealed to DHS's hearings department unless the interpretation has caused an adverse action for the provider.

(i) Providers must allow representatives of DHS, the Medicaid Fraud Control Unit, and the Texas Department of Health and Human Services to enter the premises at any time to make inspections or privately interview the recipients of Medicaid assistance.

§30.32. Disclosure Requirements for a Medicaid Hospice Provider.

(a) Medicaid providers must disclose in accordance with 42 CFR Part 455, Subpart B.

(b) Failure to comply with 42 CFR Part 455, Subpart B, may result in suspension, termination, or other contract action including but not limited to holding Medicaid payments. To appeal a sanction, a Medicaid hospice provider must submit a written request for an appeal hearing to the Texas Department of Human Services (DHS), P.O. Box 149030, Mail Code W-613, Austin, Texas, 78714-9030. Hearings will be held in Austin, Texas.

§30.34. Change of Ownership.

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

(1) Prior owner - The legal entity licensed to operate the hospice before the change ownership.

(2) New owner - The legal entity licensed to operate the hospice after the change of ownership.

(3) Agreed change date - The date of transfer of ownership agreed to between the prior owner and the new owner.

(b) Notification.

(1) The hospice must notify the Texas Department of Human Services (DHS) in writing prior to the agreed change date. DHS will recognize the ownership change effective on the agreed change date if DHS receives the written notice of the change postmarked at least 30 days before the agreed change date.

(2) If the written notice is received after the agreed change date, DHS will recognize the change effective on the date DHS receives written notice of the change.

(c) Payment of services during transfer of ownership.

(1) In no case will DHS recognize a change date that would cause DHS to make double payments for the same services.

(2) If written notice of a change of ownership is not received by DHS postmarked at least 30 days before the agreed change date, DHS is not responsible for payments made to the prior owner or new owner that do not reflect the agreed change date. DHS will not request repayment of such payments on behalf of either entity nor will DHS issue a duplicate payment. It is the responsibility of the prior owner and the new owner to make arrangements between themselves for such contingencies.

(3) After receipt of the notice of proposed or actual change of ownership, DHS may place Medicaid payments to the prior owner and the new owner on hold until completion of a billing and claims reconciliation, or up to 12 months, whichever is sooner. Any money owed to DHS will be recouped from the funds placed on hold. Medicaid payments may be released prior to the reconciliation if DHS receives information sufficient to verify the ownership change.

(d) Payment agreements.

(1) Medicaid hospice payments are not transferable or assignable at law or in equity. DHS will not allow non-split agreements in the case of ownership changes. Non-split agreements are arrangements where DHS does not interrupt payments to old and new owners but continues reimbursements as though no ownership change has occurred. A split in pay agreement ensures payments to the prior owner stop on a certain date and payments for services thereafter go to the new owner.

(2) The new owner and the prior owner of a hospice may reach any agreement they wish, but DHS will not participate in a non-split procedure which would allow the new owner to receive the prior owner's accrued Medicaid hospice payments.

(e) Filing deadline. If the application is postmarked by the filing deadline, the application will be considered to be timely filed if received in the Texas Department of Human Services, Facility Enrollment Section, Long Term Care Regulatory, Post Office Box 149030, Mail Code E-342, Austin, Texas 78714-9030, within 15 days of post-mark.

§30.36. Effective Dates of Provider Contracts.

The effective date of the provider contract for an initial certification is the first day of the month following the receipt of the HCFA certification letter, a copy of the license, and a completed application packet.

This 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 July 21, 2000.

TRD-200005036

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 438-3108

◆ ◆ ◆
**SUBCHAPTER D. PROVIDERS' CONDITIONS
OF PARTICIPATION: OTHER SERVICES**

40 TAC §30.40

The new section is proposed 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 new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.40. Condition of Participation--Physical Therapy, Occupational Therapy, and Speech-language Pathology.

(a) Physical therapy services, occupational therapy services, and speech-language pathology services must be available and, when provided, offered in a manner consistent with accepted standards of practice.

(b) Lab services must be provided under the following conditions:

(1) If the hospice engages in laboratory testing outside of the context of assisting an individual in self-administering a test with an appliance that has been cleared for that purpose by the FDA, such testing must be in compliance with all applicable requirements of 42 Code of Federal Regulations (CFR) Part 493.

(2) If the hospice chooses to refer specimens for laboratory testing to another laboratory, the referral laboratory must be certified in the appropriate specialties and sub-specialties of services in accordance with the applicable requirements of 42 CFR Part 493.

This 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 July 21, 2000.

TRD-200005037

Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 438-3108

◆ ◆ ◆
SUBCHAPTER E. COVERED SERVICES

40 TAC §§30.50, 30.52, 30.54

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.50. Requirements for Reimbursement.

To be reimbursed through Medicaid, hospice services must meet the following requirements:

(1) services must be reasonable and necessary for the palliation or management of the terminal illness, as well as conditions related to the terminal illness;

(2) the individual must elect hospice care in accordance with §30.16 of this title (relating to Election of Hospice Care);

(3) a plan of care must be established before services are provided. The services must be consistent with the plan of care; and

(4) a certification that the individual is terminally ill must be completed as set forth in §30.14 of this title (relating to Certification of Terminal Illness).

§30.52. Waiver Requirements for Nursing Services or Occupational, Physical, and Speech Therapies.

(a) The Health Care Financing Administration (HCFA) may approve a waiver for nursing services or occupational, physical, and speech therapies provided by a hospice which is located in a non-urbanized area. The location of a hospice that operates in several areas is considered to be the location of its central office. The hospice must provide evidence that it was operational on or before January 1, 1983, and that it made a good faith effort to hire a sufficient number of nurses or therapists to provide services directly. HCFA bases its decision on whether to approve a waiver application on the following:

(1) the current Bureau of the Census designations for determining non-urbanized areas;

(2) evidence that a hospice was operational on or before January 1, 1983, including:

(A) proof that the organization was established to provide hospice services on or before January 1, 1983;

(B) evidence that hospice-type services were furnished to patients on or before January 1, 1983; and

(C) evidence that the hospice care was a discrete activity rather than an aspect of another type of provider's patient care program on or before January 1, 1983; and

(3) evidence that a hospice made a good faith effort to hire nurses or therapists, including:

(A) copies of advertisements in local newspapers that demonstrate recruitment efforts;

(B) job descriptions for nurse employees or therapists;

(C) evidence that salary and benefits are competitive for the area; and

(D) evidence of any other recruiting activities, such as recruiting efforts at health fairs and contacts with nurses or therapists at other providers in the area.

(b) A waiver request for occupational, physical, and speech therapies, must be submitted in writing to Home and Community Support Services, Texas Department of Human Services (DHS), P.O. Box 149030, Mail Code E-217, Austin, Texas 78714-9030.

(c) The department will recommend in writing, approval or disapproval of the requested waiver for occupational, physical, and speech therapies, to the Health Care Financing Administration in Dallas, Texas within 30 days of receiving the request.

(d) HCFA receives requests for waivers of nursing services without the involvement of the department.

(e) Any waiver request is deemed to be granted unless it is denied within 60 days after it is received.

(f) Waivers will remain effective for one year at a time.

(g) HCFA may approve a maximum of two one-year extensions for each initial waiver. If a hospice wishes to receive a one-year extension, the hospice must submit a certification to HCFA, prior to the expiration of the waiver period, that the employment market for nurses and therapists has not changed significantly since the time the initial waiver was granted.

§30.54. Special Coverage Requirements.

(a) Continuous home care. Continuous care is to be provided only during periods of crisis to maintain the recipient at the recipient's place of residence. A period of crisis is a period in which a recipient requires continuous care which is primarily skilled nursing care to achieve palliation or management of acute medical symptoms.

(1) A minimum of eight hours of continuous home care must be provided during a 24-hour day which begins and ends at midnight. The care need not be continuous, for example, four hours could be provided in the morning and another four hours in the evening of that day.

(2) Skilled nursing care must be provided for more than half of the continuous home care period and must be provided by either a registered nurse or licensed vocational nurse.

(3) Homemaker, home health aide services, medical social work, or chaplain services may be provided to supplement the nursing care. The provider must document why social work or chaplain services were needed and what was accomplished during continuous home care. While on call, staff may be used to provide continuous home care; staff, however, must be on site, providing care to the recipient in their place of residence to be considered for inclusion in continuous home care hours.

(4) The services may be provided for up to five consecutive days.

(5) The provider must have a physician's order and a documented medical need for skilled nursing care in the recipient's record and in the plan of care. The plan of care must be established by the attending physician, hospice medical director or designee, and the interdisciplinary team, and coordinated by the hospice registered nurse. The plan of care must include the needs of the recipient; identification of the services, including management of discomfort and symptom relief; and the scope and frequency of the services needed to meet the needs of both the recipient and family.

(6) Prior to providing continuous home care, the provider must advise and discuss with the family or responsible party that temporary alternate placement may be necessary at the end of the five consecutive days. The provider must document the discussion with the family or responsible party in the recipient's records.

(7) If the provider believes that the crisis period will extend beyond the five consecutive days, the interdisciplinary team must discuss the temporary placement alternatives available to meet the needs of the recipient during the crisis period, such as a hospital or nursing facility. This discussion must be documented. If, after this discussion, the provider believes that an extension of continuous home care is necessary instead of alternative placement, the provider must submit a written request for an extension of continuous care to DHS.

(A) The written request must be sent to Texas Department of Human Services, Long-Term Care Policy, P.O. Box 149030, Mail Code Y-519, Austin, Texas, 78714-9030.

(B) The written request must include:

(i) documentation of all continuous home care provided during the previous five days;

(ii) physician's orders;

(iii) documentation of daily physician care plan oversight;

(iv) documentation that skilled nursing care was provided as more than half of the care given in a 24-hour period for each of the five days of continuous care;

(v) the number of days of continuous home care requested for the extension; and

(vi) documentation of the interdisciplinary team's discussion regarding alternate placement, including why continuous home care must be extended and why temporary alternate placement is not presently warranted.

(8) The Texas Department of Human Services (DHS) may extend continuous home care if it deems it medically necessary. Providers will be notified in writing of the department's decision within eight work hours after the department's receipt of the written request and documentation.

(9) If DHS denies the request for an extension of continuous home care, the provider will be paid at the routine home care rate or inpatient care rate, if applicable, for subsequent days of care.

(10) Request for reconsideration. If the provider does not agree with the department's denial of the request for an extension of continuous home care, the provider may request a reconsideration of the decision at the state office level. The written request for reconsideration and all supporting documentation must be submitted to DHS at the address in paragraph (7)(A) of this subsection no later than the tenth calendar day after the provider's receipt of the denial of the request for an extension. DHS's reconsideration will be limited to a review of the documentation submitted. DHS will complete the reconsideration no later than the tenth calendar day after receipt of the request for reconsideration.

(b) Respite care.

(1) Respite care is short-term inpatient care provided to the individual at home only when necessary to relieve the family members or other persons caring for the individual at home.

(2) Respite care may not be reimbursed for more than five consecutive days.

(3) Respite care can be provided by:

(A) a hospice that meets the condition of participation for providing inpatient care directly; or

(B) a hospital or nursing facility that also meets the Medicare standards regarding 24-hour nursing service and patient areas.

(4) Respite care may be provided only on an occasional basis and may not be reimbursed for more than five consecutive days at a time.

(5) Respite care may not be provided when the hospice patient is a nursing home resident.

This 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 July 21, 2000.

TRD-200005038

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.60, §30.62

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.60. Medicaid Hospice Payments and Limitations.

(a) Medicaid hospice per diem rates. For each day that an individual is under the care of a hospice, the hospice will be reimbursed an amount applicable to the type and intensity of the services furnished to the individual for that day. For continuous home care, the amount of payment is determined based on the number of hours of continuous care furnished to the beneficiary on that day.

(1) Routine Home Care. The hospice will be paid the routine home care rate for each day the recipient is at home, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(2) Continuous Home Care. The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate. A minimum of 8 hours must be provided. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day. A maximum of five consecutive days are allowed for reimbursement. Additional days may be allowed with approval from the Texas Department of Human Services (DHS).

(3) Inpatient Respite Care. The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of 5 days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(A) A hospice recipient who receives hospice respite care in a nursing facility and returns home after the respite does not have to be in a Medicaid bed in the nursing facility.

(B) Respite care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (h) of this section.

(C) If the hospice recipient dies as an inpatient, DHS pays the inpatient rate for the day of death.

(4) General Inpatient Care. Payment is made at the general inpatient rate when general inpatient care is provided.

(A) The Inpatient Care rate is paid for the date of admission and all subsequent inpatient days except day of discharge.

(B) For the day of discharge, DHS pays the routine home care rate.

(C) If the hospice recipient dies as an inpatient, DHS pays the inpatient rate for the day of death.

(D) Inpatient care days are subject to the limitation on total hospice inpatient care days, as outlined in subsection (h) of this section.

(b) Medicaid payments for physician services.

(1) The Medicaid Hospice Program makes payments to the Medicaid hospice provider for hospice physician services according to the customary and reasonable Texas Medicaid physician charges.

(2) The Medicaid Hospice Program does not pay when hospice physician services are provided by physicians who are not on staff with the Medicaid hospice provider or for independent contractors, who are under contract with the hospice.

(3) Payments for non-hospice physician services to Medicaid hospice recipients are made directly to physicians by Medicaid through the National Heritage Insurance Company (NHIC).

(4) The Medicaid hospice provider must include physician services in the hospice plan of care and clinical records and must inform physicians on how to bill for services to hospice recipients.

(c) Medicaid hospice-nursing facility per diem rates. The Medicaid Hospice Program pays the Medicaid hospice provider a hospice-nursing facility rate that is 95% of the Medicaid nursing facility rate for each hospice recipient in a nursing facility. When the hospice-nursing facility rate is paid to the hospice provider, Medicaid vendor payment to the nursing facility is not paid. Room and board services include performance of personal care services, including assistance in the activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

(d) Medicaid time limitations for DHS hospice payment.

(1) To receive payment of the hospice-nursing facility rate, the Medicaid hospice provider must complete and submit an initial Hospice-Nursing Facility Assessment to the Provider Claims Payment Unit within 20 days of either or both hospice election or entrance to the nursing facility.

(2) Nursing Facility Assessment forms not received by the Provider Claims Payment Unit within 20 calendar days will be reimbursed at a default rate until the form is received.

(e) Medicaid payments on Medicare coinsurance for drugs and biologicals. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the Medicaid hospice provider a 5.0% coinsurance on prescription drugs and biologicals, not to exceed \$5 per prescription.

(f) Medicaid payments for Medicare respite coinsurance. For Medicare-Medicaid recipients only, the Medicaid Hospice Program pays the hospice provider a 5.0% coinsurance for each day of respite care for up to five consecutive days of a hospice coinsurance period.

(g) Third party resources. Medicaid pays only after all third-party resources have been used.

(h) Medicaid payment limitations for inpatient care. During the 12- month period beginning November 1 of each calendar year and ending October 31 of the following calendar year (the cap year), the aggregate number of inpatient hospice care days must not exceed 20% of the aggregate total number of all hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. If it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate are not counted as inpatient days. The limitation is calculated as follows:

(1) The maximum allowable number of inpatient days is calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment is necessary.

(3) If the total number of days of inpatient care exceeds the maximum allowable number, the limitation is determined by:

(A) calculating a ratio of the maximum allowable days to the number of actual days of inpatient care and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made;

(B) multiplying excess inpatient care days by the routine home care rate;

(C) adding together the amounts calculated in subparagraphs (A) and (B) of this paragraph; and

(D) comparing the amount in subparagraph (C) of this paragraph with interim payments made to the hospice inpatient care during the "cap period."

(4) If the inpatient care maximum has been exceeded, DHS recoups excess payments from subsequent Medicaid hospice provider claims.

§30.62. Medicaid Hospice Claims Processing Requirements.

(a) Requirement for payment. To receive Medicaid hospice payments, an entity must be licensed as a hospice, Medicare certified by the Health Care Financing Administration (HCFA) as a hospice, and Medicaid certified by the Texas Department of Human Services (DHS).

(b) Submittal and forms completion requirements. To receive Medicaid Hospice payments, the provider must submit the following documents to Provider Claims Payment:

(1) Texas Medicaid Hospice Program Recipient Election/Cancellation Notice form;

(2) Texas Medicaid Hospice Program Physician Certification of Terminal Illness form; and

(3) Texas Medicaid Hospice Program Hospice-Nursing Facility Assessment form, if applicable.

(c) Denials. DHS will deny the following provider claims to the Medicaid Hospice Program and/or to other DHS programs:

(1) claims for hospice service days prior to a valid Medicaid Hospice Election Notice and a Physician Certification of Terminal Illness(es);

(2) claims which have been returned to the provider or recipients who have revoked the election of the Medicaid Hospice Program;

(3) claims for recipients who have been denied Medicaid eligibility;

(4) claims for Medicare-Medicaid recipients who are covered by the Medicare Hospice benefit; and

(5) claims by hospice providers whose Medicaid hospice contract has been cancelled.

This 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 July 21, 2000.

TRD-200005039

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



SUBCHAPTER G. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §30.70

The new section is proposed 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 new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.70. Procedural Requirements.

The Texas Department of Human Services (DHS) will conduct contract management visits annually. The hospice provider must submit all information requested to DHS, as outlined in their contract.

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

Filed with the Office of the Secretary of State, on July 21, 2000.

TRD-200005040

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



SUBCHAPTER H. ENFORCEMENT

40 TAC §§30.80, 30.82, 30.84

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.80. Enforcement Generally.

The Texas Department of Human Services (DHS), as the operating agency for the Medicaid hospice program, may impose certain sanctions on the Medicaid hospice provider.

§30.82. Sanctions.

(a) The Texas Department of Human Services (DHS) may take sanctions against a hospice for failure to comply with the terms of the contract or program rules or both.

(b) Sanctions may include one or more of the following at the discretion of DHS:

(1) Vendor hold.

(A) DHS may place a vendor hold upon one or all of a hospice provider's DHS contracts for reasons including, but not limited to:

(i) the hospice's failure to follow an agreed upon audit resolution payment plan;

(ii) the hospice's failure to provide service according to contract or program requirements;

(iii) the hospice's failure to comply with their corrective action plan;

(iv) DHS's recoupment of overpayments to a hospice and restitution of audit exceptions assessed against a hospice; or

(v) DHS's determination that client health and safety is jeopardized by the hospice's failure to comply with the terms of the contract or program requirements or both.

(B) DHS may accept an irrevocable letter of credit, in a format and an amount approved by DHS, to allow the release of all or a portion of vendor payments on hold. Vendor holds are released after resolution of all the reasons cited for the vendor hold.

(C) Held funds may be offset against any overpayments or audit exceptions attributable to the hospice.

(2) Contract termination. DHS may initiate contract termination for one or more reasons including, but not limited to:

(A) the hospice's failure to comply with the terms of the contract, rules, or program requirements;

(B) the hospice's failure to maintain a current required license;

(C) DHS's determination that client health and safety is jeopardized by the hospice's failure to comply with the terms of the contract or program requirements or both;

(D) the hospice's failure to comply with corrective action plans after receiving a warning from DHS that continued failure to comply with the corrective action plan, within 30 days of receiving the warning letter, could jeopardize their contract;

(E) the hospice's exclusion from contracting for Medicare or Medicaid services; or

(F) the hospice having validated reports of abuse, neglect, or exploitation when the perpetrator is an employee, volunteer, or owner who has or will have access to clients served through the contract.

(c) If the hospice has outstanding overpayments or audit exceptions upon termination of its contract, DHS can place vendor hold

upon one or all of the hospice contracts that DHS has with a hospice that have the same owner as the terminated hospice contract and take the balance owed from funds being held.

(d) The provider agency has the right to appeal any adverse action against its contract by filing a written request for a hearing so that DHS receives the request within 15 calendar days after the provider agency receives DHS's written notification of adverse action. The provider must send the request for a hearing to the Texas Department of Human Services (DHS), P.O. Box 149030, Mail Code W-615, Austin, Texas 78714-9030. Hearings will be held in Austin, Texas.

§30.84. Referral to the Attorney General.

Suspected or alleged Medicaid fraud will be referred to the Attorney General's office and the Health and Human Services Commission, Office of Investigations.

This 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 July 21, 2000.

TRD-200005041

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108



SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

40 TAC §30.90, §30.92

The new sections are proposed 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 new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.90. Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (HHSC) Utilization Review (UR) Department.

(a) According to federal regulations and State Plan requirements, HHSC UR staff will conduct required on-site activities related to utilization review and control in nursing facilities receiving Medicaid reimbursement through the hospice provider for hospice services.

(b) Hospice provider staff must cooperate with HHSC UR staff during on-site inspections regarding personal contact with hospice recipients and the review of their clinical records.

§30.92. Texas Index for Level of Effort (TILE) Assessments.

(a) Recipient assessment. Hospice nurse assessors assess recipients for TILE determination by completing the Hospice Nursing Facility Assessment (H-NF). These assessments establish TILE classifications as described in paragraphs (1)-(4) of this subsection. Effective January 1, 2001, nurse assessors must have completed a Health and Human Services Commission (HHSC) TILE training course and must be registered with the National Heritage Insurance Company (NHIC).

(1) Admissions assessments. The provider must complete and submit to the Texas Department of Human Services, Provider Claims Payment Unit, Post Office Box 149030, Mail Code Y-948, Austin, Texas 78714- 9030, the H-NF assessment on the hospice recipient or applicant in a nursing facility within 20 days of the date that hospice care starts in the nursing facility. The assessment period is four weeks prior to the assessment date. Assessments received after the 20th day will have as the effective date the stamp-in date.

(2) Continued stay reviews. The provider must complete and submit a continued stay review every 180 days on a Medicaid hospice recipient residing in a nursing facility. The following provisions apply:

(A) The provider must complete and submit the H-NF assessment to the Texas Department of Human Services, Provider Claims Payment Unit, Post Office Box 149030, Mail Code Y-948, Austin, Texas 78714- 9030. The provider may submit the assessment up to 45 days prior to the 180th day. H-NF assessments received earlier than the 135th day will be rejected.

(B) The H-NF assessment will be effective the 181st day, the day after the current H-NF Assessment expires.

(C) H-NF assessments received by the Texas Department of Human Services (DHS) Provider Claims Payment Unit after the current assessment expires will be effective the stamped date of receipt.

(D) The Medicaid hospice program will pay the default hospice- nursing facility rate for time periods when an H-NF Assessment is not current.

(3) Off-cycle assessment. If a recipient's medical condition deteriorates to the extent that he qualifies for a different TILE, the providers may submit an off-cycle assessment. Only one off-cycle assessment is permitted per recipient during a six month current assessment period.

(A) The off-cycle assessment will be effective the date received (stamp-in date) by DHS, thereby changing the review cycle.

(B) The provider must complete and submit another H-NF assessment every 180 days thereafter, as outlined under paragraph (2) of this subsection.

(4) Error correction. A new H-NF assessment may be submitted for the purpose of correcting errors previously made in the assessment portion of the form. The submission of the correction does not change the schedule for the submission of forms or necessarily change the TILE group. HHSC will not accept requests for changes submitted:

(A) over 60 days from the date of assessment on the incorrect form; or

(B) after notification of an on-site review date.

(b) Review and appeal of case-mix assessments. HHSC nurse reviewers conduct desk reviews and on-site reviews of H-NF Assessments to verify TILE information and determine that the recipient's status is accurately reflected. Forms expired over 12 months will not be reviewed.

(1) HHSC nurse reviewers notify nursing facilities and hospice providers in advance of routine onsite visits. Notice is given of recipients whose medical records will be reviewed, the time period covered by the review, the parts of the records of all hospice recipients necessary for review, and the accommodations necessary for the review. Nursing facilities and hospice providers receive a minimum of two work days notice prior to a routine visit. Less than two days notice

may be given to providers whose last two on-site visits resulted in monitoring, compliance, or vendor hold. No notice is required for visits for investigation of TILE issues, including suspected fraud, or for visits requested by another state agency. If nurse reviewers are prevented from conducting a review based on a provider's actions, TILE rates on the recipients chosen for review will be lowered to the default TILE rate until the review can be accomplished.

(2) When an HHSC nurse reviewer determines that the TILE classification is not substantiated and/or does not accurately reflect the recipient's status, the reviewer will discuss the error and propose corrections with the hospice provider staff and make appropriate corrections during the review. An exit conference is held with the nursing facility and hospice provider staff following the review. Additional documentation to support the provider's assessment may be presented at any time during the review process or the exit conference and adjustments may be made. The provider is given formal notification of all TILE changes within 15 working days of the exit conference.

(A) DHS recoups funds previously paid to the provider under incorrect TILE classification. DHS will pay the hospice provider any increase due to a change in TILE classification.

(B) The change in TILE classification and per diem rate is effective retroactively to the "effective date" of the assessment reviewed.

(3) If the HHSC nurse reviewer and the hospice nurse assessor are unable to agree about an assessment, the provider may submit a written request for a reconsideration by a state office reconsideration nurse.

(A) The request for the reconsideration and all documentation supporting the requested changes must be received by the state office reconsideration nurse within 15 days of receipt of formal notification of TILE changes.

(B) The state office reconsideration nurse will review all material submitted by the provider and all information collected during the utilization review (UR).

(C) The TILE classification and associated per diem rate specified by the HHSC nurse reviewer remain in effect during the reconsideration period.

(D) If the reconsideration establishes that HHSC has changed a TILE classification in error, HHSC corrects the error retroactively.

(4) If the provider disagrees with the findings of the state office reconsideration nurse, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q of this title (relating to Contract Appeals Process), by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 within 15 days of receipt of notification of the results of the reconsideration.

(A) The TILE classification and associated per diem specified by the state office reconsideration nurse supervisor remain in effect during the formal contract appeal.

(B) If the informal review or contract appeal process establishes that HHSC changed a TILE classification in error, HHSC corrects the error retroactively.

(c) Monitoring. Tile error rates on the assessment forms reviewed may result in a provider's undergoing a monitoring period. Decisions to institute monitoring will be made by the UR staff in state office.

(1) During the monitoring period, providers must submit all H-NF assessments to regional nurse reviewers. Assessments may not be submitted to the Provider Claims Payment Unit.

(2) The length of the monitoring period is 60 days. If accuracy of forms is still at an unacceptable level at the end of 60 days, HHSC state office staff will give a one-time, 30-day extension if the provider has shown an attempt to improve their accuracy. If forms are not accurate at the end of 90 days, HHSC places the provider on compliance.

(d) Compliance.

(1) A decision to place a provider on compliance will be made by UR staff in state office. Compliance may result when a provider has errors on the current assessment forms reviewed and one of the following:

- (A) ongoing errors at the end of the monitoring period;
- (B) lack of documentation regarding key assessment items;
- (C) a history of noncompliance; or
- (D) medical records which contain alterations in areas designed to lower the TILE level and increase the payment.

(2) Within a 30-day compliance period, providers must complete new assessment forms on all recipients not in the original review. Any forms scheduled to expire prior to the scheduled compliance visit should be completed pursuant to the TILE form instructions. Original TILE forms must be submitted, with copies of supporting medical record documentation for the assessment period, to the UR regional nurse one week prior to the scheduled visit date.

(3) If a provider has continuing errors by the end of the compliance period, per diem payments to the hospice provider will be held until the provider has corrected the errors.

(4) The hospice nurse assessor must attend an HHSC TILE training within 60 days of the beginning of the compliance period.

This 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 July 21, 2000.
TRD-200005042
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 438-3108

◆ ◆ ◆
SUBCHAPTER J. MISCELLANEOUS PROVISIONS

40 TAC §30.100

The new section is proposed 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 new section implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.100. Additional Requirements.

(a) Hospice providers must chart procedures in the nursing facility clinical record and advise the nursing facility staff of changes in the recipient's condition as necessary.

(b) The hospice provider must have joint procedures with the nursing facility for ordering medications that ensure the proper payor is billed and for reconciling billing between the nursing facility and hospice provider.

(c) The recipient has the right to refuse any service provided by a nursing facility or a hospice provider.

(d) The provider shall comply with the provisions of §49.23 of this title (relating to Advertising and Solicitation of Clients).

This 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 July 21, 2000.
TRD-200005043
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 438-3108

◆ ◆ ◆
SUBCHAPTER A. REQUIREMENTS

40 TAC §30.101, §30.103, §30.105

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

The repeals are proposed under the Human Resources Code, 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 repeals implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§30.101. Program Administrations.

§30.103. Program Coverage.

§30.105. Eligibility.

This 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 July 21, 2000.
TRD-200005033
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 438-3108

◆ ◆ ◆

CHAPTER 48. COMMUNITY CARE FOR
AGED AND DISABLED
SUBCHAPTER F. IN-HOME AND FAMILY
SUPPORT PROGRAM

40 TAC §48.2703

The Texas Department of Human Services (DHS) proposes an amendment to §48.2703, concerning income eligibility, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to exempt certain sources of income from calculations used to determine eligibility for the In-Home and Family Support Program (IHFSP).

Eric M. Bost, commissioner, 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. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increased number of individuals who are potentially eligible for IHFSP services because their sources of income are exempted from calculations used to determine eligibility. There will be no effect on large, small, or micro businesses because the rule only addresses eligibility requirements considered in processing IHFSP applications. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Debbie Berliner at (512) 438-3199 in DHS' Community Care for Aged and Disabled Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-279, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 35, which authorizes the department to administer public assistance and support services for persons with disabilities.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§35.001-35.012.

§48.2703. *Income Eligibility.*

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

(e) Applicants must provide to the caseworker all required documentation of earned or unearned income or both. This income is considered in determining financial eligibility. The following income is exempt from income eligibility calculation:

(1) Proceeds of either a commercial or an informal loan for which repayment is required with or without interest. To claim exemption of the proceeds of a loan, a client must prove that he acknowledges an obligation to repay and that some plan for repayment exists. If these can be verified, no written contract is required.

(2) Payments from the Agent Orange Settlement Fund or any other fund established in the settlement of the Agent Orange Product liability litigation (Public Law 101-239).

(3) Any payment received under the Radiation Exposure Compensation Act (Public Law 101-246).

(4) Value of any housing assistance paid on a house under the United States Housing Act of 1937, the National Housing Act, §101 of the Housing and Urban Development Act of 1965, or Title V of the Housing Act of 1949 as authorized by Public Law 94-347.

(5) Payment from any source made to individuals because of their status as victims of Nazi persecution (Public Law 103-286).

(f)-(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 July 24, 2000.

TRD-200005074

Paul Leche

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 438-3108

◆ ◆ ◆

PART 2. TEXAS REHABILITATION
COMMISSION

CHAPTER 101. GENERAL RULES

40 TAC §101.24

The Texas Rehabilitation Commission (TRC) proposes new §101.24, concerning general rules. The section is being proposed to comply with the provisions of House Bill 2641.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, 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.

Mr. Harrison also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the agency's compliance with House Bill 2641. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new section is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§101.24. *Responsibilities of the Commissioner.*

(a) The Commissioner is the executive head of the Commission, and is subject to the oversight and evaluation of the Commissioner of the Health and Human Services Commission (HHSC).

(b) The Commissioner's management responsibilities include:

(1) making all decisions regarding the daily operations of the Commission;

(2) implementing all policies and/or rules adopted by the Board;

(3) making long-range and intermediate plans for the scope and development of the program, and making decisions regarding allocation of resources;

(4) certification of funds for disbursement;

(5) delegation of authority to officers and employees of the Commission to carry out responsibilities of the Commissioner;

(6) doing all acts necessary to manage the Commission;

(7) executing all authority delegated by the Board;

(8) developing and implementing the provisions of an MOU with HHSC;

(9) advising the Commissioner of HHSC and HHSC key staff in a timely manner on matters relating to the operation of the Commission;

(10) establishing a flexible, responsible and accountable relationship with HHSC; and

(11) through open and timely communication and mutual respect for the separate missions of HHSC and the Commission, assisting HHSC accomplish its mandates with minimal resources and minimal interference in the day-to-day operation of the Commission.

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

Filed with the Office of the Secretary of State, on July 24, 2000.

TRD-200005067

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 424-4050



PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 181. GENERAL RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §181.55

The Texas Commission for the Deaf and Hard of Hearing proposes new §181.55. The proposal establishes the task forces of the Commission and their importance to the Commission.

David W. Myers, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Myers has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a

result of this rule will be a better understanding of the task forces of the Commission. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the rule as proposed.

Comments on this proposed rule may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The rule is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.55. Task Force Purpose.

The Hard of Hearing Task Force, Hispanic Tri-lingual Task Force, Deafness Task Force and Educational Interpreter Task Force are advisory committees appointed by the Texas Commission for the Deaf and Hard of Hearing. Each committee is responsible for advising and assisting in developing programs and services for persons who are deaf and hard of hearing in the state. The Task Forces remain in existence through state fiscal year 2005.

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

Filed with the Office of the Secretary of State, on July 19, 2000.

TRD-200004977

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 407-3250



40 TAC §181.56

The Texas Commission for the Deaf and Hard of Hearing proposes new §181.56. The proposal establishes the responsibilities of the task forces of the Commission.

David W. Myers, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Myers has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of this rule will be a better understanding of the responsibilities of the task forces of the Commission. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the rule as proposed.

Comments on this proposed rule may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The rule is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.56. Responsibility of Task Force members.

(a) Task Forces may recommend to the commission any rules which are necessary for the performance of its duties or the program and which are consistent with the laws of this state;

(b) Task Forces may make recommendations to the commission for approval to establish ad hoc committees to assist in the consideration of pertinent matters. These ad hoc committees may make recommendations to the task force for its consideration and approval.

(c) The Task Forces' decision-making process is independent of the administrative staff of the commission. The commission has final decision on all actions.

This 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 July 19, 2000.

TRD-200004978

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 407-3250



40 TAC §181.57

The Texas Commission for the Deaf and Hard of Hearing proposes new §181.57. The proposal establishes membership requirements and length of term for members of the task forces of the Commission.

David W. Myers, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Myers has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of this rule will be a better understanding of the membership requirements and length of term for members of the task forces of the Commission. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the rule as proposed.

Comments on this proposed rule may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The rule is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.57. Term of Membership, Vacancies and Officers.

(a) Term of members shall be three years. A member of a task force who is appointed for a full three-year term is eligible for reappointment for a second consecutive term. The commission shall fill any vacancy for the length of an unexpired term. A member of a task force who is appointed to fill an unexpired term may be reappointed to two consecutive full terms.

(b) A vacancy on a task force will be created through the expiration of a term, resignation of a member, incapacity of a member to the extent that the member is unable to fulfill the obligations of the position, or absence of a member for three consecutively scheduled and

announced meetings. To fill vacancies, the task force may review qualifications of candidates and recommend appointments of such candidates to the commission.

(c) Task Force members shall not receive any compensation for their services, but can receive reimbursement for expenses in performing the duties of the office, subject to availability of funding by the commission and in accord with state travel regulations. Committee members must receive prior approval to be reimbursed for expenses incurred while attending a task force meeting or other functions as authorized by the commission.

(d) The task forces shall elect a chairperson, a vice-chairperson, of whom each shall serve for at least one year. The election shall be held at the first regular meeting following January 1.

This 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 July 19, 2000.

TRD-200004979

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 407-3250



40 TAC §181.58

The Texas Commission for the Deaf and Hard of Hearing proposes new §181.58. The proposal establishes qualifications of the members of the task forces of the Commission.

David W. Myers, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Myers has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of this rule will be a better understanding of the qualifications of the members of the task forces of the Commission. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the rule as proposed.

Comments on this proposed rule may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The rule is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.58. Qualifications of Task Force Members.

(a) The Hard of Hearing Task Force shall be comprised of ten members appointed by the commission. Qualifications of members: Each member of the task force shall be a resident of the state; be a consumer; or in a position of providing services to individuals who are hard of hearing; and have knowledge of the needs of individuals with hearing loss and of the services available.

(b) The Hispanic Tri-lingual Task Force shall be comprised of at least five and no more than fifteen members pursuant to the needs

established by the commission. Qualifications of members: Members of the task force shall have the experience of providing or utilizing Hispanic tri-lingual interpreting services; must be a resident of the state; at least two members must be persons who are deaf and a frequent consumer of interpreter services; all members must demonstrate knowledge of the field of interpreting and the special needs of the tri-lingual interpreter and consumer.

(c) The Deafness Task Force shall be comprised of ten members appointed by the commission. Qualifications of members: Each member of the task force shall be a resident of the state; be a frequent consumer of interpreter services who demonstrates knowledge of the field of deafness and the special needs of the consumer who is deaf.

(d) The Educational Interpreter Task Force shall be comprised of at least five and no more than fifteen members pursuant to the needs established by the commission. Qualifications of members: Each member of the task force shall have the experience of providing educational interpreting services; or be a consumer of educational interpreter services; or be in a position closely associated with the use of educational interpreters; be a resident of the state; at least two members must be persons who are deaf and be frequent consumers of interpreter services; all members must demonstrate knowledge of the field of interpreting and the special needs of the educational interpreter and the consumers.

This 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 July 19, 2000.

TRD-200004980

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 407-3250



SUBCHAPTER F. FEES

40 TAC §181.830

The Texas Commission for the Deaf and Hard of Hearing proposes amendment to §181.830. The amendment is proposed to modify how fees for interpreter services are determined in accordance with Texas Administrative Code, §81.006.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be a better understanding of how fees for interpreter services are determined. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Billy Collins, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Texas Administrative Code, §81.006(b) (3), which provides the Texas Commission for

the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

§181.830. [Fees Schedules for the Payment of] Interpreter Services for the Deaf and Hard of Hearing

(a) [Fees.] Under the authority of the Texas Code of Criminal Procedure, Article 38.31, and the Texas Administrative [Human Resources] Code, Chapter 81, §[1]81.006(a) [and (e);] the Commission establishes [established the following] maximum allowable fees for the payment of interpreter services for persons who are [the] deaf and hard of hearing which must be provided by law in proceedings of state agencies, courts, and political subdivisions. Under the authority of the Texas Administrative Code, Chapter 81 §81.006(c) other state agencies shall adopt the schedule of fees established by the Commission. The fees are established as the best value through competitive bid on a biennial basis and may be reviewed and or revised as deemed necessary by the Commission. The schedule of fees and any changes will be posted on the agency website.[This fee schedule must be adhered to unless a superseding contractual arrangement exists between the employing entity and the service provider. For the services of a certified interpreter the commission sets the following maximum fees:]

{(1) Scheduled Assignments-\$30 per hour.}

{(2) Scheduled After-Hour, Weekend or Non-Scheduled (less than 24 hour notice)-\$45 per hour.}

{(3) Emergency/Holiday-\$60 per hour.}

{(4) Administrative costs of collection that are inclusive in those fees.}

(b) The Commission defines the following: [Minimum fee payment. The services of a certified interpreter should be reimbursed a guaranteed two-hour minimum with time calculated portal to portal.]

{(c) Other types of interpreting settings. Fees for interpreting services in settings, other than formal, governmental, civil, and criminal proceedings, are applicable to certified interpreter services for the deaf and hard of hearing who function in a variety of settings including, but not limited to, health, vocational, educational, and welfare activities.}

{(d) After Hours/Weekend, Emergency/Holiday interpreting service fees.}

(1) After Hours[Weekend,] Interpreting services is any scheduled interpreting [service fees should be paid in any] situation which begins between the hours of 6:00 p.m. and 6:00 a.m, Monday through Friday [or on Saturday and Sunday].

(2) Weekend Interpreting services is any scheduled interpreting situation which occurs anytime on Saturday or Sunday.

(3) [(2)] Emergency interpreting service situations within proceedings of state agencies, courts, and political subdivisions are defined as essential situations which are potentially life threatening or pose a threat to the clients' well-being during any time of the day or night. In this definition of an emergency interpreting service situation, all interpreting service situations which can reasonably be delayed to allow adequate planning, or which can be planned for in advance and do not pose a special hardship for the service provider are not considered to be emergency interpreting service situations. Lateness in planning on the part of the consumer or client are not emergency situations as defined in this subsection. The designation "emergency interpreting service situation" is to be used prudently in view of its potential for abuse.

(4) ~~[(3)]~~ Holiday Interpreting service situations are defined as applying to [fees are paid for] any federally observed holiday.

(5) Portal to portal is the time an interpreter leaves scheduled headquarters and returns to headquarters at the completion of the assignment. Headquarters is the site of the contracted service provider or the home base of the contracted interpreter whichever is closer to the assignment. Service providers will not be reimbursed mileage costs whenever portal to portal costs are charged unless otherwise specified.

(6) Guaranteed minimum assignment is the least amount of time a service provider will be reimbursed and presently is established as two hours.

(7) Late cancellation means providing less than twenty-four hours notice of the cancellation of an assignment. Cancellation must be made Monday through Friday during regular business hours unless otherwise specified.

~~[(e) Interpreting fees for services rendered to deaf-blind persons. It is recommended that interpreting services provided for persons who are deaf and blind be reimbursed according to the fee scales and policies in this section.]~~

~~[(f) Recommended practices in fee determination. The fees and related practices set forth throughout this section are the commission's recommendation issued pursuant to its statutory mandate. These recommendations do not serve to regulate other contractual fees paid to interpreters for the deaf in the State of Texas. Local, county, and state governmental units, as well as schools, agencies, and individuals, may negotiate contracts for a fee arrangements with particular interpreters on an hourly, daily, weekly, monthly, or annual basis.]~~

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

Filed with the Office of the Secretary of State, on July 19, 2000.

TRD-200004989

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: September 3, 2000

For further information, please call: (512) 407-3250



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 827. COMMUNITIES IN SCHOOLS PROGRAM

SUBCHAPTER D. FUNDING OF CIS LOCAL PROGRAMS

40 TAC §827.34

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

The Texas Workforce Commission (Commission) proposes the repeal of §827.34 concerning Communities In Schools.

The purpose of the repeal is to remove an obsolete rule from the Texas Administrative Code.

The Communities In Schools program was transferred to the Texas Department of Protective and Regulatory Services (Department) from the Commission pursuant to Senate Bill 1574 passed by the 76th Legislature, Regular Session, Chapter 489. The Department has adopted 40 TAC Chapter 701, Subchapter B, regarding Communities In Schools, effective September 1, 1999 (24 TexReg 6849), making the Commission rules, 40 TAC Chapter 827, obsolete. The only rule not transferred by this filing was §827.34.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the repeal will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the repeal;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the repeal;

There are no foreseeable implications relating to costs or revenue of the state or local government as a result of enforcing or administering the repeal; and

There are no probable economic costs to persons required to comply with the rule repeal.

John Moore, Assistant General Counsel, has determined that:

There is no anticipated adverse impact on small businesses as a result of enforcing or administering the repeal, because small businesses are not required to do anything as a result of the repeal; and

For each year of the first five years that the repeal is in effect, the public benefit expected as a result of the adoption of the proposed repeal is to remove an obsolete rule from the Texas Administrative Code.

Comments on the proposed repeal of the rule may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 608, Austin, Texas, 78778-0001; telephone number (512) 463-3041. Comments may also be submitted via facsimile to (512) 463-2220 or e-mail at john.moore@twc.state.tx.us. Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

The repeal of the rule is proposed under Texas Labor Code, §§301.061 and 302.021, which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission's services and activities.

The proposal affects Texas Labor Code Chapter 305.

§827.34. *Other Funding.*

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

Filed with the Office of the Secretary of State, on July 17, 2000.

TRD-200004924

J. Ferris Duhon
Assistant General Counsel
Texas Workforce Commission
Earliest possible date of adoption: September 3, 2000
For further information, please call: (512) 463-8812



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 1. ADMINISTRATION

**PART 12. COMMISSION ON STATE
EMERGENCY COMMUNICATIONS**

**CHAPTER 251. REGIONAL PLANS--
STANDARDS**

1 TAC §251.9

The Commission on State Emergency Communications has withdrawn from consideration, an amendment to §251.9, Guidelines for Addressing Maintenance Funds concerning the use and distribution of 9-1-1 funds and other related funds which appeared in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4420).

Filed with the Office of the Secretary of State on July 24, 2000.

TRD-200005069

James D. Goerke
Executive Director

Commission on State Emergency Communications

Effective date: July 24, 2000

For further information, please call: (512) 305-6933

◆ ◆ ◆
TITLE 16. ECONOMIC REGULATION

**PART 4. TEXAS DEPARTMENT OF
LICENSING AND REGULATION**

CHAPTER 68. ARCHITECTURAL BARRIERS

16 TAC §68.34, §68.102

The Texas Department of Licensing and Regulation has withdrawn from consideration proposed new §68.34 and §68.102, which appeared in the January 21, 2000, issue of the *Texas Register* (25 TexReg 344).

Filed with the Office of the Secretary of State on July 18, 2000.

TRD-200004937

William H. Kuntz, Jr.
Executive Director

Texas Department of Licensing and Regulation

Effective date: July 18, 2000

For further information, please call: (512) 463-7348

◆ ◆ ◆

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 7. BANKING AND SECURITIES

PART 4. TEXAS SAVINGS AND LOAN DEPARTMENT

CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

SUBCHAPTER B. PROFESSIONAL CONDUCT 7 TAC §80.10

The Texas Savings and Loan Commissioner (the "Commissioner") adopts an amendment to §80.10 of the regulations (the "Regulations") that implement the Mortgage Broker License Act, *Finance Code*, Chapter 156 (the "Act") without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 477-638). The new subsection provides an additional prohibition on false, misleading, or deceptive practices related to knowingly participating in or permitting the submission of false or misleading information of a material nature to any person in connection with a mortgage loan.

This amendment is specifically intended to incorporate misrepresentations by mortgage brokers about a potential borrower's financial condition during the loan underwriting process. Numerous checks and balances exist in the underwriting process to ensure that a potential borrower will be able to repay the mortgage loan for which he or she is applying. However, if the borrower's financial condition were misrepresented in the submission of the application and underwriting information to the lender, these checks and balances would not be effective.

The submission of material false or misleading information in the application or underwriting process might be done with or without the knowledge or participation of the loan applicant. Even in instances where the loan applicant knew that the practice was occurring, the loan applicant might not fully understand the ramifications of such actions. Among the possible ramifications of this practice to the mortgage loan applicant are the potential for criminal sanctions, the possibility of obtaining a mortgage loan that exceeds the applicant's actual ability to repay, the possibility that discovery of such falsification will disrupt the processing of the loan application or jeopardize its approval, and the possibility that the mortgage broker will use the loan applicant's participation in such activity to gain undue leverage over the applicant.

For these reasons, it was deemed appropriate to add this additional prohibition to the list of activities that would constitute

false, misleading, or deceptive practices. It is believed that including this paragraph will protect loan applicants, prevent obvious abuses, and protect the applicant and the mortgage lending/investing industry, which looks to the mortgage brokerage industry to provide accurate and reliable information in connection with mortgage loan applications.

The prohibition applies only to "knowing" participation in the submission of false or misleading information and the prohibition includes a materiality provision to make it clear that false or misleading information which is of a *de minimis* nature and does not affect the outcome of the loan approval process does not constitute a prohibited activity. For example, the omission of an inconsequential obligation or the submission of an approximate rather than precise loan balance, under certain circumstances, would not violate the rule.

The prohibition includes submission of false or misleading information of a material nature to "any person" in connection with the decision to make or approve a mortgage loan. This would include another broker, an investor or the ultimate lender.

The proposal was published for comment in the *Texas Register* on January 28, 2000, and no comments were received.

The new subsection expands upon previously adopted 7 TAC §80.10 which implements Section 156.102(b) of the Act, authorizing the Commissioner to adopt rules to prohibit false, misleading, or deceptive practices by mortgage brokers and loan officers. The new subsection implements Subtitle E of the *Finance Code*; §156.102(b) is affected by the new subsection.

The new subsection is adopted under §156.102 of the Finance Code which authorizes the Commissioner to adopt rules necessary to ensure compliance with the intent of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2000.

TRD-200004928

James L. Pledger
Commissioner

Texas Savings and Loan Department

Effective date: August 6, 2000

Proposal publication date: January 28, 2000

For further information, please call: (512) 475-1350

◆ ◆ ◆

SUBCHAPTER H. SAVINGS CLAUSE

7 TAC §80.19

The Texas Savings and Loan Commissioner (the "Commissioner") adopts a new subchapter to the regulations ("Regulations") which implement the Mortgage Broker License Act, *Finance Code*, §156 (the "Act") through the adoption of Subchapter H, containing a new section, §80.19, Savings Clause, without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 477-638).

This new section, added at the informal suggestion of the Office of the Attorney General, makes it clear that if for any reason any section of the Regulations is found to be illegal or invalid, such illegality or invalidity will not affect the remaining provisions of the Regulations.

The new section has been published for comment in the *Texas Register* on January 28, 2000, and no comments have been received.

The new section is adopted under §156.102 of the Finance Code, which authorizes the commissioner to adopt rules necessary to ensure compliance with the intent of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2000.

TRD-200004929

James L. Pledger
Commissioner

Texas Savings and Loan Department

Effective date: August 6, 2000

Proposal publication date: January 28, 2000

For further information, please call: (512) 475-1350



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 5. PROGRAM DEVELOPMENT

SUBCHAPTER D. CRITERIA FOR APPROVAL OF NEW DOCTORAL DEGREE PROGRAMS

19 TAC §§5.68 - 5.73

The Texas Higher Education Coordinating Board adopts the repeal of §§5.68 - 5.73 concerning Criteria for Approval of New Doctoral Degree Programs without changes to the proposed text as published in the May 12, 2000, issue of the *Texas Register* (25 TexReg 4270). The proposed repeal of the rules would require institutions which offer doctoral programs to provide opportunities for significant and regular interaction between program faculty and students and among students themselves; to access and engage in depth a wide variety of educational resources related to the program and associated fields; for significant exchange of knowledge with the academic community; to broaden educational and cultural perspectives; and to mentor and evaluate students in depth.

There were no comments received regarding the repeal of the rules.

The repeal of the rules is adopted under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Doctoral Degree Programs.

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 July 21, 2000.

TRD-200005054

James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: August 10, 2000

Proposal publication date: May 12, 2000

For further information, please call: (512) 427-6162



19 TAC §§5.68 - 5.74

The Texas Higher Education Coordinating Board adopts new §§5.68 - 5.74 concerning Criteria for Approval of New Doctoral Degree Programs. Section 5.74 is adopted with changes to the proposed text as published in the May 12, 2000, issue of the *Texas Register* (25 TexReg 4270). Sections 5.68 - 5.73 are being adopted without changes and will not be republished. These rules specify outcomes expected to result from doctoral residency. Because of the growing use of distance education, the traditional requirement that doctoral students should spend specified lengths of time on campus is recast to focus on expected outcomes to accrue from such a residency. Generally, those outcomes involve significant interaction between students and faculty and substantial immersion in the particular field of study.

Comments were received from thirteen institutions concerning these rules. Supportive comments were made by: University of Houston-Clear Lake, Texas A&M University-Commerce, Stephen F. Austin State University, University of Houston, The University of Texas at Dallas, The University of Texas at San Antonio and Texas Woman's University. "No comment" replies were received from: Texas Tech University, The University of Texas-Pan American, and Texas A&M University-Kingsville.

Comment: The University of Texas-Arlington (UTA) said that most doctoral students there were not full-time and felt that the attendance and enrollment patterns for doctoral students may be shifting toward part-time doctoral study.

Response: The staff believes that the outcomes to be derived from doctoral study should be the same regardless of whether a student is full-time or part-time. Attainment of this level of education requires an in-depth immersion in the appropriate field of study and substantial interaction between faculty and students and among students themselves. Therefore, no change has been made to the proposed rules.

Comment: UTA also challenged the statement that most doctoral students should be full-time and should be supported (financially) to ensure they have an opportunity to concentrate on their degree programs.

Response: This section of the rules states a desirable goal. Institutions are not required to take any particular action as a result. Therefore, no change has been made.

Comment: The University of Texas Health Science Center wanted to have §5.74 make explicit reference to the need for institutions to obtain planning authority for doctoral programs before developing a proposal.

Response: A new paragraph, §5.74(a)(1) Approval by the CB of planning authority for the proposed program; has been added to reflect this necessary action. The other paragraphs in §5.74(a) are retained and their numbers increase by one digit.

Comment: Texas A&M University (TAMU) believes that for the next few years, current residency requirements for the PhD should be retained. For other doctoral degrees (EdD, DEng), the residency requirements should be set by each university and monitored individually.

Response: The staff believes that the proposed residency expectations are central to any doctoral program and are integral to the educational process at the doctoral level. In addition, the proposed residency expectations align with the criteria from the Southern Association of Colleges and Schools (SACS). TAMU or any other doctoral-granting institution may choose to disallow such flexibility for their PhD program while allowing it for EdD programs. The staff believes such flexibility will potentially benefit the state by enhancing access to certain doctoral programs.

The new rules are adopted under Texas Education Code, §61.027, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Doctoral Degree Programs.

§5.74. Specific Steps for Implementation.

(a) Strong support from the governing board, administration, and faculty for the proposed program must be demonstrated, and, the following specific steps must be taken before a new doctoral program can be initiated:

(1) Approval by the Coordinating Board of planning authority for the proposed program;

(2) Approval of the program by the governing board of the institution concerned;

(3) Approval of the program by the Coordinating Board, with such approval requiring consideration of the proposal by the appropriate board committee at two quarterly meetings and the decision by the board being made at the second of the two meetings; and

(4) Certification of adequate funding of the program by the institution.

(b) When an institution has not previously offered doctoral level work, notification to the executive secretary of the Commission on Colleges, Southern Association of Colleges and Schools, is required at least one year in advance of program implementation.

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 July 21, 2000.
TRD-200005053

James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: August 10, 2000
Proposal publication date: May 12, 2000
For further information, please call: (512) 427-6162

◆ ◆ ◆
CHAPTER 21. STUDENT SERVICES
SUBCHAPTER AA. RECIPROCAL
EDUCATIONAL EXCHANGE PROGRAM

19 TAC §21.901, §21.909

The Texas Higher Education Coordinating Board adopts amendments to §21.901 and §21.909 concerning the Reciprocal Educational Exchange Program with changes to the proposed text as published in the May 12, 2000, issue of the *Texas Register* (25 TexReg 4272). Specifically, the amendments will provide a means of increasing the number of Texas students able to take part in study-abroad programs.

Comments were received regarding the rules.

Comment: Office of International Affairs, Texas Tech University, on behalf of the International Education Contact Group, suggested that since the emphasis of the program is on benefits to Texas students, the reference in §21.901 to "better understanding the State of Texas" should be deleted. Although Texas students going abroad can, by making comparisons, grow to better understand the State of Texas, the removal of this reference to the state increases the program's focus on increasing the opportunities for Texas students to acquire a more global perspective.

Response: The agency agreed with the comments and the words "and the State of Texas" were deleted.

Comment: Office of International Affairs, Texas Tech University, on behalf of the International Education Contact Group also suggested the references to exchange programs in §21.909 should be clarified to apply only to exchanges made through the Reciprocal Educational Exchange Program. Institutions may make exchanges outside the purview of this program, which would not be subject to these rules.

Response: The agency agreed with the comments and the clarification has been added.

The amendments to the rules are adopted under Texas Education Code, §54.060(c), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Reciprocal Educational Exchange Program.

§21.901. Purpose.

The purpose of the reciprocal educational exchange program is to enable Texas students of participating institutions to afford to participate in exchange programs with foreign institutions in order to help them better understand the culture, language, needs, and expectations of other nations of the world.

§21.909. Formula Funding.

When a Reciprocal Educational Exchange Program exchange takes place, the Texas institution may request formula funding for the hours taken by foreign students attending classes in Texas. They may not request formula funding for their students who go abroad under this reciprocal exchange program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2000.

TRD-200005056

James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: August 10, 2000

Proposal publication date: May 12, 2000

For further information, please call: (512) 427-6162



19 TAC §21.910, §21.911

The Texas Higher Education Coordinating Board adopts new §21.910 and §21.911 concerning the Reciprocal Educational Exchange Program without changes to the proposed text as published in the May 12, 2000 issue of the *Texas Register* (25 TexReg 4272). Specifically, the amendments will provide a means of increasing the number of Texas students able to take part in study-abroad programs.

No comments were received regarding the proposed new rules.

The new rules are adopted under Texas Education, §54.060(c), which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning the Reciprocal Educational Exchange Program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2000.

TRD-200005055

James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: August 10, 2000

Proposal publication date: May 12, 2000

For further information, please call: (512) 427-6162



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 513. REGISTRATION

SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §513.5

The Texas State Board of Public Accountancy adopts an amendment to §513.5 concerning Restrictions Concerning Members of Partnerships and Corporations without changes to the proposed text as published in the June 2, 2000 issue of the *Texas Register* (25 TexReg 5010).

The amendment allows a clerical mistake to be corrected.

The amendment will function by inserting the word "not" which is what the Board intended and voted on and was contained in the initial proposal publication.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2000.

TRD-200005022

William Treacy

Executive Director

Texas State Board of Public Accountancy

Effective date: August 10, 2000

Proposal publication date: June 2, 2000

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER Y. STANDARDS FOR LONG-TERM CARE INSURANCE COVERAGE UNDER INDIVIDUAL AND GROUP POLICIES

28 TAC §3.3806

The Commissioner of Insurance adopts new §3.3806 concerning the initial and subsequent conditions of eligibility for individuals who may become covered under a long-term care insurance policy and/or certificate. This new section is adopted without changes to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 Tex Reg. 5126) and will not be republished.

This new section is necessary to implement legislation enacted by the 76th Legislature in House Bill 1586, which amended Article 3.70-12, standards for long-term care insurance. Section 3.3806 sets forth individuals eligible for long-term care coverage, including the statutory language that clarified that parents of the insured and parents of the insured's spouse are eligible for coverage, and requires inclusion of a provision stating the conditions under which the long-term care coverage will become effective for an individual who becomes insured subsequent to the issuance of the policy and/or certificate.

This new section clarifies that an insurer could offer long-term care coverage to a greater number of an individual's family members or other individuals. It does not require an insurer to offer long-term care coverage to every individual listed in the section. The new section also states the conditions under which the long-term care coverage will become effective for an individual who becomes insured subsequent to the issuance of the policy and/or certificate.

No comments were received.

Section 3.3806 is adopted under the Insurance Code Articles 3.70-12, 3.70-1 and §36.001. Articles 3.70-12 and 3.70-1 provide that the Commissioner of Insurance by rule shall establish standards for long-term care policies and/or certificates. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance only as authorized by statute.

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 July 21, 2000.

TRD-200005020

Gene Jarmon

Assistant General Counsel

Texas Department of Insurance

Effective date: August 10, 2000

Proposal publication date: June 2, 2000

For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER F. APPLICATION TO PURCHASE OR LEASE VACANT AND UNSURVEYED PUBLIC SCHOOL LAND

31 TAC §13.79, §13.81

The General Land Office adopts the repeal of §13.79 relating to the Appointment of Surveyor and §13.81 relating to the Disqualification of a Surveyor and simultaneously adopts new §13.79 relating to the Appointment of Surveyor and §13.81 relating to the Disqualification of a Surveyor. The proposed repeals and proposed new rules are adopted without changes to the proposed text published in the May 26, 2000, edition of the *Texas Register* (25 TexReg 4711).

Texas Natural Resources Code §51.178 relating to Appointment of Surveyor requires the General Land Office to promulgate rules setting out the qualifications and method of selection of surveyors. The rules must provide the greatest practicable opportunity for all qualified surveyors to obtain appointment. Also the rules must provide procedures for an interested party to move for the removal of an appointed surveyor on the grounds of bias, prejudice, or conflict of interest. The statute allows removal of an appointed surveyor only upon notice to the surveyor and all interested persons and after hearing. The repealed §13.79 and

§13.81 did not fully explicate these statutory requirements and so the new §13.79 and §13.81 were necessary to comply with the specific direction in Texas Natural Resources Code §51.178.

The General Land Office adopts new §13.79 relating to Appointment of Surveyor. The purpose of the new §13.79 is to provide more detailed procedures for the appointments of surveyors. The new §13.79 lists the necessary qualifications of surveyors and requires notice to all qualified surveyors to ensure the greatest practicable opportunity for appointment. The General Land Office is adopting a new §13.79 because the previous §13.79 may have unnecessarily restricted appointments to those surveyors who have experience in the particular geographic area and who are located closest the alleged vacancy. These criteria may unduly limit the number of eligible surveyors for any particular appointment. The adopted new §13.79(a) follows the statutory requirements for eligibility: the surveyor must be a licensed state land surveyor or a county surveyor in the county where the claimed vacancy is located. The adopted new §13.79(b) details the new method for appointment. The statute mandates the greatest practicable opportunity for appointment and, to effectuate that command, the adopted new §13.79(b)(1) now requires the General Land Office to notify all currently licensed state land surveyors about the opportunities for appointment under the vacancy statute at least once a year. This subsection allows the Commissioner, in his discretion, to provide for wider dissemination of the notices of available appointment by utilizing the services of the Texas Board of Professional Land Surveying. Further, for each appointment, a specific notice and copy of the vacancy application shall be sent to all licensed state land surveyors and eligible county surveyors. Any potentially eligible surveyor may, at his option, withdraw his name from consideration for appointments, §13.79(b)(2). The factors listed at §13.79(b)(4) allow the Commissioner to consider a wider range of factors not tied to location of the surveyor and so provide greater opportunity for all eligible surveyors. The section lists possible bias, prejudice and conflict of interest as factor for consideration in an appointment. The General Land Office may be able to avoid future motions for removal of a surveyor by making this inquiry at an earlier stage of the vacancy proceeding.

Adopted new §13.81 relating to the Disqualification of a Surveyor provides details the procedures for seeking removal of an appointed surveyor because of bias, prejudice, or conflict of interest. The section also defines bias, prejudice and conflict of interest. The procedures provide time limits for seeking removal, §13.81(a); the form and contents of petitions for removal, §13.81(b)(1) and §13.81(b)(2) and §13.81(b)(3); and specific statements of fact to support an allegation of bias, prejudice or conflict of interest, §13.81(b)(4). The General Land Office is requiring affidavits of fact so that the seriousness of the removal petition may be properly evaluated at an early stage of the proceeding, §13.81(b)(4). Motions for removal of an appointed surveyor should not be filed routinely but only upon sufficient factual information. The stringency of §13.81(b) is necessary to avoid delay and unnecessary expense in the vacancy proceeding.

Sections 13.81(c) and §13.81(d) now contain additional procedural rules for notices and replies to petitions. The §13.81(d) reply requirements are designed to minimize the paperwork and to consolidate all challenges to a particular appointment in one proceeding. Thus §13.81(d)(2) now allows an interested person to urge additional grounds for removal instead of requiring a new petition and a separate proceeding. An interested person's failure to reply to a petition for removal does not have any adverse effect so unnecessary paperwork is eliminated,

§13.81(d)(4). Section 13.81(d)(3) now allows the appointed surveyor to voluntarily renounce his appointment thereby eliminating the need for a hearing. In the event of such renunciation, the Commissioner begins the appointment process anew.

Adopted new §13.81(e), (f), (g) and (h) describe the legal nature of the hearing, limit the scope of the hearing to the facts alleged in affidavits, require a written decision, and limit re-opening of the issues raised in the petition for removal. These sections were designed to expedite the vacancy proceeding by disallowing collateral appeals, §13.81(h), and focus the hearing on only the statutory bases for removal of a surveyor, §13.81(f). Section 13.81(f) governs the scope of the hearing to remove an appointed surveyor. The scope is narrow because the questions raised should be narrow, i.e. is there sufficient evidence of bias, prejudice, or conflict of interest to warrant removal of an appointed surveyor? The hearing should not become a discovery device or a preview of issues related to the ultimate question, i.e. whether a vacancy exists. Similarly facts related to the surveyor's general competence or the quality of his work are not relevant to bias, prejudice or conflict of interest. Such issues can be raised as impeachment matters at the hearing on the merits of the vacancy application.

Section 13.81(h) clarifies that there is no appeal from the Commissioner's determination on the petition for removal. The statute does not provide for an appeal from a surveyor disqualification decision and a challenge to the decision can be raised in an appeal of the final vacancy determination. In *Logan v. Armstrong*, 694 S.W.2d 68, the Corpus Christi Court of Appeals, construing the previous vacancy statute, discussed the general rule of "final administrative order." The Court noted that unless an administrative order is final, there is no appeal; an order is final when it leaves nothing open for future disposition. At the time of a petition to remove an appointed surveyor, the vacancy proceeding is in its earliest stages. Under the current statutory scheme, the ultimate issue, *inter alia*, remains after the hearing on removal of a surveyor. Accordingly there is no appeal from the interlocutory order regarding the removal of a surveyor.

Adopted new §13.81(i), (j), and (k) define prejudice, bias and conflict of interest by listing the kinds of facts that may lead to removal of an appointed surveyor. The lists are not intended to encompass all possible situations so the rules allow the Commissioner to consider other relevant factors, e.g. §13.81(i)(3). The definition of "relative" used in §13.81(j)(3) is taken from the General Land Office Employee Handbook relating to nepotism. The conflict of interest section, §13.81(k) uses the term "significant" when referring to benefit and financial interest, e.g. §13.81(k)(1) and (2). The term "significant" was intentionally not defined so that the sound exercise of discretion, judgment and common sense are not inhibited. Adoption of a rigid percentage or dollar amount automatically constituting a conflict of interest may not be meaningful in the context of a specific vacancy and may permit an injustice considering the unique circumstances of a case. Similarly an objectively small percentage can be a significant amount of money in the context of a mineral interest. Therefore, the General Land Office will be flexible when evaluating whether the alleged interest or benefit is considered significant enough to constitute a conflict of interest.

Texas Natural Resources Code §51.178 is affected by these adopted new rules.

These rules are being adopted under Texas Natural Resources Code §51.178 which requires the Commissioner to promulgate rules setting out the qualifications and method of selection of surveyors and to provide for the greatest practicable opportunity for

all qualified surveyors to obtain appointment and to provide the opportunity for an interested person to move for the removal of a surveyor. Agency counsel has reviewed these rules and has determined that the adoption of these rules is within the jurisdiction and the authority of the General Land Office.

No comments concerning the proposed repeal of these rules were received.

No comments concerning the adoption of the new rules were received.

The new rules are not subject to consistency review under the Texas Coastal Management Plan. Texas Natural Resources Code §33.2051 and §33.2051 list the state agency actions subject to consistency review and rules related to vacancy proceedings are not among those actions.

The repeals are adopted under the Natural Resources Code, §51.178 which provides the General Land Office with the authority to administer the selection and appointment of surveyors and the procedures for seeking removal of an appointed surveyor.

The repealed rules affect chapter 51 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2000.

TRD-200005006

Larry Soward

Chief Clerk

General Land Office

Effective date: August 9, 2000

Proposal publication date: May 26, 2000

For further information, please call: (512) 305-9129



The new sections are adopted under the Natural Resources Code, §51.178 which provides the General Land Office with the authority to administer the selection and appointment of surveyors and the procedures for seeking removal of an appointed surveyor.

The adopted new rules affect chapter 51 of the Texas Natural Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2000.

TRD-200005007

Larry Soward

Chief Clerk

General Land Office

Effective date: August 9, 2000

Proposal publication date: May 26, 2000

For further information, please call: (512) 305-9129



PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS
SUBCHAPTER F. STORAGE ACQUISITION AND STATE PARTICIPATION

31 TAC §363.613

The Texas Water Development Board (Board) adopts an amendment to 31 TAC §363.613 concerning administrative cost recovery fee for the state participation program without change to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5281) and will not be republished.

The adopted amendment will raise the administrative cost recovery fee for the state participation program from 0.5% to 0.77% of the total participation in a project by the Board. The change is proposed in response to a review of the state participation fees by the State Auditor's Office in accordance with section 16.142 of the Water Code. The State Auditor's Office found that the existing fee of 0.5% appeared to be too low to recover all of the costs associated with administering the state participation program and needed to be reformulated to reflect all appropriate costs, including telephones, office space, travel and the potential extra costs associated with funding large projects. Accordingly, administrative costs were recalculated and an increased cost recovery fee of 0.77% is adopted.

No comments were received on the proposed amendment.

The amendment is adopted pursuant to Texas Water Code §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 19, 2000.

TRD-200004986

Suzanne Schwartz

General Counsel

Texas Water Development Board

Effective date: August 8, 2000

Proposal publication date: June 2, 2000

For further information, please call: (512) 463-7981



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

CHAPTER 181. GENERAL RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER C. PROGRAM STANDARDS AND PROCEDURES

40 TAC §181.491

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §181.491 without changes to the text as published in the May 5, 2000, issue of the *Texas Register* (25 TexReg 3936). This rule updates the language and to more clearly define the types of courses and workshops that are eligible for credit.

No comments were received.

The amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 July 19, 2000.

TRD-200004984

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: August 8, 2000

Proposal publication date: May 5, 2000

For further information, please call: (512) 407-3250



CHAPTER 182. SPECIALIZED TELECOMMUNICATIONS DEVICES ASSISTANCE PROGRAM
SUBCHAPTER A. DEFINITIONS

40 TAC §182.4

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.4 without changes to the text as published in the April 28, 2000, issue of the *Texas Register* (25 TexReg3730). This rule defines how the types of equipment or service are determined as basic.

No comments were received.

The amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 July 19, 2000.

TRD-200004981

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: August 8, 2000

Proposal publication date: April 28, 2000

For further information, please call: (512) 407-3250



SUBCHAPTER B. PROGRAM ELIGIBILITY

40 TAC §182.21

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §182.21 without changes to the text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5297). This rule broadens the program to include social workers/case workers as certifiers and to eliminate the requirement that the STAP application must be signed by a certifier so that letters signed by a certifier can be accepted.

No comments were received.

The amendment is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 July 19, 2000.

TRD-200004982

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: August 8, 2000

Proposal publication date: June 2, 2000

For further information, please call: (512) 407-3250



40 TAC §182.27

The Texas Commission for the Deaf and Hard of Hearing adopts new §182.27 without changes to the text as published in the April 28, 2000, issue of the *Texas Register* (25 TexReg 3731). This rule explains the authority the Commission has to keep confidential information received on an applicant.

No comments were received.

This rule is adopted under the Human Resources Code, §81.006(b) (3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

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

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 July 19, 2000.

TRD-200004983

David Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: August 8, 2000

Proposal publication date: April 28, 2000

For further information, please call: (512) 407-3250



== 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 Workers' Compensation Commission

Title 28, Part 2

Filed: July 19, 2000

Agency Rule Review Plan--Revised

Texas Youth Commission

Title 37, Part 3

Filed: July 24, 2000

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications proposes to review §251.9, concerning Guidelines for Addressing Maintenance Funds, in accordance with the Appropriations Act, Article IX, Section 167.

The Commission on State Emergency Communications previously proposed and adopted the review regarding this section, which was effective August 16, 1999. The agency would again like to invite public comment and feedback regarding this section.

The Commission on State Emergency Communications will accept comments for 30 days following the publication of this rule review in the *Texas Register*. Comments on the proposal may be submitted to: James D. Goerke, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701; phone (512) 306-6911; or fax (512) 305-6937.

This notice is in accordance with the Appropriations Act, Article IX, Section 167.

TRD-200005131

James D. Goerke

Executive Director

Commission of State Emergency Communications

Filed: July 25, 2000

Texas Natural Resource Conservation Commission

Title 30, Part 1

The Texas Natural Resource Conservation Commission (commission) notices the intention to review and proposes re-adoption of Chapter 289, Weather Modification. This review of Chapter 289 is proposed in accordance with the requirements of Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for re-adoption each of its rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

Chapter 289 provides for the issuance of licenses and permits to conduct weather modification for rain-enhancement (cloud-seeding) programs. This chapter contains provisions for the issuance of Texas weather-modification licenses and permits; record keeping and reporting requirements; provisions for the amendment, revocation, and suspension of licenses and permits on motion of the commission; requirements for the amendment of permits upon application of permittees; and hail suppression election provisions.

The commission has conducted a preliminary review of the rules under Chapter 289 and has determined that the reasons for adopting these rules continue to exist. These rules are needed to implement provisions of the Texas Weather Modification Act, passed in 1967 and codified as the Texas Water Code, Chapter 18, and were adopted under the authority granted to the commission under the Texas Water Code, §§5.103, 18.011 - 18.013. The rules provide specific requirements which must be met to satisfy the statutory requirements set out in the Texas Water Code, Chapter 18. The commission invites comments on whether the reasons for the rules in Chapter 289 continue to exist.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-009-289-WT. Comments must be

received by 5:00 p.m., September 3, 2000. All comments must be submitted in writing. For further information or questions concerning this proposal, please contact Mary Ambrose, Policy and Regulations Division, at (512) 239-4813 or Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

TRD-200005123

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: July 25, 2000



The Texas Natural Resource Conservation Commission (commission) notices the intention to review and proposes re-adoption of Chapter 305, Consolidated Permits. This review of Chapter 305 is proposed in accordance with the requirements of Texas Government Code, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider for re-adoption each of its rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

Chapter 305, Consolidated Permits, includes requirements for emergency and temporary orders and executive director authorizations; permit applications for renewal, amendment, and other permit actions; and, standards for permit conditions and characteristics. Chapter 305 provides additional requirements for applications and standard permit conditions, Texas Pollutant Discharge Elimination System (TPDES) standards, and requirements for wastewater discharge permits.

More specifically, Subchapter A contains general provisions. Subchapter B contains requirements for emergency and temporary orders. Subchapter C provides requirements for permit applications filed under Texas Water Code, Chapters 26 - 28, and under Texas Health and Safety Code, Chapters 361 and 401. These requirements address application fees and the contents of a permit application, including specific requirements for the content of applications for wastewater discharge, injection well, hazardous and industrial solid waste, and radioactive materials permits.

Subchapter D contains standards and requirements for applications related to basin permitting, temporary authorizations and permit amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions.

Subchapter F establishes the characteristics and standards for injection wells, waste discharge, radioactive material disposal, and solid waste management (including sewage sludge) permits. This subchapter also includes requirements for signatories to reports and adopts federal regulations related to TPDES permits.

Subchapter G establishes characteristics and standards for hazardous and industrial solid waste permits, including requirements related to recordkeeping, certification and inspection, reporting, monitoring of commercial hazardous waste management facilities and time limits for construction of commercial hazardous waste management units. This subchapter also adopts federal regulations related to hazardous waste permits.

Subchapter H establishes characteristics and standards for Class I, Class III, and Class V injection well permits, including requirements related to corrective action, completion and inspection of injection well construction, closure, financial assurance, liability insurance, production area authorizations, and recordkeeping.

Subchapters I - K contain, respectively, operational requirements for hazardous waste incinerator permits, requirements for Land Treatment

Demonstration Permits and requirements for Research, Development and Demonstration Permits.

Subchapter L establishes requirements for compliance plans, which address groundwater protection requirements related to compliance monitoring and corrective action for hazardous waste management facilities.

Subchapter M establishes requirements for the Waste Treatment Inspection Fee Program, which imposes fees on permittees authorized to treat or discharge wastewater under the Texas Water Code, Chapter 26.

Subchapter N adopts by reference a memorandum of understanding between the commission and the Texas Department of Transportation, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects.

Subchapter O establishes additional requirements for wastewater discharge and sewage sludge permits, including adoption by reference of federal regulations related to TPDES permits, adoption of Environmental Protection Agency (EPA) permits and pretreatment programs, standards for new sources and new dischargers, requirements for TPDES permitted facilities, and requirements for applications and permits with sludge related conditions.

Subchapter P adopts by reference federal regulations related to TPDES permits and Subchapter Q contains requirements for boilers and industrial furnaces burning hazardous waste.

The commission conducted a preliminary review of the rules under Chapter 305 and has determined that the reasons for adopting these rules continue to exist. These rules are needed to implement provisions of state law including the Texas Water Code, Chapters 26 - 28 as well as the Texas Health and Safety Code, Chapters 361 and 401. Chapter 305 contains substantive and procedural regulations applicable to the permitting programs created and authorized by these statutes. The commission invites comments on whether the reasons for the rules in Chapter 305 continue to exist.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-007-305-WT. Comments must be received by **5:00 p.m., September 3, 2000**. All comments must be submitted in **writing**. For further information or questions concerning this proposal, please contact Michelle Lingo, Attorney, Policy and Regulations Division, at (512) 239- 6757, or Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

TRD-200005124

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: July 25, 2000



Texas Board of Occupational Therapy Examiners

Title 40, Part 12

The Texas Board of Occupational Therapy Examiners files this notice of intention to review the chapters as listed below, pursuant to the General Appropriations Act, House Bill 1, Article IX, §167, passed by the 75th Legislature (1997).

The board's reasons for adopting the rules in these chapters continue to exist, and it proposes to re-adopt 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 14, 2000. All questions or comments should be directed to Augusta Gelfand, OT Coordinator, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701. Phone: (512) 305-6900. Email: augusta.gelfand@mail.capnet.state.tx.us.

Chapter 361. Statutory Authority.

Chapter 362. Definitions.

Chapter 363. Consumer/Licensee Information.

Chapter 364. Requirements for Licensure.

Chapter 365. Types of Licenses.

Chapter 366. Application for License.

Chapter 367. Continuing Education.

Chapter 368. Open Records.

Chapter 369. Display of License.

Chapter 370. License Renewal.

Chapter 371. Inactive/Retiree Status.

Chapter 372. Provision of Services.

Chapter 373. Supervision.

Chapter 374. Disciplinary Actions/Complaints/Code of Ethics.

Chapter 375. Fees.

Chapter 376. Registration of Facilities.

TRD-200005217

John Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Filed: July 27, 2000



Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 152 concerning Representation of Parties Before the Agency - Attorney's Fee. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt Chapter 152.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 5, 2000

and submitted to Cherie Zavitsos, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter 152 Representation of Parties Before the Agency - Attorney's Fees

§152.1 Attorney Fees: General Provisions

§152.2 Attorney Fees: Representation of Claimants

§152.3 Approval or Denial of Fee by the Commission

§152.4 Guidelines for Legal Services Provided to Claimants and Carriers

§152.5 Allowable Expenses

TRD-200005145

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: July 26, 2000



Adopted Rule Reviews

Texas Higher Education Coordinating Board

Title 19, Part 1

The Texas Higher Education Coordinating Board adopts without changes, Chapter 8, Creation, Expansion, Dissolution, or Conservatorship of Public Community/Junior College Districts and Technical Colleges, in accordance with Section 2001.039 Texas Government Code, as noticed in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5383).

No comments were received regarding the adoption of this chapter.

TRD-200005117

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Filed: July 25, 2000



The Texas Higher Education Coordinating Board adopts without changes, Chapter 10, Institutional Effectiveness in Public Community/Junior College Districts and Technical Colleges, in accordance with Section 2001.039 Texas Government Code, as noticed in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5383).

No comments were received regarding the adoption of this chapter.

TRD-200005118

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Filed: July 25, 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: 16 TAC §68.80(b)

<u>Construction Cost</u>	<u>Review Fee</u>	<u>Late Review Fee</u>	<u>Inspection Fee</u>
\$ 50,000 - \$ 200,000	\$ 250	\$ 350	\$ 350
200,001 - 500,000	315	480	375
500,001 - 1,000,000	380	610	400
1,000,001 - 5,000,000	445	740	445
5,000,001 - 10,000,000	575	1,000	575
10,000,001 - 15,000,000	620	1,090	620
15,000,001 - 25,000,000	785	1,420	785
25,000,001 - 50,000,000	955	1,760	955
50,000,001 - 75,000,000	1,175	2,200	1,175
>75,000,000	Contact TDLR for negotiated fee		

- Inspection of State Leases,
(no construction involved) - \$ 225 per lease
- Preliminary Review Fee - \$ 145 each
- Special Inspection Fee - \$ 215 per hour, two hour minimum
- Variance Application Fee - \$ 150 each
- Variance Appeal - \$ 200
- Contract Provider Project Filing Fee - \$ 100 each
- Project Information Request - \$ 35 each
- Contract Provider Inspection Filing Fee - \$ 75 each
- Replacement Certificates - \$ 25 each

Vessel Information Form



Directions: 31 TAC §19.61(b) requires some vessel owners or operators to submit information to the GLO. The GLO prefers that owners or operators subject to this requirement submit this information by accessing the GLO's website at <http://glo.state.tx.us/oilspill>. If this form is used instead, it can be submitted to the GLO by: 1) mail sent to Texas General Land Office, Oil Spill Prevention and Response Division, P.O. Box 12873, Austin, TX 78711-2873; 2) fax sent to the Maritime Affairs Coordinator at (512) 475-1560; or 3) an attachment to an email sent to vesselplan@glo.state.tx.us.

Section I - Vessel

Date

--	--	--

Owner			
Address			
Phone		Fax	
24 hour Contact (Name and Phone Number)			

Section II - Vessel Operators (if different from owner)

Operator			
Address			
Phone		Fax	
24 hour Contact (Name and Phone Number)			

Section III - Vessel

Vessel Name	Plan Type	IMO#	OPA Plan #	Flag State	Vessel Type	Total Oil Capacity

Section IV - Emergency Response Information

	Name	24 hr Number	Pager
QI / Authorized Person			
QI / Authorized Person			
QI / Authorized Person			
Preparedness Manager			
Company Contact			
Company Contact			
Company Contact			

Replaces forms OS-001, OS-002, OS-003

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Request for Proposals - Urban Schools Grant Program

Pursuant to the Texas Agriculture Code, §§46.001-46.005 and 4 Texas Administrative Code §§1.800 - 1.804, relating to agricultural projects in certain urban schools, the Texas Department of Agriculture (the department) hereby requests proposals for demonstration agricultural projects for the period of December 1, 2000, through November 30, 2001, in certain Texas urban school districts. A total amount of up to \$2,500 may be awarded to an eligible elementary school in a school year and only one grant per urban school district may be awarded.

Eligibility. Proposals must be submitted by a Texas public elementary school from an urban school district with an enrollment of at least 49,000 students.

Proposal Requirements. Each proposal must include the following: a description of the proposed project; a schedule of projected costs for the project; and a statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture. The entire proposal may not exceed six pages, including cover letter and attachments. Please send one original with ten additional copies.

All approved projects must be completed by November 30, 2001. Upon completion of the project, a project summary of the educational results of the project and photographs to document such results will be due within four weeks. All awards will be subject to audit and periodic reporting requirements.

Proposals should be submitted to: Carol Funderburgh, Texas Department of Agriculture, 1700 North Congress Avenue, 9th Floor, Austin, Texas 78701. Ms. Funderburgh may be contacted by telephone at (512) 463-8536 or by fax at (512) 463-8170, for additional information about preparing the proposal. Proposals must be received by the department no later than 5:00 p.m. Central Standard Time, October 2, 2000.

All proposals will be evaluated by community group panels appointed by the Commissioner of the Texas Department of Agriculture. These panels shall consist of representatives from the following: the urban

school district submitting the request, the Texas Department of Agriculture, livestock industry, specialty crop industry, row crop industry, horticulture industry, and the Texas Agricultural Extension Service. Proposals will be evaluated based on the requirements set forth above. The announcement of the grant awards will be made by November 1, 2000.

TRD-200005146

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: July 26, 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 July 6, 2000, through July 13, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Prolithic Energy; Location: The site is located in State Tract 175 in East Galveston Bay, Galveston County, Texas. Approximate UTM coordinates of the well in State Tract 175. Zone 15; Easting: 347,053.14; Northing: 3,267,650.30; CCC Project No: 00-0251-F1; Description of Proposed Action: The applicant proposes to construct a 6-inch flowline from the well in State Tract 175, under Oil Field Development Permit 20104(01). Type of Applicant: U.S.A.C.E. permit application #20104(01)/005 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Prolithic Energy; Location: The site is located in State Tract 272 in East Galveston Bay, Galveston County, Texas. Approximate UTM coordinates of the well in State Tract 233. Zone 15; Easting: 331,879.89; Northing: 3,261,941.90; CCC Project No: 00-0252-F1;

Description of Proposed Action: The applicant proposes to amend Department of the Army Permit 21822 to construct a 10-inch flowline from the well in State Tract 233 to an existing flowline in State Tract 272. Type of Applicant: U.S.A.C.E. permit application #21822(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-200005159

Larry R. Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Filed: July 26, 2000

◆ ◆ ◆

Comptroller of Public Accounts

Notice of Amendment to Existing Consultant Contract

In accordance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of an existing consultant contract amendment.

The amendment extends the term of the consulting services agreement from July 31, 2000 to August 31, 2000. Written reports under the amended contract are due by August 31, 2000. The dollar value of the contract remains under \$15,000.00.

The consulting services sought by the Comptroller under this amendment relate to consulting services on the state's Temporary Assistance to Needy Families and Welfare to Work programs that are being provided under the existing consulting services agreement by Chassman Barnhart Consulting, Inc. This serves as notice that the Comptroller has amended Chassman Barnhart Consulting Inc.'s consulting services agreement.

TRD-200005156

Pamela Ponder

Deputy General Counsel, Contracts Section

Comptroller of Public Accounts

Filed: July 26, 2000

◆ ◆ ◆

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in conducting a management and performance review of the North Forest Independent School District (North Forest ISD). The services sought under this RFP will culminate in a final report, which shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review.

The successful respondent will be expected to begin performance of the contract on or about October 2, 2000.

Contact: Parties interested in submitting a proposal should contact Clay Harris, 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 was made available for pick-up at the above-referenced address on Friday, August 4, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Texas Marketplace after Friday, August 4, 2000, 2 p.m. (CZT). All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Monday, August 21, 2000. Prospective respondents 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 Clay Harris, 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. The responses to questions and other information pertaining to this procurement will be posted on Friday, August 25, 2000, on the Texas Marketplace <http://www.marketplace.state.tx.us>.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Tuesday, September 12, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 4, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - August 21, 2000, 2 p.m. CZT; Responses to Questions - August 25, 2000; Proposals Due - September 12, 2000, 2 p.m. CZT; Contract Execution - September 28, 2000, or as soon thereafter as practical; Commencement of Project Activities - October 2, 2000.

TRD-200005153

Pamela Ponder

Deputy General Counsel, Contracts Section

Comptroller of Public Accounts

Filed: July 26, 2000

◆ ◆ ◆

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in conducting management and performance reviews of one or all of the following independent school districts (ISDs): Eagle Pass, Crystal City, and La Pryor. The Comptroller reserves the discretion to award one or more contracts for a review of one or all of the districts under this RFP. The services sought under this

RFP will culminate in final reports, which shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review of each district involved. The successful respondent will be expected to begin performance of the contract on or about October 2, 2000.

Contact: Parties interested in submitting a proposal should contact Clay Harris, 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 was made available for pick-up at the above-referenced address on Friday, August 4, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Texas Marketplace after Friday, August 4, 2000, 2 p.m. (CZT). All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Monday, August 21, 2000. Prospective respondents 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 Clay Harris, 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. The responses to questions and other information pertaining to this procurement will be posted on Friday, August 25, 2000, on the Texas Marketplace <http://www.marketplace.state.tx.us>.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Tuesday, September 12, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 4, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - August 21, 2000, 2 p.m. CZT; Responses to Questions - August 25, 2000; Proposals Due - September 12, 2000, 2 p.m. CZT; Contract Execution - September 28, 2000, or as soon thereafter as practical; Commencement of Project Activities - October 2, 2000.

TRD-200005154
Pamela Ponder
Deputy General Counsel, Contracts Section
Comptroller of Public Accounts
Filed: July 26, 2000



Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified, independent firms to provide consulting services to the Comptroller. The successful respondent will assist the Comptroller in conducting a management and performance review of the Conroe Independent School

District (Conroe ISD). The services sought under this RFP will culminate in a final report, which shall contain findings, recommendations, implementation timelines, plans, and be a component part of the review. The successful respondent will be expected to begin performance of the contract on or about October 2, 2000.

Contact: Parties interested in submitting a proposal should contact Clay Harris, 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 was made available for pick-up at the above-referenced address on Friday, August 4, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Texas Marketplace after Friday, August 4, 2000, 2 p.m. (CZT). All written inquiries, questions, and mandatory Letters of Intent to propose must be received at the above-referenced address prior to 2 p.m. (CZT) on Monday, August 21, 2000. Prospective respondents 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 Clay Harris, 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. The responses to questions and other information pertaining to this procurement will be posted on Friday, August 25, 2000, on the Texas Marketplace <http://www.marketplace.state.tx.us>.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Tuesday, September 12, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 4, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - August 21, 2000, 2 p.m. CZT; Responses to Questions - August 25, 2000; Proposals Due - September 12, 2000, 2 p.m. CZT; Contract Execution - September 28, 2000, or as soon thereafter as practical; Commencement of Project Activities - October 2, 2000.

TRD-200005155
Pamela Ponder
Deputy General Counsel, Contracts Section
Comptroller of Public Accounts
Filed: July 26, 2000



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 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 07/31/00 - 08/06/00 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 07/31/00 - 08/06/00 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200005110

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 25, 2000

Edwards Aquifer Authority

Notice of Public Hearings

The Edwards Aquifer Authority will conduct public hearings to receive comments on proposed rules to be published in an upcoming issue of the *Texas Register*. Interested persons may submit written comments on the proposed rules. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830, 1615 N. St. Mary's St., San Antonio, Texas 78212-9030, within 30 days of the publication of the proposed notice in the *Texas Register*. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The dates of the public hearings are as follows:

Wednesday, August 9, 2000, 6:00 p.m., Conference Center, Edwards Aquifer Authority, 1615 N. St. Mary's San Antonio, Texas 78215, (210) 222-2204; Tuesday, August 15, 2000, 6:00 p.m., New Braunfels Civic Center, 380 S. Seguin Avenue New Braunfels, Texas 78130, (830) 625-2385; Thursday, August 17, 2000, 6:00 p.m., St. Paul's Lutheran Church, 1303 Avenue M Hondo, Texas 78861, (830) 426-3222; Tuesday, August 22, 2000, 6:00 p.m., Sgt. Willie DeLeon Civic Center, 300 E. Main Street Uvalde, Texas 78801, (830) 278-9922; Thursday, August 24, 2000, 6:00 p.m., San Marcos Activity Center, 501 E. Hopkins San Marcos, Texas 78666, (512) 393-8280.

TRD-200005122

Gregory M. Ellis

General Manager

Edwards Aquifer Authority

Filed: July 25, 2000

Golden Crescent Workforce Development Board

Public Notice

Request for Application: The Golden Crescent Workforce Development Board is seeking proposals for the provision of:

- 1) Workshops, educational programs, and assorted non-educational initiatives for youth
- 2) Transportation services for Workforce Center customers

3) Non-traditional child care services, i.e., handicapped or sick child care, non-traditional hours, etc.

4) Marketing campaign

5) Rapid Response vendors - to provide timely reemployment services for laid off workers.

The deadline for response to these procurements is 5 p.m., August 31, 2000. A complete set of specifications may be obtained at 2710 Airline, Victoria, Texas, Phone: (361) 576-5872, Fax: 573-0225, or Email: sandy.heiermann@twc.state.tx.us.

TRD-200005158

Elza dos Santos

Administrative Clerk

Golden Crescent Workforce Development Board

Filed: July 26, 2000

Governor's Office of Budget and Planning

Request for Proposals

Pursuant to Subchapter A, Sections 2254.001 et seq., Texas Government Code, the Governor's Office of Budget and Planning invites professionals with demonstrated competence and qualifications and documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, a cost allocation plan for the data processing services of the State Comptroller's Office for the fiscal year ending August 31, 2001. These services relate to consultant services that have been provided previously by the consulting firm of DMG/MAXIMUS. DMG/MAXIMUS is currently under contract with the State of Texas to prepare the primary consolidated statewide cost allocation plan for the fiscal year ending August 31, 2001. Unless a clearly superior proposal is received from a different proposer, the Governor's Office intends to award the contract for the FY2001 plan to DMG/MAXIMUS, subject to negotiation of a fair and reasonable price.

Proposers will be expected to develop a cost allocation plan for the State Comptroller's data processing services that enables the state to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs, preparing and submitting the plan, incorporating the data processing plan into the State of Texas' consolidated statewide cost allocation plan, and negotiating the final plan with the federal government for state agency use during the state fiscal year beginning September 1, 2000. Proposals must include a description of the system to be used to extract allowable costs from the State Comptroller's data processing system and for allocating such costs. Contractor may be required to prepare alternative allocation tables using different allocation bases to demonstrate maximum feasible recovery options.

As a component of the cost allocation plan, the contractor selected must also identify the costs of providing statewide data processing services to each state agency. This component must identify state agencies that use these services in carrying out their programs and the type and dollar amount of services used. The contractor selected will be responsible for all aspects of this component, including obtaining raw cost and statistical data and identifying allocable costs. Proposals must include a description of the system to be used to extract allowable costs for data processing services and for allocating such costs.

A complete set of the work papers used to prepare the plan must be kept and provided to the Governor's Office upon request. The contractor is

required to provide 20 copies of the summary of fixed costs related to federal cost allocations from the completed plan and 20 copies of the summary of costs related to the allocation of data processing services costs to other state agencies from the completed plan. The contractor must also provide the summaries of fixed costs of the data processing services for the federal plan[s] in machine-readable form, preferably EXCEL, for posting on the Internet.

The Governor's Office of Budget and Planning will evaluate each proposal and reserves the right to reject any and all proposals. The state assumes no responsibility for expenses incurred in preparing responses to this solicitation. If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications.

A copy of the FY1999 consolidated statewide cost allocation plan may be obtained by contacting Denise Francis, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711 (telephone 512-305-9415).

All proposals must be received at the above address no later than 5:00 p.m., August 14, 2000.

TRD-200005150
Kevin Van Oort
Assistant General Counsel
Governor's Office of Budget and Planning
Filed: July 26, 2000

◆ ◆ ◆
Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Angleton	Dr Salim F Dabaghi	L05353	Angleton	00	07/11/00
Denton	Network Cancer Care of Denton	L05348	Denton	00	07/11/00
Houston	Houston Cardiovascular	L05350	Houston	00	07/10/00

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Equistar Chemicals LP	L03363	Alvin	19	07/14/00
Arlington	Arlington Memorial Hospital Foundation INC	L02217	Arlington	61	06/30/00
Austin	Motorola	L05347	Austin	01	07/05/00
College Station	CME Testing and Engineering INC	L05263	College Station	01	06/30/00
Corpus Christi	CITGO Refining and Chemicals	L00243	Corpus Christi	31	07/13/00
Corpus Christi	Promed Company of the Coastal Bend	L05317	Corpus Christi	01	06/30/00
Dallas	Saint Paul Medical Center	L01065	Dallas	51	07/14/00
Denton	Denton Hospital INC	L04003	Denton	26	06/30/00
Denton	International Isotopes INC	L05159	Denton	12	07/10/00
El Paso	El Paso Natural Gas Company	L00308	El Paso	35	07/14/00
El Paso	R E Thomason General Hospital	L00502	El Paso	48	07/06/00
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	76	07/10/00
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	75	06/29/00
Graham	Phoenix Surveys INC	L04108	Graham	10	07/14/00
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	34	07/05/00
Houston	M&G Inspection & Testing	L05220	Houston	13	07/14/00
Houston	METCO	L03018	Houston	98	07/14/00
Houston	Park Plaza Hospital	L02071	Houston	37	06/30/00
Houston	Longview Inspection INC	L01744	Houston	155	07/14/00
Huffman	Raven Inspection & Testing	L05219	Huffman	03	07/13/00
Humble	Northeast Medical Center Hospital	L02412	Humble	45	07/05/00
Llano	Llano Bay Health Care	L04438	Llano	14	07/07/00
Lubbock	University Medical Center	L04719	Lubbock	32	07/14/00
Lufkin	East Texas Asphalt Company	L04710	Lufkin	08	07/05/00
McGregor	H&B Contractors LTD	L04911	McGregor	04	07/13/00
McKinney	Numed Imaging Centers INC	L05250	McKinney	02	07/10/00
Midland	Memorial Hospital and Medical Center	L00728	Midland	63	07/05/00

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Odessa	Black Warrior Wireline Corp	L04473	Odessa	13	07/14/00
Odessa	Golder CAT Scan and MRI Center	L04770	Odessa	03	06/30/00
Paris	Advanced Heart Care PA	L05290	Paris	02	06/30/00
Pittsburg	East Texas Medical Center Pittsburg	L03106	Pittsburg	13	07/06/00
Plano	Presbyterian Hospital of Plano	L04467	Plano	17	07/07/00
Point Comfort	Formosa Plastic Corporation Texas	L03893	Point Comfort	21	07/14/00
San Angelo	Ethicon INC	L00720	San Angelo	46	07/14/00
San Angelo	Shannon Medical Center	L02174	San Angelo	40	07/08/00
San Antonio	Baptist Imaging Center	L04506	San Antonio	17	07/12/00
San Antonio	Baptist Imaging Center	L04506	San Antonio	18	07/14/00
San Antonio	Cancer Therapy Research Center At Santa Rosa	L00556	San Antonio	40	07/11/00
San Antonio	CTRC Research Foundation	L03350	San Antonio	25	07/14/00
San Antonio	The University of Texas Health Science Center	L01279	San Antonio	84	07/14/00
Texarkana	Texarkana Memorial Hospital INC	L02486	Texarkana	31	06/30/00
Throughout Tx	Asoma Instruments INC	L02788	Austin	38	07/06/00
Wichita Falls	Pycor Wichita Fall INC	L00523	Wichita Falls	32	07/12/00
Woodlands	Lamco & Associate	L05152	Woodlands	03	07/13/00

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Gainesville	Gainesville Hospital District	L02585	Gainesville	20	06/28/00
Houston	Introgen Therapeutics INC	L04870	Houston	04	07/14/00
Houston	Red Oak Cardiovascular Center PA	L04159	Houston	10	07/12/00
Morton	Cochran Memorial Hospital District	L04215	Morton	03	07/13/00
Temple	Kings Daughters Hospital	L00666	Temple	39	07/10/00

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Austin	Austin Scientific Associates	L0898	Austin	20	07/14/00
Arlington	Innoserv Technology INC	L05292	Arlington	01	07/11/00
Dallas	TRI-City health Center INC	L02263	Dallas	22	07/11/00
Irving	Jordan Paving	L05257	Irving	01	06/30/00

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in

accordance with Title 25 Texas Administrative Code (TAC) Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the

license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200005144
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 26, 2000



Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Castle Dental Centers of Houston

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Castle Dental Centers (registrant-R09023) of Houston. A total penalty of \$4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code §§289.227 and 289.203.

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-200005143
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 26, 2000



Notice of Request for Proposals for Human Immunodeficiency Virus Prevention in Dallas, Texas

Introduction and Purpose

The Texas Department of Health (department) requests proposals to perform Human Immunodeficiency Virus (HIV) prevention activities among males and females who are at risk for HIV infection because of injecting drug use and/or other substance abuse behaviors in Dallas, Texas. These activities should be carried out in accordance with the Regional Action Plan for Public Health Region 3. The purpose of these funds is to provide culturally sensitive and appropriate HIV prevention outreach to the target population in order to prevent the infection and transmission of HIV. The project must provide Health Education and Risk Reduction (HERR) to the target groups, including, but not limited to, the following activities:

outreach to jails and substance abuse treatment facilities;

street and community outreach;

linkages to prevention counseling and partner elicitation;

linkages to early intervention and other HIV services;

linkages to substance abuse treatment;

linkages to HIV and pregnancy testing for high risk women; and

linkages to family planning, HIV services, prenatal care, substance abuse services and intimate partner violence intervention services.

Eligible Applicants

Eligible applicants include governmental, public or private entities located within Dallas County who deliver services to Dallas County residents. Applicants must have demonstrated ability to provide outreach and services to injecting drug users and substance abusers. Entities that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply.

Availability of Funds

Approximately \$170,500 (annual) will be awarded to one entity on a competitive basis. The specific dollar amount to be awarded will depend upon the merit and scope of the proposed project. Award of these funds is contingent upon annual federal grant awards to the department from the Centers for Disease Control and Prevention. Award of these funds is contingent upon satisfactory completion of the grant application and the contract negotiation process. Continuation of funding is contingent upon satisfactory contract performance.

To Obtain the Request for Proposals

To obtain a copy of the Request for Proposals (RFP), see the website at <http://www.tdh.state.tx.us/hivstd/grants.htm>. You may also contact Laura Ramos at (512) 490- 2525, or send an e-mail request to laura.ramos@tdh.state.tx.us. No copies of the RFP will be released prior to August 18, 2000. Applications may be submitted to Ms. Laura Ramos, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 no later than 5:00 p.m., Central Daylight Saving Time, on October 6, 2000.

TRD-200005142
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 26, 2000



Texas Department of Housing and Community Affairs

Announcement of the Request for Proposals for the Development and Implementation of a Rental Housing Pilot Program to Expand Long-Term Care Options for Elderly Residents of Texas

Introduction

Section 2306.071 note, Texas Government Code, charges the Texas Department of Housing and Community Affairs ("TDHCA" or "the Department") with the development and implementation of a rental housing pilot program to expand long-term care options for elderly residents of Texas. The pilot program is to provide subsidized multifamily rental housing for elderly residents earning less than 80 percent of an area's median family income (AMFI). Additionally the pilot program shall

coordinate services needed by low, very low, and extremely low income elderly Texans. "Elderly resident" means an individual 60 years of age or older.

The goal of service coordination is to enable residents of senior housing facilities to age in place longer and better by helping them obtain services they need and want, avoid premature placement in a nursing facility, and improve their quality of life. Service Coordination links elderly residents to community agencies and service providers, and monitors the ongoing provision of services from outside agencies.

The Texas Department of Housing and Community Affairs is seeking proposals from nonprofit organizations throughout the State of Texas to provide service coordination to elderly residents of affordable multifamily rental housing developments. Such nonprofit organizations may include units of local governments, faith-based organizations, Community Housing Development Organizations (CHDOs), Community Development Corporations (CDCs), Community Based Organizations (CBOs), and other nonprofit organizations with a proven interest in providing affordable housing opportunities and/or service coordination to elderly Texans. "Affordable multifamily rental developments" mean affordable multifamily rental developments funded in part by the Low Income Housing Tax Credit Program, the Housing Trust Fund, the HOME Investment Partnership Program, the Multifamily Bond Program, and/or any other local, state or federally funded multifamily housing development (e.g. Section 202, Section 515, Section 236, etc.).

Questions concerning this Request for Proposals may be directed in writing to TDHCA, attention John Garvin, Director, Office of Strategic Planning, P.O. Box 13941, Austin, Texas 78711-13941.

I. Proposal Content

A maximum of 100 points can be awarded to proposals submitted to TDHCA within the parameters of this Request for Proposals. Points will be awarded according to the content of each proposal according to the experience of the applicant and the services to be rendered to TDHCA, as itemized below:

A: Applicant Experience: (50 Points)

1. General Background: Please give a general description of your organization, to include the following:

a. History: Should include, but not be limited to, age of the organization, location of office, number of employees, organization's mission, etc.

b. Personnel: Provide the names, titles, brief resumes or statements of experience of the persons to be assigned any of the responsibility concerning this Proposal. Also indicate the duties assigned to each individual in providing service coordination activities for elderly residents and/or affordable housing opportunities.

c. Certifications: Please include as an attachment any relevant certifications held by your organization and/or staff with regard to long-term care service coordination and/or affordable housing activities.

d. Affiliations: If applicable, please provide a list of Identities of Interest showing all direct or indirect financial or other interests which exist in or between your organization and other parties that will be assisting you in providing these services. In addition, list National Intermediary Group memberships and the names of other organizations with whom they are affiliated.

e. Other Funding Sources: Please describe any other federal, state, or private funding received by your organization, and provide a copy of most recent annual audited financial statement as an attachment.

2. Current Long-term Care/Service Coordination Activities: Please submit a detailed description of the service coordination activities your

organization has provided since September 1, 1997. This period corresponds roughly to the past three state fiscal years. The description should not exceed *five typewritten pages* in length and should cover the topics listed below.

B. Description of Services to be Rendered to TDHCA (50 points)

1. Service Coordination: Please summarize the service coordination activities your organization will provide to elderly residents of affordable multifamily rental developments. Please describe service coordination activities to be provided *beyond* what your organization is currently providing. You should address how you intend to expand your current services to help reach elderly residents earning less than 80 percent AMFI. Include in this description the estimated number of elderly residents expected to benefit from the coordination of services. Also, please include any pamphlets and training materials as an attachment, or refer to previous attachments if applicable.

2. Budget Description: Please provide an itemized budget outlining all costs to be covered by TDHCA funds requested in this proposal.

3. Evaluation: Describe the method by which you will evaluate the effectiveness of your program in expanding your current services to help reach elderly residents earning less than 80 percent AMFI.

4. Outreach: Please describe in detail a proposed marketing/outreach plan. This plan should include methods by which your organization intends to inform elderly residents earning less than 80 percent AMFI of the availability of service coordination.

III. General Information for Applicants

A. Requirements for Awardees: Successful sub-grantees will be required to offer a performance-based strategic plan illustrating the organizations goals relating to service coordination. Services to be coordinated for elderly residents of affordable multifamily rental developments should include, but not be limited to, those listed below. Please include the names of service providers and, if applicable, any associated costs.

Meal Services (Congregate and Meals on Wheels)

Housekeeping

Home Health/Therapy Services

Personal Care Assistance

Financial Management

Counseling/Mental Health Services

Educational Programs

Health Screenings/Wellness Services

Transportation

Shopping Assistance

Errand/Chore Services

Entitlement Programs/Benefits

Medication Management

Emergency Response System

B. Continuance of Service Coordination: Successful sub-grantees will include a continuation plan, illustrating how service coordination will continue after the funds have been expended.

C. Funding Procedures: Funding amount up to a maximum of \$25,000/year for two years to selected organizations will be in the form of a cost-reimbursement contract. All selected organizations

will be required to submit quarterly progress reports detailing their activities.

D. Reservation of Rights

1. **Public Information:** Information submitted relative to this Request for Proposal shall not be released by TDHCA during the evaluation process or prior to contract award. All information submitted to, and retained by TDHCA, becomes public record and is subject to disclosure under the Texas Public Information Act, unless an exception under such Act is applicable.

2. **Exceptions to the Public Information Act:** If an organization does not desire proprietary information in the proposal to be disclosed under the Texas Public Information Act or otherwise, it is required to identify (and segregate, if possible) all proprietary information in the proposal, which identification shall be submitted concurrently with the proposal. If such information is requested under the Texas Public Information Act, your organization will be notified and given an opportunity to present its position to the Texas Attorney General, who shall make the final determination. If your organization fails to clearly identify proprietary information, it agrees, by submission of the proposal, that those sections shall be deemed non-proprietary and made available upon public request after the contract is awarded.

3. **Costs Incurred in Responding:** All costs directly or indirectly related to the preparation of a response to this Request for Proposal or any oral presentation required to supplement and/or clarify the proposal, which may be required by TDHCA shall be the sole responsibility of, and shall be borne by, your organization.

4. **Selection Process:** In releasing this Request for Proposal, TDHCA is not obligated to proceed with any action, and may decide it is in the agency's best interest to discontinue consideration of services. TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this Request for Proposal is intended to serve only as a general description of the services sought by TDHCA.

5. **Contract Renewal and Cancellation:** TDHCA reserves the right to renew any contract awarded under this Request for Proposal once the contractual term expires. TDHCA reserves the right, with thirty days written notice, to cancel any contract awarded under the terms of this Request for Proposal.

IV. Submission of Response: Please send an original and three (3) copies of responses to one of the following addresses, depending on the method of delivery:

Texas Department of Housing and Community Affairs

Office of Strategic Planning/Housing Resource Center

Attn.: John Garvin

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address

507 Sabine, Suite 800

Austin, Texas 78701

Proposals must be received by TDHCA no later than 5:00 p.m. on Monday, September 25, 2000. Faxed or e-mailed applications will not be accepted.

Individuals who require auxiliary aids or services should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, so that appropriate arrangements can be made.

TRD-200005157

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 26, 2000



Notice of Administrative Hearing (MHD1998000607UI)

Manufactured Housing Division

Tuesday, August 8, 2000, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building,
1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. Robert Hawkins dba Hawkins Mobile Home Service to hear alleged violations of Sections 4(d)(f) and 7(d) of the Act and Sections 80.51 and 80.125(e) of the Rules regarding installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license and not properly installing the manufactured home. SOAH 332-00-1836. Department MHD1998000607UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489,
(512) 475-3589.

TRD-200005149

Daisy Stiner

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 26, 2000



Notice of Public Hearing for the Low Income Home Energy Assistance Program

On or about October 1, 2000, the Texas Department of Housing and Community Affairs (TDHCA) anticipates receiving federal funds to continue the operation of certain programs that assist very low-income Texans. The Department is now in the process of deciding how these funds will be used and is seeking the input of groups affected by these programs and/or other interested citizens.

As part of the public information consultation and public hearing requirements for the Low Income Home Energy Assistance Program, the Community Affairs Division of the Texas Department of Housing and Community Affairs (TDHCA) will conduct one public hearing. The primary purpose of the hearing is to solicit comments on the proposed use and distribution of federal fiscal year (FFY) 2001 funds provided under the Low Income Home Energy Assistance Program (LIHEAP). LIHEAP provides funding for the Weatherization Assistance Program (WAP) and Comprehensive Energy Assistance Program (CEAP).

The public hearing has been scheduled as follows:

Friday, August 18, 2000, 3:00 p.m. in Room #1 at the Carver Library,
1161 Angelina Street, Austin, Texas.

A representative from TDHCA will be present to explain the planning process and receive comments from interested citizens and affected groups regarding the proposed plan. A copy of the Intended Use Report may be obtained by contacting the Texas Department of Housing

and Community Affairs, Energy Assistance Section, P. O. Box 13941, Austin, Texas 78711-3941. For questions, contact the Energy Assistance Section, Community Affairs Division at (512) 475-1099.

Comments on the intended use of funds may be in the form of written comments or oral testimony at the public hearing. Written comments must be received no later than the close of business at 5:00 p.m. on August 24, 2000. Comments concerning the Intended Use Report may be submitted to Lolly Caballero at TDHCA using the address provided above, or via the internet using lcaballe@tdhca.state.tx.us, or by fax to (512) 475-3935. If you have any questions regarding the public hearing process or any of the programs referenced above, please contact the Energy Assistance Section at (512) 475-1099.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200005133
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 25, 2000

Texas Department of Human Services

Notice of Amendment to One Consultant Contract

In Accordance with Texas Government Code, Chapter 2254.029(b), the Texas Department of Human Services (TDHS) publishes this notice of an amendment to one consultant contract.

The purpose of the contract was to provide expertise in information resources in support of automation projects administered by the Texas Department of Human Services, Office of Programs, Rate Analysis Department. The original contract and previous extensions were primarily for support of the Medicare Nursing Facility Case Mix and Quality Demonstration project and related automation of resident assessment information. The State fiscal year 2001 extension is for continued support of the automated cost reporting and evaluation system.

The Texas Department of Human Services awarded the original contract to Red Bluff Computing Consultants, P.O. Box 90892, Austin, Texas 78709, effective from September 1, 1993. This contract will be awarded to Red Bluff Computing Consultants unless a better offer is received.

This notice is referenced in the Electronic State Business Daily at <http://www.texas-one.org/1380/>.

Red Bluff Computing Consultants must provide all deliverables under the amended contract no later than August 31, 2001. For Information, contact Ray Wilson, Texas Department of Human Services, Rate Analysis Department, 701 West 51st Street, Mail Code W-425, Austin, TX 78751, (512) 438-4055.

TRD-200005136
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: July 25, 2000

Notice of Contract Award - Food Stamp Education Campaign

The Texas Department of Human Services announces this notice of contract award.

The invitation for request for proposal was published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 12142).

Description of Services: The applicant organization is needed to develop and operate a statewide Food Stamp Education Campaign. The statewide contractor will be required to sub-contract with community based, not-for-profit organizations that have a strong, credible local presence to carry out local efforts to improve low-income consumers' access to basic nutrition and healthy foods.

Name of Contractor: The Texas Association of Community Action Agencies, inc., 2512 I.H. 35 South, Suite 100 Austin, Texas 78704-5751.

Terms and/or Amount: The contract period is August 1, 2000 through July 31, 2001. Funding for the contract is \$700,000.

Report Due Date: Annual performance report due October 10, 2001.

TRD-200005167
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: July 26, 2000

Public Notice for Proposed Title XX Intended Use Report

The Texas Department of Human Services (DHS) has published a report outlining the proposed intended use of federal block grant funds during fiscal year 2001 for Title XX social services programs administered by the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Protective and Regulatory Services, the Texas Department of Mental Health and Mental Retardation, Texas Education Agency, the Texas Workforce Commission, and the Texas Interagency Council on Early Childhood Intervention.

To obtain free copies of the report, send written requests to Chris Traylor, Government Relations Division, Mail Code W-623, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. DHS is seeking written comments from representatives of both public and private sectors regarding the proposed use of Title XX block grant funds. Written comments will be accepted for 30 days. Please mail comments to the address listed previously.

TRD-200005137
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: July 25, 2000

Request for Proposal for CLASS Case Management Services Statewide

Request for Proposal (RFP): The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the Department effective November 1, 2000, a case management agency must be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

Purpose: This announcement should appear in the *Texas Register* on August 4, 2000.

Description of Services: A case management agency enrolls participants in the CLASS program and is the focal point for developing

service plans, coordinating services, and tracking participant progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency which delivers home and community-based services.

Geographic Area: The Department intends to contract for the delivery of CLASS services Statewide for at least 1,278 individuals in all 75 counties covered by the CLASS program in the following catchment areas: Bexar, Bandera, Comal, Guadalupe, Kendall, Kerr, Dallas, Denton, Kaufman, Collin, Rockwall, Ellis, El Paso, Harris, Brazoria, Fort Bend, Galveston, Montgomery, Jefferson, Orange, Chambers, Hardin, Liberty, Lubbock, Crosby, Floyd, Hale, Hockley, Lamb, Nueces, Jim Wells, Kleberg, San Patricio, Smith, Gregg, Rusk, Upshur, Wood, Van Zandt, Henderson, Harrison, Tarrant, Hood, Johnson, Parker, Wise, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy, Zapata, Travis, Hays, Bastrop, Williamson, Blanco, Caldwell, Armstrong, Carson, Potter, Randall, Coke, Nolan, Taylor, Tom Green, Runnels, Ector, Midland, Martin and Andrews. The provider(s) who is awarded a contract must be able to serve all 75 counties.

Closing Date and Time: Proposals must be received by the Department no later than 5:00 p.m. on Wednesday, September 13, 2000.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, Systems Support Specialist, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, TX 78751), P. O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-3516 or fax a request to (512) 438-5135. The RFP packet will be available on Monday, August 7, 2000.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by TDHS no later than 5:00 p.m. on Friday, August 25, 2000.

This notice is referenced in the Electronic State Business Daily at <http://www.texas-one.org/1380/>.

Historically underutilized businesses are encouraged to apply.

TRD-200005134

Paul Leche

Agency Liaison

Texas Department of Human Services

Filed: July 25, 2000



Request for Proposal for CLASS Direct Services Statewide

Request for Proposal (RFP): The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of Medicaid home and community-based services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the department effective November 1, 2000, a direct services agency must be licensed by the Texas Department of Human Services as a home and community support services (HCSS) agency under the categories of licensed home health and personal assistance services, be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

Purpose: This announcement should appear in the *Texas Register* on August 4, 2000.

Description of Services: The direct services agency is responsible for delivering the following services in accordance with the individual service plan: personal assistance services (PAS) and skills development training, supported employment, nursing services, physical therapy, occupational therapy and speech pathology services, respite, psychological services, specialized therapies, adaptive aids and minor home modifications. CLASS participants are also eligible for the full range of Medicaid benefits. Direct services agency representatives participate in the assessment and care planning benefits of the interdisciplinary team and work in a cooperative relationship with the case management agencies.

Geographic Area: The Department intends to contract for the delivery of CLASS services Statewide for at least 1,278 individuals in all 75 counties covered by the CLASS program in the following catchment areas: Bexar, Bandera, Comal, Guadalupe, Kendall, Kerr, Dallas, Denton, Kaufman, Collin, Rockwall, Ellis, El Paso, Harris, Brazoria, Fort Bend, Galveston, Montgomery, Jefferson, Orange, Chambers, Hardin, Liberty, Lubbock, Crosby, Floyd, Hale, Hockley, Lamb, Nueces, Jim Wells, Kleberg, San Patricio, Smith, Gregg, Rusk, Upshur, Wood, Van Zandt, Henderson, Harrison, Tarrant, Hood, Johnson, Parker, Wise, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Kenedy, Starr, Webb, Willacy, Zapata, Travis, Hays, Bastrop, Williamson, Blanco, Caldwell, Armstrong, Carson, Potter, Randall, Coke, Nolan, Taylor, Tom Green, Runnels, Ector, Midland, Martin and Andrews. The provider(s) who is awarded a contract must be able to serve all 75 counties.

Closing Date and Time: Proposals must be received by the Department no later than 5:00 p.m. on Wednesday, September 13, 2000.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, Systems Support Specialist, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, TX 78751), P. O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-3516 or fax a request to (512) 438-5135. The RFP packet will be available on Monday, August 7, 2000.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by TDHS no later than 5:00 p.m. on Friday, August 25, 2000.

This notice is referenced in the Electronic State Business Daily at <http://www.texas-one.org/1380/>.

Historically underutilized businesses are encouraged to apply.

TRD-200005135

Paul Leche

Agency Liaison

Texas Department of Human Services

Filed: July 25, 2000



Texas Department of Insurance

Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Great Northern Insurance 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 a rate of -70% below the benchmark for all homeowners policy forms.

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-200005016
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 21, 2000



Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2453 on September 7, 2000, at 10:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas. The Commissioner will consider for adoption new sections 21.3002-21.3005 concerning pharmacy identification cards.

The proposed new sections and the statutory authority for the proposed new sections, were published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6649).

TRD-200005077
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 24, 2000



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 North American Medical Management-San Antonio, L.P. a domestic third party administrator. The home office is San Antonio, Texas.

Application for admission to Texas of Theraphysics Corporation, a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200005148
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 26, 2000



Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Request for Proposal

Notice of Request for Proposals from Certified Public Accountants to provide audit and other professional services for the Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association (the "Association").

Requesting the Proposal. A complete copy of the RFP may be obtained by writing Marvin Coffman, Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association, 301 Congress Avenue, Suite 500, Austin, Texas 78701, telephone number: (512) 476-5101.

Schedule of Events. To be considered for this engagement, your firm must meet the qualifications and satisfy the requirements set forth in the RFP. All inquiries concerning the RFP must be received by August 11, 2000. Please indicate your intent to submit a proposal by submitting a written Notification of Interest. The Notification of Interest is a prerequisite to submitting a proposal. The Notification may be faxed to Marvin Coffman by August 11, 2000 at fax number: (512) 472-1470.

Further Information. Firms that wish to submit a proposal and wish to obtain additional information related to the Association and its operations may schedule interviews/conferences with Marvin Coffman. Meetings will be at the offices of LaShelle, Coffman & Boles at 301 Congress Avenue, Suite 500, Austin, Texas 78701, between 8:00 a.m. and 4:00 p.m. (CZT).

Deadline for Receipt of Proposals. Five (5) copies of the completed proposal must be received by 5:00 p.m. (CZT) on September 15, 2000. Please limit your proposal to twenty (20) pages, including any appendices that you deem pertinent.

Evaluation and Award Procedure: All proposals will be subject to evaluation by the Audit Committee of the Association. The selection and awarding of a contract will be based on criteria and procedures set forth in the RFP; including ability to provide the requested services, demonstrated competence, qualifications and experience, and the reasonableness of the proposed fees. The Audit Committee reserves the right to accept or reject any or all proposals submitted and is under no legal obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Audit Committee shall pay no costs incurred by any entity responding to this Notice or the RFP. Selection of a firm will be made during the third week of October 2000. Certain firms may be interviewed at that time. You will be notified in advance if your company is requested to make a presentation.

TRD-200005125
Charles S. LaShelle
Executive Director
Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association
Filed: July 25, 2000



Texas Lottery Commission

Instant Game No. 179 - "Chili Pepper Payoff"

1.0 Name and Style of Game.

A. The name of Instant Game No. 179 is "Chili Pepper Payoff". The play style of the game is a "add the number of peppers in the chili pot and the total . The total could win a prize if it corresponds with a total in the prize legend" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 179 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 179.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: Bowl, Garlic, Pepper, Fire, Tomato and Beans.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

PLAY SYMBOL	CAPTION
Bowl	BOWL
Garlic	GARLIC
Pepper	PEPPER
Fire	FIRE
Tomato	TOMATO
Beans	BEANS

Table 2 of this section

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$5.00, \$10.00, and \$20.00

H. Mid-Tier Prize - A prize of \$50.00 or \$500.00.

I. High-Tier Prize - No high tier prizes in this game.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (179), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 179-0000001-000.

L. Pack - A pack of "Chili Pepper Payoff" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one. Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Chili Pepper Payoff" Instant Game No. 179 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "Chili Pepper Payoff" Instant Game is determined once the latex on the ticket is scratched off to expose nine (9) play symbols in the chili pot. Players win a prize by counting only the peppers in the chili pot and seeing if the total number of peppers in the chili pot is represented in the prize legend on the ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 9 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 9 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No consecutive string of non-winning tickets will be greater than 13.

B. A ticket will not contain three or more of a king of a symbol other than the chili pepper symbol

C. No more than one winner of \$50 and higher per pack.

D. Consecutive non-winning tickets will not have identical play data, spot for spot

E. Every ticket will contain at least one chili pepper, with a predominance of non-winners containing two chili peppers.

2.3 Procedure for Claiming Prizes.

A. To claim a "Chili Pepper Payoff" Instant Game prize of \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$500.00 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$500.00 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "Chili Pepper Payoff" Instant Game prize the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Chili Pepper Payoff" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post

Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "Chili Pepper Payoff" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "Chili Pepper Payoff" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on

the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 60,000,000 tickets in the Instant Game No. 179. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$1.00	6,720,000	1:8.93
\$2.00	3,120,000	1:19.23
\$5.00	1,920,000	1:31.25
\$10.00	480,000	1:125.00
\$20.00	240,000	1:250.00
\$50.00	43,750	1:1,371.43
\$500.00	3,500	1:17,142.86

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 179 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 179, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005050

Ridgely C. Bennett

Deputy General Counsel

Texas Lottery Commission

Filed: July 21, 2000



Instant Game No. 191 - "Winmill"

1.0 Name and Style of Game.

A. The name of Instant Game No. 191 is "Winmill". The play style of the game is a "key number match with a doubler" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 191 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 191.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, DOLLAR BILL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$500, \$5,000 or \$25,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	STN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
Dollar Bill	DBLR
\$1.00	ONES\$
\$2.00	TWOS\$
\$4.00	FOURS\$
\$5.00	FIVES\$

\$10.00	TENS
\$20.00	TWENTY
\$50.00	FIFTY
\$500	FIV HUND
\$5,000	FIV THOU
\$25,000	25 THOU

Table 2 of this section

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, and \$20.00

H. Mid-Tier Prize - A prize of \$50.00, \$200 or \$500.

I. High-Tier Prize - A prize of \$5,000 or \$25,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (191), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 191-0000001-000.

L. Pack - A pack of "Winmill" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 000 - 001 will be on the top page and tickets 002 - 003 will be on the next page and so forth with tickets 248 - 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Winmill" Instant Game No. 191 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "Winmill" Instant Game is determined once the latex on the ticket is scratched off to expose twenty-two (22) play symbols. Players win the prize shown by matching any of the ten (10) YOUR NUMBERS to either of the two (2) LUCKY NUMBERS. If the player reveals a dollar bill symbol, they win double the amount for that prize. Players can win up to 10 times on each ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No duplicate Lucky Numbers on a ticket.

B. No duplicate non-winning Your Number play symbols on a ticket.

C. Consecutive non-winning tickets will not have identical play data, spot for spot.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. The doubler symbol will never appear more than once on a ticket.

F. There will be no correlation between the matching symbols and the prize amount.

G. No more than 2 like duplicate non-winning prize symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "Winmill" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be

forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "Winmill" Instant Game prize of \$5,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Winmill" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "Winmill" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "Winmill" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,040,000 tickets in the Instant Game No. 191. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$2.00	1,923,840	1:10.42
\$4.00	1,202,400	1:16.67
\$5.00	400,800	1:50.00
\$10.00	320,640	1:62.50
\$15.00	240,480	1:83.33
\$20.00	120,240	1:166.67
\$50.00	68,470	1:292.68

\$200.00	10,020	1:2,000.00
\$500.00	835	1:24,000.00
\$5,000.00	20	1:1,002,000.00
\$25,000.00	10	1:2,004,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 191 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 191, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005049
 Ridgely C. Bennett
 Deputy General Counsel
 Texas Lottery Commission
 Filed: July 21, 2000



Instant Game No. 194 - "Raceway Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 194 is "Raceway Riches". The play style of the game is a "key number match with doubler" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 194 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 194.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, TROPHY, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$200, \$400, \$4,000, or \$20,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

PLAY SYMBOL	CAPTION
140	ONFRY
141	ONFRON
142	ONFRTW
143	ONFRTR
144	ONFRFO
145	ONFRFV
146	ONFRSX
147	ONFRSV
148	ONFREG
149	ONFRNI
150	ONFTY
151	ONFTON
152	ONFTTW
153	ONFTTR
154	ONFTFO
155	ONFTFV
156	ONFTSX
157	ONFTSV
158	ONFTEG
159	ONFTNI
160	ONSXY
161	ONSXON
162	ONSXTW
163	ONSXTR
164	ONSXFO
165	ONSXFV
166	ONSXSX
167	ONSXSV
168	ONSXEG

169	ON SXNI
170	ON SVY
171	ON SVON
172	ON SVTW
173	ON SVTR
174	ON SVFO
175	ON SVFV
176	ON SVSX
177	ON SVSV
178	ON VEG
179	ON SVNI
Trophy	DOUBLE
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$200	TWO HUND
\$400	FOR HUND
\$4,000	FOR THOU
\$20,000	20 THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section.

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
EGT	\$8.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$15.00 and \$20.00

H. Mid-Tier Prize - A prize of \$40.00, \$200 or \$400.

I. High-Tier Prize - A prize of \$4,000 or \$20,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (194), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 194-0000001-000.

L. Pack - A pack of "Raceway Riches" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 000 - 001 will be on the top page and tickets 002 - 003 will be on the next page and so forth with tickets 248 - 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Raceway Riches" Instant Game No. 194 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "Raceway Riches" Instant Game is determined once the latex on the ticket is scratched off to expose seventeen (17) play symbols. Players win the prize shown under the YOUR SPEEDS play symbol if YOUR SPEEDS is higher than THEIR SPEED. If players get a trophy symbol, it doubles the prize shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 17 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 9 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 17 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 17 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. No duplicate non-winning YOUR SPEEDS play symbols on a ticket.
- B. Consecutive non-winning tickets will not have identical play data, spot for spot.
- C. No duplicate non-winning prize symbols on a ticket.

D. YOUR SPEEDS will never be the same as THEIR SPEED on a ticket.

E. The doubler symbol will appear on intended winners as dictated by the prize structure.

F. The doubler symbol may appear only once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "Raceway Riches" Instant Game prize of \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$40.00, \$200 or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$200 or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "Raceway Riches" Instant Game prize of \$4,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Raceway Riches" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "Raceway Riches" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "Raceway Riches" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any

prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,040,000 tickets in the Instant Game No. 194. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$2.00	2,324,640	1:8.62
\$4.00	1,242,480	1:16.13
\$5.00	320,640	1:62.50
\$8.00	200,400	1:100.00
\$10.00	220,440	1:90.91
\$15.00	200,400	1:100.00
\$20.00	100,200	1:200.00
\$40.00	80,160	1:250.00
\$200.00	9,686	1:2,068.97
\$400.00	835	1:24,000.00
\$4,000.00	75	1:267,200.00
\$20,000.00	13	1:1,541,538.46

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 194 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 194, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005080
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 24, 2000



Instant Game No. 197 - "Heads Or Tails"

1.0 Name and Style of Game.

A. The name of Instant Game No. 197 is "Heads Or Tails". The play style of the game is a "match 2 symbols" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 197 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 197.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: TAILS, HEADS, \$1.00, \$2.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 or \$2,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

PLAY SYMBOL	CAPTION
TAILS	TAILS
HEADS	HEADS
\$1.00	ONES
\$2.00	TWOS
\$5.00	FIVES
\$10.00	TENS
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$2,000	TWO THOU

Table 2 of this section.

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, and \$20.00.

H. Mid-Tier Prize - A prize of \$40.00 or \$300.

I. High-Tier Prize - A prize of \$2,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (197), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 197-0000001-000.

L. Pack - A pack of "Heads Or Tails" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Heads Or Tails" Instant Game No. 197 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "Heads Or Tails" Instant Game is determined once the latex on the ticket is scratched off to expose twelve (12) play symbols. Players win by getting 2 Heads or 2 Tails within the same toss and win the prize shown for that toss. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 12 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 12 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 12 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No duplicate non-winning prize symbols on a ticket.

B. Consecutive non-winning tickets will not have identical play data, spot for spot.

2.3 Procedure for Claiming Prizes.

A. To claim a "Heads Or Tails" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "Heads Or Tails" Instant Game prize of \$2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Heads Or Tails" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "Heads Or Tails" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "Heads Or Tails" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 197. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$1.00	2,419,200	1:8.33
\$2.00	1,008,000	1:20.00
\$4.00	241,920	1:83.33
\$5.00	241,920	1:83.33
\$10.00	120,960	1:166.67
\$20.00	100,800	1:200.00
\$40.00	50,400	1:400.00
\$300.00	336	1:60,000.00
\$2,000.00	84	1:240,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 197 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 197, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005001

Ridgely C. Bennett
 Deputy General Counsel
 Texas Lottery Commission
 Filed: July 20, 2000



Instant Game No. 199 - "Run For The Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 199 is "Run For The Money". The play style of the game is a "key number match" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 199 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 199.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1,2,3,4,5,6,7,8,9,10,11,12, HORSE SHOE, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$1,000, or \$4,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
Horse Shoe	WIN
\$1.00	ONES\$
\$2.00	TWOS\$
\$3.00	THREES\$
\$4.00	FOURS\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$4,000	FOR THOU

Table 2 of this section.

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, and \$20.00

H. Mid-Tier Prize - A prize of \$50.00 or \$100.

I. High-Tier Prize - A prize of \$1,000 or \$4,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (199), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 199-0000001-000.

L. Pack - A pack of "Run For The Money" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five. Tickets 000 - 004 will be on the top page and tickets 005 - 009 will be on the next page and so forth with tickets 245 - 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "Run For The Money" Instant Game No. 199 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "Run For The Money" Instant Game is determined once the latex on the ticket is scratched off to expose ten (10) play symbols. Players win the prize shown by matching YOUR HORSE numbers to either WINNING HORSE number within a race. If players reveal a HORSE SHOE symbol, they automatically win the prize displayed for that race. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 10 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 10 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 10 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 10 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. No duplicate non-winning Your Horse Number play symbols on a ticket.

B. No duplicate non-winning prize symbols on a ticket.

C. Consecutive non-winning tickets will not have identical play data, spot for spot.

D. No duplicate Winning Horse Number play symbols on a ticket.

E. The auto win symbol will never appear more than once on a ticket.

F. The auto win symbol will appear only on intended winning tickets.

G. Non-winning prize symbols will not match a winning prize symbol on a ticket.

H. There will be no correlation between the Your Horse Numbers play symbols and the prize symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "Run For The Money" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00 or \$100 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "Run For The Money" Instant Game prize of \$1,000 or \$4,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "Run For The Money" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "Run For The Money" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "Run For The Money" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 199. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$1.00	2,278,080	1:8.85
\$2.00	927,360	1:21.74
\$4.00	483,840	1:41.67
\$5.00	221,760	1:90.91
\$10.00	80,640	1:250.00
\$15.00	80,640	1:250.00
\$20.00	80,640	1:250.00
\$50.00	10,500	1:1,920.00
\$100.00	5,880	1:3,428.57
\$1,000.00	84	1:240,000.00
\$4,000.00	30	1:672,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 199 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 199, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005046
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Filed: July 21, 2000



Instant Game No. 211 - "24K"

1.0 Name and Style of Game.

A. The name of Instant Game No. 211 is "24K". The play style of the game is a "key number match" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 211 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 211.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19, 20,21,22,23,24, CROWN, GOLD BAR, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 or \$24,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
Crown	WIN
Gold Bar	WIN ALL
\$1.00	ONES\$
\$2.00	TWOS\$
\$4.00	FOURS\$
\$5.00	FIVES\$
\$10.00	TENS\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$24,000	24 THOU

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to

verify and validate instant winners. The possible validation codes are:

Table 2 of this section

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWL	\$12.00
TWN	\$20.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00, \$12.00, \$20.00, and \$24.00

H. Mid-Tier Prize - A prize of \$50.00 or \$200.00.

I. High-Tier Prize - A prize of \$2,000 or \$24,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (211), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be : 211-0000001-000.

L. Pack - A pack of "24K" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two. Tickets 000 - 001 will be on the top page and tickets 002 - 003 will be on the next page and so forth with tickets 248 - 249 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "24K" Instant Game No. 211 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "24K" Instant Game is determined once the latex on the ticket is scratched off to expose ten (10) play symbols, ten (10) prize symbols and two (2) winning numbers. Players win the prize shown by matching any of YOUR NUMBERS to either WINNING NUMBER. If players reveal a CROWN symbol, they automatically win the prize displayed. If the player reveals a GOLD BAR symbol, they win all 10 prizes automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. No duplicate non-winning Your Number play symbols on a ticket.
- B. No duplicate non-winning prize symbols on a ticket.
- C. Consecutive non-winning tickets will not have identical play data, spot for spot.
- D. No duplicate Winning Number symbols on a ticket.
- E. The gold bar symbol will never appear more than once on a ticket.
- F. The gold bar symbol will appear only on intended winning tickets.
- G. The crown symbol will never appear more than once on a ticket.
- H. The crown and gold bar symbol will never appear on the same ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "24K" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$12.00, \$20.00, \$24.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200.00 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to

the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "24K" Instant Game prize of \$2,000 or \$24,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "24K" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "24K" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "24K" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,040,000 tickets in the Instant Game No. 211. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$2.00	2,965,920	1:6.76
\$4.00	2,004,000	1:10.00
\$5.00	160,320	1:125.00
\$10.00	160,320	1:125.00
\$12.00	80,160	1:250.00
\$20.00	40,080	1:500.00
\$24.00	40,080	1:500.00
\$50.00	43,420	1:461.54
\$200.00	20,875	1:960.00
\$2,000.00	80	1:250,500.00
\$24,000.00	20	1:1,002,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 211 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 211, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005002

Ridgely C. Bennett

Deputy General Counsel

Texas Lottery Commission

Filed: July 20, 2000

◆ ◆ ◆

Instant Game No. 212 - "WILD WILD WINNINGS"

1.0 Name and Style of Game.

A. The name of Instant Game No. 212 is "WILD WILD WINNINGS". There are five games on this ticket. The play style of Game 1 is a "key symbol match with doubler" play style. The play style of Game 2 is a "yours beats theirs" play style. The play style of Game 3 is a "add up" play style. The play style of Game 4 is a "match 3 or match 2 with symbol" play style. The play style of Game 5 is a "automatic \$5" play style.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 212 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 212.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: BUD, JAKE, JOE, COLONEL, BART, CAL, ROY, KID, BILLY, KEY, ACE, KING, QUEEN, JACK, 10, 9, 8, 7, 6, 5, 4, 3, 2, 1, 2, 3, 4, 5, 6, CACTUS, HAT, SPUR, FIRE, BIG 5, \$1.00, \$2.00, \$4.00, \$5.00, \$8.00, \$10.00, \$100, \$500, \$1,000, \$5,000 and GOLD NUGGET.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section

PLAY SYMBOL	CAPTION
BUD	BUD
JAKE	JAKE
JOE	JOE
COLONEL	COLONEL
BART	BART
CAL	CAL
ROY	ROY
KID	KID
BILLY	BILLY
KEY	DOUBLE
ACE	ACE
KING	KNG
QUEEN	QUN
JACK	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
1	ONE
CACTUS	TRY AGAIN
HAT	TRY AGAIN

Table 2 of this section

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

CODE	PRIZE
FIV	\$5.00
EGT	\$8.00
TEN	\$10.00
TWN	\$20.00
SPUR	TRY AGAIN
FIRE	TRY AGAIN
BIG 5	WIN \$5
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
GOLD NUGGET	WINx10

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$8.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (212), a seven (7) digit pack number and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be : 212-0000001-000.

L. Pack - A pack of "WILD WILD WINNINGS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of ones. Ticket 000 will be on the top page and ticket 001 will be on the next page and so forth with ticket 074 on the last page.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery " WILD WILD WINNINGS " Instant Game No. 212 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the " WILD WILD WINNINGS " Instant Game is determined once the latex on the ticket is scratched off to expose forty-two (42) play symbols. In Game 1, the player must match any of the WANTED posters to the OUTLAW to win the prize show for that poster. If the player finds the KEY symbol, the player wins double the prize shown. In Game 2, if YOUR CARD beats DEALER'S CARD within a hand, the player wins the prize shown. In Game 3, for each roll, if the total of YOUR ROLL equals 7 or 11, the player wins the prize shown for that roll. In Game 4, if the player gets 3 like amounts within each game, the player wins that amount. Or if the player gets 2 like amounts plus a GOLD NUGGET symbol, the player wins ten (10) times the prize amount. In Game 5, if the player gets a "BIG 5" symbol, the player wins \$5 automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 42 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 42 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 42 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 42 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be no correlation between a prize symbol and the play symbol it appears with.

C. No duplicate non-winning prize symbols in Game 1.

D. No duplicate non-winning Wanted Guy play symbols in Game 1.

E. The key symbol will only appear once in the game in Game 1.

F. The key symbol will only appear on intended winners in Game 1.

G. No ties between Your Card and Dealer's Card in a hand in Game 2.

H. No duplicate non-winning prize symbols in Game 2.

I. No duplicate Your Card play symbols in Game 2.

J. No duplicate Dealer's Card play symbols in Game 2.

K. No duplicate non-winning prize symbols in Game 3.

L. No duplicate non-winning rolls in any order in Game 3.

M. The x10 symbol will only appear once on a ticket and only on intended winners.

N. No duplicate non-winning games in Game 4.

O. The BIG 5 symbol will only appear on intended winners on Game 5.

2.3 Procedure for Claiming Prizes.

A. To claim a " WILD WILD WINNINGS " Instant Game prize of \$5.00, \$8.00, \$10.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a " WILD WILD WINNINGS " Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a " WILD WILD WINNINGS " Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the " WILD WILD WINNINGS " Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the " WILD WILD WINNINGS " Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,040,000 tickets in the Instant Game No. 212. The expected number and value of prizes in the game are as follows:

Table 3 of this section

Prize Amount	Approximate Number of Winners	Chances of Winning
\$5.00	2,672,000	1:7.50
\$8.00	1,870,400	1:10.71
\$10.00	1,603,200	1:12.50
\$20.00	467,600	1:42.86
\$50.00	89,345	1:224.30
\$100	21,710	1:923.08
\$500	4,342	1:4,615.38
\$1,000	1,670	1:12,000.00
\$5,000	90	1:222,666.67
\$50,000	10	1:2,004,000.00

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 212 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 212, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200005000

Ridgely C. Bennett

Deputy General Counsel

Texas Lottery Commission

Filed: July 20, 2000

◆ ◆ ◆
Texas Department of Mental Health and Mental Retardation

Notice of Medicaid State Plan Amendment for Case Management Rate Setting

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has postponed the effective date in the notice of the Medicaid state plan amendment that was published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6598). TDMHMR plans to submit a Medicaid state plan amendment with an effective date of October 1, 2000, to allow for the transfer of Case Management rate setting activities from TDMHMR to the Health and Human Services Commission.

Copies of the state plan amendment (Transmittal No. 00-09, Amendment No. 574) will be available for review after October 31, 2000, by writing the Medicaid Office, Health and Human Services Commission at P. O. Box 13247, Austin, Texas 78711.

TRD-200005086

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: July 24, 2000

◆ ◆ ◆
 Notice of Medicaid State Plan Amendment for ICF/MR Rate Setting

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has postponed the effective date in the notice of the Medicaid state plan amendment that was published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6598). TDMHMR plans to submit a Medicaid state plan amendment with an effective date of October 1, 2000, to allow for the transfer of ICF/MR rate setting activities from TDMHMR to the Health and Human Services Commission and to remove the requirement of the review of reimbursement rules and rates by the TDMHMR Board.

Copies of the state plan amendment (Transmittal No. 00-08, Amendment No. 573) will be available for review after October 31, 2000, by writing the Medicaid Office, Health and Human Services Commission at P. O. Box 13247, Austin, Texas 78711.

TRD-200005087

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: July 24, 2000

◆ ◆ ◆
 Notice of Medicaid State Plan Amendment for Institutions for Mental Diseases Rate Setting

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has postponed the effective date in the notice of the Medicaid state plan amendment that was published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6598). TDMHMR plans to submit a Medicaid state plan amendment with an effective date of October 1, 2000, to allow for the transfer of Institutions for Mental Diseases rate setting responsibilities from TDMHMR to the Health and Human Services Commission.

Copies of the state plan amendment (Transmittal No. 00-12, Amendment No. 576) will be available for review after October 31, 2000, by writing the Medicaid Office, Health and Human Services Commission at P. O. Box 13247, Austin, Texas 78711.

TRD-200005088
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: July 24, 2000



Notice of Medicaid State Plan Amendment for Rehabilitative Services Rate Setting

The Texas Department of Mental Health and Mental Retardation (TDMHMR) has postponed the effective date in the notice of the Medicaid state plan amendment that was published in the July 7, 2000, issue of the *Texas Register* (25 TexReg 6598). TDMHMR plans to submit a Medicaid state plan amendment with an effective date of October 1, 2000, to allow for the transfer of Rehabilitative Services rate setting activities from TDMHMR to the Health and Human Services Commission.

Copies of the state plan amendment (Transmittal No. 00-10, Amendment No. 575) will be available for review after October 31, 2000, by writing the Medicaid Office, Health and Human Services Commission at P. O. Box 13247, Austin, Texas 78711.

TRD-200005085
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: July 24, 2000



Public Hearing Notice - Health and Human Services Commission and Texas Department of Mental Health and Mental Retardation Notice of Joint Public Hearing on Reimbursement Rates for Service Coordination

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation will conduct a joint public hearing to receive public comment on proposed reimbursement rates for Service Coordination facilities effective September 1, 2000, through August 31, 2001. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Thursday, August 17, 2000, at 9:00 a.m. in room 240 of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas 78751. Comments must be received by noon on Thursday, August 17, 2000. Interested parties may obtain a copy of the reimbursement briefing package 10 days prior to the hearing by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring ADA accommodation should contact Tom Wooldridge by calling (512)206-5753, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tom Wooldridge through the Texas Relay

operator by calling 1-800-735-2988. Janet Hodgson Office of Policy Development Texas Department of Mental Health and Mental Retardation P.O. Box 12668 Austin, TX 78711-2668 (512) 206-5153 FAX (512) 206-4750 E-mail: Janet.Hodgson@mhmr.state.tx.us

TRD-200005089
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: July 24, 2000



Texas Natural Resource Conservation Commission

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* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 4, 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 September 4, 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: Friede Goldman Offshore Texas, L.P.; DOCKET NUMBER: 2000-0701-MLM-E; TNRCC ID NUMBERS: 23492 and 81891; LOCATION: 91 West Front Street, Orange, Orange County, Texas; TYPE OF FACILITY: street yard; RULES VIOLATED: §101.4 and Texas Health and Safety Code, (THSC), §382.085(a) and (b), by emitting paint overspray from surface coating operations creating nuisance conditions; and §335.4 and the Code, §26.121, by allowing an unauthorized discharge of waste oil and spent sandblasting grit and Class I nonhazardous waste; PENALTY: \$29,375; STAFF ATTORNEY: Richard O'Connell, Litigation Division, MC 175, (512) 239-5528; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Nicholas Hallinan; DOCKET NUMBER: 1998-0464-SLG-E; TNRCC ID NUMBER: NONE; LOCATION: 12670 Highway 181 South, San Antonio, Bexar County, Texas; TYPE OF FACILITY: sluge transportation; RULES VIOLATED: §335.41(1) and the

Code, §26.121(c), by allowing the unauthorized discharge of hazardous waste; PENALTY: \$6,250; STAFF ATTORNEY: John Sumner, Litigation Division, MC 175, (512) 239-0497; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Hartley Water Supply Corporation; DOCKET NUMBER: 1997-1085-PWS-E; TNRCC ID NUMBER: 1030010; LOCATION: Hartley, Hartley County, Texas; TYPE OF FACILITY: public drinking water system; RULES VIOLATED: §290.46(f)(1)(A), by failing to maintain an adequate disinfectant residual of 0.2 mg/l for the free chlorine residual; §290.42(e)(2), by failing to disinfect the groundwater from well numbers one and two prior to distribution; §290.43(c)(3), by failing to provide a gravity hinged and weighted cover for the overflow on the water storage reservoir in accordance with American Water Works Association standards; and §290.46(p), by failing to have records of the annual elevated storage tank inspections available for review; PENALTY: \$7,563; STAFF ATTORNEY: Joshua Olszewski, Litigation Division, MC 175, (512) 239-3645; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

TRD-200005082

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: July 24, 2000



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 4, 2000**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 4, 2000**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: AquaSource Utility, Incorporated dba Country-side Estates Wastewater Treatment Facility; DOCKET NUMBER: 2000-0090-MWD-E; IDENTIFIER: Water Quality Permit Number 11249-001; LOCATION: near Port Acres, Jefferson County, Texas;

TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Water Quality Permit Number 11249-001, by failing to submit a monthly effluent report, meet the effluent limitation of 20 milligrams per liter (mg/l) for biochemical oxygen demand, meet the effluent limitation of 20 mg/l for total suspended solids, meet the effluent limitation of greater than or equal to two mg/l for dissolved oxygen, and properly operate and maintain all systems of treatment; and 30 TAC §305.125(4), Water Quality Permit Number 11249-001, and the Code, §26.121, by failing to take all reasonable steps to prevent or minimize a discharge of sludge; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: City of Atlanta; DOCKET NUMBER: 1999-1582-MWD-E; IDENTIFIER: Water Quality Permit Number 10338-001 and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0032344; LOCATION: Atlanta, Cass County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10338-001 and NPDES Permit Number TX0032344, by failing to comply with permitted effluent limits for ammonia-nitrogen, total suspended solids, and five-day carbonaceous biochemical oxygen demand; PENALTY: \$4,375; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: BC Utilities, Inc.; DOCKET NUMBER: 2000-0249-MWD-E; IDENTIFIER: Water Quality Permit Number 11145-001 and NPDES Permit Number TX0067539; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4), the Code, §26.121, and Water Quality Permit Number 11145-001, by failing to operate and maintain the facility to prevent the discharge and accumulation of solids; Water Quality Permit Number 11145-001 and the Code, §26.121, by failing to comply with the minimum chlorine residual limit; 30 TAC §§305.125(5) and (11), 317.3(b)(1), 317.4(a)(8), 317.6(b)(1)(C), 317.7(e), and Water Quality Permit Number 11145-001, by failing to operate and maintain the facility to comply with permit conditions and prevent discharges and maintain complete monitoring, reporting, and sludge records; and Water Quality Permit Number 11145-001, by failing to submit an engineering report and/or plans and specifications; PENALTY: \$11,375; ENFORCEMENT COORDINATOR: Cathy Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Evans Systems, Inc. dba Boogie's Mini Mart; DOCKET NUMBER: 2000-0125-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0036871; LOCATION: West Columbia, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(C) and the Act, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS); and 30 TAC §115.248(1) and the Act, §382.085(b), by failing to ensure at least one facility representative receive training and instruction in the operation and maintenance of the Stage II VRS; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Trina Lewison, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: The Leroy and Dorothy Brown Family Limited Partnership; DOCKET NUMBER: 2000-0285-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 11357-001; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: mobile home park; RULE VIOLATED: TPDES Permit Number 11357-001 and the Code, §26.121, by failing to prevent

an unauthorized discharge of wastewater from the influent lift station force main; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Cal-Tex Lumber Company, Inc.; DOCKET NUMBER: 2000-0053-AIR-E; IDENTIFIER: Air Account Number NA-0055-O; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: lumber sawmill; RULE VIOLATED: 30 TAC §116.110(a), 106.454(1)(E) and (F), and the Act, §382.085(b), by failing to obtain a permit or meet the conditions of a standard exemption for two remote reservoir solvent degreasers; and 30 TAC §116.115(b)(2)(F)(i) and the Act, §382.085(b), by failing to maintain records of the sawdust feed rate at the boiler gasifiers; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Orvel Casey; DOCKET NUMBER: 2000-0282-OSI-E; IDENTIFIER: On-Site Sewage Facility (OSSF) Installer Identification Number OS6282; LOCATION: Uvalde, Uvalde County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.58(a)(11) and the THSC, §§366.051(c), 366.054, and 366.055, by failing to obtain the permitting agent's authorization before installing, constructing, altering, or repairing an OSSF and failing to call for the required inspections; PENALTY: \$400; ENFORCEMENT COORDINATOR: Julia McMasters, (512) 239-5839; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(8) COMPANY: Central Bowie County Water Supply Corporation; DOCKET NUMBER: 2000-0136-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 0190024; LOCATION: New Boston, Bowie County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(4), by failing to meet minimum water system capacity requirements of 0.6 gallons per minute (gpm) per connection; PENALTY: \$313; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Chevron Chemical Company, LLC; DOCKET NUMBER: 2000-0018-AIR-E; IDENTIFIER: Air Account Number JE-0508-W; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (c), the Act, §382.085(b), and Air Permit Number 18568, by failing to comply with permit emission limits; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-3892, (409) 898-3838.

(10) COMPANY: Chevron U.S.A., Inc.; DOCKET NUMBER: 2000-0439-AIR-E; IDENTIFIER: Air Account Numbers WC-0083-I and WC-0084-G; LOCATION: Wickett, Ward County, Texas; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §122.146(2) and the Act, §382.085(b), by failing to submit an annual compliance certification; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(11) COMPANY: Clemsa Lumber Company; DOCKET NUMBER: 1999-1564-AIR-E; IDENTIFIER: Air Account Number AC-0051-B; LOCATION: Pollok, Angelina County, Texas; TYPE OF FACILITY: lumber sawmill; RULE VIOLATED: 30 TAC §101.20(a), 40 Code of Federal Regulations (CFR) §60.48c(g) and (i), and the Act, §382.085(b), by failing to maintain daily fuel usage records for the boilers; 30 TAC §116.110(a) and the Act, §382.085(b), by failing

to obtain a permit or meet a standard exemption for a cold solvent degreaser; 30 TAC §116.115(b)(2)(F) and (G), and (c), Permit Number 19871, and the Act, §382.085(b), by failing to limit the production of lumber to 260,000 finished board feet per day and maintain accurate records of wood dried in Kiln 1 and 2; and 30 TAC §122.121 and the Code, §382.054, by failing to obtain a Title V permit; PENALTY: \$14,000; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Crockett County WCID No. 1; DOCKET NUMBER: 1998-1451-PWS-E; IDENTIFIER: PWS Number 0530011; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D) and (F), and (3)(A), (C), (O), and (P), by failing to ensure that livestock are not allowed within 50 feet of supply wells, acquire sanitary easement, provide and maintain well data, pressure cement all six active wells, provide fencing and housing, ensure wells were not located within 500 feet of animal pens, and provide all-weather roads; 30 TAC §290.106(a)(1), by failing to develop a written sample siting plan; 30 TAC §290.46(f)(1)(A), (n), (p)(1) and (2), and (t), by failing to maintain a 0.2 mg/l free chlorine residual, develop and maintain an updated distribution map, conduct an annual inspection of ground storage tanks, conduct an annual inspection of its pressure tanks, and maintain the underground storage tank in a watertight condition; 30 TAC §290.42(e)(4)(B) and (j), by failing to provide automatic proportioning of the disinfectant dosage and compile a thorough plant operations manual; and 30 TAC §290.43(c)(3) and (e), by failing to provide intruder-resistant fencing for all ground storage and pressure tanks, provide an overflow for the underground storage tank, and provide the ground storage tank with an inspection ladder; PENALTY: \$4,313; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(13) COMPANY: Crystal Beach Corporation; DOCKET NUMBER: 1999-1419-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0003909; LOCATION: Crystal Beach, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7) and the Act, §382.085(b), by failing to maintain and have available Stage II records; 30 TAC §115.242(9)(C) and the Act, §382.085(b), by failing to post Stage II vapor recovery hotline number on the pumps; and 30 TAC §334.21 and the Code, §26.358(b), by failing to pay underground storage tank fees; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Echo Production, Inc.; DOCKET NUMBER: 2000-0464-AIR-E; IDENTIFIER: Air Account Number HE-0012-I; LOCATION: Quanah, Hardeman County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(1) and the Act, §382.085(b), by failing to certify compliance with Title V Permit O-0015; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Kara Dudash, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: Engineered Carbons, Incorporated; DOCKET NUMBER: 2000-0188-AIR-E; IDENTIFIER: Air Account Number OC-0020-R; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: hard carbon black production; RULE VIOLATED: 30 TAC §116.115(b)(2)(G) and (C), §101.20(3), and the Act, §382.085(b), by failing to comply with the permitted carbon monoxide emission limits of 204 pounds per hour (lbs/hr) and the permitted nitrogen oxide emission limits of 37.4 lbs/hr; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838;

REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703- 1892, (409) 898-3838.

(16) COMPANY: Halliburton Energy Services, Inc.; DOCKET NUMBER: 2000-0333-PWS-E; IDENTIFIER: PWS Number 1011560; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(b)(1) and (5), and (e)(2), by failing to submit the required number of repeat water samples for bacteriological analysis, submit additional routine water samples for bacteriological analysis, and provide public notification of the coliform monitoring and maximum contaminant level (MCL) violations; and 30 TAC §290.105 and the Code, §341.031, by exceeding the MCL for total coliform; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Shawn Stewart, (512) 239-6684; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Harris County Municipal Utility District No. 150; DOCKET NUMBER: 2000- 0106-MWD-E; IDENTIFIER: Water Quality Permit Number 11863-001 and NPDES Permit Number TX0072893; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 11863-001 and NPDES Permit Number TX0072893, by failing to comply with effluent limits and failing to submit discharge monitoring reports for the results of chronic biomonitoring requirements; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: John Leininger and Harvest Fellowship Community Church; DOCKET NUMBER: 1999-1550-EAQ-E; IDENTIFIER: Edwards Aquifer Protection Program Identification Number 1263; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: church; RULE VIOLATED: 30 TAC §213.4(a), by failing to have received approval prior to commencing construction activities; PENALTY: \$720; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(19) COMPANY: Heritage Financial Group, Inc.; DOCKET NUMBER: 1999-0592-MLM-E; IDENTIFIER: PWS Number 1020061 and Water Quality Permit Number 13522-001; LOCATION: near Longview, Harrison County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(F)(i) and (iii), by failing to provide well capacity of 0.6 gpm per connection and provide two or more service pumps with a total rated capacity of two gpm per connection; the Code, §290.113(b), by failing to install facilities to treat the water, blend the water with an acceptable source, or abandon the source; 30 TAC §290.44(d), by failing to provide at all times a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.42(e)(8), by failing to completely cover and seal the top of the hypochlorination solution container; and Permit Number 13522-001 and the Code, §26.121, by failing to meet daily average and single grab permit parameter limitations for total suspended solids and five-day biochemical oxygen demand, maintain a minimum of two mg/l dissolved oxygen in the aeration basin, prevent sludge and grease accumulations in the chlorine contact chamber, have the traveling bridge collector on the clarifier operating properly, have the flow meter calibrated annually, and ensure at all times that the facility and all its systems of collection, treatment, and disposal are properly operated; PENALTY: \$9,950; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239-4489; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20) COMPANY: Hometown Meadow Glen Utility Service, LP; DOCKET NUMBER: 2000- 0062-MWD-E; IDENTIFIER: Water

Quality Permit Number 12768-001; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4), (5), and (9), the Code, §26.121, and Water Quality Permit Number 12768-001, by failing to prevent discharge of sludge to the creek, properly maintain the aeration basin, weirs, and clarifiers, notify the regional office within 24 hours of the noncompliance, and maintain a minimum chlorine residual of one mg/l; PENALTY: \$4,800; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 469-6750.

(21) COMPANY: Hondo Creek Cattle Company, Ltd.; DOCKET NUMBER: 2000-0279-AGR- E; IDENTIFIER: Water Quality Permit Number 01497; LOCATION: Edroy, San Patricio County, Texas; TYPE OF FACILITY: cattle feedlot; RULE VIOLATED: 30 TAC §321.39(e) and (f)(24)(K), by failing to amend the facility's pollution prevention plan prior to change in operation and prevent the ponding of water in pens; and 30 TAC §321.40(7) and Water Quality Permit Number 01497, by failing to provide 100 feet of vegetative buffer zone and appropriate tailwater controls; PENALTY: \$5,760; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(22) COMPANY: Horticultural Printers, Ltd. dba Integracolor, Ltd.; DOCKET NUMBER: 2000-0222-AIR-E; IDENTIFIER: Air Account Number DB-1250-P; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: commercial printing; RULE VIOLATED: 30 TAC §122.121, §122.130(c)(2), and the Act, §382.054 and §382.085(b), by failing to submit a Title V abbreviated permit application; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(23) COMPANY: The City of Ingleside; DOCKET NUMBER: 1999-1304-MWD-E; IDENTIFIER: Water Quality Permit Number 10422-001 and NPDES Permit Number TX0020401; LOCATION: Ingleside, San Patricio County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10422-001, NPDES Permit Number TX0020401, and the Code, §26.121, by failing to comply with both the state and federal permit limits for the 30-day average total ammonia nitrogen limit of three mg/l; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Kelly-Moore Paint Company, Inc.; DOCKET NUMBER: 2000-0227-AIR-E; IDENTIFIER: Air Account Number TA-0203-D; LOCATION: Hurst, Tarrant County, Texas; TYPE OF FACILITY: paint manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b), and the Act, §382.054 and §382.085(b), by failing to submit a Title V abbreviated permit application; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469- 6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(25) COMPANY: Lohn Water Supply Corporation; DOCKET NUMBER: 2000-0334-PWS-E; IDENTIFIER: PWS Number 1540002; LOCATION: Lohn, McCulloch County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.105(a)(2) and the Code, §341.031(a) and §341.0315(c), by exceeding the MCL for total coliform; and 30 TAC §290.106(b)(1) and (5), by failing to collect and submit repeat water samples for bacteriological analysis following a total coliform-positive sample and collect and submit additional routine water samples for bacteriological analysis; PENALTY: \$1,563; ENFORCEMENT COORDINATOR: Sandy

VanCleave, (512) 239-0667; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(26) COMPANY: Louisiana-Pacific Corporation; DOCKET NUMBER: 2000-0081-AIR-E; IDENTIFIER: Air Account Number JC-0058-I; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: oriented strandboard mill plant; RULE VIOLATED: 30 TAC §116.115(c) and Permit Number 22377, by failing to comply with special condition number 21 of the permit; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Gerald S. Calvert and Randy Russel dba Oak Ridge Mobile Home Park; DOCKET NUMBER: 2000-0197-PWS-E; IDENTIFIER: PWS Number 0200183; LOCATION: near Seabrook, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.105(b), by exceeding the MCL for total coliform bacteria; and 30 TAC §290.106(a), (b)(1), (4), and (5), and (e)(2), and the Code, §341.033(d), by failing to collect a water sample from the facility for bacteriological analysis, take repeat bacteriological samples for each coliform-positive sample, take additional routine bacteriological samples, and provide public notice of failure to collect bacteriological samples; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Jaime Garza, (512) 239-1406; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Oil Patch Sandblasting and Paint, Ltd.; DOCKET NUMBER: 2000-0015-AIR-E; IDENTIFIER: Air Account Number HX-1323-M; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: abrasive sandblasting and painting; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b), by emitting into the atmosphere air contaminants to create a nuisance in the form of paint overspray; 30 TAC §106.433(2)(B), (6)(B) and (C), (7)(C), and (8)(B), §116.110(a)(4), and the Act, §382.085(b), by failing to operate the exhaust fan in the work area while cleaning spray guns, use a stack to reduce emissions from the enclosed paint booth, use the dry filter system to control emissions, meet the distance requirement of 50 feet or more from the property for coating operations and 500 feet or greater from any recreational area, residence, or other structure for sandblasting activities, and maintain complete records of the coating activities; and 30 TAC §115.421(a)(9)(A)(ii) and the Act, §382.085(b), by exceeding the volatile organic compound content limit of 3.5 pounds per gallon of coating; PENALTY: \$8,750; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: The City of Pearland; DOCKET NUMBER: 1999-1488-MWD-E; IDENTIFIER: Water Quality Permit Number 10134-002; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10134-002 and the Code, §26.121, by failing to prevent the unauthorized discharges; and 30 TAC §305.125(1) and Water Quality Permit Number 10134-002, by failing to maintain compliance with permitted daily average flow limitations; PENALTY: \$101,250; ENFORCEMENT COORDINATOR: Cathy Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Pemarco, Inc.; DOCKET NUMBER: 2000-0099-EAQ-E; IDENTIFIER: Edwards Aquifer File Numbers 98092301 and 98092401; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: underground storage tank; RULE VIOLATED: 30 TAC §213.4(g), by failing to timely submit proof of deed recordation; PENALTY: \$720; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(31) COMPANY: San Miguel Electric Cooperative, Inc.; DOCKET NUMBER: 2000-0283-AIR-E; IDENTIFIER: Air Account Number AG-0007-G; LOCATION: Christine, Atascosa County, Texas; TYPE OF FACILITY: electricity generating plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(B), by failing to meet the opacity limit of 20% or quality for exemption; 30 TAC §101.6(a)(3)(E), §111.111(a)(1)(B), and the Act, §382.085(b), by failing to include in upset notification reports the information regarding actions taken to correct the upset and minimize the emissions; 30 TAC §116.115(b)(2)(G), Permit Number 4180A, and the Act, §382.085(b), by failing to operate the plant in compliance with the emission limitations; 30 TAC §101.10(b)(1) and the Act, §382.085(b), by failing to include all emissions from the combustion of fuel oil in the annual emissions inventory; and 30 TAC §101.20(1) and the Act, §382.085(b), by failing to include adequate explanation of the nature and cause of malfunctions and the corrective action taken; PENALTY: \$45,760; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(32) COMPANY: Sea-Dan Ranches; DOCKET NUMBER: 2000-0255-AIR-E; IDENTIFIER: Air Account Number CB-0083-L; LOCATION: Seadrift, Calhoun County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §111.219(3) and (6)(A), and the Act, §382.085(b), by failing to conduct outdoor burning only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects and complete the outdoor burn on the same day it was commenced, and not later than one hour before sunset; PENALTY: \$800; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(33) COMPANY: Solutia Inc.; DOCKET NUMBER: 2000-0304-IHW-E; IDENTIFIER: Hazardous Waste Permit Number HW-50189 and Solid Waste Registration Number 30138; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: production of organic chemicals; RULE VIOLATED: 30 TAC §335.431(c) and 40 CFR §268.50(c), by failing to meet the one year storage limit for ten restricted hazardous waste containers; PENALTY: \$7,200; ENFORCEMENT COORDINATOR: Cathy Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Stericycle, Inc.; DOCKET NUMBER: 2000-0226-AIR-E; IDENTIFIER: Air Account Number KB-0006-V; LOCATION: Terrell, Kaufman County, Texas; TYPE OF FACILITY: medical waste incinerator; RULE VIOLATED: 30 TAC §122.121, §122.130(b), and the Act, §382.054 and §382.085(b), by failing to submit a Title V abbreviated permit application; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(35) COMPANY: United Petroleum Transports, Inc.; DOCKET NUMBER: 2000-0168-AIR-E; IDENTIFIER: Air Account Number EE-1056-J; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel transport; RULE VIOLATED: 30 TAC §114.100(a) and the Act, §382.085(b), by failing to meet the minimum oxygen content of 2.7% by weight; and 30 TAC §334.21 and the Code, §26.358(b), by failing to pay underground storage tank fees; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Corey Burke, (512) 239-5259; REGIONAL OFFICE: 401 East Franklin, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(36) COMPANY: VV Water Supply System, Inc.; DOCKET NUMBER: 2000-0061-PWS-E; IDENTIFIER: PWS Number 0610052; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and (v), by failing to provide a well capacity of 0.6 gpm and provide auxiliary power; 30 TAC §290.41(c)(1)(F) and (3)(B) and (J), by failing to provide a sanitary easement around the well location, provide a well casing 18 inches above the natural ground, and provide a properly constructed concrete sealing block; 30 TAC §290.46(p)(1) and (2), by failing to document annual inspections of ground and pressure tanks; and 30 TAC §290.46(i), by failing to adopt a plumbing ordinance or regulations; PENALTY: \$3,688; ENFORCEMENT COORDINATOR: Wendy Penland, (817) 469- 6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200005106

Paul Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: July 25, 2000



Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit

APPLICATION.

Hudspeth County, P.O. Box 68, Sierra Blanca, Texas 79851 which operates a Type I-Arid Exempt (AE) landfill has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a permit amendment to authorize a lateral expansion of 122.444 acres. The facility is located approximately 3.5 miles south of Sierra Blanca adjoining FM 1111 in Hudspeth County, Texas.

This application was submitted to the TNRCC on May 8, 2000. The permit application is available for viewing and copying at the Office of the County Judge, Hudspeth County Courthouse, 109 Milligan, Sierra Blanca, Texas 79851.

The TNRCC executive director has determined the application is administratively complete and will conduct a technical review of the application. After completion of that 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 or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. The TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting 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 completed, 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. If comments are received, 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 disputed issues of fact that are relevant and material to the Commission's 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.

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 Hudspeth County at the address stated above or by calling Mr. James E. Tompkins P.E., West Texas Consultants, Inc. at (915) 685-3800.

TRD-200005200

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 25, 2000



Notice of Water Rights Application

Notice is given that WALTER EXPLORATION, INC., applicant, seeks a permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§ 295.1, et seq. The applicant seeks authorization to divert and use not to exceed 67 acre-feet of water per annum from the underflow of the Double Mountain Fork Brazos River, tributary of the Brazos River, Brazos River Basin for mining (oil and gas waterflood) purposes in Stonewall County, Texas. The permit application is based on an upstream water sales contract with the Brazos River Authority. The water will be diverted from the underflow of the River through wells at a maximum of 43.75 GPM (0.1 cfs). The water will be diverted by means of two stationary pumps from four wells located at S 34.07° E 3187 feet, S 42.3° E 3098 feet, S 50.53° E 3061 feet and S 55.98° E, 2986 feet from the northwest corner of the W.P. Kelly Survey Abstract No. 1030, Stonewall County, Texas. The permit, if granted, will only be valid as long as the contract with BRA is in effect and will expire and be null and void at termination of the contract.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested extension of time which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not grant the application and will forward it 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-200005112

LaDonna Castañuela
Chief Clerk

Texas Natural Resource Conservation Commission
Filed: July 25, 2000

◆ ◆ ◆

Public Utility Commission of Texas

Notice of Application for Emergency Revision of Fixed Fuel Factors and Related Good-Cause Waivers

Notice is given to the public of the filing of an application with the Public Utility Commission (commission) for emergency revision of fuel factors and related good-cause waivers.

Docket Style and Number: Application of Southwestern Public Service Company for: (1) Emergency Revision of its Fixed Fuel Factors; and (2) Related Good Cause Waivers. Docket Number 22810.

The Application: Southwestern Public Service Company (SPS) requests authority to revise its fixed voltage level fuel factors pursuant to P.U.C. Substantive Rule §25.237(f) and requests related good-cause waivers pursuant to P.U.C. Substantive Rule §25.3. SPS asserts that circumstances such as the substantial and unforeseeable increase in natural gas prices experienced by SPS qualifies as an emergency and justifies a revision of SPS' s fuel factors. Additionally, SPS is proposing to flow-through margins from wholesale non-firm sales using a methodology consistent with that approved most recently by the commission in Docket Number 20551, rather than incorporate those margins in the calculation of its voltage level fuel factors. SPS seeks a good-cause waiver of all applicable commission rules necessary to continue that methodology. SPS requests authorization from the commission to change its current fuel factors in its Secondary Distribution to 0.022343; its current fuel factors in its Primary Distribution to 0.022037; its current fuel factors in its Sub-Transmission to 0.021094; and its current fuel factors in its Backbone Transmission to 0.020974.

All classes of SPS' s Texas retail customers will be affected by the proposed change in fuel factors which will become effective upon the commission' s approval and remain in effect until revised by the commission. If approved, these changes will be subject to final review by the commission in SPS' s next fuel reconciliation proceeding.

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 August 15, 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-200005113

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2000

◆ ◆ ◆

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 July 21, 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 TVS Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22764 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 August 9, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005073

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2000

◆ ◆ ◆

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 18, 2000, to amend a certificate of convenience and necessity pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Style and Number: Application of the West Texas Utilities Company (WTU) to Amend A Certificate of Convenience and Necessity for a Proposed Transmission Line Within Sterling, Coke, Tom

Green, Concho, Coleman and McCulloch Counties. Docket Number 22798.

The Application: WTU proposes to construct a double circuit 345 kV transmission line on a preferred route extending from an inter-connection point with Texas Utilities Electric Company (TXU) at the Mitchell-Sterling County line and continuing into Coke and Tom Green Counties to a proposed Twin Buttes Switching Station. Construction will continue within Tom Green County from the proposed Twin Buttes Switching Station on to the existing Red Creek Switching Station. The proposed transmission line will then continue into Concho, McCulloch and Coleman Counties and meet proposed TXU construction at the Coleman-Brown County line. The transmission project is proposed to relieve certain transmission constraints to and from West Texas and will provide additional localized benefits in the Concho Valley area. This project, which is known as the Morgan Creek-Twin Buttes-Red Creek-Comanche Switch transmission line, was identified by the Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) as necessary. Copies of the amended application and additional associated maps are available for review at the offices of WTU, 301 Cypress Street, Abilene, Texas. Arrangements to view or obtain a map may be made by contacting Brett E. Madison, Project Manager at (214) 777-2209.

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 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, but will be no earlier than September 1, 2000. The commission should receive a letter requesting intervention on or before that date.

TRD-200005011
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2000

◆ ◆ ◆
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 July 21, 2000, to amend a certificated service area boundary in Tom Green 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 West Texas Utilities (WTU) and Concho Valley Electric Cooperative (CVEC) to Amend Certificated Service Area Boundaries Within Tom Green County. Docket Number 22820.

The Application: This service area exception is necessary to allow WTU to provide electric service to an oil well pump (Turner 44-6) owned by Increased Energy Inc. of San Angelo Texas. This pump is located on the Percy (Bud) R. Turner ranch in western Tom Green County, Texas. The WTU power line adjacent to this well is entirely within an area that is single certified to CVEC. This power line is considered to be grandfathered and can be used only to serve new loads located within 200 feet of it. This new oil pump is located approximately 350 feet from this power line. The distance from the nearest CVEC power line to this location is approximately one mile. Because of the length of new line required to serve this small load, CVEC has

agreed to allow WTU to serve this pump. Copies of the application and additional associated maps are available for review at 400 West 15th, Suite 650, Austin, Texas. Persons with questions about this project should contact Richard Byrne at the above listed address, or telephone WTU at (915) 674-7000.

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 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-200005081
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2000

◆ ◆ ◆
Public Notice of Amendment to Interconnection Agreement

On July 19, 2000, Fairpoint Communications Corporation 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 22799. 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 22799. 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 August 21, 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 22799.

TRD-200005012
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2000



Public Notice of Interconnection Agreement

On July 17, 2000, Panhandle Telecommunications Systems, 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 22790. 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 22790. 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 August 14, 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 22790.

TRD-200004991
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2000



Public Notice of Interconnection Agreements

On July 17, 2000, Cumby Telephone Cooperative Incorporated 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 22791. 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 22791. 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 August 14, 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 22791.

TRD-200004992
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2000



Public Notice of Interconnection Agreements

On July 17, 2000, Business Telecom, Inc. 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 22792. 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 22792. 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 August 14, 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 22792.

TRD-200004993
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2000



Public Notice of Interconnection Agreement

On July 17, 2000, W.T. Service Incorporated and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 22793. 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 22793. 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 August 14, 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 22793.

TRD-200004994
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2000



Public Notice of Interconnection Agreement

On July 17, 2000, U.S. Metro Line Services, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 22794. 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 22794. 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 August 14, 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 22794.

TRD-200004995
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 20, 2000



Public Notice of Interconnection Agreements

On July 19, 2000, Pathnet, Inc. and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 22800. 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 22800. 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 August 21, 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 22800.

TRD-200005013
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2000



Public Notice of Interconnection Agreement

On July 19, 2000, Supra Telecom 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 22802. 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 22802. 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 August 21, 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 22802.

TRD-200005014
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2000



Sul Ross State University

Solicitation for Consultant Services

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a Member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the proposal development, management, and administration of a TRIO Student Support Services Grant from the United States Department of Education as authorized under Title IV of the Higher Education Act of 1965.

Project Summary: The purpose of these projects are to provide program services to students including instruction in basic skills, tutorial services, academic, financial or personal counseling, assistance in securing admission and financial aid for enrollment in graduate and professional programs, information about career options, mentoring, and special services for students with limited English proficiency. The request for proposal calls for the responding consultants to detail in writing and support with documentation their knowledge and experience in the Title IV Student Support Services areas.

Responses should be sent in an envelope plainly marked to David Wilson, Purchasing Director, Sul Ross State University, Highway 90 East, Alpine, Texas 79832. A copy of the request for proposal is available upon request from David Wilson, telephone (915)837-8045, fax (915)837-8046 or e-mail dwilson@sulross.edu. Two copies of the responses are required and are to arrive no later than 3:00 p.m. on August 14th, 2000. They should address in detail the various items set forth.

The Sul Ross State University Title IV Development Team and the University Executive Committee will review the Consultants and their proposals. The University reserves the right to reject any and all proposals received in response to this request for proposals if it is determined to be in the best interest of the University to do so. All material submitted in response to this request becomes the property of the University and may be reviewed by other Consultants on the request for proposals after the official review of the proposals.

TRD-200005078
David C. Wilson
Purchasing Director
Sul Ross State University
Filed: July 24, 2000

◆ ◆ ◆

Texas Department of Transportation

Public Notice

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site - <http://www.dot.state.tx.us> - click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200005015

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: July 21, 2000

◆ ◆ ◆

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 proposed State Highway 45. The limits of the transportation corridor studied in the FEIS extend from Anderson Mill Road (west of US Highway 183) in Williamson County to FM 685 (northeast of Pflugerville) in Travis County. As a result of public comments submitted through the public hearing process, the limits of the proposed facility have been modified. As now recommended and addressed in the FEIS, the proposed facility would terminate at US 183, with a transition (west of US 183) back to existing RM 620. The total length of the proposed facility is approximately 15 miles.

Alternatives evaluated in the FEIS, and presented at the public hearing, include taking no action (the "no build" alternative) and several possible route alternatives. The primary route alternatives include one route alternative along predominantly existing right-of-way at the western end of the study area; four route alternatives along predominantly new location rights-of-way in the central segment between FM 734/Parmer Lane and IH 35; and three route alternatives on existing and new location rights-of-way in the eastern segment between IH 35 and FM 685.

The proposed facility is intended to alleviate traffic congestion on existing roadways in urbanized Travis and Williamson Counties; to provide an east-west artery linking Austin and the communities of Cedar Park, Leander, Round Rock and Pflugerville; and to increase mobility and access consistent with the transportation plan for the region.

As currently proposed, the ultimate facility design is anticipated to be a controlled access six mainlane roadway within a usual right-of-way of 400 feet. Frontage roads, auxiliary lanes, grade separations and direct connection ramps will be constructed at varying locations, depending on the final alignment and design. The ultimate build-out would also include two high occupancy vehicle lanes with full shoulders.

The proposed State Highway 45 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 State Highway 45 FEIS is available for review at the offices of the TTA, 125 E. 11th Street, Austin, Texas 78701. Copies of the FEIS may be purchased from TTA for the actual cost of reproduction (\$62.13).

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), the Cedar Park Public Library, the Round Rock Public Library and the Pflugerville Public Library.

Comments on the FEIS may be submitted to Ms. Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483. For additional information contact Ms. Benningfield at the address listed above or by telephone at (512) 936-0983.

TRD-200005160

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: July 26, 2000

◆ ◆ ◆

Notice of Receipt of Unsolicited Proposal

On or about June 28, 2000, the Texas Turnpike Authority, a Division of the Texas Department of Transportation ("TTA") received an unsolicited proposal to develop the "SH 45 South" turnpike project in Travis and Hays Counties, from FM 1626 to US 183, pursuant to an exclusive development agreement with the TTA. On July 7, 2000, the Board of Directors of the TTA authorized the publication of a notice announcing receipt of the proposal and inviting the submission of competing proposals.

Pursuant to the authority granted under Chapter 361 of the Texas Transportation Code, the TTA has promulgated and adopted rules located at 43 Texas Administrative Code, §54.1, et seq., under the caption of "Policy, Rules and Procedures for Private Involvement in Authority Projects" (the "Rules"). These rules generally address private involvement in TTA projects and the submission of solicited and unsolicited proposals for such projects. Section 54.5 of the Rules governs the submission and processing of unsolicited proposals, and requires publication of notice that an unsolicited proposal was received (pursuant to Chapter 361 of the Texas Transportation Code and the TTA's rules, 43 Texas Administrative Code, §54.1 et seq.) if the TTA Board of Directors desires to further evaluate the unsolicited proposal. As noted previously in this notice, the TTA Board of Directors expressed this desire on July 7, 2000.

Description of the Proposal. The unsolicited proposal received on June 28, 2000, is for the development of a ten-mile turnpike beginning at FM 1626 on the west with a connection with the planned SH 45 South feeder from Loop 1 to FM 1626 which will be developed by the Texas Department of Transportation. The proposed turnpike will continue eastward to cross and interchange with IH 35, then continue further eastward to an interchange with US 183 and a connection to the proposed SH 130 turnpike. Slip ramp/discontinuous service road connections to FM 1626, IH 35, and US 183 are proposed initially. The unsolicited proposal anticipates the construction of four 12-foot turnpike lanes initially to be followed by 2 additional turnpike lanes when traffic demand warrants. Likewise, the unsolicited proposal anticipates the construction of direct connecting ramps to and from the proposed turnpike, IH 35, and US 183 when traffic volumes warrant. To accommodate the phased expansion of the proposed turnpike, the unsolicited proposal provides for a typical right-of-way width of 349 feet where there are no service roads and 529 feet where there are service roads anticipated. Each of the two right-of-way width sections provides for

a 103-foot median between inside shoulders. The unsolicited proposal provides for the construction of two barrier toll plazas.

The unsolicited proposal provides that the developer will acquire the right-of-way, secure original or supplemental environmental clearances, perform all design and construction, and accomplish utility clearance. The proposer has stipulated it will perform operations and maintenance of the proposed turnpike post completion.

Submission of Competing Proposals. Interested parties or consortia are invited to submit competing proposals within 45 days of the date of publication of this notice. Competing proposals must be detailed (as defined in the Rules) and must be submitted in conformance with the Rules and the procedures set forth in this Notice. Failure by a prospective proposer to submit a competing proposal, together with the proper nonrefundable and nonnegotiable proposal review fee in the amount of twenty thousand dollars (\$20,000) within the 45-day period following the date of publication of this notice, shall preclude such proposal from consideration by the TTA. The proposal review fee shall be submitted in the form of a cashier's check made payable to the TTA. The TTA will not grant requests to extend the 45-day period; and the receipt of one or more competing proposals during such period will not trigger the posting or publication of a new notice or the commencement of any new 45-day period.

All proposals submitted in response to this notice should be as thorough and detailed as possible. In addition to the information required under the Rules, proposers should also address the potential impacts of the proposed turnpike project on the planned development of the SH 130 turnpike by the TTA.

The TTA reserves all rights available to it by law in administering these rules, including without limitation, the right in its sole discretion to: reject any and all proposals, including the initial unsolicited proposal or competing proposals, at any time; terminate evaluation of any and all proposals at any time; suspend, discontinue or terminate exclusive development agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties; negotiate with a proposer without being bound by any provision in its proposal; request or obtain additional information about any proposal(s).

Under no circumstances shall the state, the TTA, TxDOT, or any of their agents, representatives, consultants, directors, officers or employees be liable for, or otherwise obligated to reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements.

Any and all information the TTA makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries.

If a proposer has a question regarding this notice or the Rules, the proposer shall submit the question in writing to the person indicated in this notice. The TTA will provide the answers in writing. In submitting any proposal, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the foregoing provisions and all other provisions of this notice and the Rules.

Contacts: Questions concerning this assignment should be submitted in writing to Phillip Russell, Director, Texas Turnpike Authority, 125 East 11th Street, 5th Floor, Austin, Texas 78701.

Submittals: Parties submitting competing proposals pursuant to this notice must provide 12 copies which must be received by the TTA by 5:00 p.m. C.S.T. on the 45th day following publication of this notice (or the first business day thereafter if the 45th day is a weekend or

legal holiday). Proposals shall be submitted to Phillip Russell, Director, Texas Turnpike Authority, 125 East 11th Street, 5th Floor, Austin, Texas 78701. Facsimile and/or e-mail submissions are not permitted.

TRD-200005161

Phillip Russell

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: July 26, 2000

Texas Workforce Commission

Request for Proposals Mentoring Initiative

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is requesting proposals from potential offerors in order to select a single contractor that has the capacity to support statewide training and technical assistance services for Texas mentoring organizations to develop increased capacity for quality youth mentoring throughout Texas. (Mentoring organizations are providers such as human service agencies, schools, faith-based and/or work place programs that provide one on one mentoring services to youth). At minimum, the training and technical assistance function will require staffing and resources to serve minimally 250-400 Texas mentor program providers annually. TWC has identified the following basic services to encompass the training and technical assistance function. The selected contractor will be required to develop and manage the following: training activities, workshops and seminars for program staff of mentoring programs, designing and delivering conference mentoring track at the annual Governor's Volunteer Leadership Conference, ongoing- regional training, individualized technical assistance, networking, act as a resource center of mentoring program materials, ongoing communication such as newsletter, mailings that alert providers to training and consultation opportunities, tracking and evaluation of services, and reporting and integration with ongoing Texas Commission on Volunteerism and Community Service activities.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to issue this RFP and award contracts under the Texas Labor Code, Chapter 302.

C. AVAILABLE FUNDING

Up to three hundred four thousand five hundred twenty seven dollars (\$304,527.00) will be available for the mentoring initiative contract for the 12-month period beginning September 22, 2000, to run through September 21, 2001.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals must complete an Request for Proposal (RFP) Package and provide required documentation as requested in the application in order to be considered eligible.

E. PROJECT SCHEDULE

Application submission deadline is August 28, 2000. The anticipated contract effective date is September 22, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Understanding of Program Content and Client Need, 85 points; Management of Workplan for Scope of Work, 45 points; Offeror's Qualifications, 40 points; Organizational Capacity, 30 points; Budget and Cost Information, 20 points; and Key Financial Controls, 20 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

TWC will use competitive negotiation to determine awards. Proposals will be evaluated and tentatively ranked by TWC. Applicants submitting superior proposals may be invited to make oral presentations to TWC.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to request an Application Packet, contact Bill Turner, Texas Workforce Commission, Room 440T, 101 East 15th

Street, Austin, TX 78778-0001, (512) 936-3203, fax (512) 936-3420, e-mail address bill.turner@twc.state.tx.us

TRD-200005147

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: July 26, 2000



How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 24 (1999) is cited as follows: 24 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 8, April 9, July 9, and October 8, 1999). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Texas Register

Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

- Chapter 285** \$25 update service \$25/year (*On-Site Wastewater Treatment*)
 Chapter 290 \$25 update service \$25/year (*Water Hygiene*)
 Chapter 330 \$50 update service \$25/year (*Municipal Solid Waste*)
 Chapter 334 \$40 update service \$25/year (*Underground/Aboveground Storage Tanks*)
 Chapter 335 \$30 update service \$25/year (*Industrial Solid Waste/Municipal Hazardous Waste*)

Update service should be in printed format 3 1/2" diskette

Texas Workers Compensation Commission, Title 28

- Update service \$25/year

Texas Register Phone Numbers

(800) 226-7199

Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/ Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections Information	(512) 463-5650
Statutory Documents Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

Change of Address

(Please fill out information below)

Paper Subscription

One Year \$150 Six Months \$100 First Class Mail \$250

Back Issue (\$10 per copy)

_____ Quantity

Volume _____, Issue # _____.

(Prepayment required for back issues)

NAME _____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____

(Number for change of address only)

Bill Me

Payment Enclosed

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.

Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

Periodical Postage

PAID

Austin, Texas
and additional entry offices

