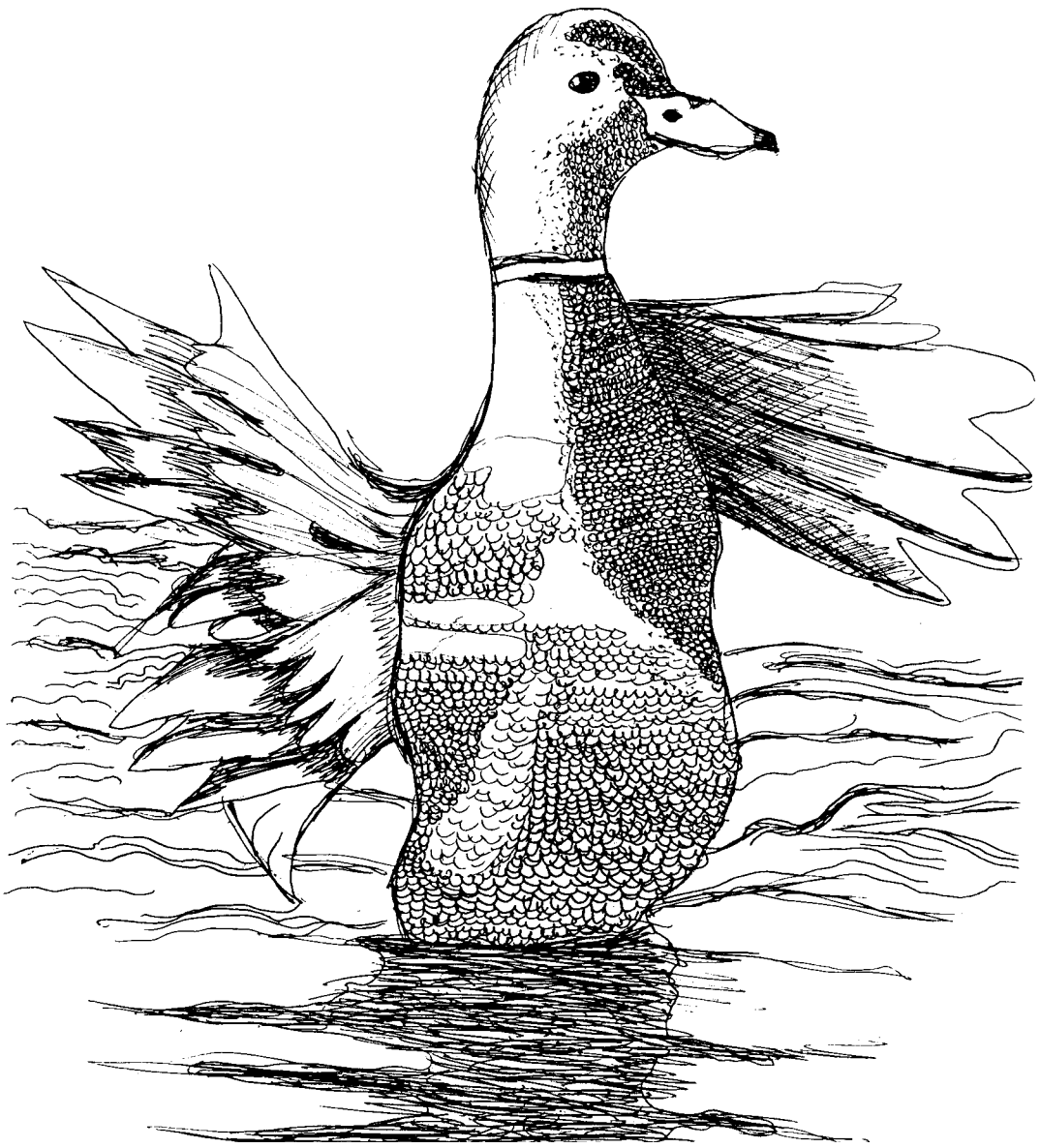
TEXAS REGISTER

Volume 25 Number 37 September 15, 2000 *Pages 9107-9290*



This month's front cover artwork:

Artist: *Terriney Bennett*
5th grade
French Elementary

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.

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

Customer Relations
Leti Benavides
LaKiza Fowler

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

Office of Consumer Credit Commissioner

Texas Department of Criminal Justice

Texas Education Agency

Office of the Governor

Texas Department of Human Services

Texas Department of Insurance

Lower Rio Grande Valley Workforce Development Board

Texas Department of Mental Health and Mental Retardation

Texas Natural Resource Conservation Commission

Texas Department of Protective and Regulatory Services

Public Utility Commission Of Texas

Texas Water Development Board

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-56 (ID#140643)

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: What information is excepted under section 552.117(2) of the Government Code and whether a governmental body may withhold the information without requesting a decision from the attorney general. (ORQ #56)

Parties interested in submitting a brief to the Attorney General concerning this ORQ are asked to please submit the brief no later than September 20, 2000.

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

TRD-200006228
Susan Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 1, 2000

♦ ♦ ♦

Opinions

Opinion No. JC-0276

The Honorable A. J. (Jack) Hartel Liberty County Attorney P.O. Box 9127 Liberty, Texas 77575-9127

Re: Appointment and powers of a deputy treasurer (RQ-0224-JC)

S U M M A R Y

Section 83.005 of the Local Government Code concerns only the appointment of a temporary substitute for the county treasurer when the treasurer is "absent, unavoidably detained, incapacitated, or unable to act." Tex. Loc. Gov't Code Ann. § 83.005(a) (Vernon 1999). The appointment of a deputy treasurer is governed by chapter 151 of the Local Government Code. A deputy treasurer properly appointed pursuant to chapter 151 of the Texas Local Government Code may exercise all the powers of the treasurer.

Opinion No. JC-0277

The Honorable Bill G. Carter Chair, Committee on Urban Affairs Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Whether a municipal court may allow criminal defense attorneys to post bail bonds without showing proof of their solvency under articles 17.11, 17.13 and 17.14 of the Code of Criminal Procedure, and related questions (RQ-0219-JC)

S U M M A R Y

A municipal court must require from an attorney who acts as a surety on a bail bond for a client evidence of the sufficiency of the security offered, as provided by articles 17.11, 17.13 and 17.14 of the Code of Criminal Procedure. If a municipal court determines that a defendant has failed to make an appearance as required by a bail bond, article 22.02 of the Code of Criminal Procedure requires the court to enter a judgment nisi. What constitutes a "reasonable time" in which a defendant must appear in court before a judgment nisi must be entered under article 22.02 will depend upon the facts of the particular case.

Opinion No. JC-0278

The Honorable Bill G. Carter Chair, Committee on Urban Affairs Texas House of Representatives P.O. Box 2910 Austin, Texas 78768-2910

Re: Whether the Lower Valley Water District may assess a fee to its service area property owners who opt not to connect to the District's wastewater system (RQ-0221-JC)

S U M M A R Y

The Lower Valley Water District is authorized to assess a necessary fee to its service area property owners who are able to connect to the District's sewer system but have refused to do so.

Opinion No. JC-0279

Mr. Randall S. James Commissioner Texas Department of Banking 2601 North Lamar Boulevard Austin, Texas 78705-4294

Re: Authority of individual designated to handle disposition arrangements for a decedent to modify the terms of a prepaid funeral benefits contract, and related questions (RQ-0215-JC)

S U M M A R Y

Pursuant to section 711.002(g) of the Texas Health and Safety Code, a person may provide written directions for the disposition of his or her remains in a signed, written instrument, including a prepaid funeral contract, and these directions may be modified or revoked only in a signed writing. Section 711.002(g) applies only to changes in directions for disposition of the decedent's remains, that is, directions for burial or an alternative, such as cremation, whereby the remains reach their final resting place, and does not apply to other goods and services purchased under a prepaid funeral services contract. If the decedent is the named beneficiary but did not purchase and sign the prepaid funeral services contract, section 711.002(g) does not apply to changes of the disposition instructions found in a prepaid funeral services contract. The application of section 711.002(g) is not affected by the fact that the contract is not fully paid at the time of the purchaser/beneficiary's death.

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

TRD-200006247
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: September 6, 2000

♦ ♦ ♦

Request for Opinions

RQ-0271-JC. The Honorable Raymie Kana, Colorado County Auditor, Courthouse, Third Floor, Columbus, Texas 78934, regarding authority of a county to require binding arbitration in employment disputes (Request No. 0271-JC)

Briefs requested by September 28, 2000

RQ-0272-JC. Mr. Benny M. Mathis, Executive Director, Texas Structural Pest Control Board, 1106 Clayton Lane, Suite 100, LW, Austin, Texas 78723-1066, regarding authority of the Texas Structural Pest Control Board to regulate contract language, and related questions (Request No. 0272-JC)

Briefs requested by September 28, 2000

RQ-0273-JC. Mr. Jim Nelson, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, regarding whether a school district may operate educational programs outside its geographic boundaries, and related questions (Request No. 0273-JC)

Briefs requested by September 28, 2000

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

TRD-200006104
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 30, 2000

♦ ♦ ♦

EMERGENCY RULES

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

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 20. EDWARDS AQUIFER AUTHORITY

CHAPTER 720. EMERGENCY DROUGHT MANAGEMENT PLAN RULES FOR 2000

On May 9, 2000, the Edwards Aquifer Authority ("Authority") adopted, on an emergency basis, the following rules: §§720.1, 720.120, 720.122, 720.124, 720.126, 720.128, 720.130, 720.132, 720.134, 720.136, 720.138, 720.140, 720.142, 720.144, 720.146, 720.148, 720.150, 720.152, 720.154, 720.156, 720.157, 720.158, 720.160, 720.162, 720.164, concerning the "Emergency Drought Management Plan Rules for 2000". These emergency rules specify mandatory restrictions on the use of groundwater from the Edwards Aquifer designed to slow, stop, or reverse the decline of water levels in the aquifer and springflows at Comal and San Marcos Springs.

On August 8, 2000, due to declining aquifer and spring flow conditions, the Authority renewed the rules for an additional 60-day period, thereby extending the effectiveness of the rules until November 6, 2000.

The Authority now amends the following emergency rules--§§720.1(18) and (27), 720.136, 720.142, 720.144 and 720.146 in order to clarify the scope of allowable landscape watering and in order to place additional limits upon the permissible times and methods by which landscape watering may take place.

Chapter 720 in its entirety will be republished in the *Texas Register* for clarification.

Summary of the Amendments

In order to clarify the scope of allowable landscape watering and in order to place additional limits upon the permissible times and methods by which landscape watering may take place, the Authority now adopts amendments to rules §§720.1(18) and (27), 720.136, 720.142, 720.144 and 720.146.

Section 720.1(18) defines "landscape watering." The rule is amended to clarify the permissible watering methods for concrete foundation watering. Section 720.1(27) is amended to clarify that landscape watering during Emergency Drought Management Stage III may take place only during limited hours, much like in Stage II.

As originally adopted, the Emergency Rules implement three Emergency Drought Management Stages. Each stage is triggered by aquifer conditions based upon readings at various index wells. Various aquifer uses, including landscape watering, must be increasingly cut back as one progresses from Stage I to Stage III. In order to increase protection for endangered species found in Comal and San Marcos Springs, the Authority believes that additional restrictions on landscape watering should be triggered by spring flow conditions at Comal Springs. Section 720.136 is amended by adding a new subsection (g) which prohibits landscape watering, other than by means of a hand-held hose, hand-held bucket, a soaker hose, or a properly installed drip irrigation system, when Comal Springs drops to 150 cubic feet per second (c.f.s.) or less. This restriction applies throughout the Authority's boundaries, regardless of whether or what Stage any given drought management area may be in at the time spring flow drops to 150 c.f.s. or less. Once this prohibition is triggered, it remains in effect for the entire period during which spring flow is 150 c.f.s. or less, and continues until at least 14 days after the date on which spring flow first dropped to 150 c.f.s. or less and until such time that the Authority's general manager determines that aquifer conditions indicate that spring flow above 150 c.f.s. will be maintained without the restriction in place.

As originally adopted, §720.142 and §720.144, which deal with Stages I and II, respectively, unintentionally limited all methods of landscape watering to only one day of the week. The rules are amended to allow use of a hand-held hose or bucket, or properly installed drip irrigation system on any day of the week during Stages I and II, but during limited hours.

As originally adopted, §720.146, which deals with Stage III, allowed landscape watering by means of a hand-held hose or bucket, a soaker hose, or properly installed drip irrigation system only one day of the week during Stage III. All other methods of landscape watering were prohibited. The rule is amended to allow use of a hand-held hose or bucket, or a properly installed drip irrigation system, three days a week during limited hours. Other methods of landscape watering, such as the use of a sprinkler, are also now allowed, but only at very limited times--one day every other week during limited hours.

The Need for Amendments to the Emergency Rules

Conditions within the Edwards Aquifer and at Comal and San Marcos Springs continue to worsen due to persistent drought conditions. The aquifer declined to 640.0 feet above mean sea level (msl) on Tuesday, August 15, 2000 at the J-17 index well.

Further, spring flow levels at Comal and San Marcos Springs continue to decline.

Comal and San Marcos Springs are the primary natural outflows from the Aquifer. There are at least six species which are directly dependent upon Comal Springs and/or San Marcos Springs and which are federally-listed as endangered or threatened pursuant to the Endangered Species Act, 16 U.S.C.A. §§1531-1544 (the "ESA"). Those species are: the fountain darter (*Etheostoma fonticola*), the San Marcos gambusia (*Gambusia georgei*), Texas wild-rice (*Zizania texana*), the San Marcos salamander (*Eurycea nana*), the Peck's Cave amphipod (*Stygobromus pecki*), and the Comal Springs riffle beetle (*Stygoparnus comalensis*).

The United States Fish and Wildlife Service ("FWS") is the federal agency primarily responsible for implementing and enforcing the ESA. FWS has determined that maintaining adequate discharge at the springs is one of the major requirements to protect threatened and endangered species that depend upon the Comal and San Marcos Springs ecosystems. Reduced spring discharges threaten the endangered species by decreasing available habitat, decreasing available food supply, increasing competition from native and exotic species, increasing water temperature, and decreasing dissolved oxygen. FWS has made determinations relative to minimum springflows necessary for certain of these species. It is the Authority's understanding that FWS currently contends that the fountain darter, San Marcos gambusia, and Texas wild-rice are generally "taken," i.e. killed or injured, when springflow at San Marcos Springs drops to below 100 cubic ft. per second ("c.f.s."). FWS also currently contends that when San Marcos springflow drops to 100 c.f.s., there is an appreciable reduction in the likelihood of survival and recovery of these three species (i.e. "jeopardy " conditions exist), and there is an appreciable diminution of the value of critical habitat for the survival and recovery of these species (i.e. destruction or adverse modification of critical habitat occurs).

The FWS has made similar general determinations of the springflow needs of the fountain darter in Comal Springs. Those numbers are: (1) 200 c.f.s. for "take"; and (2) 150 c.f.s for "jeopardy."

With respect to the threatened or endangered species found within the Comal and San Marcos Springs, the Authority, pursuant to §1.14(a) and (h) of the Edwards Aquifer Authority Act, has broad powers and responsibilities to take measures designed to protect these species. In order to achieve that objective, the Authority is currently engaged in a large-scale project to develop a habitat conservation plan, or HCP, for the management of the aquifer and protection of the listed species. Any such HCP will ultimately be approved by FWS before it is implemented. The HCP is a long-term project which will likely take many months for completion. In the meantime, the Authority believes these amendments to the emergency rules are needed as a short-term remedy.

The Authority does not concede that it can legally be held directly liable for a "take" of the species based upon diminished springflows. It has, however, been advised by FWS that FWS may seek to hold the Authority liable for a "take" under the ESA if springflows drop below these specified levels. Likewise, the Authority does not concede that the springflow numbers currently relied upon by FWS accurately reflect when "take," "jeopardy" or adverse habitat modification occur. The Authority believes that, as more biological data on the species is developed, these flow numbers might be revised. It is hoped that the Authority's HCP project will lead to such revisions. In the meantime, however, the Authority has determined that it needs to implement these amendments to the emergency rules in order to reduce aquifer withdrawals and thereby increase, or at a minimum, slow decreases in flows at Comal and San Marcos Springs in order to protect these species.

Spring discharge is a function of groundwater elevation in the aquifer. The Authority maintains a series of observation and index wells across the region to gauge groundwater elevations in the aquifer. The index well levels for Medina and Atascosa Counties (Hondo Well) and the index well for Bexar, Comal, Caldwell, Guadalupe, and Hays Counties (J-17) have dropped significantly over recent weeks. Comal Springs has shown a corresponding decrease in discharge. J-17 is used to predict trends in the aquifer because it has a very good correlation to spring flow at Comal Springs. In addition, San Marcos Springs has a significant regional flow component from the western region which increases as aquifer levels drop.

Aquifer levels are decreasing because of hot and dry weather across the region and the subsequent increase in demand by municipal and agricultural users. Long-range weather predictions indicate that these conditions will most likely persist. In addition, the month of August has historically been a high demand period for the region that will put an additional stress on aquifer levels.

It is anticipated that adoption of the amendments will result in a reduction in aquifer demand which will help limit the rate of decline of the aquifer and help mitigate impacts of dry weather and groundwater demand on San Marcos and Comal Springs until wetter and cooler weather returns.

For these reasons, these rules are amended because the Authority finds that an imminent peril to public health, safety or welfare and a requirement of federal law requires adoption of these amendments on fewer than 30 days' notice. As explained more fully above, declining aquifer and springflow levels create an imminent peril to the well-being of federally-listed species in Comal and San Marcos Springs. Congress, through the passage of the ESA, has determined that protection of endangered species is of the utmost importance to mankind.

It is in the best interests of mankind to minimize the losses of genetic variations. The reason is simple: they are potential resources. They are keys to puzzles which we cannot solve, and may provide answers to questions which we have not yet learned to ask.[1] ([1] H.R. Rep. No. 93-412, 93d Cong., 1st Sess., pp. 4-5 (1973) (Committee report on statutory precursor to the ESA)).

Declining springflows, therefore, create an imminent threat to public health, safety and welfare which requires adoption of these amendments on fewer than 30 days' notice.

Further, based upon current aquifer conditions, springflow rates and aquifer levels could continue to decline precipitously. The Authority believes that quick implementation of the amendments will reduce the likelihood of the need to impose more draconian demand management measures at a later time, thereby averting negative economic impacts and other threats to the public welfare in the region.

Finally, as explained more fully above, because dropping springflow levels threaten the listed species at Comal and San Marcos Springs, federal law (the "ESA") requires adoption of the amendments on fewer than 30 days' notice.

The Authority has determined that a local employment impact statement ("LEIS"), pursuant to §2001.022 of the TEXAS

GOVERNMENT CODE, is not required for the adoption of these amendments because the requirement to prepare an LEIS is made explicitly inapplicable to the adoption of emergency rules pursuant to TEXAS GOVERNMENT CODE §2001.022(g).

The Authority has determined that a regulatory impact analysis of major environmental rules ("RIAMER"), pursuant to §2001.0225 of the TEXAS GOVERNMENT CODE, is not required for the adoption of these amendments. This conclusion has been reached for the following reasons: First, the requirements of §2001.0225 do not apply to rules proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. *See*, TEXAS GOVERNMENT CODE §2001.0225(h). These amendments fall well within the scope of this exception. Second, because emergency rules may, pursuant to TEXAS GOVERNMENT CODE §2001.034(a), be adopted without any prior notice or hearing, compliance with the "notice", "draft impact analysis" and "final regulatory analysis" required by §2001.0225 would be impossible during emergency rulemaking.

The Authority has determined that a small business effects statement ("SBES"), pursuant to Chapter 2006, subchapter A, TEXAS GOVERNMENT CODE, is not required for the adoption of these amendments. The basis for this determination is that the Act does not itself make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in section 2006.001(3), TEXAS GOVERNMENT CODE. Further, the Authority has determined that, as a matter of law, chapter 2006, Subchapter A, is inapplicable to emergency rulemaking.

The Authority has determined that the preparation of a Takings Impact Assessment ("TIA") pursuant to Subchapter C, Chapter 2007, TEX. GOV. CODE (the "Property Rights Act") is not required in connection with the Authority's adoption of these amendments. This determination has been reached for the following reasons: First, the procedural requirements of the Property Rights Act are incompatible with the requirements concerning emergency rulemaking set forth in TEXAS GOVERNMENT CODE ANNOTATED §2001.034. In the event of an unreconcilable conflict between two statutes, the more specific statue (in this case, TEXAS GOVERNMENT CODE ANNOTATED §2001.034) prevails. Second, all actions of the Authority are excluded from the Property Rights Act by virtue of TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(11)(C). Third, the Authority's adoption of these amendments are actions reasonably taken to fulfill an obligation mandated by state and federal law and is therefore excluded from the Property Rights Act by virtue of TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4). Finally, the Authority's adoption of these amendments is an action taken in response to a real and substantial threat to public health and safety and is therefore excluded from the Property Rights Act by virtue of TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(13).

Expedited Effective Date Notice

These amendments shall be effective immediately upon filing with the Secretary of State and shall remain effective until November 6, 2000, the date upon which the emergency rules as whole cease to be effective. Pursuant to §2001.034 and §2001.036 of the TEXAS GOVERNMENT CODE and as explained more fully above, the Authority finds that this expedited effective date is necessary because of imminent peril to the public health, safety or welfare.

SUBCHAPTER A. DEFINITIONS

31 TAC §720.1

The emergency rules are amended by the Authority pursuant to §§1.08(a), 1.11(a), 1.14(a), (f) and (h), 1.15(a), 1.17(b) and (c), and 1.26 of the Act of May 30, 1993, 73rd Legislature, Regular Session, chapter 626, 1993 TEXAS GENERAL LAWS 2350, as amended by Act of May 28, 1995, 74th Legislature, Regular Session, chapter 3189, 1995 TEXAS GENERAL LAWS 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 361, 1995 TEXAS GENERAL LAWS 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 TEXAS GENERAL LAWS 634 (the "Act"). Section 1.08(a) grants the Authority all powers, rights and privileges necessary to manage, conserve, preserve and protect the aquifer; §1.11(a) requires the Authority to adopt rules to carry out its powers and duties under the Act; §1.14(a) requires the Authority to limit all authorizations and rights to withdraw water from the aquifer to, among other things: (1) protect the water quality of the aquifer and its springflows, (2) achieve water conservation, (3) protect aquatic and wildlife habitats, and (4) protect species that are listed as endangered or threatened; §1.14(f) enables the Authority to interrupt permitted withdrawals if aquifer levels drop below 650 feet at index well J-17 or below 845 feet at index well J-27, and requires the Authority to limit additional withdrawals to ensure springflows are not affected during critical drought conditions; §1.14(h) requires the Authority to implement and enforce water management practices to ensure that springflows of the Comal and San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law through, inter alia, "phased reductions" in the amount of aquifer water that may be withdrawn; §1.15(a) directs the Authority to manage all withdrawals from the aquifer; §1.17(b) allows the Authority to determine interim authorization amounts; §1.17(c) clarifies that interim authorization use is subject to the Authority's rules; §1.26 directs the Authority to implement a plan for critical period management which distinguishes between discretionary and non-discretionary uses, requires reductions in discretionary uses, requires utility pricing to limit use by water utility customers, and requires reductions of nondiscretionary uses as necessary.

§720.1. Definitions.

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

(1) Applicant--An existing user who has filed with the Authority an application for an initial regular Permits/Enforcement Coordinator.

(2) Aquifer--The Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(3) Athletic field--A sports play field including playgrounds whose essential feature is a grass turf, other than a golf course.

(A) Conforming athletic field--An athletic field with an approved groundwater conservation plan under §720.150 of this chapter (relating to Athletic Fields);

(B) Non-conforming athletic field--Any other athletic field that is not a conforming athletic field.

(4) Authorized pumping amount--An applicant's interim authorization amount as set forth in Section 4B of a Declaration of Historical Use plus a transferred amount, if any, or the contracted amount which is applied against a monthly pumping schedule.

(5) Average historical groundwater withdrawal amount--The average annual amount of groundwater pumped during the years an applicant was in business from June 1, 1972 to May 31, 1993.

(6) c.f.s.--Cubic feet per second.

(7) Commercial landscape watering--Landscape watering which is not agricultural or residential.

(8) Conjunctive user--An applicant is a conjunctive user if:

(A) the applicant uses water other than groundwater from the aquifer for at least 10% of the portion of the total amount of water used in the preceding 12 months;

(B) the non-aquifer water satisfies a demand that would otherwise be satisfied by the aquifer;

(C) the applicant, on a daily basis, uses all available non-aquifer water before using aquifer groundwater; and

(D) the non-aquifer water use considered with respect to determining the applicant's status as a conjunctive user was first used after 1986.

(9) Conservation Plan--a method and time schedule for the application of groundwater for commercial landscaping.

(10) Contract amount--An amount of groundwater from the aquifer than an applicant contracts with the Authority not to withdraw over an annual basis in excess of.

(11) Day--A 24-hour period beginning at midnight Central Daylight Time (CDT).

(12) Discretionary use--Any use of groundwater other than a nondiscretionary use.

(13) ft. m.s.l.--Feet above mean sea level.

(14) Golf course--An area of land used for the game of golf.

(A) Conforming Golf Course--A golf course with an approved groundwater conservation plan pursuant to §720.148 of this chapter (relating to Golf Courses).

(B) Non-conforming golf course--Any other golf course that is not a conforming golf course.

(15) Groundwater--Water within or withdrawn from the Edwards Aquifer.

(16) Index well--One of the following wells indicating aquifer water level conditions used to declare Emergency Drought Management Stages:

(A) for Bexar, Guadalupe, Comal, Hays, and Caldwell counties, well J-17;

(B) for Uvalde County, well J-27; and

(C) for Medina and Atascosa Counties, the Medina well in the Hondo Well Yard (well number TD 69-47-306).

(17) Interim Authorization--The period prior to the issuance of an initial regular permit when an applicant owning a well qualifying for interim authorization status may withdraw on an annual basis an amount that can not exceed the applicant's historical, maximum beneficial use as claimed on Section 4B of an application for the initial regular permit.

(18) Landscape watering--The application of groundwater from the aquifer for the discretionary use to grow or maintain plants such as flowers, ground covers, turf or grasses, shrubs, and trees, but does not include:

(A) Nondiscretionary use without waste of groundwater by a commercial nursery to the extent the water is used for production rather than decorative landscaping;

(B) Application of groundwater without waste to a non-commercial family garden or orchard, the produce of which is for household consumption only;

(C) Application of groundwater by means of a hand-held hose, a hand-held bucket, or properly installed drip irrigation system; and [~~Application of groundwater by means of hand-held bucket; hand-held hose; soaker hose or properly installed drip irrigation system; and~~]

(D) Application of groundwater by means of a soaker hose, [~~hand-held hose, or properly installed drip irrigation system~~] immediately next to a concrete foundation solely for the purpose of preventing, to the extent the watering is necessary, substantial damage to the foundation or the structure caused by movement of the foundation.

(19) Maximum allowable withdrawals--The product of the groundwater withdrawal times the reduction percentage assigned to each reduction stage. The stages and reduction percentages are shown in the figure listed in §720.136(f) of this title (relating to Beginning and End of Emergency Drought Management Stages).

(20) Maximum transfer withdrawals--The product of the estimated monthly transfer amount times the reduction percentage assigned to each reduction stage.

(21) Monthly pumping schedule--The amount of water an applicant plans to pump each month of a calendar year. If an applicant fails to provide the Authority with a pumping schedule within thirty days of adoption of these rules, the Authority will determine a pumping schedule for the applicant.

(22) Municipal distribution system--A system for the distribution of potable water from the aquifer for municipal use by an applicant who is a person, privately owned utility, political subdivision, or other entity.

(23) Nondiscretionary use--A use of groundwater for:

(A) The protection of public health, safety, or welfare, including but not limited to use for drinking, food preparation, personal hygiene, public sanitation, control or prevention of disease, and fire fighting;

(B) An industrial, irrigation, or military use that directly supports gainful employment; or

(C) Domestic or livestock use.

(24) Transfer--The sale or lease of an applicant's interim authorization status to a third party.

(25) Transfer schedule--A document indicating the estimated monthly amount of groundwater to be withdrawn by each applicant that has been transferred.

(26) Water Conservation Rates--A method of encouraging efficient water use through quantity-based pricing structures by means of increasing the price of the water as more volume of water is used.

(27) Watering days and hours--A day and hours designated for landscape watering, limited as follows:

(A) Stage I is limited to the morning hours from midnight to 10:00 a.m. and the evening hours from 8:00 p.m. to midnight. Thus, if Friday is a designated watering day, the period of time referenced is Friday morning between 12:00 a.m. to 10:00 a.m., and Friday evening between 8:00 p.m. and midnight; and

(B) Stage II is limited to the morning hours of 3:00 a.m. to 8:00 a.m., and the evening hours of 8:00 p.m. to 10:00 p.m.

(C) Stage III is limited in the morning hours from 3:00 a.m. to 8:00 a.m., and the evening hours of 8:00 p.m. to 10:00 p.m.

Filed with the Office of the Secretary of State, on August 31, 2000.

TRD-200006132
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: August 31, 2000
Expiration date: November 6, 2000
For further information, please call: (210) 222-2204

♦ ♦ ♦

SUBCHAPTER B. EMERGENCY DROUGHT MANAGEMENT RULES

31 TAC §§720.120, 720.122, 720.124, 720.126, 720.128, 720.130, 720.132, 720.134, 720.136, 720.138, 720.140, 720.142, 720.144, 720.146, 720.148, 720.150, 720.152, 720.154, 720.156, 720.157, 720.158, 720.160, 720.162, 720.164

The emergency rules are amended by the Authority pursuant to §§1.08(a), 1.11(a), 1.14(a), (f) and (h), 1.15(a), 1.17(b) and (c), and 1.26 of the Act of May 30, 1993, 73rd Legislature, Regular Session, chapter 626, 1993 TEXAS GENERAL LAWS 2350, as amended by Act of May 28, 1995, 74th Legislature, Regular Session, chapter 3189, 1995 TEXAS GENERAL LAWS 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 361, 1995 TEXAS GENERAL LAWS 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 TEXAS GENERAL LAWS 634 (the "Act"). Section 1.08(a) grants the Authority all powers, rights and privileges necessary to manage, conserve, preserve and protect the aquifer; §1.11(a) requires the Authority to adopt rules to carry out its powers and duties under the Act; §1.14(a) requires the Authority to limit all authorizations and rights to withdraw water from the aquifer to, among other things: (1) protect the water quality of the aquifer and its springflows, (2) achieve water conservation, (3) protect aquatic and wildlife habitats, and (4) protect species that are listed as endangered or threatened; §1.14(f) enables the Authority to interrupt permitted withdrawals if aquifer levels drop below 650 feet at index well J-17 or below 845 feet at index well J-27, and requires the Authority to limit additional withdrawals to ensure springflows are not affected during critical drought conditions; §1.14(h) requires the Authority to implement and enforce water management practices to ensure that springflows of the Comal and San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law through, inter alia, "phased reductions" in the amount of aquifer water that may be withdrawn; §1.15(a) directs the Authority to manage all withdrawals from the aquifer; §1.17(b) allows the Authority to determine interim authorization amounts; §1.17(c) clarifies that interim authorization use is subject to the Authority's rules; §1.26 directs the Authority to implement a plan for critical period management which distinguishes between discretionary and non-discretionary uses, requires reductions in discretionary uses, requires utility pricing to limit use by water utility customers, and requires reductions of nondiscretionary uses as necessary.

§720.120. Policy/Mission Statement.

The purpose of this subchapter is to enable the authority to diminish the possibility of cessation of springflow, by working toward accomplishment of §1.14(h) of the Act.

§720.122. Applicability.

This chapter applies to

(1) applicants; and

(2) owners of exempt wells.

§720.124. Exempt Wells.

Owners of exempt wells are subject to the reduction measures in §720.142 (relating to Stage I Restrictions), §720.144 (relating to Stage II Restrictions), and §720.146 (relating to Stage III Emergency Springflow Protection Measures) of this title, irrespective of the reference to "applicant" in these sections.

§720.126. Nondiscretionary Uses.

Nondiscretionary uses will be reduced if necessary in order to help maintain adequate minimum spring discharges. These might be required under §720.146 of this subchapter (relating to Stage III Emergency Springflow Protection Measures) and, if required, will follow the priority as specified in §1.26(4) of the Act.

§720.128. Reduction Efforts for Discretionary Uses.

(a) An applicant shall avoid exceeding the maximum allowable withdrawal level at each Emergency Drought Management Stage by conserving groundwater, minimizing waste, reducing discretionary uses of groundwater to the maximum extent feasible, and taking any other necessary steps to reduce withdrawals of groundwater from the aquifer.

(b) A municipal distribution system, or appropriate governmental jurisdiction, shall adopt and enforce an Emergency Drought Management Ordinance, a Critical Period Management Ordinance, or other appropriate legal instrument that meets or exceeds §720.136(d) of this chapter (relating to Beginning and End of Emergency Drought Management Stages).

(c) All proposed or current ordinances (or appropriate legal instruments) will be submitted to the general manager for review and approval as a qualifying instrument to ensure compliance with this chapter.

(d) If a municipal distribution system, or appropriate governmental jurisdiction, does not have the authority to enforce this subchapter(s), then the Authority will be responsible for enforcement.

(e) During all times, in which a qualifying ordinance is not in effect, the provisions of this subchapter shall apply.

(f) The Emergency Drought Management Ordinance, or Critical Period Management Ordinance must be certified by the general manager as a qualifying instrument to ensure compliance with this chapter. The ordinance shall be certified within 30 days of receipt by the Authority, unless the general manager requests additional information from the applicant , or if the general manager fails to respond

within 30 days. All municipal distribution systems, or appropriate governmental jurisdictions, shall file with the Authority any updated water service pricing orders or ordinances adopting rates, charges, and other Emergency Drought programs by their effective date. If the general manager does not certify the Emergency Drought Management Ordinance (or other appropriate legal instrument) then the municipal distribution system, or appropriate governmental jurisdiction, has the right to appeal the decision to the Board of Directors of the Authority on a form prescribed by the Authority.

§720.130. Emergency Drought Management Stages-- East Area.

The Emergency Drought Management Stages listed in paragraphs (1)-(3) of this section apply within the boundaries of the Authority in the counties of Bexar, Comal, Hays, Caldwell, and Guadalupe. When the J-17 well reaches the following levels:

(1) Stage I. Stage I applies on any day following a day when the J-17 well level is at or below 650 ft. m.s.l. and above 640 ft. m.s.l.;

(2) Stage II. Stage II applies on any day following a day when the J-17 well level is at or below 640 ft. m.s.l. and above 630 ft. m.s.l.; or

(3) Stage III Emergency Springflow Protection Measures. Stage III Emergency Springflow Protection Measures applies on any day following a day when the J-17 well level is at or below 630 ft. m.s.l.

§720.132. Emergency Drought Management Stages--Medina/Atascosa Area.

The Emergency Drought Management Stages listed in paragraphs (1) - (3) of this section apply within the boundaries of the Authority in the counties of Medina and Atascosa, when the Medina well level reaches the following levels:

(1) Stage I. Stage I applies on any day following a day when the TD 69-47-306 Medina well level is at or below 670 ft. m.s.l. and above 660 ft. m.s.l.;

(2) Stage II. Stage II applies on any day following a day when the TD 69-47-306 Medina well level is at or below 660 ft. m.s.l. and above 655 ft. m.s.l.; or

(3) Stage III Emergency Springflow Protection Measures. Stage III Emergency Springflow Protection Measures applies on any day following a day when TD 69-47-306 Medina well level is at or below 655 ft. m.s.l.

§720.134. Emergency Drought Management Stages--Uvalde Area.

The Emergency Drought Management Stages listed in paragraphs (1) - (3) of this section apply within the boundaries of the Authority in the County of Uvalde, when the J-27 level reaches the following levels:

(1) Stage I. Stage I applies on any day following a day when the J-27 well level is at or below 845 ft. m.s.l. and above 840 ft. m.s.l.;

(2) Stage II. Stage II applies on any day following a day when the J-27 well level is at or below 840 ft. m.s.l. and above 835 ft. m.s.l.; or

(3) Stage III Emergency Springflow Protection Measures. Stage III Emergency Springflow Protection Measures applies on any day following a day when the J-27 level is at or below 835 ft. m.s.l.

§720.136. Beginning and End of Emergency Drought Management Stages.

(a) The general manager will post on the Internet and at the official office of the authority, by 10:00 a.m. every business day, the most recently available index well levels and the applicable Emergency Drought Management Stage as established by §§720.130, 720.132, and 720.134 of this title (relating to Emergency Drought Management Stages--East Area; Emergency Drought Management Stages--Medina Area; Emergency Drought Management Stages--Uvalde Area, respectively).

(b) If the groundwater elevation for the relevant index well is not available on a particular day, the stage in effect in the applicable area will continue to the next day.

(c) An Emergency Drought Management Stage will remain in effect for at least thirty days unless a more restrictive stage is implemented. A stage may be rescinded before the thirty days expire if the general manager determines aquifer groundwater levels are sufficient to end the stage.

(d) The maximum allowable withdrawals for each stage are as follows:

(1) Stage I Restrictions: The maximum allowable withdrawals for applicants, except for irrigation users, shall be 95% of the authorized pumping amount for that corresponding month.

(2) Stage II Restrictions: The maximum allowable withdrawals for applicants, except for irrigation users, shall be 90% of the authorized pumping amount for that corresponding month.

(3) Stage III Emergency Springflow Protection Measures: The maximum allowable withdrawals for applicants, except for irrigation users, shall be 85% of the authorized pumping amount for that corresponding month.

(e) Transfer Withdrawals--Withdrawals of transferred amounts are based on the estimated monthly withdrawals indicated on the transfer schedule and for each stage is as follows: Stage I--95% of monthly withdrawals; Stage II--90% of monthly withdrawals; Stage III Emergency Springflow Protection Measures--85% of monthly withdrawals. The monthly transfer schedule is the total amount of transfer water that can be withdrawn monthly. The monthly transfer schedule is determined by the following: Monthly transfer schedule = Total Annual Transfer Amount * (monthly pumping schedule for the corresponding month / interim authorization amount or contract amount.).

(f) The well levels that trigger stages as described in this section and the applicable maximum withdrawal amounts are stated in the following table, which is incorporated herein. Stages are triggered independently in each of the three areas.
Figure: 31 TAC §720.136(f)

(g) Additional Restrictions on Certain Types of Landscape Watering Regardless of Stages--In the event that spring flow at Comal Springs drops to 150 cubic feet per second (c.f.s.) or less, then all methods of landscape watering, other than by means of a hand-held hose, a hand-held bucket, a soaker hose, or a properly installed drip irrigation system, are prohibited, effective upon the day following the day during which springflow drops to 150 c.f.s. or less. This landscape watering prohibition applies throughout all of the East, Medina/Atascosa and Uvalde Areas, as delineated in §§720.130, 720.132 and 720.134, respectively, regardless of whether or not any given Area is within an Emergency Drought Management Stage at the time that spring flow at Comal Springs drops to 150 c.f.s. or less. Further, in the event that any given Area is within an Emergency Drought Management Stage at the time spring flow at Comal Springs drops to 150 c.f.s. or less, the landscape watering prohibition contained in this section shall be controlling over any provision in §§720.142, 720.144, and 720.146 of this title (relating to Stage I Restrictions, Stage II Restrictions, Stage III Emergency Springflow Protection Measures) which is conflicting and less restrictive. The landscape

watering prohibition contained in this section shall remain in effect for the entire period during which spring flow is 150 c.f.s. or less. In addition, the landscape watering prohibition contained in this section shall continue in effect until at least 14 days after the date on which the springs first dropped below 150 c.f.s. and until such time that the General Manager, in his discretion, determines that aquifer conditions indicate that spring flow above 150 c.f.s. will be maintained without the restriction.

§720.138. Enforcement.

(a) All measurements in this section are for one calendar month intervals.

(b) Subject to §720.126 of this title (relating to Nondiscretionary Uses), applicants are prohibited from withdrawing more than the applicable monthly pumping schedules during each Emergency Drought Management Stage.

(c) An applicant that violates these rules is subject to enforcement as provided for in the Act.

§720.140. Determination of Monthly Pumping Schedule.

(a) The general manager will initially determine the monthly pumping schedule for each applicant, except an irrigation user. The general manager will notify applicants of the determinations in writing.

(b) The general manager, with the approval of the board, may calculate the monthly pumping schedule and monthly transfer schedule on different criteria than is otherwise required by these rules in particular cases, to better approximate the minimum amount of groundwater the applicant needs for nondiscretionary uses, or to avoid penalizing the applicant for development of alternative water supplies.

(c) Notwithstanding subsection (a) of this section, applicants have the duty to self-determine their monthly pumping schedule and monthly transfer schedule within 30 days of the implementation of these rules regardless of whether the general manager has determined such amounts or notified an applicant of such determinations.

§720.142. Stage I Restrictions.

When Stage I is in effect, the following restrictions apply to applicants, or their customers as applicable throughout the applicable area of the Authority:

(1) An applicant shall file monthly withdrawal reports.

(2) No applicant may withdraw from the aquifer more than 95% of the authorized pumping amount for that corresponding month.

(3) Municipalities must designate a specific day or days of the calendar week when customers within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section. For all customers of applicants using groundwater for landscape watering of property located within a municipality, the watering days are those days designated in that system's Emergency Drought Management Ordinance or Critical Period Management Ordinance. Municipal distribution systems, or appropriate governmental jurisdictions, are encouraged to stagger those days to reduce peaks of demand.

(4) For all applicants and owners of exempt wells whose property is not in a municipality, the watering day, in accordance with the last digit of the property address is as follows:
Figure: 31 TAC §720.142(4)

(5) No applicant or owner of an exempt well may use groundwater for an ornamental outdoor fountain or similar feature.

(6) Applicants and owners of exempt Edwards Aquifer water wells inside the appropriate jurisdiction of a municipal corporation must comply with that entity's Emergency Drought Management Ordinance.

(7) Landscape watering by means of a hand-held hose, a hand-held bucket, a soaker hose, or a properly installed drip irrigation system is permitted on any day of the week, but only from 12:00 a.m. to 10:00 a.m. and from 8:00 p.m. to 12:00 a.m.

§720.144. Stage II Restrictions.

When Stage II is in effect, the following restrictions apply to all applicants, or their customers as applicable, and owners of exempt wells throughout the applicable area of the Authority:

(1) An applicant shall file monthly withdrawal reports.

(2) Section 720.142 of this title (relating to Stage I Restrictions) apply in Stage II.

(3) No applicant may withdraw from the aquifer more than 90% of the authorized pumping amount for that corresponding month. Municipalities must designate a specific day or days of the calendar week when customers within their jurisdictions are allowed to use groundwater for landscape watering, in accordance with this section.

(4) Landscape watering by means of a hand-held hose, a hand-held bucket, or a properly installed drip irrigation system is permitted on any day of the week, but only from [~~hours are reduced to the morning hours of~~] 3:00 a.m. to 8:00 a.m. and from [~~the evening hours of~~] 8:00 p.m. to 10:00 p.m. Any other method of [~~However,~~] landscape watering is permitted only one [~~by means of a hand held hose, a hand-held bucket, a soaker hose, or a properly installed drip irrigation system is permitted on the authorized~~] day per week, with the watering day for each applicant or owner of an exempt well to be as determined in §720.142(3) and (4) of this title (relating to Stage I Restrictions), and only from 3:00 a.m. to 8:00 a.m. and from 8:00 p.m. to 10:00 p.m. [~~of the week during the designated hours listed in this paragraph.~~] Persons utilizing irrigation systems requiring more than seven hours to complete one weekly watering cycle may request a variance in accordance with Chapter 720.158 of this title (relating to Variance Applications). Such a request must be accompanied by an emergency plan.

(5) Filling of all new and existing swimming pools is prohibited, unless at least 30% of the water is obtained from a source other than the aquifer. Groundwater may be used to replenish swimming pools to maintenance level. Draining of swimming pools is permitted only onto a pervious surface or onto a pool deck where the water is transmitted directly to a pervious surface, only if necessary, to:

(A) remove excess water from the pool due to rain to lower the water to the maintenance level;

(B) repair, maintain, or replace a pool component that has become hazardous; or

(C) repair a pool leak.

§720.146. Stage III Emergency Springflow Protection Measures.

When Stage III is in effect, the following restrictions apply to all applicants and owners of exempt wells throughout the applicable area of the Authority:

(1) Any other provision of this chapter notwithstanding, groundwater from the aquifer may be used when and to the extent it is necessary to prevent danger to public health, safety, or welfare.

(2) The provisions of §720.142 of this chapter (relating to Stage I Restrictions);

(3) The provisions of §720.144 of this chapter (relating to Stage II Restrictions);

(4) An applicant may not withdraw from the aquifer more than 85% of the authorized pumping amount for the corresponding month.

(5) An applicant shall submit weekly reports of groundwater withdrawals as required by §720.157 of this chapter (relating to Weekly Withdrawal Reports).

(A) Weekly groundwater reports are to be submitted to the authority by 8:00 a.m. on Tuesday following the reporting week.

(B) Weekly groundwater reports will monitor progress towards monthly pumping goals; however, compliance and enforcement will be based on monthly reports.

(C) The reporting period for Weekly groundwater reports is from Sunday to Saturday.

(6) Irrigation is limited to two acre-feet per acre irrigated during the calendar year. Irrigation can continue on the acreage irrigated during that calendar year if the crop is planted prior to implementation of Stage III Emergency Springflow Protection Measures. Irrigation of a new crop is prohibited during or while Stage III Emergency Springflow Protection Measures are in effect. This limitation is subject to variances that may be issued by the general manager based on rainfall.

(7) Landscape water is restricted as follows:

(A) Landscape watering by means of a hand-held hose, a hand-held bucket, a soaker hose, or a properly installed drip irrigation system is permitted only on Tuesdays, Thursdays and Saturdays between the morning hours from 3:00 a.m. to 8:00 a.m. and from 8:00 p.m. to 10:00 p.m. [~~during the same days and hours authorized in Stage II~~]

(B) Other methods of landscape watering are permitted only one day every other week from 3:00 a.m. to 8:00 a.m. from and 8:00 p.m. to 10:00 p.m. The designated day of the week for such landscape watering for each applicant or owner of an exempt well shall be as determined in §720.142(3) and (4) of this title (relating to Stage I Restrictions). The first week of such landscape watering shall commence on the Monday following any week during which Stage III comes into effect.

(8) The Authority may seek further reductions of groundwater withdrawals for Stage III and may require reduction of nondiscretionary use by permitted or contractual users, to the extent further reductions are necessary, in the reverse order of the following water use preference:

(A) municipal, domestic, and livestock

(B) industrial and crop irrigation;

(C) residential landscape irrigation;

(D) recreational and pleasure; and

(E) other uses that are authorized by law.

§720.148. Golf Courses.

Notwithstanding any other language in this Emergency Drought Management Plan, the owners of golf courses that are applicants or customers of an applicant shall be required to submit a groundwater conservation plan and shall be defined as "conforming" and "non-conforming" and shall reduce usage of aquifer groundwater under the following terms:

(1) A conforming golf course is one that achieves enhanced conservation by utilizing a computer controlled irrigation system ("CCIS"), or similar system, which may be comprised of a computer controller (digital operating system), software, interface modules, satellite, field controller, soil sensors, weather station, or similar devices, which is capable of achieving maximum efficiency and conservation in the application of water to the golf course, must accomplish the following restrictions listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I--10% reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil holding capacity; or use of not more than 95% of the Authorized Pumping Amount for that corresponding month,

(B) Stage II--15% reduction in the replacement of ET rate or daily soil holding capacity; or use of not more than 90% of the Authorized Pumping Amount for that corresponding month,

(C) Stage III Emergency Springflow Protection Measures--20% reduction in the replacement of daily ET rate or daily soil holding capacity, or use of not more than 85% of the Authorized Pumping Amount for that corresponding month.

(2) A non-conforming golf course shall comply with the following reduction measures listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I--15% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 95% of the Authorized Pumping Amount for that corresponding month for golf courses that are not equipped with a CCIS;

(B) Stage II--20% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 90% of the Authorized Pumping Amount for that corresponding month for golf courses that are not equipped with a CCIS;

(C) Stage III Emergency Springflow Protection Measures- 30% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS or use of not more than 85% of the Authorized Pumping Amount for that corresponding month for golf courses that are not equipped with a CCIS.

(3) The owner or operator of a golf course must comply with all Stage III Emergency Springflow Protection Measures rules issued by the board under §720.146 of this chapter (relating to Stage III Emergency Springflow Protection Measures) of this title.

(4) The owner or operator of a golf course must maintain daily water use records available for inspection upon request.

(5) The owner or operator of a conforming golf course or a golf course with a CCIS must maintain daily water use records of their evapotransporation ("ET rate") or daily soil holding capacity, which must be available for inspection upon request.

(6) All daily records must be kept on site.

§720.150. Athletic Fields.

Notwithstanding any other language in this Emergency Drought Management Plan, the owners of an athletic field that is an applicant, or a customer of an applicant, shall only be required to submit a groundwater conservation plan and shall be defined as "conforming" and "non-conforming" and shall reduce usage of aquifer groundwater under the following terms:

(1) A conforming athletic field is one that achieves enhanced conservation by utilizing a computer controlled irrigation system ("CCIS"), or similar system, which may be comprised of a computer controller (digital operating system), software, interface modules, satellite, field controller, soil sensors, weather station, or similar devices, which is capable of achieving maximum efficiency and conservation in the application of water to the athletic field. must

require the user to accomplish the following restrictions listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I--10% reduction in the replacement of ET rate or daily soil holding capacity; or use of not more than 95% of the Authorized Pumping Amount for that corresponding month for athletic fields,

(B) Stage II--15% reduction in the replacement of daily ET rate or daily soil holding capacity; or use of not more than 90% of the Authorized Pumping Amount for that corresponding month for athletic fields,

(C) Stage III Emergency Springflow Protection Measures--20% reduction in the replacement of daily ET rate or daily soil holding capacity, or use of not more 85% of the Authorized Pumping Amount for that corresponding month for athletic fields

(2) A non-conforming athletic field shall comply with the following reduction measures listed in subparagraphs (A)-(C) of this paragraph:

(A) Stage I--10% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more 95% of the Authorized Pumping Amount for that corresponding month for athletic fields that are not equipped with a CCIS;

(B) Stage II--20% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 90% of the Authorized Pumping Amount for that corresponding month for athletic fields that are not equipped with a CCIS;

(C) Stage III Emergency Springflow Protection Measures--30% reduction in the replacement of daily ET rate as monitored by a properly operating CCIS, if determined to be cost effective, or use of not more than 85% of the Authorized Pumping Amount for that corresponding month for athletic fields that are not equipped with a CCIS.

(3) The owner or operator of an athletic field must comply with all Stage III Emergency Springflow Protection Measures rules issued by the board under §720.146 (relating to Stage III Emergency Springflow Protection Measures) of this title.

(4) The owner or operator of an athletic field must maintain daily water use records available for inspection upon request.

(5) The owner or operator of an athletic field with a CCIS must maintain daily water use records of their evapotransporation ("ET rate") or daily soil holding capacity, which must be available for inspection upon request.

(6) All daily records must be kept on site.

§720.152. Commercial Landscape Watering.

Commercial landscape watering users that are applicants or customers of applicants that are outside an appropriate jurisdiction of a municipality and cannot specifically comply with §§720.142(3), 720.144(4), or 720.146(9) of this chapter (relating to Stage I Restrictions, State II Restrictions, and Stage III Emergency Springflow Protection measures respectively) may submit a Conservation Plan that achieves the withdrawal restrictions of the Authority. For customers of municipal distribution systems, or appropriate governmental jurisdictions, the general manager may refer to ordinances within the entities jurisdiction to determine consistency of the plan during his review.

§720.154. Groundwater Withdrawal Reports.

(a) Every applicant other than an irrigation user, must file a groundwater withdrawal report with the Authority that contains the following information;

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

(2) contact person and title;

(3) the location and name or number of all wells from which groundwater is withdrawn (attach map);

(4) the total amount of groundwater withdrawn each month during the 12 months prior to the date of the report;

(5) the estimated amount of groundwater actually beneficially applied without waste to nondiscretionary uses, and the nature of such uses;

(6) a summary of the applicant past efforts to conserve water and reduce the amount of water required, and the efficacy of such efforts;

(7) a summary of any actions the applicant intends to take to conserve water and reduce the amount of water required in order to comply with these rules; and

(8) any other information requested by the general manager.

(b) An applicant must file its groundwater withdrawal report with the Authority within 30 days after the effective date of these rules.

(c) A person who, based on a transfer, becomes an applicant after the effective date of these rules must file a groundwater withdrawal report within seven days of the first day the person becomes an applicant.

(d) An applicant who, without good cause, fails to timely file a completed groundwater withdrawal report, is not entitled to exclude groundwater water under §720.126 of this title (relating to Nondiscretionary Uses) from mandatory restrictions until a groundwater withdrawal report is filed with the Authority.

(e) The groundwater withdrawal report shall be filed on a form prescribed by the Authority.

(f) The groundwater withdrawal report may be filed by e-mail, regular mail, or hand delivery. The subject line of the e-mail shall include: "GWR", an application number and applicant's name.

§720.156. Monthly Withdrawal Reports.

(a) Each applicant must file monthly withdrawal reports with the Authority for any month during which a stage is in effect for the particular area where the applicant is located. These reports must contain the following information:

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

(2) contact person and title;

(3) the reporting month;

(4) total amount of groundwater withdrawn during the reporting month;

(5) the estimated amount of groundwater applied to nondiscretionary use during the reporting month, and the nature of such use; and

(6) any other information requested by the general manager.

(b) Monthly withdrawal reports must be filed with the Authority no later than the fifth business day of the month following the reporting month.

(c) An applicant who fails to timely file a monthly withdrawal report in accordance with this section is not entitled to exclude groundwater under §720.126 of this title (relating to Nondiscretionary Uses) from mandatory restrictions for the reporting month.

(d) The general manager may in special cases arrange for different reporting requirements under this section, including less frequent reporting.

(e) The monthly withdrawal report shall be filed on a form prescribed by the Authority.

(f) The monthly withdrawal report may be filed by e-mail, regular mail, or hand delivery. The subject line of the e-mail shall include: "MWR", the permit application number and applicant's name.

§720.157. Weekly Withdrawal Reports.

(a) Each applicant must file weekly withdrawal reports with the Authority for any week during which Stage III Emergency Springflow Protection Measures is effect for the particular area where the applicant is located. These reports must contain the following information:

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

(2) contact person and title;

(3) the reporting week;

(4) total amount of groundwater withdrawn during the reporting week;

(5) any other information requested by the general manager.

(b) Weekly withdrawal reports must be filed with the Authority no later than 8:00 a.m. on Tuesday of the week following the reporting week.

(c) The general manager may in special cases arrange for different reporting requirements under this section, including less frequent reporting.

(d) The weekly withdrawal report shall be filed on a form prescribed by the Authority.

(e) The weekly withdrawal report may be filed by e-mail as an option to filing by regular mail or hand delivery. The subject line of the e-mail shall include: "WWR", the permit application number and applicant's name.

(f) A reporting week is from Sunday through Saturday.

§720.158. Variance Applications.

An applicant may file with the Authority an application for a variance.

§720.160. Basis for Granting and Affirming Variances; Action of the General Manager.

The general manager shall provisionally grant an application for a variance from the Emergency Drought Management Plan until the board considers the variance application if all of the following elements are established by convincing evidence:

(1) the applicant paid the application fee;

(2) the variance is necessary to avoid an unusual, direct, and substantial hardship;

(3) there are no other reasonably available means for avoiding the hardship or elimination without a variance;

(4) the application is in compliance with the Act;

(5) the application is in compliance with the rules of the Authority; and

(6) granting the variance will not cause significant harm to any other person or group of persons.

§720.162. Board Action on Variance Application.

(a) The board may affirm a provisional variance for a specific term and with any conditions the board deems appropriate.

(b) The board may require an applicant granted a variance to file reports with the Authority containing such information as is relevant to monitoring the continuing appropriateness of the variance and compliance with the terms and conditions of the variance.

(c) If the board does not affirm the general manager's action or variance, then the provision becomes null and void.

§720.164. Rescission of Variance.

The board may rescind a variance at any time due to changed circumstances, new information, or failure of an applicant to abide by the terms and conditions of the variance, the Act, the rules of the Authority, or any order of the board.

Filed with the Office of the Secretary of State, on August 31, 2000.

TRD-200006133
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Effective date: August 31, 2000
Expiration date: November 6, 2000
For further information, please call: (210) 222-2204

♦ ♦ ♦

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER K. RELEASE OF INFORMATION

1 TAC §55.501

The Office of the Attorney General proposes new §55.501 concerning release of information. The new section is being proposed to define information which can be released upon request and who can make requests on a case.

Howard G. Baldwin, Jr., Deputy Attorney General for Child Support has determined that for the first five years this section as proposed is in effect, there will be no fiscal implications for state or local government as a result of any replacement of this section.

Mr. Baldwin has also determined that each year of the first five years the section is in effect, the public benefit anticipated as a result of replacing or deleting this section is a more standardized and efficient way to release case information. There will be no effect on small business. There are no anticipated economic costs to persons who are required to comply with the proposed sections.

Comments on this proposed section may be submitted to Carol Campbell, Child Support Division, General Counsel Section, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas, 78741 or (mailing address) P. O. Box 12017, mail code 039, Austin, Texas 78711-2017.

The section is proposed under the September 1, 1999 statutory changes, found in the Texas Family Code, Chapter 231, Subchapter B, Services Provided by Title IV-D Program. The Code affected by this new section is Texas Family Code, Section 231, Title IV-D Services.

§55.501. Release of Information.

(a) Upon request to the IV-D agency by an authorized person or his or her authorized representative, the IV-D agency may provide the following information about a IV-D case involving the authorized person:

(1) the status of pending or possible legal action regarding a case involving the authorized person;

(2) copies of legal documents that have been filed with the court and that are maintained in the files and records of the agency, so long as the documents have not been sealed by the court or there is no order prohibiting the release of the documents;

(3) copies of correspondence or documents previously provided to the IV-D agency by the authorized person;

(4) copies of correspondence or documents previously provided by the IV-D agency to the authorized person;

(5) records of child support payments and arrearage balances regarding the authorized person's child support case;

(6) copies of information submitted to a credit reporting agency regarding the authorized person's child support obligation; and

(7) any other information authorized to be released pursuant to federal statute or rule.

(b) As used herein, "authorized person" means:

(1) the applicant or recipient, or former applicant or recipient, of IV-D services;

(2) the custodial parent;

(3) the noncustodial parent;

(4) the alleged or presumed father;

(5) the obligor or obligee;

(6) the authorized representative of any of the above, as defined herein.

(c) As used herein, the term authorized representative means:

(1) a private attorney representing an authorized person as identified herein;

(2) a person designated in writing by an authorized person, including a public official, so long as the designation has not been rescinded by the authorized person.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006229
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: October 15, 2000
For information regarding this publication, please call A.G. Younger at (512) 463-2110.

♦ ♦ ♦

PART 5. GENERAL SERVICES COMMISSION

CHAPTER 113. CENTRAL PURCHASING DIVISION

SUBCHAPTER I. SPECIAL PURCHASES

1 TAC §113.148

The General Services Commission proposes new rule, Title 1, T.A.C. §113.148, concerning the establishment of a purchase price of commemorative items including the official state lapel pin and the official state ring. The new rule carries out the requirements of the Texas Government Code, §2172.006. Drawings for the lapel pins and rings may be found in the Tables and Graphics Section of this *Texas Register*.

Mr. Paul E. Schlimper, Director of the Central Procurement Division, has determined for the first five year period the rules are in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering these new rules.

Mr. Paul E. Schlimper, Director of the Central Procurement Division, 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 to establish rules that carry out the intent of the Texas Government Code, §2172.006 for the "Manufacture and Sale of Certain Commemorative Items". There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with these rules and there is no impact on local employment.

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 rule is proposed under the authority of the Texas Government Code, Title 10, Subtitle D, Chapter 2172, §2172.006 which provides the General Services Commission with the authority to promulgate rules necessary to implement the sections.

The following code is affected by these rules: Government Code, Title 10, Subtitle D, Chapter 2172, §2172.006.

§113.148. Purchase Price of Commemorative Items.

Pursuant to Government Code, §2172.006, the commission shall establish the purchase price of an official state lapel pin, and an official state ring for purchase by members and former members of the Texas House of Representatives and the Texas Senate. Price may be adjusted periodically by the director based upon market index pricing for precious metals (gold and platinum) and the consumer price index for all urban areas in the United States for labor costs. The initial prices for the items are as follows:

(1) Lapel pin in 14k yellow gold and platinum is $425.00

(2) Lapel pin in 18k yellow gold and platinum is $475.00

(A) Lapel pin for Texas House of Representatives.
Figure 1: 1 TAC §113.148 (2)(A)
Figure 2: 1 TAC §113.148 (2)(A)

(B) Lapel pin for Texas Senate.
Figure 1: 1 TAC §113.148(2)(B)
Figure 2: 1 TAC §113.148(2)(B)

(3) Men's 14k yellow gold and platinum ring is $600.00

(4) Men's 18k yellow gold and platinum ring is $775.00

(5) Women's 14k yellow gold and platinum ring is $500.00

(6) Women's 18k yellow gold and platinum ring is $675.00

(7) Texas House of Representative ring.
Figure: 1 TAC §113.148(7)

(8) Texas Senate ring.
Figure: 1 TAC §113.148(8)

This 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 August 28, 2000.

TRD-200006038
Ann Dillon
General Counsel
General Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-3960

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. MEDICAID REIMBURSEMENT RATES

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.308, concerning enhanced direct care staff rate, in its Medicaid Reimbursement Rates chapter. The purpose of the proposal is to clarify the definition of direct care staff to state that staff members performing more than one function without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. The proposal also revises the enrollment process to allow enrollments to "roll over" unchanged to the following year, unless the provider changes its enrollment status during the open enrollment period. The proposal identifies procedures for enrolling new facilities; clarifies that, if a facility is decertified during the enrollment period, once it is recertified the participation will be reinstated as it existed prior to the decertification; clarifies the due date for Staffing and Compensation Reports for providers voluntarily withdrawing from the enhanced direct care staff rate as well as the penalty for failing to meet the due date; clarifies current procedures for granting enhancements that begin granting with the lowest level of enhancement and granting successive levels until requested enhancements are granted within available funds. The proposal also allows for the collection of reasonable interest on recouped funds from providers who miss their self-selected staffing targets by two or more licensed- vocational-nurse-equivalent minutes and lowers those providers' enhancement levels to the level they actually attained until the later of the first day of the second full rate year following the date of the adjustment or the first day of the rate year that begins after funds identified for recoupment are repaid to DHS. The proposal allows providers controlling more than one nursing facility contract to request that their contracts' compliance with spending requirements be determined in the aggregate for all facilities controlled by the provider at the end of the reporting period.

Don Green, chief financial officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Commissioner Don Gilbert has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that providers will be given greater clarification of the definition of direct care staff, and the enrollment process will be easier for those providers who do not want to change their enrollment status. The proposal clarifies the enrollment process for new and decertified facilities and clarifies the current procedures for granting enhancements and reporting requirements for facilities voluntarily withdrawing from the enhanced direct care staff rate. The proposed rules also strengthen disincentives for failure to meet self-imposed staffing levels by a substantial margin, thereby encouraging providers to request and meet their targeted staffing levels. Finally, by allowing providers to meet their spending requirements in the aggregate in certain situations, the proposed rules allow providers to finance higher direct care staff compensation costs in certain facilities with dollars saved in facilities with lower direct care staff compensation expenses. There will be no adverse economic effect on small or micro businesses.

A public hearing will be held on October 3, 2000, at 9 a.m. in the public hearing room at the Texas Department of Human Services, 701 West 51st Street, Austin, Texas.

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-280, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*. Contact the local regional office or Carolyn Pratt for copies of the proposed 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).

§355.308. Enhanced Direct Care Staff Rate.

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs) including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs), Licensed Vocational Nurses (LVNs) including DONs and ADONs, medication aides [~~Medication Aides~~], and nurse aides performing nursing-related duties for Medicaid contracted beds.

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

(7) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(b) (No change.)

(c) Open enrollment. [~~Implementation open enrollment begins on April 1, 2000, and ends on April 14, 2000. Standard open~~] Open enrollment begins on the first day of July and ends on the last day of that same July preceding the [~~standard~~] rate year for which payments are being determined.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Requests to modify a facility's enrollment status during an open enrollment period must be received by the Texas Department of Human Services' (DHS's) Rate Analysis Department by the last day of the open enrollment period as per subsection (c) of this section. Facilities from which DHS's Rate Analysis Department has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation of the previous year within available funds. To be acceptable, an enrollment contract amendment must be completed according to DHS instructions, signed by an authorized signator as per the DHS Form 2031 applicable to the provider's contract or ownership type and be legible. [~~All contracted facilities must submit an enrollment contract amendment during the open enrollment period. On the enrollment contract amendment the provider must specify for each facility its desire to participate or its desire not to participate. The provider also must submit with the contract amendment all required~~

~~documentation to the Texas Department of Human Services (DHS), in a manner specified by DHS. Facilities failing to submit an acceptable enrollment contract amendment by the end of the open enrollment period may be placed on vendor hold until such time as an acceptable enrollment contract amendment is received and processed by DHS.~~]

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a DHS recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment contract amendment is defined as a legible enrollment contract amendment that has been completed according to DHS instructions, signed by an authorized signator as per the DHS Form 2031 applicable to the provider's contract or ownership type, and received by DHS's Rate Analysis Department within 30 days of the mailing of notification to the facility by DHS that such an enrollment contract amendment must be submitted. [~~New facilities must complete the enrollment contract amendment specified in subsection (d) of this section within 30 days of notification by DHS. Facilities failing to submit an acceptable enrollment contract amendment within 30 days of notification by DHS will be placed on vendor hold until such time as an acceptable enrollment contract amendment is received and processed by DHS. Based on the enrollment contract amendment information received, the facility's direct care staff rate will be adjusted effective on the sixty-first day of the contract with DHS.~~] New facilities will receive the direct care staff rate associated with minimum staffing requirements as determined in subsection (j)(1) of this section [~~for the first 60 days of their contract with DHS.~~] until:

(1) for facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l)(3) of this section, effective on the first day of the month following receipt by the Rate Analysis Department of the acceptable enrollment contract amendment.

(2) for facilities specifying their desire not to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (k) of this section retroactive to the first day of their contract.

(3) for facilities from which an acceptable enrollment contract amendment is not received, the direct care staff rate is adjusted as specified in subsection (k) of this section retroactive to the first day of their contract.

(f) Staffing and Compensation Report submittal requirements. Staffing and Compensation Reports must be submitted as follows:

(1) All contracted facilities. All contracted facilities will provide DHS, in a method specified by DHS, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section for the last six months of the rate year for participants, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section for all facilities. Facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by DHS. For the implementation rate period, a Staffing and Compensation Report is required reflecting the activities of the facility while delivering contracted services from June 1, 2000, through August 31, 2000.

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

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report within 60 days of the date of withdrawal as determined by DHS, covering the period from the beginning of the rate year to the date of withdrawal as determined by DHS. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

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

(4) Vendor hold. DHS will place on hold the vendor payments for any facility which does not submit a Staffing and Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until an acceptable Staffing and Compensation Report is received by DHS.

(g)-(i) (No change.)

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) (No change.)

(2) Enhanced staffing levels. Participating facilities desiring to staff above the minimum requirements from paragraph (1) of this subsection may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment.

(3) Granting of staffing enhancements. DHS divides all requested enhancements into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly- requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. For the granting of enhancements to be effective September 1, 2001, and thereafter, for an enhancement to qualify as a pre-existing enhancement, a facility must have actually met the enhancement's staffing requirements during the most recent six-month [~~six month~~] reporting period from which reliable data is available at the time qualification is determined. Enhancements held by nursing facilities whose staffing requirements were not met during the most recent six-month reporting period from which reliable data is available will qualify as pre-existing if the facility submitted, with that staffing report, documentation that demonstrates to the satisfaction of DHS that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel. If the initial six-month report from the subsequent rate year indicates that the staffing requirement was again not met, the unmet staffing will no longer be considered pre-existing. Using the process described herein, DHS first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, DHS then determines the distribution of newly-requested enhancements.

(A) (No change.)

(B) DHS compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) (No change.)

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds [~~in a proportional manner~~]. Based upon an examination of existing staffing levels and staffing needs, DHS may grant certain enhancement options priority for [~~proportional~~] distribution.

(4) (No change.)

(k)-(m) (No change.)

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. Upon receipt of the six-month staffing information described in subsections (f)(1) and (2) of this section, DHS will determine the LVN-equivalent [~~LVN equivalent~~] minutes maintained by each facility during the six-month reporting period. Adjustments to direct care staff rates and staffing requirements and collection of recoupment and interest amounts, if applicable, will be made upon determination by DHS that a facility has failed to meet its staffing requirement.

(1) DHS will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during any particular six-month period.

(2) [~~(1)~~] Participating facilities required to provide less than two LVN-equivalent minutes above their minimum required LVN-equivalent minutes per resident day, as determined in paragraph (j)(1) of this subsection, who fail to maintain staffing at their required LVN-equivalent minutes and any participating facilities that fail to maintain staffing at their required LVN-equivalent [~~LVN equivalent~~] minutes by less than two LVN-equivalent minutes will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest LVN- equivalent [~~LVN equivalent~~] minutes, as defined in subsection (j) of this section, that they actually attained. If the level attained is less than the minimum direct care staff requirement for participation, the facility will be removed from participation. During the first six months of any rate year, staffing requirements as determined in subsection (j) of this section override any prospective adjustments made to staffing requirements under this paragraph.

[~~(2) Determination of staffing levels will be made on a six-month basis with adjustments to direct care staff rates and staffing requirements made upon determination by DHS that a facility is failing to meet its staffing requirement.~~]

(3) The contents of this paragraph apply only to participating facilities required to provide two or more LVN-equivalent minutes above their minimum required LVN-equivalent minutes per resident day, as determined in paragraph (j)(1) of this section. Participating facilities that fail to maintain their required LVN-equivalent minutes by two or more LVN-equivalent minutes will have their direct care staff rates and staffing requirements adjusted to a level consistent with the highest LVN-equivalent minutes, as defined in subsection (j) of this section, that they actually attained. If the level attained is less than the minimum direct care staff requirement for participation, the facility will be removed from participation. These adjustments will remain in effect for the longer of either the remainder of the rate year in which the determination is made plus another full rate year or until the first day of the rate year after funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to DHS. DHS will collect interest from participating facilities that fail to maintain their required LVN-equivalent minutes by two or more LVN-equivalent minutes as follows:

(A) Determine the average excess funds available to the provider over the reporting period as the recoupment amount from paragraph (1) of this subsection divided by two.

(B) Determine the annualized average three-month United States Treasury Bill rate during the provider's reporting period as the unweighted monthly average for all months included, either partially or fully, in the reporting period.

(C) Determine the interest rate on the recoupment amount by multiplying the annualized average rate from subparagraph (B) of this paragraph by the number of days in the reporting period divided by the number of days in the rate year.

(D) Determine the interest on the recoupment amount by multiplying the recoupment interest rate calculated in subparagraph (C) of this paragraph by the average excess funds available to the provider over the reporting period from subparagraph (A) of this paragraph.

[~~(3) Participating facilities that fail to meet the minimum direct care staff requirements for participation will be removed from participation.~~]

[~~(4) DHS will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during any particular six-month period.~~]

[~~(5) During the first six months of any rate year, staffing requirements as determined in subsection (j) of this section override any prospective adjustments made to staffing requirements under paragraphs (1)-(4) of this subsection.~~]

(o)-(t) (No change.)

(u) Vendor hold. [~~Facilities required to submit a Staffing and Compensation Report due to any of the events described in subsection (f) of this section will have a hold placed on their vendor payments from the date they are notified by DHS until an acceptable Staffing and Compensation Report is received by DHS and funds identified for recoupment from subsections (n) or (o) of this section are repaid to DHS.~~] Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f)(1)(A)-(B) of this section will have funds held as per 40 TAC §19.2308(2) (relating to Change of Ownership) until an acceptable Staffing and Compensation Report is received by DHS and funds identified for recoupment from subsections (n) and/or [~~or~~] (o) of this section are repaid to DHS. DHS will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (y) of this section will be jointly and severally liable for any additional payment due to DHS. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all DHS contracts controlled by the responsible entity and will bar the responsible entity from enacting any new contracts with DHS until repayment is made in full.

(v)-(y) (No change.)

(z) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs prior to or during an open enrollment period as defined in subsection (c) of this section and the new owner has not met all contracting requirements delineated

in §19.2301 of this title (relating to Requirements for Medicaid-Contracted Facilities) by the end of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the ownership change will confer to the new owner.

(aa) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership.

(bb) In cases where a responsible entity controls more than one nursing facility (NF) contract, the responsible entity may request, in a manner prescribed by DHS, to have its contracts' compliance with the spending requirements detailed in subsection (o) of this section evaluated in the aggregate for all NF contracts it controlled at the end of the rate year or at the effective date of the change of ownership or termination of its last NF contract.

(cc) [~~(aa)~~] Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

[~~(bb) Effective date. All rules enumerated in this section are effective as of May 1, 2000.~~]

This 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 August 31, 2000.

TRD-200006142
Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 438-3734

♦ ♦ ♦

CHAPTER 370. State Children's Health Insurance Program

The Health and Human Services Commission (Commission) proposes new Chapter 370, State Children's Health Insurance Program; Subchapter A, Program Administration, §§370.1, 370.2, 370.3, 370.4, and 370.10; Subchapter B, Application Screening, Referral and Processing, Division 1, TexCare Partnership application process, §§370.20, 370.21. 370.22, 370.23, 370.24, 370.25; Division 2, Applicant Rights and Responsibilities Regarding Application and Eligibility, §§ 370.30, 370.31; Division 3, Eligibility Determination, §§ 370.40; Division 4, Eligibility criteria, §§ 370.42, 370.43, 370.44, 370.45, 370.46, 370.47, 370.48, 370.49; and Division 5, Review and Reconsideration of Eligibility Denials and Temporary Enrollment, §§ 370.50, 370.51, 370.52, 370.53, and 370.54.

Background and Summary of Factual Basis for the Rules

Chapter 62, Health and Safety Code, establishes the State Child Health Plan authorized under Title XXI of the federal Social Security Act, 42 U.S.C. §§ 1397aa, et seq. Section 62.051, Health and Safety Code, designates the Commission as the agency responsible for developing the state-designed child health plan program for Texas, making policy for the program, and adopting rules as necessary to implement chapter 62.

Chapter 63, Health and Safety Code, authorizes health benefits coverage for certain children who are ineligible for the State Child Health Plan authorized under chapter 62 or the state Medicaid program. The Commission is directed to develop and implement this plan which, to the extent possible, must provide benefits comparable to the plan established under chapter 62.

Section-by-Section Summary

Subchapter A of the proposed rules provides a general summary of the administration of the state Children's Health Insurance Program. Section 370.1 states the overall purpose of the program. Section 370.2 describes the scope of the program. Section 370.3 provides, consistent with state and federal law, that the state Children's Health Insurance Program does not create an entitlement to insurance coverage. Section 370.4 provides definitions that are applicable to the chapter. Section 370.10 describes the responsibilities of the Commission in administering the program.

Subchapter B governs the CHIP application, screening, and eligibility determination process. Section 370.30 describes the application process for persons interested in obtaining CHIP benefits. Section 370.40 governs the determination of eligibility for CHIP coverage. Section 370.42 describes age-related eligibility requirements. Section 370.45 describes citizenship and residency qualifications for the program. Section 370.46 describes waiting period limitations. Section 370.47 describes the ineligibility of persons who are eligible for insurance benefits from the State Kids Insurance Program operated by the Employee Retirement System. Section 370.48 prescribes procedures for completion of the CHIP application process. Section 370.49 describes the disposition of applications that are referred to the Texas Department of Human Services for completion of Medicaid eligibility determination. Section 370.50 describes the CHIP eligibility and other decisions that are subject to review by the TexCare Partnership and reconsideration by the Commission. Section 370.51 informs the public of the procedures for requesting review and/or reconsideration of a CHIP decision. Section 370.52 prescribes the process for disposition of requests for review by the TexCare Partnership. Section 370.53 describes the process for requesting reconsideration of a TexCare Partnership review by the Commission. Section 370.54 provides for temporary enrollment of a CHIP applicant pending disposition of a request for review and/or reconsideration of a CHIP eligibility decision.

Public Benefit

Don Green, Chief Financial Officer, has determined that during the first five years that the proposed rules are in effect, the public will benefit from adoption of the rules by making low-cost insurance for children of low income families more accessible, clarifying the criteria that govern eligibility for CHIP benefits, providing greater access to health care for children who currently are uninsured or under-insured, relieving some of the burden on public health systems that currently provide uncompensated or non-reimbursed health care to the population eligible for CHIP, and establishing administrative methods that obtain the greatest level of federal reimbursement of program costs.

Fiscal Note

Don Green, Chief Financial Officer, has determined that for the first five years that the proposed rules are in effect, there will be a fiscal impact of approximately $104,829,478, which represents

state funds prior to federal match and total costs for administration of the CHIP program. No additional costs will be borne by local governments as a result of the rules other than costs borne by local governments that contract with the Commission to provide health care benefits or community-based outreach services, nor is there any anticipated negative impact of revenues of state or local government.

Small and Micro-business Impact Analysis

The proposed rules will not result in additional costs to persons required to comply with the rules other than the cost of insurance premiums for families with cost-sharing obligations under the CHIP program, nor do the rules have any anticipated adverse effect on small or micro-businesses. The rules will not negatively affect local employment.

Regulatory Analysis

The Commission has determined that none of the proposed rules is a "major environmental rule" as defined by §2001.0225, Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. None of the proposed rules is specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

The Commission has evaluated the takings impact of the proposed rules under Texas Government Code, §2007.043. The commission has determined that this action does not restrict or limit an owner's right to their property that would otherwise exist in the absence of governmental action and therefore does not constitute a taking. The proposed rules are administrative and do not impose any new regulatory requirements. The proposed rules are reasonably taken to fulfill requirements of state law.

Public Comment

Public comment may be submitted in writing to Janice Collins, Health and Human Services Commission, by mail addressed to P.O. Box 12348, Austin, Texas 78711, or by facsimile to (512) 424-6585. Comments must be submitted by 5:00 p.m., Central Time, October 16, 2000. Further information may be obtained by calling Janice Collins at (512) 424-6568.

Public Hearing

The Commission has scheduled a public hearing to accept public testimony regarding the proposed rules. The hearing will be held from 1:30 to 4:30 p.m., Central Time, on October 2, 2000, in the Public Hearing Room of the Brown-Heatly State Office Building, 4900 North Lamar Boulevard, Austin, Texas. Persons requiring special assistance or accommodations should contact Janice Collins at (512) 424-6568.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §§370.1 - 370.4, 370.10

Legal Authority

These rules are proposed under authority granted to the Commission by Government Code section 531.033, which authorizes the commissioner of health and human services to adopt rules necessary to implement the commission's duties, and under Health and Safety Code section 62.051(d), which directs the Commission to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed rules implement chapters 62 and 63, Health and Safety Code.

Statutory Authority

The new rules are proposed under §62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code. The proposed rules implement §62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.1. Purpose.

This chapter implements the State Children's Health Insurance Plan (CHIP), authorized under chapter 62, Health and Safety Code, in a manner that is timely, efficient, fair, and that promotes access to quality and economical health care for eligible children and their families in Texas.

§370.2. Scope.

(a) The CHIP is a state-designed child health insurance plan authorized under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.), and chapter 62, Health and Safety Code, which provides access to low-cost preventative and primary health care to children, including children with special health care needs, in certain low-income families of this state.

(b) The CHIP is administered, in part, in accordance with the state plan for children's health insurance, filed by the Health and Human Services Commission with the federal Secretary of Health and Human Services, which prescribes the general conditions under which federal state child health insurance plan funds will be administered in Texas.

§370.3. Non-Entitlement.

The establishment of CHIP does not create an entitlement to assistance or in obtaining health insurance benefits or health care.

§370.4. Definitions.

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

(1) "Administrative Contractor" means the entity that performs administrative services for the CHIP under contract with the Commission.

(2) "Alien" means a person who is not a citizen or national of the Untied States of America.

(3) "Applicant" means an individual who applies for health insurance coverage under the CHIP, including:

(A) a child's legal or adoptive parent;

(B) a child's grandparent, relative or other adult who lives with and provides care for the child if the child does not reside in the home of a legal or adoptive parent; or

(C) an emancipated minor.

(4) "Application" means the standardized, written document issued by TCP that a family must complete to apply for health care benefits or coverage through CHIP, Medicaid, or THKC.

(5) "Application completion date" means the calendar date a completed CHIP application is entered into the TCP database.

(6) "Budget Group" means a child for whom a CHIP application is submitted and the adults who live in the home with the child who have a legal obligation to support the child, including a child's stepparent.

(7) "Children's Health Insurance Program" or "CHIP" means the Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C, §§ 1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(8) "Commission" means the Health and Human Services Commission.

(9) "Completed application" means an application entered into the TCP database that includes all information required under §370.23.

(10) "Countable income" means any type of payment that is a regular and predictable gain or a benefit to a budget group that is not specifically exempted. Regular and predictable income is income received in one month that is either likely to be received in the next month and/or was received on a regular and predictable basis in past months. It does not include income that is not received on a regular and predictable basis in past months.

(11) "Children's Health Insurance Program Service Area" or "CSA" means one of the designated areas in the state that are served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.

(12) "Community-based Organization" or "CBO" means an organization that contracts with the commission to provide outreach services to applicants for CHIP coverage.

(13) "Dental Plan" means an insurance company, health maintenance organization, or other entity regulated by the Texas Department of Insurance that contracts with the commission to provide dental benefits coverage to CHIP members.

(14) "Department" or "TDH" means the Texas Department of Health.

(15) "Earned income" means employment compensation received by a member of a budget group .

(16) "Earned income deductions" means standardized deductions that are applied to the gross earnings of each budget group member with earnings during the CHIP application process.

(17) "Enrollment" means the process by which a child determined to be eligible for CHIP is enrolled in a CHIP health plan serving the CHIP Service Area in which the child resides.

(18) "Exempt income" means income received by the budget group that is not counted in determining income eligibility.

(19) "FPL" means Federal Poverty Income Guidelines.

(20) "Health Plan" means a licensed health maintenance organization, indemnity carrier, or authorized exclusive provider organization that contracts with the commission to provide health benefits coverage to CHIP members.

(21) "Income eligibility standard" means monthly net family income at or below 200% of current (FPL). A child meets the CHIP income eligibility standard if the budget group's monthly net income exceeds the age-variable income eligibility standard applied to the child in the Texas Medicaid Program and is at or below the 200% of FPL CHIP monthly income standard.

(22) "Member" means a child or family enrolled in a CHIP Health Plan.

(23) "Net family income" means the sum of monthly countable earned income (gross earnings minus allowed earned income disregards) and monthly countable unearned income received by the budget group.

(24) "Qualified alien" means an alien who applies for CHIP coverage and who, at the time of such application satisfies the criteria established under 8 U.S.C. §1641(b).

(25) "SSI" means Supplemental Security Income.

(26) "State fiscal year" means the 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

(27) "TexCare Partnership" or "TCP" means the name designated to publicly identify the operational entity that provides administrative services for the CHIP program.

(28) "Texas Healthy Kids Corporation" or "THKC" means the non-profit corporation established under chapter 109, Health & Safety Code.

(29) "TDHS" means the Texas Department of Human Services.

§370.10. Duties and Responsibilities of the Commission.

The commission is the state agency responsible for:

(1) developing a state-designed CHIP to obtain health benefits coverage for children in low-income families in a manner that qualifies for federal funding under Title XXI of the Social Security Act;

(2) making policy for CHIP, including policy related to covered benefits provided under the program, a duty which the commission may not delegate to another agency or entity;

(3) overseeing the implementation of CHIP;

(4) adopting necessary rules to implement CHIP;

(5) contracting with appropriate individuals and organizations to provide CHIP benefits coverage, community-based outreach, and other services related to the implementation or operation of the CHIP program;

(6) conducting a review of each entity that enters into a contract with the commission to ensure that the entity is available, prepared and able to fulfill the entity's obligations under the contract; and

(7) ensuring that amounts spent for CHIP administration do not exceed any limit on administrative expenditures imposed by federal law.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006216
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-6576

♦ ♦ ♦

SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING
DIVISION 1. TEXCARE PARTNERSHIP APPLICATION PROCESS

1 TAC §§370.20 - 370.25

Statutory Authority

The new rules are proposed under § 62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement § 62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.20. Availability and Method of Completion.

The TCP application may be completed:

(1) in writing from an application booklet available from TCP upon telephone request. The application booklet may also be available through CBOs, local organizations that support CBO outreach efforts, and participating CHIP health care providers;

(2) by computer using printable applications available over the Internet from the TCP website; or

(3) by telephone through TCP's toll-free telephone number.

§370.21. Application Assistance.

An applicant for CHIP coverage may obtain assistance completing the application:

(1) by telephone from TCP staff during hours that are posted on the TCP website or published in applications, brochures, or other marketing media issued or approved by TCP. Telephone applications may also be accepted by TCP staff;

(2) by telephone or in person from a local CBO; or

(3) by telephone or in person from a licensed insurance agent or broker that contracts with a CHIP health plan or CBO provided the applicant is not directly or indirectly induced to enroll in a specific health plan.

§370.22. Completion of Telephone Applications.

Telephone applications are completed to the extent possible over the telephone, printed by TCP and mailed to the applicant for completion of any missing information, the applicant's signature, and attachment of all required verifications.

§370.23. Contents of Completed Applications.

A completed application must include the following:

(1) Information concerning the applicant, consisting of:

(A) The applicant's full name;

(B) The applicant's home address (including city, county, state and zip code); and

(C) The applicant's mailing address (including city, county, state, and zip code) if different from the home address;

(2) Information concerning each child for whom an application is filed, consisting of:

(A) The child's full name;

(B) A description of the applicant's relationship of the child;

(C) The child's date of birth;

(D) The child's status as a United States citizen or a legal resident;

(E) The full name of the child's mother or father;

(F) If the child has income reported on the application, the child's school status; and

(G) Confirmation whether the child currently has health insurance, or had health insurance within 90 days prior to the date the application is being completed.

(3) Information concerning the household, consisting of:

(A) family income, including the name of the person receiving the income, the employer or source of the income, the amount received, and the frequency of receipt;

(B) if anyone in the family is pregnant;

(C) if anyone in the family pays for child or disabled adult care to permit a family member to receive work or training;

(D) if anyone in the family pays child support and/or alimony to anyone outside home;

(4) the applicant's original signature and the date of signature; and

(5) all needed verifications.

§370.24. Electronic Entry of Application Information.

Within three working days from receipt of an application TCP:

(1) enters the application, regardless of origin or completeness, into a database;

(2) date-stamps the application; and

(3) assigns a unique application identification number.

§370.25. Incomplete Applications.

(a) Missing information.

(1) TCP monitors the status of entered, incomplete application information.

(2) If an incomplete application is received, TCP sends the family an initial follow-up letter requesting the missing information within two working days from the date that the application information is entered into the database.

(3) If TCP does not receive the requested missing information within 14 calendar days, TCP sends the family a second follow-up letter requesting the missing information.

(b) Missing signatures.

(1) If an application is incomplete because it lacks the applicant's signature, TCP enters the application information into the database and returns the application to the family for signature.

(2) The application remains incomplete until TCP receives the signed application and enters receipt of the signed application into the database.

(c) Termination of an incomplete application.

(1) If an application remains incomplete 90 calendar days from the date TCP entered the incomplete application information into the database, the application process is terminated.

(2) A family whose application is terminated because it is incomplete must complete a new TCP application before CHIP coverage is provided.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006217
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-6576

♦ ♦ ♦

DIVISION 2. APPLICANT RIGHTS AND RESPONSIBILITIES REGARDING APPLICATION AND ELIGIBILITY

1 TAC §§370.30, 370.31

Statutory Authority

The new rules are proposed under § 62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement § 62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.30. Applicant Rights.

An applicant has the right to:

(1) be treated fairly and equally regardless of race, color, religion, national origin, gender, political beliefs or disability;

(2) request a review and/or reconsideration of an adverse decision related to CHIP eligibility, disenrollment, or increased cost sharing

(3) file a complaint, in writing or by telephone, about the application process for reasons other than an eligibility decision, disenrollment, or an increase in cost-sharing within 30 working days from the date of an incident, TCP must respond in writing within 15 working days.

§370.31. Applicant Responsibilities.

(a) An applicant is responsible for:

(1) correctly and truthfully completing the TCP application form regardless of where the application was obtained;

(2) providing all required verifications; and

(3) mailing the completed, signed application along with all required verifications to TCP.

(b) An applicant who intentionally misrepresents information on an application to receive a program benefit the person or a member of the budget group is not entitled to receive:

(1) is responsible for reimbursing the state for the cost of benefits they were ineligible to receive;

(2) may be held permanently ineligible for CHIP coverage; and

(3) may be subject to prosecution under the Texas Penal Code.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006218
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-6576

♦ ♦ ♦

DIVISION 3. ELIGIBILITY DETERMINATION

1 TAC §370.40

Statutory Authority

The new rules are proposed under § 62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement § 62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.40. Determining Eligibility.

Once TCP enters a completed application into the database, the automated eligibility system passes the information through an eligibility screen to determine potential eligibility for CHIP, Medicaid, or THKC. CHIP eligibility is determined in accordance with the criteria specified in Sections 370.43 through 370.47.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006219

Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-6576

♦ ♦ ♦

DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.42 - 370.49

Statutory Authority

The new rules are proposed under § 62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement § 62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.42. Age Limits.

(a) A child is eligible for CHIP beginning with the date of birth through the child's eighteenth year.

(b) A child is eligible for the entire month in which the child reaches age nineteen.

(c) The applicant states the child's birth date on the application form. Verification of age is not required.

§370.43. Citizenship and Residency.

(a) An eligible CHIP child must be a citizen of the United States of America or a non-citizen lawfully admitted as a resident or a qualified alien.

(b) An eligible CHIP child must be a Texas resident. A child is a Texas resident if:

(1) the child's fixed habitation is located in Texas and the child's family intends for the child to return to Texas after any temporary absences;

(2) the child has no fixed residence but the child's family intends to remain in the state; or

(3) the child is a new resident of Texas and the child's family intends to remain in the state.

(c) A child does not lose status as a state resident because of temporary absences from the state. No time limits are placed on a child's temporary absence from the state.

(d) There are no durational requirements for residency. A child without a fixed residence or a new resident in the state who intends to remain in the state is considered a Texas resident.

(e) The applicant states the child's citizenship, lawful resident status and Texas residency on the TCP application form. If the applicant states that the child is a United States citizen and a Texas resident, no verification of this status is required. If the applicant states the child is a lawfully admitted resident, the family must provide a photocopy of a Resident Alien Card (Green Card), I-94 Card (White Visitor Card), I-688-B, I-766, I-551, an INS asylum letter, or an order from an immigration judge granting asylum or showing deportation was withheld.

(f) If the applicant states on the application that the child is not a United States Citizen or a lawfully admitted resident, the application is referred to THKC. If the applicant states on the application that the child is not a Texas resident, the application is denied.

§370.44. Income.

(a) General principles.

(1) Income is either countable income or exempt income.

(2) TCP must consider the income of all family members included in the budget group.

(b) Earned income is countable income received by the budget group and includes:

(1) Military pay and allowances for housing, food, base pay, and flight pay;

(2) Self-employment income (minus business expenses). A person is self-employed if he is engaged in an enterprise for gain, either as an independent contractor, franchise holder, or owner-operator. If someone other than the earner withholds either income taxes or FICA from the earner's earnings, the earner is an employee and is not self-employed;

(3) Wages, salaries, and commissions; and

(4) On-The-Job (OJT) payments funded under Title II, Section 204(#) of the Workforce Investment Act (WIA) if received by an adult member of the budget group.

(c) Unearned income is countable income received by the budget group and includes:

(1) Cash contributions received on a regular and predictable basis;

(2) Child support payments, after deducting $50 from the budget group's total monthly child support payments;

(3) Disability insurance benefits;

(4) Government-sponsored program payments, however, payments from crisis intervention programs are exempt;

(5) Pensions;

(6) Retirement, survivors, and disability insurance (RSDI) benefits and other retirement benefits (exempt the amount deducted from the RSDI check for the Medicare premium and any amount that is being recouped for a prior overpayment);

(7) Income from property, whether from rent, lease, or sale on an installment plan;

(8) Unemployment compensation;

(9) Veterans Administration (VA) benefits other than benefits that meet a special need ; and

(10) Worker's compensation benefits .

(d) All income that is not included as countable earned income or countable unearned income is exempt income.

(e) Net income test and deductions.

(1) Net income test.

(A) The net income test is used to determine eligibility.

(B) Net monthly income is gross monthly income minus allowable deductions.

(C) A child is eligible if the budget group's net monthly income, after rounding down cents, is equal to or less than the 200% of

FPL for the budget group's size. All budget groups must pass the net income test.

(2) income deductions. TCP makes the following deductions from countable income :

(A) TCP allows a standard work-related expense deduction of $120 a month for each employed budget group member;

(B) TCP deducts payments for the actual costs for the care of a dependent child or disabled adult, if necessary for employment or to receive training. The maximum dependent care deduction is $200 per month for each dependent child and $175 per month for each dependent disabled adult.

(C) TCP deducts payments for the actual costs of alimony or child support paid to an individual who is not s budget group member.

(f) Computing countable income. TCP converts income received non-monthly to monthly amounts by:

(1) dividing yearly income by 12;

(2) multiplying weekly income by 4.33;

(3) adding amounts received twice a month; or

(4) multiplying amounts received every other week by 2.17.

(g) Verification of income.

(1) Countable income must be verified unless the amount of income reported by the household makes the household ineligible.

(2) TCP verifies all countable income at initial application and at the annual redetermination.

(3) Verification may include, but is not limited to, obtaining:

(A) copies of paycheck stubs issued within the immediately preceding 60-day period;

(B) a copy of the most recent federal income tax return;

(C) a copy of the applicant's most recent Social Security statement;

(D) copies of child support checks; or

(E) written confirmation from an employer of the applicant's income.

§370.45. Medicaid Eligibility.

A child who meets all Medicaid eligibility requirements is not eligible for CHIP.

§370.46. Waiting Period.

(a) A child is not eligible for enrollment in a CHIP health plan if the child was covered by creditable health insurance at any time within the 90 days immediately preceding the submission of a CHIP application.

(b) Collateral health benefits provided to a CHIP-eligible child under a different type of insurance, such as workers compensation or personal injury protection under an automobile policy, is not creditable health insurance coverage for purposes of this section.

(c) The 90-day waiting period specified in subsection (a) of this section does not apply to a child under the following circumstances:

(1) The child's family whose family lost insurance coverage for the child because:

(A) The employment of a member of the Budget Group was terminated due to:

(i) a layoff;

(ii) a reduction-in-force; or

(iii) a business closure;

(B) Insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) terminated;

(C) The marital status of a parent of the child has changed;

(D) The child's Medicaid eligibility was terminated because:

(i) the family's earnings or resources exceed allowable amounts for Medicaid eligibility; or

(ii) the child reached an age for which Medicaid benefits are no longer available; or

(E) Other circumstances similar to those described in this subparagraph that result in an involuntary loss of insurance coverage;

(2) The child has insurance coverage provided by THKC;

(3) The child's health insurance coverage costs more than 10 percent of the budget group's net monthly income; or

(4) The Commission grants an exception to the waiting period under subsection (c) of this section.

(d) The Commission may grant an exception to the 90-day waiting period prescribed by this section if it determines good cause exists to grant an exception and either:

(1) An applicant requests an exception:

(A) Prior to submission of an application;

(B) At the time of application; or

(C) As part of a request for review or reconsideration of a denial of eligibility under sections 370.52 or 370.54 of this chapter; or

(2) The Commission reaches a determination based either on information provided by an applicant or information obtained by the Commission.

§370.47. State Kids Insurance Program.

Children of employees who receive health insurance coverage through the Uniform group Insurance Program (UGIP) administered by the Employee's Retirement System of Texas are ineligible for CHIP. These children qualify for the State Kid's Insurance Program (SKIP) administered by the Employee's Retirement System of Texas if they otherwise meet the eligibility criteria for CHIP.

§370.48. Completion of Application Process.

If the TCP application screening indicates:

(1) At least one child in the family appears to meet Medicaid income eligibility requirements and the family has not applied by telephone, TCP sends the family a Medicaid Assets Letter to collect information about the family's countable assets and reviews the information returned by the family. If, following this review, the family's countable assets do not exceed Medicaid limits, TCP:

(A) electronically transfers the application to the Texas Department of Human Services (DHS) within one working day of the application completion date for a Medicaid eligibility determination;

(B) Delivers the paper application to the appropriate DHS office within two additional working days; and Notifies the family of potential Medicaid eligibility in writing and provides guidance for the family's follow-up with the Medicaid eligibility determination;

(2) At least one child in the family does not meet one or more Medicaid eligibility requirements, the budget group's net family income is at or below 200% of FPL, and the family meets all other CHIP eligibility requirements, TCP:

(A) Determines that the child is eligible for CHIP; and

(B) Notifies the family of the CHIP eligibility by letter and includes a CHIP enrollment packet

(3) Al least one child in the family does not meet one or more Medicaid or CHIP eligibility requirements and the budget group's net family income exceeds 200% of FPL, TCP:

(A) electronically transfers the application to THKC within one working day of the application completion date; and

(B) Notifies the family in writing of the referral to THKC.

§370.49. Medicaid Referrals.

If a TCP applicant child is referred to Medicaid and subsequently determined ineligible for Medicaid for a reason other than failure to complete the Medicaid application process or comply with other cooperation criteria, Medicaid denies eligibility and may deem the child eligible for CHIP based on the family's income or resources or the child's citizenship or immigration status.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006220
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-6576

♦ ♦ ♦

DIVISION 5. REVIEW AND RECONSIDERATION OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §§370.50 - 370.54

Statutory Authority

The new rules are proposed under § 62.051(d), Health and Safety Code, which authorizes the commission to adopt rules necessary to implement chapter 62, Health and Safety Code, and under § 531.033, Government Code, which provides the commissioner of health and human services with authority to adopt rules necessary to carry the duties of the Health and Human Services Commission under Chapter 531, Government Code.

The proposed rules implement § 62.051, Health and Safety Code, concerning development of and the making of policy for the state child health plan program.

§370.50. Matters Subject to Review and Reconsideration of Eligibility Denials and Temporary Enrollment

(a) A family that is dissatisfied or disagrees with certain decisions made by or on behalf of the CHIP program may request:

(1) a review of the initial decision; and

(2) if the family is dissatisfied with the outcome of the review, a reconsideration of the review of the decision.

(b) A family may request a review and/or reconsideration of the following decisions:

(1) denial of CHIP eligibility;

(2) disenrollment of a child; or

(3) increase in the family's cost-sharing obligation.

§370.51. Deadline and Method for Requesting Review of Initial Decision.

(a) A family may request a review of an initial CHIP decision described in section 370.50(a) within 30 working days from the date the family received written notice of the decision.

(b) A family may request a review by contacting TCP in writing.

§370.52. Disposition of Request for Review.

(a) TCP must complete its review of the initial decision within 10 working days of receipt of the request for review, whether the request was submitted by telephone or in writing.

(b) TCP must notify a family in writing of the results of its review of the initial decision not later than the 5th day following receipt of the request. The written notification must:

(1) explain the reason for the initial decision;

(2) inform the family whether the initial decision was reversed following TCP's review; and

(3) if the initial decision is upheld, inform the family of its right to request reconsideration of the decision by HHSC if the family disagrees with the decision and provide instructions for submitting a written request for reconsideration by HHSC.

§370.53. Request for Reconsideration by HHSC.

(a) A family that is dissatisfied or disagrees with the result of TCP's review of an initial decision may request reconsideration of the TCP review by HHSC.

(b) A family must request reconsideration by HHSC in writing within 15 working days from the date the family received the written notice of the result of the TCP review.

(c) Within 15 working days from the date TCP receives the written request for reconsideration, HHSC must complete the reconsideration and notify the family in writing of its final decision.

§370.54. Temporary Enrollment Pending Disposition of Review or Reconsideration.

(a) There is no retroactive enrollment in CHIP.

(b) If a family's request for review by TCP of an adverse eligibility decision includes factual information that could have an impact on the decision, TCP will approve temporary enrollment of the child pending completion of the review and/or reconsideration by HHSC of the eligibility decision.

(c) A child will remain enrolled until the TCP review and/or HHSC reconsideration process is complete.

(d) If the initial eligibility decision is reversed, the child's 12 months of eligibility continues. If the review/reconsideration confirms the initial decision of ineligibility, the child is disenrolled as of the next cut-off date.

(e) TCP will not approve temporary enrollment if the family's request for review/reconsideration includes no factual basis for reversing the initial eligibility decision.

(f) TCP may approve temporary enrollment for a child on the basis of a review/ only once every 12 months.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006221
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-6576

♦ ♦ ♦

TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 14. TEXAS HISTORICAL ARTIFACTS ACQUISITION PROGRAM

13 TAC §§14.1, 14.3, 14.5

The Texas Historical Commission proposes a new Chapter 14, §§14.1, 14.3, and 14.5 to contain rules concerning the acquisition of historical artifacts. Texas has a rich history extending more than 12,000 years. Extensive collections of artifacts and documents important to the state's history exist in private collections, and these materials are bought and sold from time to time, or are deaccessioned from public collections. This chapter proposes a process by which the Texas Historical Commission, on behalf of the State of Texas, can acquire historical artifacts and related documents to ensure their protection and use by the citizens of Texas.

F. Lawerence Oaks, Executive Director, has determined that for the first five-year period during which the sections as proposed are in effect there will be no fiscal implications to local governments. Fiscal implications to State government will be minimal and will be dependent upon funds appropriated by the Legislature for the acquisition of historical artifacts.

Mr. Oaks also anticipates that the public will benefit from these rules through the acquisition of some of the State's most important historical artifacts and documents. There will be no costs anticipated for individuals or small businesses. These materials will be housed in museums and libraries of Texas for use by researchers, viewing by the public, and promotion of heritage tourism

Comments on the proposed rules may be submitted to F. Lawerence Oaks, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276.

The new rules are proposed under Texas Government Code, §§442.005(q) which authorizes the Texas Historical Commission to promulgate rules for its programs, and 442.007(d)(7) which provides that the Commission, through the authority of the State Archeologist, may preserve the historic and archeological heritage of the State.

The Texas Historical Commission does not anticipate that the adoption of these rules will effect any other rules, statutes, or codes of the state of Texas.

§14.1. Scope.

The intent of these rules is to provide a program by which the Texas Historical Commission, hereafter referred to as the commission, may acquire documents, records, or historical artifacts related to the history of Texas.

§14.3. Definitions.

When used in this chapter, the following words or terms have the following meanings unless the context indicates otherwise.

(1) Historical Artifacts. Means the tangible remains of existing and past inhabitants of and visitors to the state of Texas.

(2) Records. Means documents that are written, either by hand or mechanical impression, that provide important information related to the history of Texas.

(3) Documents. Means written letters, diaries, journals, books, photographs, drawn pictures, or any other material accounts or portrayals of information related to the history of Texas.

(4) Acquisition. Means the purchase or other necessary expenditures associated with obtaining, transporting, packaging, and preparing documents, records, or historical artifacts for perpetual preservation, including cataloguing, collecting, analyzing, conserving, excavating, or curating. Ownership of all materials will be by the State of Texas.

(5) Museum. Means the Bob Bullock Texas State History Museum, and any public or private institution that is organized on a permanent basis for mainly educational or aesthetic purposes, uses a professional staff, owns or uses tangible objects, whether animate or inanimate, cares for those objects and exhibits them to the public on a regular basis for at least 120 days a year, and has as a primary purpose the curation or display of documents, records, or historical artifacts important to Texas history. Such institutions must be accredited by the American Association of Museums or, after December 31, 2002, be accredited by the Council of Texas Archeologists Accreditation and Review Council.

(6) Library. Means any publicly or privately supported institution that has as its primary purpose the maintenance and loan for public use of books and other written materials, and has the capability to provide appropriate care for historical documents and records.

(7) Repository. Means any publicly or privately supported institution that has as its primary purpose the curation for public benefit of documents, records, or historical artifacts important to Texas history. After December 31, 2002 such institutions must be accredited by the Council of Texas Archeologists' Accreditation Review Council.

(8) Emergency acquisition. Means that the decision to purchase documents, records, or historical artifacts must be made before the next scheduled meeting of the commission. Such decisions would be necessary because the documents, records, or artifacts are available

for immediate sale and are not likely to be available for acquisition at the next scheduled commission meeting. The decision to make an emergency acquisition will be made by the executive director with the advice of the chair of the commission.

§14.5. Acquisition Program.

(a) Documents, records, or historical artifacts, hereafter collectively referred to as historical items, may be identified for potential purchase by any person and brought to the attention of the commission.

(b) Only historical items that represent a unique opportunity to preserve the cultural heritage of Texas will be considered for acquisition. Historical items recommended for acquisition will be researched for authenticity and appropriateness of acquisition, by the staff of the commission, or consultants contracted by the commission for this purpose. Staff will make a recommendation to the commission.

(c) The commission will review the recommendation for the acquisition of historical items, including the staff findings and comments, and will make a final decision to proceed or to not proceed with the acquisition. Commission review can occur at a regularly called meeting or by special meeting as called by the chair of the commission.

(d) In cases of emergency acquisition, the executive director, in consultation with the chair, may make a final decision to proceed or to not proceed with an acquisition of historical items. The decision shall be reported by the chair at the next regularly scheduled meeting of the commission. The Commission will not purchase items of questionable origin.

(e) The commission will decide if a museum, library, or repository will receive the acquired historical items. Acquisitions may also be made by the commission for historical items to be maintained at the commission's headquarters. For materials not housed at the commission's headquarters, held-in-trust agreements will be executed between the receiving museum or library and the commission to insure the safety and long-term care of the historical items. Exceptions to the accreditation requirement may be considered by the Commission on a case-by-case basis.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006202
F. Lawerence Oaks
Executive Director
Texas Historical Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-6096

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 3. CAPACITY AUCTION

16 TAC §25.381

The Public Utility Commission of Texas (commission) proposes new §25.381, relating to Capacity Auctions. The proposed new rule will implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.153 (Vernon 1998, Supplement 2000) (PURA), as it relates to the establishment of procedures by which affected affiliated power generation companies (PGCs) will auction entitlements to 15% of their Texas jurisdictional installed generation capacity beginning 60 days before the implementation of customer choice. Project Number 21405 has been assigned to this proceeding.

The proposed rule is intended to develop a set of standard products for electricity generation capacity to be auctioned by affiliated PGCs and the procedures by which those auctions will be performed. Under the proposed rule, each affected affiliated PGC, or the affected electric utility for purposes of the first auction, will auction entitlements to its generation capacity as a mix of baseload, gas intermediate, gas cyclic, and gas peaking capacity. The entitlements will not be tied to a specific plant, but instead will be served by the relevant portfolio of generation plants that make up the utility's system. As a result, the auction products are subject to a lesser degree of outage risk than products tied to specific utility plants.

The proposed rule also sets forth scheduling rules for the various products and details the prices that will be paid by the holder of an entitlement when that entitlement is exercised. The products as proposed exhibit varying levels of flexibility and dispatchability based on the nature of the characteristics of the underlying generation plants.

In addition to the four different types of auction products, there will be varying terms for the entitlements. The initial auction to be conducted before September of 2002 will include the auctioning of discrete months of entitlements and strips of entitlements that will encompass the 12 months through the end of 2003 and the 24 months through the end of 2004. The varying durations of entitlements are intended to provide a mix of products to meet the different needs of companies in the restructured electric market.

It is intended that the auction products will be standardized across all affected affiliated PGCs. Standardized products will be more tradable in a secondary market, and therefore are intended to significantly increase the liquidity in the wholesale energy market. Similarly, in order to help minimize the administrative costs of participating in the auctions, the procedures to be followed and the timings of the auctions are intended to be standardized across all affected affiliated PGCs.

The proposed rule also prescribes the methodology under which the price of power obtained in the capacity auctions will be reconciled against the power cost projections employed for the same time period in the ECOM model used to estimate stranded costs in the proceeding under PURA §39.201 during the true-up procedure conducted pursuant to PURA §39.262.

As part of the drafting process, commission staff conducted workshops in Austin to receive input from potentially affected persons on March 3, 2000, May 30, 2000, June 28, 2000, and August 3, 2000. Informal comments were solicited at several of those workshops.

Brian Lloyd, Senior Economic Analyst, Policy Development Division has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lloyd 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 and liquidity in the wholesale generation market, readily available generation supplies to purchasers, and a variety of products to assist both wholesale market participants and retail electric providers in servicing retail customers, thus ultimately 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 affected PGCs and parties interested in participating in the auctions through the preparation and evaluation of bids. 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. Winners of the auctions will be required to make payments to the affected PGCs for the capacity and energy as directed by the rule.

Moreover, Mr. Lloyd 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. Does the rule reflect an appropriate level of firmness for the products?

2. The heat rates specified in the "fuel price" sections of the gas product descriptions are intended to be standardized across the state in order for the products to be more tradable in a secondary market. Are the heat rates set at an appropriate level to be used as a statewide standard?

3. Are fuel service costs and start-up fees appropriate? Should these costs be standardized across the state and if so, are the appropriate values included in the proposed rule?

4. Are the credit requirements detailed in subsection (e)(5)(D) consistent with typical credit requirements in wholesale markets and with other credit requirements previously adopted by either the commission or ERCOT?

5. Given that the entitlement products are system capacity, should there be more flexibility in scheduling the baseload, gas intermediate, and gas cyclic products?

6. Will the bid procedures, evaluation methodology, and determination and application of the market clearing price provide an appropriate valuation for the products? What procedures best balance the commission's goals of determining an appropriate market price, providing market liquidity, and facilitating price discovery and transparency?

7. Is the true-up methodology in subsection (h) an appropriate methodology to incorporate the capacity auction revenues into the stranded cost true-up required by PURA §39.262? Is there an adjustment needed to those revenues in order to reflect products that are more firm than the overall system?

8. The definition of "affiliated power generation company" in PURA §31.002(1) refers to a power generation company that is the successor in interest of an electric utility. If an affiliated PGC places its generation assets in a non-affiliated company, is that company a "successor in interest" and therefore considered an "affiliated power generation company" for the purpose of remaining subject to the capacity auction requirement? Similarly, if generation assets are sold to a third party, does that third party become a "successor in interest" and therefore an "affiliated power generation company" and also become subject to the capacity auctions for those assets?

9. Should the gas price paid by the holder of an entitlement when that entitlement is struck be a known, fixed price at the time the entitlement is up for bid? Will having a known price make the products more usable and desirable to retail electric providers?

10. Should the commission retain an independent third party to conduct the auctions?

Comments on the proposed new rule (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 28 days after publication. Reply comments may be submitted within 42 days after publication. All comments should refer to Project Number 21405.

The commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on Friday, October 20, 2000, at 9:30 a.m. in the Commissioners' Hearing Room located on the seventh floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

This new section 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 §39.153, which grants the commission authority to establish rules that define the scope of the capacity entitlements to be auctioned, and the procedures for the auctions.

Cross Reference to Statutes: PURA §§14.002, 31.002, 39.153, 39.201, and 39.262.

§25.381. Capacity Auctions.

(a) Applicability. This section applies to all affiliated power generation companies (PGCs) as defined in this section in Texas. This section does not apply to electric utilities subject to Public Utility Regulatory Act (PURA) §39.102(c) until the end of the utility's rate freeze.

(b) Purpose. The purpose of this section is to promote competitiveness in the wholesale market through increased availability of generation and increased liquidity by requiring electric utilities and their affiliated PGCs to sell at auction entitlements to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity, describing the form of products required to be auctioned, prescribing the auction process, and prescribing a true-up procedure, in accordance with PURA §39.262(d)(2).

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

(1) Affiliated power generation company (PGC) - For purposes of this section, an "affiliated PGC" refers to a power generation company that is unbundled from the electric utility in accordance with PURA §39.051. The term also includes an electric utility as defined in §25.5 of this title (relating to Definitions) that owns or operates for compensation in this state equipment or facilities to generate more than 400 megawatts (MW) of electricity in this state until the electric utility has unbundled, but does not include river authorities.

(2) Auction conclusion date - The date on which the bids are due to be received and the winning bids in an auction are announced.

(3) Business day - Any day on which the affiliated PGC's corporate offices are open for business and that is not a banking holiday

(4) Close of business - 5:00 p.m., central standard or daylight savings time.

(5) Congestion zone - An area of the transmission network that is bounded by commercially significant transmission constraints, as defined by an independent organization.

(6) Daily gas price - The index posting for the date of flow in the Financial Times Energy publication "Gas Daily" under the heading "Daily Price Survey" for East-Houston-Katy, Houston Ship Channel.

(7) Day-ahead - The day preceding the operating day.

(8) Installed generation capacity - All potentially marketable electric generation capacity owned by an affiliated power generation company, including the capacity of:

(A) generating facilities that are connected with a transmission or distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility; and

(C) generating facilities that will be connected with a transmission or distribution system and operating within 12 months.

(9) Power generation company (PGC) - As defined in §25.5 of this title.

(10) Starts - Direction by the owner of an entitlement to dispatch a previously idle entitlement.

(11) Texas jurisdictional installed generation capacity - The amount of an affiliated PGC's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission approved allocation study, or other such commission- approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(d) General requirements. Subject to the qualifications for auction entitlements and the auction process described in subsections (e) and (f) of this section, each affiliated PGC subject to this section shall sell at auction capacity entitlements equal to at least 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. Divestiture of a portion of an affiliated PGC's Texas jurisdictional installed generation capacity will be counted toward satisfaction of the affiliated PGC's capacity auction requirement if and only if the divestiture is made pursuant to a commission order in a business combination proceeding pursuant to PURA §14.101, and after the transfer of the assets and operations to a third party.

(e) Product types and characteristics.

(1) Available entitlements and amounts. The following four products shall be auctioned as capacity entitlements under subsection (d) of this section. Each affiliated PGC shall auction an amount of each product in proportion to the amount of Texas jurisdictional installed generating capacity on the affiliated PGC's system that are the respective type of generating units. An affiliated PGC that owns generation in multiple congestion zones shall auction entitlements for delivery in each congestion zone. The amount of each product auctioned in each zone shall be in proportion to the amount of the respective type of generating units located in that zone, but the total shall not be less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity. Entitlements shall be for system capacity.

(A) Baseload.

(i) Description. For each baseload capacity entitlement, the scheduled power shall be provided to the purchaser during the month of the entitlement seven days per week and 24 hours per day, in accordance with the scheduling requirements and limitations provided in paragraph (5)(C)(i) of this subsection.

(ii) Block size. Each baseload capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel cost owed to the affiliated PGC by the entitlement purchaser for the dispatched baseload power will be the average cost of coal, lignite, and nuclear fuel (in dollars per MWh) based on the company's final excess cost over market (ECOM) model as determined in the proceeding pursuant to PURA §39.201 as projected for the relevant time period. There is no fuel service cost associated with baseload capacity. Electric utilities without an ECOM determination in their proceeding conducted pursuant to PURA §39.201 shall propose, for commission review, an average cost of fuel in a similar manner.

(iv) Starts per month. The purchaser of a baseload capacity entitlement must take power from the entitlement seven days per week and 24 hours per day and is therefore not permitted to direct the affiliated PGC to make any starts per month of baseload capacity entitlements.

(B) Gas - intermediate.

(i) Description. For each gas-intermediate capacity entitlement, 50% of the entitlement shall be provided to the purchaser during the month of the entitlement seven days per week and 24 hours per day with the remainder of the block scheduled day-ahead, or hour ahead for ancillary services, in accordance with the scheduling requirements and limitations provided in paragraph (5)(C)(ii) of this subsection.

(ii) Block size. Each gas-intermediate capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel cost owed to the affiliated PGC by the capacity purchaser for the gas-intermediate capacity dispatched will be 9,900 british thermal units per kilowatt- hour (Btu/kWh) heat rate times the minimum kilowatt- hours (kWh) that

must be taken for gas-intermediate capacity as required in paragraph (5)(C)(ii) of this subsection times the first-of-the-month index posted in the publication "Inside FERC" for the Houston Ship Channel for the month of the entitlement. For power dispatched above the minimum kWh required, the additional fuel price owed to the affiliated PGC will be 9,900 Btu/kWh times the kWh of gas-intermediate power dispatched under the entitlement above the minimum requirement times the sum of the daily gas price and a fuel service cost equal to $0.14 per million Btu (MMBtu).

(iv) Starts per month. The purchaser of gas-intermediate capacity must take a minimum of 50% of the power from the entitlement and is therefore not permitted to direct the affiliated PGC to make any starts per month of gas- intermediate capacity entitlements.

(C) Gas - cyclic.

(i) Description. The gas-cyclic entitlement shall be flexible day- ahead shaped power and ancillary services.

(ii) Block size. Each gas-cyclic capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel price owed to the affiliated PGC by the capacity purchaser for gas-cyclic capacity dispatched will be 12,100 Btu/kWh times the kWh of the gas-cyclic power dispatched under the entitlement times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(iv) Starts per month and associated costs. The purchaser of gas- cyclic capacity shall be entitled to direct the selling affiliated PGC to make up to 15 starts per month of each entitlement of gas-cyclic capacity. For each start ordered by the purchaser, the purchaser shall pay the selling affiliated PGC a fee to reflect an appropriate pro-ration of start-up costs equal to 150 MMBtu times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(D) Gas - peaking.

(i) Description. The gas-peaking entitlement shall be intra-day power and ancillary services.

(ii) Block size. Each gas-peaking capacity entitlement shall be 25 MW in size.

(iii) Fuel price. The fuel price owed to the affiliated PGC by the purchaser for gas-peaking capacity dispatched will be 14,100 Btu/kWh times the kWh of the gas-peaking power dispatched under the entitlement times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(iv) Starts per month and associated costs. The purchaser of gas- peaking capacity shall be entitled to direct the selling affiliated PGC to make unlimited starts per month of each entitlement of gas-peaking capacity. For each start ordered by the purchaser, the purchaser shall pay the selling affiliated PGC a fee to reflect an appropriate pro-ration of start-up costs equal to 20 MMBtu times the sum of the daily gas price and a fuel service cost equal to $0.14 per MMBtu.

(E) Ancillary services. The owner of a capacity entitlement may use it to meet ancillary services needs, if the needs may be met in a manner that is consistent with the scheduling and dispatch provisions of this section. The amount of ancillary services available will be in proportion to the ancillary services capabilities of the units that are used to define the capacity offered in the different entitlement products.

(F) Other products. Upon showing of good cause by the affiliated PGC and approval by the commission, an affiliated PGC may propose to auction entitlements different from those described in this subsection, including unit specific capacity.

(2) Firmness.

(A) Planned outages. For entitlements auctioned as discrete months, the seller will commit to a planned outage schedule at the time of the auction. For entitlements auctioned in strips of one-year or two- years, the selling utility will commit to a six-month planned outage schedule, to be provided to the relevant entitlement holders every six-months. When a generating unit is undergoing a planned outage, the entitlement shall be reduced in proportion to the percentage reduction to the grouping of units assigned to that entitlement described in paragraph (3) of this subsection. For example, where units V, W, X, Y, and Z (each generating 200 MW) are assigned to a 25 MW block of auctioned capacity, and unit V is undergoing a planned outage during the month of the capacity, the 25 MW block will be reduced to 20 MW for the duration of the planned outage. In the event that all units providing capacity to an entitlement product are undergoing planned outages at the same time, the entitlements of that product will be unavailable through the duration of the outage; however, if the duration of the outage exceeds 10% of the length of the entitlement, the capacity payment shall be pro-rated to reflect the reduced availability of the entitlement.

(B) Forced outages. If all units providing capacity to an entitlement product experience a forced outage or an emergency condition prevents or restricts the ability of an affiliated PGC to dispatch a particular entitlement product, the entitlements of that product shall be unavailable through the duration of the forced outage or emergency condition. Notification of such unavailability will take place prior to the next settlement interval. If the duration of such outage exceeds 10% of the length of the entitlement, the capacity payment shall be pro-rated to reflect the reduced availability of the entitlement.

(3) Generation units offered. Within 60 days after the effective date of this section, the affiliated PGC shall file with the commission its proposed assignment of each of the affiliated PGC's power generation units to one of the four available product entitlements identified in paragraph (1) of this subsection, and the resulting amount of each type of entitlement to be auctioned. Interested parties shall have 30 days in which to provide comments on the utility's proposed assignments. If no comments are received, the utility's assignment shall be deemed appropriate. If any party objects to the utility's proposed assignments, the commission shall determine the appropriate assignment

(4) Obligations of affiliated PGC. The affiliated PGC shall dispatch entitlements only as directed by the holder of the entitlement in accordance with paragraph (5)(C) of this subsection. The affiliated PGC may not refuse to dispatch the entitlement or curtail the dispatch of an entitlement unless expressly authorized by this section. The affiliated PGC shall specify in its notice provided pursuant to subsection (f)(2)(A) of this section the point on the affiliated PGC's system from which each entitlement is dispatchable.

(5) Purchaser's rights and duties.

(A) No possessory interest. The entitlements sold at auction shall include no possessory interest in the unit or units from which the power is produced.

(B) No possessory obligations. The entitlements sold at auction shall include no obligation of a possessory owner of an interest in the unit or units from which the power is produced.

(C) Scheduling. The purchaser shall have the right to designate the dispatch of the entitlement, subject to planned outages, outages beyond the control of the utility operating the unit, and other exigencies declared by an independent organization. In addition, the following scheduling limitations apply based upon the type of capacity entitlement being scheduled.

(i) Baseload. Baseload capacity entitlements must be scheduled and taken at a constant rate for the entire month of the purchased capacity entitlement. Baseload capacity entitlements cannot be scheduled on a day-ahead or hour- ahead basis. Nothing in this paragraph affects the right or obligation of the owner of a baseload entitlement to schedule the delivery of power from the entitlement through the independent organization.

(ii) Gas - intermediate. Gas-intermediate entitlements can be scheduled on a day-ahead basis. Gas-intermediate ancillary services can be scheduled on a day-ahead basis. Daily scheduling requires a minimum of 50% of the block size, with a maximum allowable hourly swing of +/-25% of the block size. Other than for ancillary services, there shall be no hour-ahead scheduling for intermediate capacity entitlements.

(iii) Gas - cyclic. Day-ahead notice is required to schedule cyclic capacity entitlements, and shall be consistent with the day- ahead scheduling requirements of the relevant independent organization. The purchaser must take a minimum of 20% of the capacity entitlement purchased for a given day if scheduled and there shall be a maximum hourly swing of +/-25% per hour of the block size.

(iv) Gas - peaking. When scheduling gas-peaking power, the entitlement owner must provide the affiliated PGC with a minimum of one-hour notice of the intent to dispatch the gas-peaking power. When scheduling gas-peaking power, the purchaser of gas-peaking capacity must schedule a minimum run of two sequential hours, and any downtime must last at least four sequential hours. The power must be scheduled at either 0.0% of the block size or 100% of the block size. Where the purchaser schedules the capacity as a reserve or replacement, the purchaser must provide the affiliated PGC with a notice of the intention to do so on a day-ahead basis.

(D) Credit requirements.

(i) Standards. Entities submitting bids must satisfy one of the following credit standards:

(I) The entity holds an investment grade credit rating (BBB- or Baa3 from Standard and Poor's or Moody's respectively or an equivalent);

(II) The entity provides an escrowed deposit equal to the bid amount plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or three months at the minimum required dispatch;

(III) The entity provides a letter of credit or surety bond equal to the bid amount plus the amount that would be paid to exercise the entitlement for the shorter of the duration of the entitlement or a rolling three- month period at the minimum dispatch required, irrevocable for the duration of the entitlement;

(IV) The entity provides a guaranty from another entity with an investment grade credit rating;

(V) The entity receives a loan issued by a subsidiary or affiliate of the applicant or a corporation holding a controlling interest in the applicant irrevocable for the duration of the entitlement; or

(VI) The entity makes other suitable arrangements with the affiliated PGC, provided that the affiliated PGC makes such arrangements available on a non- discriminatory basis.

(ii) All cash and other instruments used as credit security shall be unencumbered by pledges for collateral.

(iii) In the event the holder of the entitlement initially relied on its investment grade credit rating but subsequently loses it during the entitlement period, the holder of the entitlement must provide alternative financial evidence within ten days.

(iv) The holder of the entitlement must notify the affiliated PGC of any material changes that impact the financial requirement contained in the credit standards.

(v) In the event the holder of the entitlement fails to meet or continue to meet its security requirement, the entitlement shall revert to the affiliated PGC and shall be auctioned in the next auction for which notice can be provided of the sale of the entitlement pursuant to subsection (f)(2)(A) of this section.

(f) Auction process.

(1) Timing issues.

(A) Frequency of auctions.

(i) Initial auction. The initial capacity auction shall be concluded on or before September 1, 2001.

(ii) Subsequent auctions. Capacity auctions subsequent to the initial auction shall be concluded on March 15, 2002, July 15, 2002, October 15, 2002, and November 15, 2002. Auctions conducted in years following 2002 will be concluded in the same months as the auctions conducted in 2002, and will occur on the 15th day of the month (or in the event that date falls on a weekend or banking holiday, on the first business day before the weekend or banking holiday).

(iii) Termination of the capacity auction process. The obligation of an affiliated PGC to auction entitlements shall continue until the earlier of 60 months after the date customer choice is introduced or the date the commission determines that 40% or more of the electric power consumed by residential and small commercial customers within the affiliated transmission and distribution utility's certificated service area before the onset of customer choice is provided by nonaffiliated retail electric providers.

(B) Auction conclusion.

(i) Receipt of bids. In order for an affiliated PGC that is auctioning capacity to consider a bid, the bid must be received by that affiliated PGC for auction by 12:00 p.m. on the auction conclusion date as defined in paragraph (1)(A) of this subsection. Bids shall be time-stamped by the affiliated PGC and notice of receipt of the bid shall be provided to the bidder.

(ii) Concluding each individual auction. The affiliated PGC shall provide notice of the winning bid(s) to auction participants and the commission by the close of business on the auction conclusion date.

(iii) Confidentiality and posting of bids. The affiliated PGC shall keep all bids confidential until the announcement of the winning bids. The affiliated PGC shall designate non- marketing personnel to evaluate the bids and persons reviewing the bids shall not disclose the bids to any person(s) engaged in marketing activities for the affiliated PGC. Upon announcement of the winning bids, the affiliated PGC shall provide the commission and all auction participants with all of the bids, but shall not divulge the identity of any particular bidders. Upon specific request by the commission, and under standard protective order procedures, the utility shall provide the identity of the bidders to the commission.

(2) Auction administration.

(A) Each auction shall be administered by the affiliated PGC selling the entitlement.

(B) Notice of capacity available for auction.

(i) Method of notice. At least 60 days before each auction conclusion date, each affiliated PGC offering capacity entitlements at auction shall file with the commission notice of the pending auction. The commission shall provide on its Internet site a continually updated list of pending auctions for each affiliated PGC subject to this section.

(ii) Contents of notice. Such notice shall include the auction conclusion date, the date by which bids must be received, and the types, quantity (number of blocks), congestion zone, and term of each entitlement available in that auction. The affiliated PGC shall also specify which power generation units will be used to meet the entitlement for each type of entitlement to be auctioned. If baseload entitlements are being auctioned, the utility shall also specify the fuel cost described in subsection (e)(1)(A)(iii) of this section at the time of the auction. If gas intermediate, gas cyclic, or gas peaking entitlements are being auctioned, the utility shall specify the fuel service cost.

(3) Term of auctioned capacity.

(A) Initial auction. For the initial auction on October 31, 2001, each entitlement will be one month in duration, with:

(i) Approximately 30% of the entitlements auctioned as two-year strips (the 24 months of 2002 through 2003),

(ii) Approximately 30% of the entitlements as one-year strips (the 12 months of 2002), and

(iii) Approximately 20% of the entitlements as discrete months for each of the 12 months of 2002 (January through December of 2002)

(iv) Approximately 20% of the entitlements as discrete months for the first four months of 2002 (January through April of 2002).

(B) Subsequent auctions.

(i) The auction on March 15 of a year will auction approximately 20% of the entitlements as the discrete months of May through August of that year.

(ii) The auction on July 15 of a year will auction approximately 20% of the entitlements as the discrete months of September through December of that year.

(iii) The auction on October 15 of a year will auction:

(I) Approximately 30% of the entitlements as the one-year strips for the next year, and

(II) Approximately 20% of the entitlements as discrete months for each of the 12 calendar months of the next year.

(iv) The auction on November 15 of a year will auction approximately 20% of the entitlements as the discrete months of January through April of the next year.

(v) In June of 2003, an evaluation will be made by the commission as to the need for another set of two-year strips (the 24 months of 2004 through 2005). If such term is deemed to be necessary, the next set of two-year strips will be auctioned on October 15 of 2003. If such term is not deemed to be necessary, then subsequent auctions will auction 60% of entitlements over one-year strips and 40 % of the entitlements as discrete months.

(C) Modification of term. If the auction is for a one-year or two-year strip term and the affiliated retail electric provider (REP) expects to reach the 40% load loss threshold in paragraph (1)(A)(iii) of this subsection, the affiliated PGC may request a shorter term strip by providing evidence of the loss of customer load. Similarly, prior to an auction for the next four available months, an affiliated PGC may request to not auction months in which it projects reaching the 40% threshold. Such filings shall be made 90 days before the auction conclusion date. An affiliated PGC that will satisfy its auction requirements through divestiture, as described in subsection (d) of this section may petition the commission to set an appropriate term for entitlements. The affiliated PGC may not adjust the amount or length of an entitlement to be auctioned except as authorized by the commission.

(4) Quantity to be auctioned.

(A) Block size and number of blocks. The block size of the auctioned capacity entitlement is 25 MW. The affiliated PGC shall divide the amount determined for each product described in subsection (e)(1) of this section by 25 to determine the number of blocks of each type to be auctioned.

(B) Divisibility. If the amount to be auctioned for an affiliated PGC for a particular product is not evenly divisible by 25, the remainder shall be added to the next highest heat-rate product available (in the order of baseload, gas-intermediate, gas cyclic, and gas peaking). The remainder for the highest heat-rate product available shall then be rounded up to 25.

(C) Total amount. The sum of the blocks of capacity auctioned shall total no less than 15% of the affiliated PGC's Texas jurisdictional installed generation capacity.

(5) Bidders. For each auction, potential bidders may prequalify by demonstrating compliance with the credit requirements in subsection (e)(5)(D)(i) of this section in advance of submission of a bid or providing evidence of the satisfaction of the credit requirements concurrent with the submission of a bid.

(6) Form of bid. A bid must contain the following terms:

(A) Price. The bid shall include an offer to purchase capacity that is stated in dollars per megawatt ($/MW).

(B) Quantity. The quantity must specifically indicate each block of capacity made available by the seller that the bidder is seeking to acquire.

(C) Term. For each block of capacity the bidder is seeking to acquire, the bid must include the month or strip of months for which the bidder is seeking to acquire such capacity.

(D) Product type. Each bid must include the type of product the bidder is bidding upon.

(7) Establishment of reserve bid price. Within 60 days of the effective date of this section, the affiliated PGC may file with the commission a methodology for determining a reserve bid price, if needed, based on the utility's expected variable cost of operation, but excluding any return on equity. The reserve price may not include any cost included in the fuel price to be paid by entitlement winners, nor any cost being recovered by its affiliated transmission and distribution utility through non-bypassable delivery charges, but may recover variable costs not included in the fuel prices. Parties shall have 30 days after filing to challenge the methodology. In the notice provided pursuant to paragraph (2)(A)(i) of this subsection, the affiliated PGC may make available an opening bid price calculated pursuant to the commission-approved methodology for each type of entitlement to be offered for sale at auction.

(8) Determining the winning bidders. Bids for each product by term will be ranked from the highest to the lowest price. The available number of blocks will be assigned to the highest ranked bids.

The market-clearing price will be the lowest bid that is assigned to a block. If there are multiple bids at the clearing price, available blocks will be assigned ratably to the bids, with the time of bid submission serving as an additional tie-breaker, if needed. Each winning bidder will pay the market-clearing price. The market-clearing price will be posted at the close of the auction through notice to all bidders and the commission.

(g) Resale of entitlement. The winners of an entitlement may resell the entitlement (or portions thereof) to any eligible purchaser except the affiliated REP of the affiliated PGC that originally auctioned the entitlement. The third party must meet the same credit requirements that had been required of the initial bid winner. Alternatively, a winner may assign the entitlement to a third party that does not meet the associated credit requirements provided that the original winner retains all payment and other related obligations. Owners of entitlements may direct dispatch of those entitlements to any lawful purchaser of electricity, including the affiliated REP.

(h) True-up process.

(1) Capacity portion of true-up. Each month beginning on February 1, 2002 to the month following the date a final order is issued in the PURA §39.262 proceeding, the affiliated PGC shall notify the commission of the amount of dollar receipts from capacity payments and start-up fees received in the previous month from entitlement holders. That amount shall be divided by the percentage of product offered relative to the megawatts of the units and purchased power contracts underlying that product and the resulting amount shall be subtracted from the projection of fixed cost contribution (FCC) from the ECOM model for that affiliated PGC. The FCC shall be calculated by subtracting the total fuel expense found in the cost partition sheet of the ECOM model, adjusted to exclude the total wholesale fuel expense found in the cost allocation sheet of the ECOM model, from the revenues by fuel type found in the plant economics sheet of the ECOM model (i.e., FCC = (Texas Retail Revenues at Market Price) - (Fuel Expense - Texas Jurisdictional Wholesale Fuel Expense)). The resulting difference is the ECOM true-up amount required by PURA §39.262(d)(2) (i.e., ECOM True-up amount = FCC - Capacity Auction Premium). A positive number shall indicate an amount due the affiliated PGC, while a negative number shall indicate an amount due the ratepayers.

(A) The "Texas Retail Revenues at Market Price" comes from the "Plant Economics" tab of the ECOM model, and is the sum of rows 12 through 14 (by fuel type) by year.

(B) The "Fuel Expense" comes from the "Cost Partition" tab of the ECOM model at row 37 (which is the sum of rows 33 through 36 by fuel type).

(C) The "Texas Jurisdictional Wholesale Fuel Expense" comes from the "Cost Allocation" tab of the ECOM model at row 224 (which is the sum of rows 220 through 223 by fuel type) by year.

(2) Fuel portion of true-up. The affiliated PGC shall also reconcile any difference between non-market based gas costs included in the affiliated PGC's ECOM model with the fuel revenues received for the gas- intermediate, gas-cyclic, and gas-peaking products for the period from January 1, 2002 to the date a final, appealable order is issued by the commission.

(i) True-up process for electric utilities with divestiture. If an affiliated PGC meets its capacity auction requirements through a divestiture as allowed by subsection (d) of this section, the proceeds of the divestiture shall be used for purposes of the true-up calculation.

(j) Modification of auction procedures or products. Upon a finding by the commission that the auction procedures or products require modification to better value the products or to better suit the needs of the competitive market, the commission may, by order, modify the procedures detailed in this rule.

(k) Contract terms. Parties shall utilize a standard agreement adopted by the commission in detailing the terms, conditions, and obligations of the selling and buying parties.

This 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 August 30, 2000.

TRD-200006097
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

SUBCHAPTER Q. SYSTEM BENEFIT FUND

16 TAC §§25.451, 25.453, 25.454, 25.457

The Public Utility Commission of Texas (commission) proposes new §25.451, relating to the Administration of System Benefit Account; §25.453, relating to the Targeted Energy Efficiency Programs; §25.454, relating to the Rate Reduction Program; and §25.457, relating to the Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives. The proposed new rules will implement provisions of the Public Utility Regulatory Act (PURA) §39.901 and §39.903, relating to the System Benefit Fund. Section 25.451 establishes administrative requirements for the setting, collecting, billing, reporting, and reimbursement of the system benefit fee. Section 25.453 defines the criteria for energy efficiency programs, administered by the Texas Department of Housing and Community Affairs, that can be funded with the system benefit fee. Section 25.454 establishes requirements for a rate reduction program for qualifying low-income customers and outlines enrollment options for those customers. Section 25.457 establishes the system benefit fee collection and reimbursement process for the municipally owned utilities and electric cooperatives. Project Number 22429 has been assigned to this proceeding.

Project Number 22429, *Rulemaking to Address System Benefit Fee and Associated Programs Pursuant to PURA §39.901 and §39.903*, was established on April 19, 2000, as part of the plan for implementing Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2591 (Vernon) (codified as an amendment to the Public Utility Regulatory Act, Texas Utilities Code Annotated §39.901 and §39.903). Senate Bill 7, the Electric Restructuring Act, amended several sections of the Public Utility Regulatory Act (Vernon 1998, Supplement 2000), and became effective on September 1, 1999. The commission staff posted questions for comment on its Internet site on April 26, 2000, and published the questions and an invitation to comment in the *Texas Register* on May 5, 2000 (25 TexReg 4245). The questions were discussed at a workshop held on June 2, 2000. The staff prepared drafts of §§25.451, 25.453, and 25.454, which were discussed at a workshop held on July 6, 2000.

Margarita Fournier, Senior Economic Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Margarita Fournier has determined that, for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the availability of discounted rates and weatherization programs for low-income customers. In addition, the customer education program on electric industry restructuring will be funded by the system benefit fee. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules. When commenting on specific subsections of the proposed rules, 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. The system benefit fee funds four programs pursuant to PURA §39.903(e). The statute does not specify the order in which these programs shall be funded. Should a funding priorities order be established?

2. Given that the pilot project for the competitive electric market in Texas will start on June 1, 2001, but the system benefit fee will not be assessed against the retail electric customers until January 1, 2002, is it appropriate to include in the pilot project the low income discount program? If the answer were yes, what would be the best way to implement such a program?

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.

The commission staff will conduct a public hearing on this rulemaking under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, October 23, 2000, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor.

Comments on the proposed new sections (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 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 22429.

These new rules are 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; and specifically, PURA §39.903(j), which grants the commission authority to adopt rules on enrollment options for eligible customers to participate in the rate reduction program, and which requires the commission to provide for an automatic enrollment option.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.901 and 39.903, 39.905.

§25.451. Administration of the System Benefit Account.

(a) Purpose. The purpose of this section is to implement the system benefit account, including its administration, establishment of a revenue requirement, fee collection procedures, and review and approval of accounts pursuant to the Public Utility Regulatory Act (PURA) §39.901 and §39.903.

(b) Application. Except as provided in PURA §39.102(c), this subchapter applies to electric utilities, retail electric providers, retail electric providers pursuant to PURA §39.352(g), and transmission and distribution utilities. This section applies to municipally owned electric utilities and electric cooperatives no sooner than six months preceding the date on which a municipally owned electric utility or an electric cooperative implements customer choice in its certificated service area.

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

(1) Electric customer - As defined in PURA §31.002(16).

(2) Electric utility - As defined in PURA §31.002(6).

(3) Fiscal year - The State of Texas fiscal year, starting on September 1 of a calendar year, and ending on August 31 of the next year.

(4) Low-income customer - For the purposes of rate reduction program, as defined in §25.454(c) of this title (relating to the Rate Reduction Program). For the purposes of targeted weatherization programs, as defined in §25.453(f) of this title (relating to Targeted Energy Efficiency Programs).

(5) Retail electric provider (REP) - As defined by PURA §31.002(17).

(6) System benefit account - An account with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission.

(7) System benefit fee - A nonbypassable fee set by the commission to finance the system benefit account. The fee shall be charged to retail electric customers based on the amount of kWh of electric energy used.

(8) Transmission and distribution utility (TDU) - As defined in PURA §31.002(19).

(d) System benefit fee.

(1) The commission shall set the amount of the system benefit fee for the next fiscal year at or before the last open meeting scheduled for July of each year.

(2) The amount of the fee will be based on the total revenue requirement as determined in subsection (e) of this section and the projected retail sales of electricity in megawatt hours in the state as determined in subsection (f) of this section.

(3) The commission may, at any time during the fiscal year, review the revenue requirement, projected sales of electricity, or the system benefit account payments and balance, and revise the system benefit fee for the remainder of the year to accomplish the purposes of PURA §39.901 and §39.903. The commission may issue an order revising the fee amount. The TDUs shall implement the new fee in billings to the electric retail providers within 30 days of the date such order is issued.

(4) The fee may not exceed $0.50 per megawatt hour (MWh), except beginning in January 1, 2002, and until December 31, 2006, it may be set in an amount not to exceed $0.65 per MWh if necessary to fund at least a 10% reduction in rates for qualifying low-income customers.

(e) Revenue requirement. The revenue requirement used by the commission to set the system benefit fee for each fiscal year shall be established as provided by this subsection.

(1) The total revenue requirement used to set the amount of the system benefit fee will be the total of the revenue requirements determined under paragraphs (2)-(5) of this subsection, including the shortfall, if any, in funding for the Texas Education Agency (TEA) from the previous year.

(2) TEA shall provide by June 1 of each year its estimate of the amount required to fund school funding losses as determined under PURA §39.901(b) and (c) for the next fiscal year. If TEA does not provide its estimate by this date, the commission may use the amount determined by TEA under PURA §39.901(b) and (c) for the current fiscal year in setting the amount of the fee for the following fiscal year.

(3) The revenue requirement needed to effect the rate reduction for low-income customers and the targeted energy efficiency programs shall be determined as follows:

(A) The revenue requirement for reduced rates as provided by PURA §39.903(h)-(l) shall be based on the average annual consumption of electric energy by low-income customers and the number of such customers enrolled in a rate reduction program as of June 1 of each year, or the number of eligible participants as listed in the Texas Department of Human Services' client database, plus a projection for new enrollees, to account for growth in enrollment, based on the latest available census data and as determined by the commission. The average annual expenditure by a low-income customer for electric energy shall be derived from the latest available data.

(B) The revenue requirement for targeted energy efficiency programs, including a program plan, to be administered by the Texas Department of Housing and Community Affairs (TDHCA) shall be provided to the commission by June 1 of each year. If TDHCA does not provide an estimate by that date, the commission may use the estimate from the previous fiscal year, the actual amount spent on the programs in the prior fiscal year, or any other amount the commission determines to be reasonable.

(C) Each REP shall submit to the commission not later than June 1 of each year:

(i) A report listing the number of low-income customers enrolled in the rate reduction program in the previous year, except that in the year 2002, the report shall list enrollment for January through May of 2002;

(ii) The amount of reimbursement requested and received from the fund for the previous year, or for the year 2002 report, the first five months of the year 2002;

(iii) The aggregate electric energy consumption in kilowatt hours (kWh) for all low-income customers enrolled in the program for the previous year, or for the 2002 report, the first five months of the year 2002;

(iv) The total amount of rate discounts provided to the low-income customers in the previous year, or for the 2002 report, the first five months of the year 2002; and

(v) Copies of promotional materials regarding this program provided to customers during the previous 12 months.

(4) The commission shall include in the calculation of revenue requirement any additional amounts authorized by the legislature, including appropriations to the Public Utility Commission for customer education programs and any other authorized purpose, and for the Office of Public Utility Counsel.

(5) The commission shall include in the calculation of the revenue requirement the operating costs for the low income discount administrator.

(f) Electric sales estimate. Based on the Annual Update of Generating Electric Utility Data report, or any report that may replace it, the commission staff shall file its estimate of projected retail sales of electricity in the state for the following fiscal year by June 1 of each year. An electric utility may seek a change to the staff's estimate by filing its own estimate with support documentation of the estimate. The commission shall determine the most reasonable estimate when it sets the system benefit fee.

(g) Remittance of fees after January 1, 2002.

(1) Beginning in January 1, 2002, each electric utility, transmission and distribution utility, municipally owned electric utility, or electric cooperative collecting the system benefit fee from the retail electric providers in its service area, shall remit the fees to the Comptroller within five business days of the receipt of fees.

(2) Remittance of funds to the Comptroller shall comply with the Comptroller's rules governing any such deposits. Amounts over $250,000 shall be transferred electronically.

(3) Deposits due to the system benefit account pursuant to PURA §39.352(g) shall be transferred to the Comptroller at the time of the filing of annual report pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).

(4) The collecting utility shall account for all system benefit fees received from the retail electric providers in its service area separately from any other account in its records.

(h) Billing requirements.

(1) A transmission and distribution utility, a municipally owned utility, or an electric cooperative shall send billing statements to the retail electric providers indicating the amount of system benefit fee owed for the specified period. The billing and payments between the transmission and distribution utility and the retail electric providers shall be governed by §25.214 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities).

(2) A retail electric provider shall include on the monthly bill sent to each customer a charge for the system benefit fee, as approved by the commission for that period, and based on the kWh of electric energy consumed by that customer. The charge may be shown as a separate item on the bill. The retail electric provider shall account for the system benefit fee collected from its customers separately from any other account in its records. The retail electric provider shall remit to the transmission and distribution utility an amount equal to the kWh of electric energy consumed by the customer in the utility's service area times the fee approved by the commission.

(i) Reporting and auditing requirements.

(1) A retail electric provider, municipally owned utility, or electric cooperative shall prepare and send to the commission a monthly activity report on a form prescribed by the commission. The monthly report shall be due on the fifteenth day following the end of the reporting month. The report shall include, but not be limited to:

(A) The number of MWh of electricity sold;

(B) The amount of the system benefit fee billed;

(C) The amount of the system benefit fee collected;

(D) The amount of the system benefit fee remitted to the transmission and distribution utility;

(E) The amount of rate reduction discount granted to the eligible low-income customers for the prior month;

(F) The number of low-income customers enrolled in its rate reduction program for the prior month; and

(G) The amount of reimbursement received for the prior month's discounts provided.

(2) Each retail electric provider offering rate reduction discounts to eligible customers shall keep records of such discounts to enable an audit by the commission or its agent, for at least three years from the date the discount is first given to the customer.

(3) Each transmission and distribution utility, municipally owned utility, or electric cooperative, collecting and forwarding the system benefit fee to the Comptroller, shall file with the commission at the time the money is sent a report, on the commission prescribed form, stating for each service territory the amount of fee billed and the amount forwarded to the Comptroller.

(j) Reimbursement for the rate reduction discount. The retail electric provider, municipally owned utility, or electric cooperative shall include in the monthly report to the commission the amount of the rate reduction discounts granted to their eligible customers. The commission shall, within five working days of receipt of the monthly report, prepare an authorization for reimbursement to the retail electric provider, a municipally owned utility, or electric cooperative in a form prescribed by the commission. The prescribed form shall include instructions for direct deposit of the reimbursement into the bank account of the retail electric provider, municipally owned utility, or electric cooperative bank account. The Comptroller shall transfer the funds by the close of the next business day following receipt of an authorization from the commission.

(k) Establishment of fee and collection of funds prior to January 1, 2002. Prior to the beginning of customer choice on January 1, 2002, the commission shall determine the level of the system benefit fee based upon the expenses authorized for payment out of the system benefit account or as needed for purposes of PURA.

(1) An estimate of projected sales of electricity for the period shall be filed by the commission staff prior to the issuance of a commission order.

(2) The commission shall issue an order setting the amount of the system benefit fee, assessing that amount against each electric utility in proportion to its retail electric sales out of the total retail sales in the state, and directing the utilities on the method and timing of payment.

§25.453. Targeted Energy Efficiency Programs.

(a) Purpose. The purpose of this section is to implement the targeted energy efficiency programs for eligible low-income customers, including administration, program design, and program evaluation. All programs carried out under this section must reduce energy consumption and costs for customers.

(b) Application. This section applies to all electric utilities service areas in the state, except service areas of municipally owned utilities or electric cooperatives that have not opted in to competition and the service area of a utility that is referenced in Public Utility Regulatory Act (PURA) §39.102(c).

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

(1) Deemed savings - A pre-determined, validated estimate of energy and peak demand savings attributable to an energy efficiency measure in a particular type of application, which a utility may use instead of energy and peak demand savings, determined through measurement and verification process.

(2) Demand - The rate at which electric energy is delivered to or by a system at a given instant, or averaged over a designated period, usually expressed in kilowatts (kW) or megawatts (MW).

(3) Energy efficiency program (program) - Programs that are aimed at reducing the rate at which electric energy is used by appliances, equipment and processes. Reduction in the rate of energy used may be obtained by substituting technically more advanced equipment to produce the same level of end-use services with less electricity; adopting technologies and processes that reduce heat or other energy losses; or reorganizing of processes to make use of waste heat.

(4) Energy efficiency measures - Equipment, materials, and practices which, when installed and used at a customer site, result in a measurable and verifiable reduction in purchased electric energy consumption, measured in kilowatt-hours (kWh), or peak demand, measured in kilowatts (kW), or both.

(5) Energy efficiency service provider - A person who installs energy efficiency measures or performs other energy efficiency services. For the purposes of this section, entities currently under contract with the Texas Department of Housing and Community Affairs (TDHCA) to provide United States Department of Energy Weatherization Assistance Program for Low-Income Persons (US DOE WAPFLIP) services are energy efficiency services providers.

(6) Energy savings - A quantifiable reduction in a customer's consumption of energy.

(7) Inspection - On-site examination of a program to verify that a measure has been installed and is capable of performing its intended function and is in compliance with TDHCA health and safety standards.

(8) Measurement and verification (M&V) - Activities intended to determine the actual kWh and kW savings resulting from energy efficiency programs.

(d) Energy efficiency goal requirement under PURA §39.905. Electric utilities may count savings achieved under this program towards the requirements of §25.181 of this title (relating to the Energy Efficiency Goal).

(e) Compliance with state and federal law. Programs offered under the system benefit account shall maintain TDHCA's current service delivery structure and quality standards unless alternative programs are necessary to meet performance requirements under this section. The energy efficiency program under the system benefit account may fund the equivalent of 25% of the state's U.S. DOE WAPFLIP allocation to programs structured to comply with the cost-sharing requirements under the federal fiscal year 2000 Interior and Related Agencies Omnibus Appropriations Bill. TDHCA shall notify the commission of changes in other state and federal law that affect the system benefit account programs and amend its low-income energy efficiency plan as appropriate.

(f) Eligibility criteria. A beneficiary of the targeted energy efficiency programs must be a customer of a retail electric provider, or a municipally owned utility or an electric cooperative that offers customer choice, and meet the state's income eligibility guidelines for the United States Department of Health and Human Services Low-Income Home Energy Assistance Program (US DHHS LIHEAP) or US DOE WAPFLIP.

(g) Program transition. Existing programs to fund low-income weatherization services under contracts between individual utilities and TDHCA shall continue until utilities enter the competitive market. An electric utility currently under contract with TDHCA and entering the competitive market shall enter into a successor in interest agreement with TDHCA to transfer program materials, funding and responsibilities to TDHCA.

(h) Low-income energy efficiency plan.

(1) Schedule. TDHCA shall:

(A) By June 1, 2001, file a low-income energy efficiency plan for the years January 1, 2002 and beyond in accordance with subsection paragraph (2) of this subsection.

(B) By June 1, 2003, and annually thereafter, file its updated low-income energy efficiency plan in accordance with paragraph (2) of this subsection.

(C) No later than April 1, 2002, and quarterly thereafter, file quarterly reports in accordance with subsection (i) of this section.

(D) No later than April 1, 2003, and annually thereafter, file final reports in accordance with subsection (j) of this section.

(2) Low-income energy efficiency plan. The TDHCA low-income energy efficiency plan shall describe how TDHCA intends to achieve the legislative mandate and the requirements of this section. Beginning in January 1, 2002, the plan shall be on a calendar year cycle and may cover a multiple-year period. The plan shall propose an annual budget in accordance with subparagraph (E) of this paragraph. TDHCA's energy efficiency plan shall include:

(A) A summary description of every program being implemented through the system benefit account, including programs fully funded, programs funded in part, programs funded statewide and programs funded regionally, including pilot projects. Each program summary shall include a description of:

(i) The manner in which the program reduces energy consumption.

(ii) The manner in which energy and demand savings are measured.

(iii) The anticipated number of households assisted.

(iv) The projected eligible population.

(B) A description of the monitoring responsibilities and reporting requirements of the contractor, TDHCA, and any other parties conducting reviews, audits, inspections, and oversight.

(C) A description of outreach efforts, including the development of a publication for statewide distribution explaining the availability of system benefit fund energy efficiency programs. The publication will also provide a toll-free number for customers to call for information about referrals to participating local energy efficiency service providers.

(D) A description of the training and technical assistance to be made available to contractors under programs funded through the system benefit account.

(E) The proposed annual budget required to implement the TDHCA energy efficiency plan. The proposed budget should detail funding allocations to energy efficiency services providers, TDHCA's administrative costs, including monitoring, training, and technical assistance and outreach, and the rationale and methodology used to estimate the proposed expenditures. If the proposed budget is more than 10% higher than the previous year's budget or expenditure level, the plan should include a detailed explanation for the need for additional funding and, if necessary, an implementation plan for an expanded program. In the budget:

(i) The total cost of administration may not exceed 10%.

(ii) Funding allocations to energy efficiency service providers must reflect the proportional size of the eligible customer base for all applicable areas in the state.

(F) A discussion of the solicitation process TDHCA plans to use to select energy efficiency service providers, including the manner in which TDHCA will use to post notice of requests for proposals, minimum contractor qualifications, and any other facts that may be considered when evaluating a program. Except for pilot projects and existing contractors under the US DOE WAPFLIP, competitive solicitation shall be the method for contract selection. TDHCA may request a waiver from the requirements of a competitive solicitation for good cause.

(G) A discussion of the public participation process TDHCA used in the development of programs to be funded through the system benefit account, including a summary of comments submitted by parties during the process.

(H) All contracts shall include the customer protection provisions required under §25.181(n) of this title. Contracts shall provide a complaint process that allows:

(i) The energy efficiency service provider to file a complaint against a TDHCA.

(ii) A customer to file a complaint against an energy efficiency service provider. TDHCA may use customer complaints as a criterion for disqualifying energy efficiency service providers from participating in the program.

(iii) Complaints unresolved within 60 days shall be reported to the commission.

(3) Minimum program requirements. Programs shall encourage a comprehensive approach to energy efficiency either by installing multiple measures or through the coordination with other programs. Programs must describe the manner in which they are coordinated with the existing US DOE WAPFLIP.

(A) Each program must be cost-effective. An energy efficiency program is deemed to be cost-effective if the cost of the measure installed is less than or equal to the benefits of the measure. The benefit of the measure is the value of the purchased electrical energy saved to the customer based on the price to beat in the applicable service area. The present value of the measure benefits shall be calculated over the projected life of the measure, not to exceed ten years.

(B) Each program must identify the goal it is intended to achieve and the goal for the calendar year.

(C) Each program must identify a timeline and milestones, including a quarterly production and expenditure schedule.

(D) Programs shall result in consistent and predictable energy savings over a seven-year period.

(E) Programs shall disclose potential adverse environmental or health effects associated with the energy efficiency measures to be installed.

(F) Programs shall include the procedures for measuring and reporting the energy and peak demand savings from installed energy efficiency measures consistent with the requirements of paragraph (5) of this subsection.

(G) Pilot projects to test new concepts and technologies may be implemented in limited geographic areas prior to making the program available statewide.

(H) Programs or measures not eligible for incentive payments or compensation are those that:

(i) Do not reduce energy consumption and energy costs.

(ii) Would achieve demand reduction by eliminating an existing function, shutting down a facility, or operation, or would result in building vacancies.

(iii) Result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(4) Commission review. Prior to the implementation of the energy efficiency program, the commission shall review the energy efficiency plan. The commission may consider, in addition to the requested budget, the amount of SBF funds available and the percentage increase in program funding requested from the previous year. Deemed savings shall be reviewed in accordance with the guidelines of §25.181 of this title.

(5) Monitoring, inspection, and measurement. Each program shall be subject to monitoring of operation and management of contracts, as well as measurement of savings.

(A) TDHCA is responsible for the monitoring of contract operation and management. Findings of fraud shall be reported to the commission immediately.

(B) TDHCA is responsible for the measurement of energy and peak demand savings, using a commission-approved measurement and verification protocol. Commission approved deemed energy and peak demand savings may substitute for a measurement and verification protocol.

(C) Each customer shall sign a certification indicating that the measures contracted for were installed before final payment is made to the energy efficiency service provider.

(D) A statistically significant sample of installations will be subject to on-site inspection by TDHCA in accordance with the protocol set out for the program. Failure to meet health and safety, and installation standards may be cause for contract termination.

(i) Quarterly energy efficiency report. The quarterly energy efficiency report shall provide the information listed below:

(1) The most current information available comparing the baseline and milestones achieved under the program, including the number of households served under each program.

(2) A statement of funds expended by energy efficiency service providers and TDHCA program administration during the quarter.

(3) A statement of any funds that were committed but not spent during the quarter.

(j) Annual energy efficiency report. The annual energy efficiency report shall provide the information listed below:

(1) The most current information available comparing projected savings to reported savings.

(2) The most current information available comparing the baseline and milestones achieved under the program.

(3) A statement of funds expended by the energy efficiency service providers and TDHCA program administration.

(4) A statement of any funds that were committed but not spent during the year, by program.

(5) A statement regarding the number of households served by each program.

(6) A summary of the previous year's operation and management monitoring and installation inspection findings.

(7) Any other information prescribed by the commission.

(k) Unspent funds. TDHCA is responsible for the expenditure of funds in a timely manner, while ensuring that eligible customers receive an equitable share of services. TDHCA will meet production schedules by assigning quarterly expenditure and production goals to each energy efficiency service provider. No later than July 1 of each year, TDHCA shall submit a corrective action plan for contracts experiencing low production and expenditure levels.

(1) In the case of individual contracts where the expenditure or production level is between 15% and 25% below schedule, TDHCA shall develop a corrective action plan within 30 days that will ensure timely expenditure of funds.

(2) In the case of contracts where expenditures are over 25% below production and expenditure schedule, excess funds shall be made available to alternate service providers for the purpose of carrying out projects in the designated county(ies).

(3) In its annual energy efficiency plan, TDHCA shall provide for the selection of an alternate service provider for the designated area if production was not met in the previous year.

(4) Alternate service providers shall be selected in accordance with subsection (h)(2)(F) of this section.

§25.454. Rate Reduction Program.

(a) Purpose. The purpose of this section is to define the low-income electric rate reduction program, establish the discount rate calculation, and specify enrollment options and processes.

(b) Application. This section applies to electric utilities as defined in the Public Utility Regulatory Act (PURA) §31.002(6); retail electric providers (REPs); providers of last resort (POLR) as defined in PURA §39.106; and the municipally owned electric utilities and electric cooperatives no sooner than six months preceding the date on which a municipally owned utility or an electric cooperative implements customer choice.

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

(1) Discount amount - The amount of discount an eligible low-income customer is entitled to receive from any REP in the customer's area, expressed as cents per kWh.

(2) Discount percentage - The percentage of discount established by the commission annually, or as needed, and applied to the lower of the price to beat or POLR rate in a particular service territory.

(3) Discount rate - A rate charged by a REP or POLR that includes the commission- established discount.

(4) Electric service identifier (ESI Id) - The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by ERCOT or another independent organization.

(5) Low-income customer - An electric customer, whose household income is not more than 125% of the federal poverty guidelines, or who receives food stamps from the Texas Department of Human Services (TDHS) or medical assistance from a state agency administering a part of the medical assistance program.

(6) Low-Income Discount Administrator (LIDA) - A third-party administrator contracted by the commission to administer the rate reduction program.

(7) POLR rate - The rate for the standard retail service package offered by the provider of last resort (POLR) in the area under §25.43 of this title (relating to the Provider of Last Resort).

(8) Price to beat (PTB) - A price for electricity, as determined pursuant to PURA §39.202, charged by an affiliated REP to customers in its service area.

(9) Rate reduction program - A program to provide reduced electric rates for eligible low-income customers, in accordance with PURA §39.903(h).

(10) Registration agent - Entity designated by the commission to administer settlement and premise data and other processes concerning a customer's choice of electric service provider in the competitive electric market in Texas.

(d) Rate reduction program. All eligible low-income customers shall be entitled to receive a discount rate, as determined by the commission pursuant to this section, on their electric bills from their retail electric providers.

(1) Eligibility criteria. A low-income customer, as defined in subsection (c) of this section, is entitled to receive a discount rate.

(2) Discount percentage. The commission shall establish a discount percentage each year at the time the commission sets the system benefit fee. The discount percentage:

(A) Shall not be less than 10% and may, if there were funds sufficient to support a higher level, be set as high as 20%.

(B) May be recalculated during the year as necessary.

(3) Discount amount. A REP shall provide to each eligible low-income customer a rate discounted by an amount as established by this subsection for the area in which the customer is located.

(A) The commission shall calculate and establish the low-income discount amount for distinct geographical areas, which shall correspond to the certified electric utility service areas, or smaller areas designated by the commission as POLR service areas.

(B) The discount amount shall be calculated by taking the lower of the POLR rate and the PTB to establish the baseline rate. The discount amount shall be calculated by multiplying the baseline rate by the discount percentage.

(C) If the commission changes the discount amount, by either changing the discount percentage or establishing a new baseline rate for any area, then REPs must implement the resulting change in the discount amount in their billings to customers within 30 days of the date the commission issues its order.

(D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Account) for amounts equal to the documented discount amounts they have provided to eligible low-income customers.

(4) Each eligible low-income customer shall be entitled to receive from any REP in the customer's area a discount rate equal for each kWh of electricity consumed. The discount rate shall be the rate the customer would otherwise be charged by that REP minus the discount amount.

(e) Terms of customer enrollment. Eligible customers will be enrolled in the low-income discount rate program through automatic enrollment or a self-certification process implemented by a low-income discount administrator.

(1) Automatic enrollment. Automatic enrollment is an electronic process of identifying customers eligible for the low-income discount rate by matching data from agencies that operate programs serving eligible clients with electric utility data maintained by the ERCOT ISO's registration agent. The transfer of data for the purposes of establishing and maintaining the automatic enrollment process shall occur between TDHS, ERCOT ISO, and the low-income discount administrator (LIDA). To accomplish the purposes of this subsection, the commission shall:

(A) Contract with a person to perform the LIDA function. This person shall perform all necessary tasks to establish and maintain the automatic enrollment system, or any other related task, as specified in the contract.

(B) Enter into a memorandum of understanding with TDHS to establish the respective duties of the two agencies.

(C) Develop a protocol to define the automatic enrollment process and the respective duties of the participating entities sharing data.

(2) Self-certification. Self-certification is a form of alternate enrollment available to those eligible electric customers who do not receive benefits from TDHS, but whose combined household income does not exceed 125% of federal poverty guidelines. Self-certification enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) Processing the self-certification applications, which shall be filed on a form developed by the commission.

(B) Adding qualified applicants to the list of eligible electric service identifiers (ESI Ids).

(C) Forwarding to the REPs the list of ESI Ids, with monthly updates.

(D) Maintaining a toll-free number for inquiries. This number shall be displayed on the self-certification application.

(E) Conducting outreach and distributing self-certification applications.

(3) Period of customer enrollment: Once enrolled, the eligible customer shall receive the discount rate for 13 months from the date of enrollment.

(A) The continued eligibility status of the customer shall be reviewed during the twelfth month after the date of initial enrollment, and every 12 months thereafter.

(B) Customer who continues to receive TDHS benefits as defined in subsection (c) of this section, will have eligibility for the discount rate renewed for a new 13-month cycle.

(f) Protocol. The purpose of the protocol is to define responsibilities of the participating entities. Other technical information may be added to the request for proposal for the LIDA and memoranda of understanding between the parties as necessary to establish the automatic enrollment process, in accordance with this section.

(1) TDHS shall:

(A) No later than April 1, 2001, provide the LIDA with a complete database of its clients, stripped of all information except as listed below, and sorted by ZIP codes. For each client, the database shall include:

(i) Full name; and

(ii) Service and mailing addresses, including city, state, and 5-digit ZIP code, following the U.S. Postal Service standards;

(B) Provide the LIDA with monthly updates of the names, or ESI Id if available, and addresses of new clients and any address changes for existing clients who move.

(C) Provide monthly updates of clients who are no longer receiving benefits from TDHS as of the twelfth month of client enrollment in the low-income discount program.

(D) Distribute the self-certification applications in TDHS offices statewide.

(2) ERCOT ISO shall:

(A) No later than April 1, 2001, allow the LIDA to have access to a database of residential premises that includes for each premise:

(i) Service address, including city, state, and 5-digit ZIP code, following the U.S. Postal Service standards; and

(ii) ESI Id.

(B) Provide the LIDA with monthly updates of new residential premises and their ESI Ids.

(C) Provide the LIDA with monthly updates of residential premises that have had a change of tenant (i.e., move-out/move-in).

(D) Provide the LIDA with monthly updates of those customers and ESI Ids who switched retail electric providers.

(3) LIDA shall:

(A) Retrieve the initial database of residential premises and ESI Ids from ERCOT ISO.

(B) Retrieve the initial database of clients from TDHS.

(C) Establish a list of eligible ESI Ids by initially, and then periodically, comparing the addresses from the ERCOT ISO and TDHS databases and identifying records that reasonably match.

(D) Retrieve on a monthly basis the ERCOT ISO's update of change of tenants and remove those ESI Ids from the list of eligible ESI Ids.

(E) Retrieve on a monthly basis the ERCOT ISO's list of new premises and add those to the database used for matching.

(F) Retrieve on a monthly basis the TDHS list of addresses of new clients and clients who have moved and add those that reasonably match the ERCOT ISO list to the list of eligible ESI Ids.

(G) Implement a program whereby potential low-income customers can self- certify for enrollment in the rate reduction program, as specified in subsection (e)(2) of this section.

(H) Develop procedures to notify customers of enrollment, expiration, and opportunities for renewal of the rate discount program.

(I) Annually report to the commission as to the number of customers enrolled through the automatic enrollment process and the number of customers enrolled though self-certification.

(J) Make the database of eligible ESI Ids available to the REPs.

(4) A REP shall:

(A) Retrieve on a monthly basis the list of eligible ESI Ids from the LIDA.

(B) Compare the list of its customers with the list of eligible ESI Ids, and enroll those ESI Ids that match in the rate discount program. The customer enrollment shall take place within the first billing cycle if notification is received within seven days before the end of the billing cycle or within 30 days after the REP receives notification from the LIDA, whichever comes first.

(C) Develop procedures to notify customers of enrollment, expiration, and opportunities for renewal of the rate discount program.

(D) Notify customers twice a year about the availability of the rate discount program.

(g) Confidentiality provision.

(1) All data transfers shall be conducted under the terms and conditions of a TDHS confidentiality agreement so as to protect customer privacy. The acquired data shall only be used for the purposes of implementing automatic enrollment.

(2) Data shall not be provided to the retail electric providers in advance of registering customers. LIDA's protocols and procedures shall be developed in a way that maintains the customer eligibility for the rate discount as proprietary data not to be used for any other purpose.

§25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.

(a) Purpose. The purpose of this section is to implement the system benefit fee and associated programs as they relate to municipally owned utilities and electric cooperatives.

(b) Applicability. This section applies to municipally owned utilities and electric cooperatives, no sooner than six months preceding the date on which a municipally owned utility or an electric cooperative implements customer choice.

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

(1) Electric cooperative - As defined in §25.5 of this title (relating to Definitions).

(2) Municipally owned utility - As defined in §25.5 of this title.

(d) Implementation of fee collection. Not earlier than six months before the onset, and not later than the day of implementation of customer choice in its service territory, a municipally owned utility or an electric cooperative shall impose on its customers, including its transmission and distribution customers who choose to receive a single bill from the municipally owned utility or electric cooperative, a system benefit fee, as determined by the commission pursuant to §25.451(d) of this title (relating to the Administration of the System Benefit Account).

(e) Billing requirements. Each municipally owned utility or electric cooperative shall comply with the billing requirements in §25.451(h) of this title.

(f) Remittance of funds. The system benefit fee collected by a municipally owned utility or an electric cooperative shall be remitted to the Texas Comptroller of Public Accounts (Comptroller) pursuant to §25.451(g) of this title.

(g) Fee reduction. The commission shall, on a request by a municipally owned utility or an electric cooperative, reduce the system benefit fee, imposed on its retail customers, by an amount equal to the amount provided by the requesting municipally owned utility or an electric cooperative, or their retail customers, for local, low-income programs and local programs that educate customers about the retail electric market in a neutral and non- promotional manner. The qualifying low-income programs must reduce the cost of electricity to the recipients of such programs and be targeted at customers whose total household income does not exceed 125% of federal poverty guidelines. At the time of its request, and once a year thereafter, the municipally owned utility or an electric cooperative shall provide to the commission the following:

(1) The total in kWh of electric power sold to its retail customers in the 12 months preceding the request;

(2) The total amount spent on the qualifying, local, low-income programs, for which the reduction is being sought, in the 12 months preceding the date of request;

(3) The total amount spent on qualifying, local, educational programs, for which the reduction is being sought, in the 12 months preceding the date of request;

(4) The total amount projected to be spent on qualifying, local, low-income programs, for which reduction is being sought, in the 12 months following the date of request; and

(5) The total amount projected to be spent on local, qualifying, educational programs, for which reduction is being sought, in the 12 months following the date of request.

(h) Reduced rate. A municipally owned utility or an electric cooperative shall establish a reduced rate for its low-income customers, who are eligible for a rate discount pursuant to §25.454(d) of this title (relating to the Rate Reduction Program), which will be discounted off the standard retail service package established under PURA §40.053 or §41.053, as appropriate.

(i) Reduction in program funding. If a municipally owned utility or an electric cooperative requests a reduction in fees paid pursuant to subsection (g) of this section, then the portion of the system benefit fee proceeds allocated for low-income or education programs for that municipally owned utility or electric cooperative shall be reduced by the amount of such reduction.

(j) Reimbursement. To receive reimbursement for the rate discounts provided to eligible low- income retail customers, the municipally owned utility or electric cooperative shall comply with §25.451(j) of this title. The municipally owned utility or electric cooperative may seek reimbursement for the difference between the reduced rate charged to its low-income customers and the standard retail service package established under PURA §40.053 or §41.053, as appropriate. The total annual reimbursement for a municipally owned utility or electric cooperative shall not be more than the proportional amount a municipally owned utility or electric cooperative has paid into the system benefit account. The proportional amount shall be established by the commission in the following manner:

(1) By calculating a share of the total revenue in the system benefit account that is spent on each of the programs as described in PURA §39.903(e) in the preceding 12 months;

(2) By calculating the share of total spending on programs pursuant to PURA §39.903(e)(1) paid by each municipally owned utility or electric cooperative into the system benefit account; and

(3) Any such calculations can be amended by the commission as necessary throughout the year.

(k) Reporting requirements. If a municipally owned utility or an electric cooperative continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the municipally owned utility of electric cooperative shall file with the commission two types of reports. One report will identify the amount of system benefit fee collected and paid by its retail customers pursuant to §25.451(i)(1) of this title; the second report shall identify the amount of system benefit fee paid by the transmission and distribution only customers pursuant to §25.451(i)(3) of this title. Both types of reports shall be filed with the commission at the time the system benefit fee is paid pursuant to §25.451(g) 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 August 30, 2000.

TRD-200006095
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 72. STAFF LEASING SERVICES

16 TAC §72.90

The Texas Department of Licensing and Regulation proposes amendments to §72.90 concerning staff leasing services.

The amendments to §72.90 update the cites for the Texas Labor Code Chapter 91 from (Vernon 1997) to (Vernon 1999), 16 Texas Administrative Code Chapter 60 from (1994) to (1999), and Texas Revised Civil Statutes Annotated Article 9100 (Vernon 1991) to the Texas Occupations Code, Chapter 51 (Vernon 1999); and establishes a written enforcement plan that provides notice to license holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the Department determines the amount of a proposed administrative penalty.

The justification for these changes is to comply with statutory changes made by the 76th Legislature to the Labor Code Chapter 91, §91.021(d) Sanctions and the codification of Article 9100 into the Occupations Code.

Jimmy Martin, Director of the Enforcement Division of the Texas Department of Licensing and Regulation, has determined that for the first five-year period these sections are in effect there will be no fiscal implications for state or local government as a result of the proposed amendments.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased compliance with the Labor Code, §91 requirements.

The anticipated economic effect on small businesses and persons who are required to comply with the sections as proposed will be none.

The cost of compliance will be none.

Comments on the proposal may be submitted to Jimmy Martin, Director of the Enforcement Division, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-2872, or electronically: jimmy.martin@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

The amendments are proposed under the Texas Labor Code, Chapter 91, which authorizes the Executive Director of 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 Codes affected by the amendments are the Texas Labor Code, Chapter 91 (Vernon 1999) and the Texas Occupations Code, Chapter 51 (Vernon 1999).

§72.90. Sanctions - Administrative Sanctions/Penalties

(a) If a person violates Texas Labor Code Annotated §91 (Vernon 1999 [~~1997~~]), or a rule, or order of the Commissioner [~~commissioner~~] or Commission [~~commission~~] relating to this Code and Chapter, proceedings may be instituted to impose administrative sanctions and/or recommend administrative penalties in accordance with this Code or the Texas Occupations Code, §51 (Vernon 1999) [~~Texas Revised Civil Statutes Annotated article 9100 (Vernon 1991)~~], and 16 Texas Administrative Code Chapter 60 (1999) [~~(1994)~~] of this title (relating to the Texas Department of Licensing and Regulation).

(b) Determination of the amount of a proposed administrative penalty or the degree of a proposed sanction, the following factors are taken into consideration.

(1) The severity or seriousness of the violation.

(2) Whether the violation was willful or intentional.

(3) Whether the license holder acted in good faith to avoid or mitigate the violation.

(4) Whether the license holder has engaged in similar violations in the past, and the penalties previously assessed by the department against other license holders under this chapter.

(5) The amount necessary to deter a future violation.

(6) Efforts made to correct the violation.

(7) Any other matter that justice may require.

(c) Enforcement Plan-Penalties and Sanctions
Figure: 16 TAC §72.90(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 September 1, 2000.

TRD-200006206
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 15, 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 an amendment to §74.80 concerning the fees for the Elevators, Escalators, and Related Equipment program.

The amendment to §74.80 proposes to decrease the waiver/delay application fee from $100 to $50 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 above the amount required by the Department to cover costs. The decrease would not adversely affect the administration or 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 these sections are in effect there will be minimal fiscal implications for state government and no fiscal implications on local government.

Mr. Ferrie also has determined that for each year of the first five years these sections are in effect the public will benefit from a reduction in cost.

The anticipated economic effect on small businesses or buildings owners who are required to comply with this section as proposed will be a $50 reduction in cost to request a waiver/delay.

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 September 25, 2000 at 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: $50 [~~$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 September 1, 2000.

TRD-200006203
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 162. SUPERVISION OF MEDICAL SCHOOL STUDENTS

22 TAC §162.2

The Texas State Board of Medical Examiners proposes an amendment to §162.2, regarding exemptions related to the supervision of medical school students. This will clarify that a student must be enrolled in the medical school.

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

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification that a student must be enrolled in the medical school. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

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

The Texas Occupations Code, Annotated, §151.052 is affected by the amendment.

§162.2. Exemption.

A physician is not required to register with or provide certification to the board if he or she supervises a medical student who is enrolled [~~in training~~] at an approved medical school. An approved medical school is one that has been accredited by the Liaison Committee on Medical Education or the American Osteopathic Association and subsequently approved by the board.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006191
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 164. PHYSICIAN ADVERTISING

22 TAC §164.4

The Texas State Board of Medical Examiners proposes new §164.4, relating to the use of the term board certification by physicians in advertising. This section will outline the criteria to be followed when using the term board certification so as not to be false or misleading in content.

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

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be outlined criteria to be followed when using the term board certification so as not to be false or misleading in content. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

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

The Texas Occupations Code, Annotated, §164.052(a)(6) is affected by the new section.

§164.4. Board Certification.

(a) A physician's authorization of or use in any advertising for his or her practice of the term "board certified," or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising unless the physician discloses the complete name of the specialty board which conferred the aforementioned certification. Furthermore, the certifying organization must be a member board of the American Board of Medical Specialties, the American Osteopathic Association, or must meet the following criteria.

(1) The certifying board shall require all physicians who are seeking certification to successfully pass a written or an oral examination or both which tests the applicants' knowledge and skills in the specialty or subspecialty area of medicine. All or part of the examination may be delegated to a testing organization. All examinations shall be subject to a psychometric evaluation. The examinations shall be a minimum of 16 hours in length. Those specialty boards which require as a prerequisite for certification prior passage of an examination in a related specialty or subspecialty area by a certifying board that is a member of the American Board of Medical Specialties (ABMS) or the American Osteopathic Association (AOA), may grant up to eight hours credit for the ABMS or AOA qualifying board examination toward the 16 hour testing requirement.

(2) The certifying board has been determined by the Internal Revenue Service of the United States Department of the Treasury to be a bona fide nonprofit corporation or organization under §501(c) of the Internal Revenue Code.

(3) The certifying board has a permanent headquarters and staff.

(4) The certifying board shall require all applicants who are seeking certification to have satisfactorily completed a postgraduate training program accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the appropriate Royal College of Physicians and Surgeons that includes identifiable and substantial training in the specialty or subspecialty area of medicine in which the physician is seeking certification. This identifiable training shall be deemed acceptable unless determined by the Board of Medical Examiners to be inadequate in scope, content and duration in that specialty or subspecialty area of medicine in order to protect the public health and safety.

(5) The certifying board has at least 100 duly licensed certificants from at least one-third of the states.

(b) A physician may not use the term "board certified" or any similar words or phrase calculated to convey the same meaning if the claimed board certification has expired and has not been renewed at the time the advertising in question was published or broadcast.

(c) The terms "board eligible," "board qualified," or any similar words or phrase calculated to convey the same meaning shall not be used in physician advertising.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006190
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 165. MEDICAL RECORDS

22 TAC §165.2

The Texas State Board of Medical Examiners proposes an amendment to §165.2(b), relating to medical records. The amendment will correct an error regarding the number of days a physician has to release copies of medical records. The amendment will clarify that the number of days required to release medical records is 15 business days, not calendar days.

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

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification that the number of days required to release medical records is 15 business days, not calendar days. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018. A public hearing will be held at a later date.

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

The Texas Occupations Code, Annotated, §§159.006-159.008 is affected by the amendment.

§165.2. Medical Record Release and Charges.

(a) (No change.)

(b) The requested copies of medical records or a summary or narrative of the records shall be furnished by the physician within 15 business days after the date of the request and reasonable fees for furnishing the information shall be paid by the patient or someone on behalf of the patient.

(c)-(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 September 1, 2000.

TRD-200006189
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 171. INSTITUTIONAL PERMITS

22 TAC §171.2, §171.3

The Texas State Board of Medical Examiners proposes amendments to §171.2 and §171.3, relating to training permits. Section 171.3 was previously proposed in the June 23, 2000, issue of the *Texas Register* and is being withdrawn elsewhere in this issue of the *Texas Register*.

The amendments will add Canadian postgraduate training programs to the rule, extend the postgraduate training permit to fourteen months, require that the Education Commission for Foreign Medical Graduates (ECFMG) certificate be notarized, and add the language "for cause" to the sections addressing disciplinary action taken by other state licensing boards.

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the adding of Canadian postgraduate training programs to the rule, extending the postgraduate training permit to fourteen months, requiring that the Education Commission for Foreign Medical Graduates (ECFMG) certificate be notarized, and adding the language "for cause" to the sections addressing disciplinary action taken by other state licensing boards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

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

The Texas Occupations Code, Annotated, §156.001 is affected by the amendments.

§171.2. Postgraduate Resident Permits.

(a) (No change.)

(b) Definitions.

(1) (No change.)

(2) Approved Postgraduate Training Program: a clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior 1994), the Royal College of Physicians and Surgeons of Canada, the College of Family Physicians of Canada, or the Texas State Board of Medical Examiners.

(3) Basic Postgraduate Resident Permit: permit issued by the board in its discretion to a postgraduate resident who has not previously been issued a permit or license to practice medicine in Texas and is enrolled in an approved postgraduate training program in Texas, regardless of his/her PGY status within the program; the permit shall be effective for a fourteen month period [~~one year~~] from the date of issuance and may be renewed for a 14 month [~~one-year~~] period twice; at such time as the basic postgraduate resident permit (and its timely renewals) expires the physician shall not be eligible for another basic postgraduate resident permit.

(4) Advanced Postgraduate Resident Permit: permit issued by the board in its discretion to a postgraduate resident whose basic postgraduate resident permit has expired and who is enrolled in an approved postgraduate training program in Texas, regardless of his/her PGY status within the program; the permit shall be effective for a 14 month period [~~one year~~] from the date of issuance and may be renewed for a 14 month [~~one-year~~] period four times.

(c)-(d) (No change.)

(e) Qualifications of Postgraduate Permit Holders.

(1) (No change.)

(2) To be eligible for a postgraduate resident permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted for cause, cancelled for cause, suspended for cause, revoked or subject to other discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B)-(C) (No change.)

(3) (No change.)

(f) Application for Postgraduate Resident Permit.

(1) (No change)

(2) Basic Postgraduate Resident Permit Application. An application for a basic postgraduate resident permit must be on forms furnished by the board and include the following:

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

(C) a notarized copy of the applicant's valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate, if the applicant is a graduate of a medical school located outside the United States unless the applicant has completed a Fifth Pathway program. All Fifth Pathway applicants must submit a notarized copy of the applicant's ECFMG interim certificate;

(D)-(G) (No change)

(H) an oath on a form provided by the board signed by the applicant swearing that:

(i) the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States is not restricted for cause, cancelled for cause, suspended for cause, revoked, or subject to other discipline;

(ii)-(v) (No change.)

(I) (No change.)

(3) Advanced Postgraduate Resident Permit Application. An application for an advanced postgraduate resident permit must be on forms furnished by the board and include the following:

(A)-(G) (No change.)

(H) a notarized copy [~~certificate~~] of the applicant's permanent Educational Commission for Foreign Medical Graduates (ECFMG) certificate, if the applicant is a graduate of a medical school located outside the United States unless the applicant has completed a Fifth Pathway program. All Fifth Pathway applicants must submit a [~~an~~] notarized copy of the applicant's ECFMG interim certificate;

(I)-(L) (No change.)

(M) an oath on a form provided by the board signed by the applicant swearing that:

(i) the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States is not restricted for cause, cancelled for cause, suspended for cause, revoked, or subject to other discipline;

(ii) no investigation or proceeding is pending against the applicant for the restriction for cause, cancellation for cause, suspension for cause, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(iii)-(v) (No change.)

(N) (No change.)

(g) Renewal and Expiration of Postgraduate Resident Permit.

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

(3) Postgraduate resident permits shall expire on the earlier of:

(A) 14 months [~~one year~~] from the date the permit was issued or renewed; or

(B) (No change.)

(4)-(5) (No change.)

(h)-(i) (No change.)

§171.3. Institutional Permits.

(a) (No change.)

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

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

(3) A postresidency fellow is a physician who is in a specialized, clearly defined, and delineated program, following completion of a delineated residency program, for additional training in a medical specialty or subspecialty delivered in a program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, Committee on Accreditation of Preregistration Physician Training Programs, the Federation of Provincial Medical Licensing Authorities of Canada (internships prior 1994), the Royal College of Physicians and Surgeons of Canada, the College of Family Physicians of Canada, or in a program approved by the Texas State Board of Medical Examiners.

(c)-(m) (No change.)

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006188
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 174. TELEMEDICINE

22 TAC §174.13, §174.15

The Texas State Board of Medical Examiners proposes amendments to §174.13 regarding home health orders and hospice services and §174.15 regarding a correction in the annual registration fee. The amendments will update §174.13 to be in compliance with statutory change from the 76th Legislature and correct an error in §174.15

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated regulations in order to be in compliance with statutory change from the 76th Legislature. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

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

The Texas Occupations Code, Annotated, §151.056 is affected by the amendments.

§174.13. Exemptions.

The following activities shall be exempt from the requirements of a special purpose license and this chapter:

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

(4) informal consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation; [~~and~~]

(5) furnishing of medical assistance in case of an emergency or disaster if no charge is made for the medical assistance; and, [~~.~~]

(6) the acts of a physician located in another jurisdiction of a state of the United States whose borders are contiguous with the State of Texas who is the treating physician of a patient and orders home health or hospice services for a resident of this state to be delivered by a home and community support services agency licensed in this state.

§174.15. Fees and Failure to Submit Fees.

The fee for a special purpose license and the fee for annual renewal of a special purpose license shall be as follows.

(1) (No change.)

(2) Renewal Fee and Renewal Form. In addition to all other requirements of this chapter, to maintain a special purpose license, a special purpose license holder shall submit an annual renewal fee of $330 [~~$300~~] in the form of a check or money order payable to the Texas State Board of Medical Examiners, along with a completed renewal form provided by the Texas State Board of Medical Examiners.

(3) (No change.)

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006187
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 175. FEES, PENALTIES, AND APPLICATIONS

22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, relating to the fee for processing a late application for biennial recertification of a non-profit health organization and the fee for registration of office-based anesthesia. The amendment will provide for a fee for late registration regarding biennial recertification of non-profit health organizations and clarify that the fee for registration of office-based anesthesia is site-based.

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

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the added provision of a fee for late registration regarding biennial recertification of non-profit health organizations and clarification that the fee for registration of office-based anesthesia is site-based. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

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

The Texas Occupations Code, Annotated, §§153.001, 153.051, and 162.001 is affected by the amendment.

§175.1. Fees.

The board shall charge the following fees.

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

(6) Certification as a Non-Profit Health Organization:

(A) processing an application for new or initial certification--$2,500;

(B) (No change.)

(C) processing a late application for biennial recertification--$1,250.

(7) Miscellaneous Fees:

(A)-(C) (No change.)

(D) office-based anesthesia site registration--$300.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006186
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 177. CERTIFICATION OF NON-PROFIT HEALTH ORGANIZATIONS

22 TAC §177.1, 177.2, 177.6-177.8, 177.11, 177.13, 177.15, 177.16

The Texas State Board of Medical Examiners proposes amendments to §§177.1, 177.2, 177.6-177.8, 177.11, 177.13, 177.15, and 177.16, relating to certification of non-profit health organizations. The amendments will clarify cite references to Texas Occupations Code Annotated, will establish fees for late submissions, and will adjust the time frame for submitting certain documentation.

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarified cite references to Texas Occupations Code Annotated, established fees for late submissions, and an adjusted time frame for submitting certain documentation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

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

The Texas Occupations Code, Annotated, §162.001 is affected by the amendments.

§177.1. Definitions.

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

(1) Act--The Texas Medical Practice Act, Texas Occupations Code, Annotated §§151.001-165.160, 205.001-.402; and Physician Assistant Licensing Act, and Texas Occupations Code, Annotated, §§204.001-.352.

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

(4) Certification by the Board--The board by rule shall certify an organization for non-profit health organization status, or status as a migrant, community, or homeless health center or a federally qualified health center, under the provisions of Chapter 162, Texas Occupations Code, Annotated.

(5) [~~(4)~~] Chief Executive Officer--The officer of the Health Organization authorized in the articles of incorporation, the bylaws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which such officer may be designated by the Health Organization.

(6) [~~(5)~~] Director--A member of the Board of Directors whether referred to as a director, trustee or other title.

(7) [~~(6)~~] Member--A member of the Health Organization.

(8) [~~(7)~~] Health Organization--An applicant for or holder of certification from the Texas State Board of Medical Examiners under the Act, §162.001(b) [~~§5.01(a)~~].

(9) [~~(8)~~] Rules--The rules promulgated by the Texas State Board of Medical Examiners pursuant to the Act.

(10) [~~(9)~~] Supplier--

(A) A physician retained to provide medical services to or on behalf of the Health Organization; and

(B) any other person providing or anticipated to provide services or supplies to or on behalf of the Health Organization in excess of $10,000 during a twelve-month period.

§177.2. Initial Certification.

Any Health Organization meeting the qualifications specified in §177.3 of this title (relating to Qualifications for Certification) may seek certification by the Texas State Board of Medical Examiners under the Act, §162.001(b) [~~§5.01(a)~~], by the submission of an application as provided in section 177.4 of this title (relating to Applications for Certification).

§177.6. Biennial Report.

Each Health Organization certified under the Act, §162.001(b) [~~§5.01(a)~~], shall file with the Texas State Board of Medical Examiners a Biennial Report in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year, and the Biennial Report shall include:

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

§177.7. Establishment of Fees.

The fees established pursuant to the Act, §153.011 and §153.051 [~~§2.09(k)~~] and the Rules for certification and continued certification shall be as follows.

(1) Initial Fee. In addition to all other requirements for certification under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules, to obtain certification, the Health Organization shall submit a fee of $2,500 in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(2) Biennial Fee. In addition to all other requirements for continued certification under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules, to maintain certification, at the time of submission of the Biennial Report, the Health Organization shall submit a fee of $500 in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(3) Late Fees. In addition to all other requirements for continued certification under the Act, §162.001(b), and the Rules, and in order to maintain certification, if the Health Organization is more than 120 days but not more than 240 days late in submitting their Biennial Report and Biennial Fee as specified in paragraph (2) of this section, the Health Organization will be required to pay a penalty amount of $1,250 at the time of submission of their late Biennial Report instead of the normal fee of $500 in the form of a check or money order payable to the Texas State Board of Medical Examiners. If the Health Organization is more than 240 days late in submitting their Biennial Report and Biennial Fee as specified in paragraph (2) of this section, the certification of the Health Organization will be deemed to have lapsed and shall be grounds for decertification as a nonprofit health organization. If the certification of the Health Organization has lapsed, it will be required to submit a new application for certification as a nonprofit health organization under §162.001(b) of the Act, and shall submit a fee of $2,500 with the application for certification in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(4) [~~(3)~~] Refunds. Fees shall not be refundable.

§177.8. Failure to Submit Reports or Fees.

The failure of a Health Organization seeking certification under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules to submit any required fee shall be grounds for the Texas State Board of Medical Examiners to stop the processing of the application for certification and to deny the application. The failure of a Health Organization which is certified under the Act, §162.001(b) [~~§5.01(a)~~], and the Rules to timely submit an accurate Biennial Report along with any required fee shall be grounds for decertification pursuant to §177.7(3) of this title (relating to Late

Fees) and§177.12 of this title (relating to Review of Applications and Reports).

§177.11. Review of Applications and Reports.

Applications for certification and biennial reports under this section shall be initially reviewed by the permits and legal staffs of the Texas State Board of Medical Examiners or other designees of the Texas State Board of Medical Examiners to determine compliance with the requirements for certification. If upon review of the application or statement and any supporting documentation, the applying or reporting Health Organization appears to be in compliance for certification or continued certification, such certification shall be made upon approval of the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners. In the event that such compliance cannot be determined or is otherwise in question for any reason including complaints of actions by the Health Organization in contravention of this section or the Act, including but not limited to failure to provide due process or evidence of undue influence on the practice of medicine, the application or statement and any supporting documentation shall be submitted to the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners for further review, investigation, and approval or denial. If an application for certification is denied or an insufficient biennial report results in decertification, the Health Organization shall be notified in writing of the basis for the denial or decertification, and the Health Organization may attempt to correct the deficiency, address any complaint, and resubmit the certification application or reporting statement without paying an additional fee if resubmitted within 120 [~~60~~] days of the date of the mailing of the denial or decertification letter. If a biennial reporting statement is insufficient or there appears to be a basis for decertification, the Health Organization shall be notified in writing of the potential basis for decertification, and the Health Organization may attempt to correct the deficiency or potential basis for decertification without paying an additional fee if the corrective action is taken and the reporting statement is resubmitted within 120 [~~60~~] days of the date of the mailing by the Texas State Board of Medical Examiners of the written explanation regarding the deficiency or apparent basis for decertification. If the deficiency or apparent basis for decertification is not remedied or adequately explained, and the corrected reporting statement submitted within 240 days [~~the 60 day period~~], the Health Organization shall be decertified at the next meeting of the Texas State Board of Medical Examiners.

§177.13. Approved Form.

A Health Organization seeking certification under the Act, §162.001(b) [~~§5.01(a)~~], shall submit an application on a board-approved form.

§177.15. Migrant, Community or Homeless Health Centers.

(a) Section 162.001(c) [~~5.01(b)~~], non-profit health organizations. Migrant, community, or homeless health centers organized and operated under the authority of and in compliance with 42 U.S.C. §§254b, 254c, or 256, or federally qualified health centers under 42 U.S.C. §1396d(1)(2)(B), who are non-profit corporations under the Texas Non-Profit Corporation Act, Article 1396-1.01, Vernon's Texas Civil Statutes, and the Internal Revenue Code, §501(c)(3), and who wish to obtain approval and certification to contract with and employ physicians pursuant to the Medical Practice Act, §162.001(c) Texas Occupations Code Annotated [~~§5.01(b), Article 4495b, Vernon's Texas Civil Statutes~~], may do so by submitting an application on a form approved by the Texas State Board of Medical Examiners to the permits department of the board with the following attached documentation:

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

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

(d) Biennial reports. Each organization approved and certified under the Act, §162.001(c) [~~§5.01(b)~~], shall file with the Texas State Board of Medical Examiners a completed Biennial Report on a board-approved form which contains updated and current information which would otherwise be required for initial approval and certification to contract with and employ physicians. The Biennial Report shall be submitted in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year. Failure to timely submit a required Biennial Report shall be grounds for withdrawal or revocation of approval and certification to contract with and employ physicians pursuant to subsection (e) of this section.

(e) Review of applications and reports. Applications for approval and certification to contract with and employ physicians pursuant to the Act, §162.001(c) [~~§5.01(b)~~], and subsequent Biennial Reports shall initially be reviewed by the permits and legal staffs of the Texas State Board of Medical Examiners or other designees of the Texas State Board of Medical Examiners to determine compliance with the requirements for approval and certification. If upon review of the application or statement and any supporting documentation, the applying or reporting organization appears to be in compliance for approval and certification or continued approval and certification, upon consideration and approval by the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners, the organization shall be certified and approved to contract with and employ physicians. In the event that such compliance cannot be determined or is otherwise in question for any reason including complaints of actions by the organization in contravention of this section or the Act, the application or statement and any supporting documentation shall be submitted to the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners for further review, investigation, and approval or denial. If an application for approval and certification to contract with and employ physicians is denied, the organization shall be notified in writing of the basis for the denial and the organization may attempt to correct the deficiency, address any complaint, supplement the application to comply with the requirements for approval and certification, or resubmit a new application for consideration. If a biennial reporting statement is insufficient or appears to be a basis for revocation or withdrawal of approval and decertification, the organization shall be notified in writing of the basis for the revocation or withdrawal of approval and decertification, and the organization may attempt to correct the deficiency, address any complaint, or supplement the biennial statement to comply with the requirements for continued approval and certification. If a deficiency or apparent basis for denial, revocation, or withdrawal of approval and decertification is not remedied or adequately explained, and corrected or required supplemental documentation is not submitted within 60 days of the date of the mailing of the notification by the Texas State Board of Medical Examiners, the organization shall be denied, revoked, decertified, or otherwise have approval withdrawn at the next meeting of the Texas State Board of Medical Examiners.

(f) (No change.)

(g) Approved forms. An organization seeking approval and certification to contract with and employ physicians under the Act, §162.001(c) [~~§5.01(b)~~], shall submit an application on a board-approved form. Biennial reports for continued approval and certification shall be submitted on a board-approved form.

(h) Compliance date. Organizations approved and certified prior to the effective date of this section shall be required to be in compliance with these provisions no later than January 1, 1997. Organizations applying for approval and certification after the effective date

of this section shall be required to meet the requirements of these provisions as a prerequisite for approval and certification to contract with and employ physicians pursuant to the Act, §162.001(c) [~~§5.01(b)~~].

§177.16. Complaint Procedure Notification.

(a) Method of Notification. For the purpose of directing complaints to the board regarding health-care delivery by licensees of the board practicing through non-profit health organizations certified pursuant to the Medical Practice Act, §162.001 [~~§5.01~~], the non-profit health organizations which are certified or otherwise approved pursuant to the Medical Practice Act, §162.001(b) [~~§5.01(a)~~] and §162.001(c) [~~§5.01(b)~~], shall provide notification to the public of the name, mailing address, and telephone number of the board by displaying in a prominent location at each site of health-care delivery and readily visible to patients or potential patients, signs in English and Spanish of no less than 8 1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement.

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

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006185
F.M. Langley, DVM, MD, JD
Executive Director
Texas Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 186. SUPERVISION OF PHYSICIAN ASSISTANT STUDENTS

The Texas State Board of Medical Examiners proposes an amendment to §186.1 and repeals of §186.2 and §186.3, relating to supervision of physician assistant students. The sections are being amended and repealed to bring the chapter up to date in regards to the agency's rule review.

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be an up to date chapter in regards to the agency's rule review. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

22 TAC §186.1

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

The Texas Occupations Code, Annotated, §204.205 is affected by the amendment.

§186.1. Eligibility [~~Registration~~].

To be eligible to act as a preceptor to a student physician assistant, a physician must:

(1) hold a current, active, and unrestricted Texas Medical License;

(2) retain professional and legal responsibility for the care rendered by the student physician assistant; and

(3) hold a valid written agreement with an accredited physician assistant program to supervise its students, if the supervision is to occur at a site other than that of the program itself. A copy of the agreement must be available for inspection by the board upon request. [~~Except as provided in §186.3 of this title (relating to Exemption), a physician who is serving as a preceptor in a student physician assistant program must register with the board prior to supervising a student physician assistant while that student receives training and performs duties involved in a physician assistant program course or curriculum. To register to supervise a student physician assistant program course or curriculum. To register to supervise a student physician assistant in training, a licensed physician must certify to the board that:~~]

~~[(1) he or she has a valid written agreement with the physician assistant program to supervise its students in training, a copy of which must be provided annually to the board;]~~

~~[(2) he or she has read and understands the physician assistant guidelines;]~~

~~[(3) he or she will not violate the Medical Practice Act; and]~~

~~[(4) physicians supervising a student during a preceptorship will notify the board of this in writing. This letter will include the physician's and student's names, as well as the dates of the preceptorship.]~~

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006184
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §186.2, §186.3

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

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

The Texas Occupations Code, Annotated, §204.205 is affected by the repeals.

§186.2. Supervision.

§186.3. Exemption.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006183
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 192. OFFICE-BASED ANESTHESIA

22 TAC §192.4

The Texas State Board of Medical Examiners proposes an amendment to §192.4, relating to office-based anesthesia. The section is being amended to clarify the requirements for registration of office-based anesthesia.

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

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification in the requirements for registration of office-based anesthesia. 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 Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

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

The Texas Occupations Code, Annotated, §153.001 is affected by the amendment.

§192.4. Annual Registration.

(a) (No change.)

(b) The physician who owns, maintains, controls, or is otherwise deemed to be responsible for the office-based anesthesia site shall pay an annual office-based anesthesia site registration fee to the board in an amount established by the board. In the event that a non-physician or any other entity owns, maintains, controls, or is otherwise deemed to be responsible for the office based anesthesia site, that non-physician or entity shall designate a duly licensed Texas physician to be responsible for that office based anesthesia site. The designated physician shall be responsible for the registration of the office based anesthesia site.

(c) [~~(b)~~] The board shall coordinate the registration required under this section with the registration required under the Medical Practice Act, Article 4495b, Texas Revised Civil Statutes, §3.01, so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006182
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §§193.1 - 193.8

The Texas State Board of Medical Examiners proposes amendments to §§193.1-193.8, relating to standing delegation orders. The amendments will clarify cite references to the Texas Occupations Code Annotated.

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

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarified cite references to the Texas Occupations Code Annotated. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

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

The Texas Occupations Code, Annotated, §§157.001-157.007; 157.051-157.060; and 157.101 is affected by the amendments.

§193.1. Purpose.

(a) The purpose of this chapter is to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where such delegation is consistent with the patient's health and welfare; and to provide guidelines for physicians in order that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services Texas Occupations Code Annotated, §164.052 and §164.053 [~~Texas Civil Statutes, Article 4495b, §3.08(4)(H), (12), and (15),~~] empower the Texas State Board of Medical Examiners to cancel, revoke or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of failing to supervise adequately the activities of persons acting under the physician's supervision, allowing another person to use his license for the purpose of practicing medicine, or of aiding or abetting, directly or indirectly, the practice of medicine by a person or entity not licensed to do so by the board. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. The provisions of this chapter are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of medical judgment, to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. The board recognizes that statutory law shall prevail over any rules adopted and that the practice of medicine is, by statute, defined as follows: "A person shall be considered to be practicing medicine within the Medical Practice Act:

(1) who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; or

(2) who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation."

(b) Likewise, nothing in this chapter shall be construed as to prohibit a physician from instructing a technician, assistant, or nurse to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee. Nothing in this chapter should be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of those persons with whom the delegating physician has established a physician-patient relationship. Nothing in this chapter shall enlarge or extend the applicable statutory law relating to the practice of medicine, or other rules and regulations previously promulgated by the board.

§193.2. Definitions.

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

(1) Advanced practice nurse - A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, a nurse midwife, nurse anesthetist, and clinical nurse specialist, as defined by Texas Occupations Code Annotated, §301.152 [~~§8, Article 4514, Revised Statutes~~].

(2) Authorizing physician - A physician or physicians licensed by the board who execute a standing delegation order.

(3) Carrying out or signing a prescription drug order - To complete a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after being registered [~~the person has been designated~~] with the board by the delegating physician as a person authorized [~~delegated~~] to sign a prescription. The following information shall be provided on each prescription: the patient's name and address; the drug to be dispensed; directions to the patient for taking the drug; dosage; the intended use of the drug, if appropriate; the name, address, and telephone number of the physician; the name, address, telephone number, identification number, and signature of the physician assistant or advanced practice nurse completing or signing the prescription drug order; the date; and the number of refills permitted. This also includes the ability of a physician assistant or advanced practice nurse to telephone prescriptions in to a pharmacy under his or her prescriptive authority.

(4) Dangerous drug - A device or a drug that is unsafe for self medication and that is not included in the Texas Health and Safety Code, Schedules I-V or Penalty Groups I-IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription".

(5) Health professional shortage area (HPSA) -

(A) An area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary of health and human services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area;

(B) a population group which the secretary determines to have such a shortage; or

(C) a public or nonprofit private medical facility or other facility which the secretary determines has such a shortage as delineated in 42 United States Code §254(e)(a)(1).

(6) Medically underserved area (MUA) - An area or population group designated by the USDHHS as an area with a shortage of personal health services. Also includes an area defined by rule adopted by the Texas Board of Health that is based on demographics specific to this state, geographic factors that affect access to health care, and environmental health factors.

(7) Physician Assistant - A person who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(8) Physician's orders - The instructions of a physician for the care of an individual patient.

(9) Protocols - Delegated written authorization to initiate medical aspects of patient care including authorizing a physician assistant or advanced practice nurse to carry out or sign prescription drug orders pursuant to the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060 [~~Texas Civil Statutes, Article 4495b, §§3.06(d)(5) and (6)~~] and §193.6 of this title (relating to the Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses). The protocols must be agreed upon and signed by the physician, the physician assistant and/or advanced practice nurse, reviewed and signed at least annually, maintained on site, and must contain a list of the types or categories of dangerous drugs available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring or contain a list of the types or categories of dangerous drugs that may not be prescribed. Protocols shall be defined to promote the exercise of professional judgment by the advanced practice nurse and physician assistant commensurate with their education and experience. The protocols used by a reasonable and prudent physician exercising sound medical judgment need not describe

the exact steps that an advanced practice nurse or a physician assistant must take with respect to each specific condition, disease, or symptom.

(10) Site serving a medically underserved population - A site located in a medically underserved area; a site located in a health manpower shortage area; a rural health clinic designated under Public Law 95-210, the Rural Health Clinic Services Act of 1977; a public health clinic or a family planning clinic operating under contract with the Texas Department of Human Services or the Texas Department of Health; a site located in an area in which there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs, as determined by the Texas Department of Health; or a site that serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs, as determined by the Texas Department of Health.

(11) Standing delegation order - Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at a minimum, should:

(A) include a written description of the method used in developing and approving them and any revision thereof;

(B) be in writing, dated, and signed by the physician;

(C) specify which acts require a particular level of training or licensure and under what circumstances they are to be performed;

(D) state specific requirements which are to be followed by persons acting under same in performing particular functions;

(E) specify any experience, training, and/or education requirements for those persons who shall perform such orders;

(F) establish a method for initial and continuing evaluation of the competence of those authorized to perform same;

(G) provide for a method of maintaining a written record of those persons authorized to perform same;

(H) specify the scope of supervision required for performance of same, for example, immediate supervision of a physician;

(I) set forth any specialized circumstances under which a person performing same is to immediately communicate with the patient's physician concerning the patient's condition;

(J) state limitations on setting, if any, in which the plan is to be performed;

(K) specify patient record-keeping requirements which shall, at a minimum, provide for accurate and detailed information regarding each patient visit; personnel involved in treatment and evaluation on each visit; drugs, or medications administered, prescribed or provided; and such other information which is routinely noted on patient charts and files by physicians in their offices; and

(L) provide for a method of periodic review, which shall be at least annually, of such plan including the effective date of initiation and the date of termination of the plan after which date the physician shall issue a new plan.

(12) Standing medical orders - Orders, rules, regulations or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both. These orders, rules, regulations or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient.

(13) Submit - The term used to indicate that a completed item has been actually received and date-stamped by the Board along with all required documentation and fees, if any.

§193.3. Exclusion from the Provisions of this Chapter.

The provisions of this chapter shall not be applicable, nor shall they restrict the use of pre-established programs of health care, nor shall they restrict physicians from authorizing the provision of patient care by use of pre-established programs under the following circumstances listed in paragraphs (1)-(8) of this section:

(1) where a patient is institutionalized and the care is to be delivered in a hospital, nursing home, or other institution which has an organized medical staff which has authorized or approved standing delegation orders or standing medical orders;

(2) where care is rendered in an emergency. Emergency care is that care provided to a person who is unconscious, ill, or injured, when the reasonable apparent circumstances require prompt decisions and actions in care and when the necessity of immediate care is so reasonably apparent that any delay in the rendering of care or treatment would seriously worsen the physical condition or endanger the life of the person;

(3) where care is rendered as a part of disaster relief and charges for the services are not made;

(4) where limitation from civil liability is provided under the Texas Civil Practice and Remedies Code, §74.001;

(5) where first aid care is provided at the site of an injury or as an interim measure prior to transfer of the patient to a medical facility where medical services are available;

(6) where care rendered is provided by licensed health professional acting within the scope of the licensed profession as defined by Texas Occupations Code Annotated [~~Texas Civil Statutes~~];

(7) where care is to be delivered in any setting under standing medical orders as defined in this chapter;

(8) where care is to be delivered as authorized by the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060 [~~Texas Civil Statutes, Article 4495b, §3.06(d)(5) or (6)~~] except as provided in §193.6 of this title (relating to the Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses).

§193.4. Scope of Standing Delegation Orders.

Providing the authorizing physician is satisfied as to the ability and competence of those for whom the physician is assuming responsibility, and with due regard for the safety of the patient and in keeping with sound medical practice, standing delegation orders may be authorized for the performance of acts and duties which do not require the exercise of independent medical judgment. Limitations on the physician's use of standing delegation orders which are stated in this section shall not apply to patient care delivered by physician assistants or advanced practice nurses, as authorized by the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.[~~Texas Civil Statutes, Article 4495b, §3.06(d)(5) or (6)~~] or §193.6 of this title (relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses). When care is delivered under other circumstances, standing delegation orders may include authority to undertake the following as listed in paragraphs (1)-(8) of this section:

(1) the taking of personal and medical history;

(2) the performance of appropriate physical examination and the recording of physical findings;

(3) the ordering of tests appropriate to the services provided under such orders, such as tuberculin tests, skin tests, VD tests, VDRL tests, gram stains, pap smears, and serological tests;

(4) the administration or providing of drugs ordered by direct personal or voice communication by the authorizing physician who shall assume responsibility for the patient's welfare, providing such administration or provision of drugs shall be in compliance with other state or federal laws and providing further that pre-signed prescriptions shall not be utilized by the authorizing physician except under the following conditions shown in subparagraphs (A)-(D) of this paragraph.

(A) The prescription shall be prepared in full compliance with the Texas Health and Safety Code, §483.001(13) except for the inclusion of the name of the patient and the date of issuance.

(B) The prescription shall be for one of the following classes or types of drugs:

(i) oral contraceptives;

(ii) diaphragms and contraceptive creams and jellies;

(iii) topical anti-infectives for vaginal use;

(iv) oral anti-parasitic drugs for treatment of pinworms;

(v) topical anti-parasitic drugs; or

(vi) antibiotic drugs for treatment of venereal disease.

(C) The prescriptions may not be issued for any controlled substance.

(D) The providing of the drugs shall be in compliance with the Texas Pharmacy Act and rules adopted by the Texas State Board of Pharmacy.

(5) the administration of immunization vaccines providing the recipient is free of any condition for which the immunization is contraindicated;

(6) the providing of information regarding hygiene and the administration or providing of medications for health problems resulting from a lack of hygiene, including the institution of treatment for conditions such as scabies, ringworm, pinworm, head lice, diaper rash and other minor skin disorders, provided the administration or providing of drugs adheres to paragraph (4) of this section;

(7) the provision of services and the administration of therapy by public health departments as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law;

(8) the issuance of medications which do not require a prescription (over the counter medications) for the symptomatic relief of minor illnesses provided that such medications are packaged and labeled in compliance with state and federal laws and regulations.

§193.5. Enforcement.

Any physician authorizing standing delegation orders or standing medical orders which authorize the exercise of independent medical judgment or treatment shall be subject to having his or her license to practice medicine in the State of Texas revoked or suspended under Texas Occupations Code Annotated, §§164.052 and 164.053 [~~Texas Civil Statutes, Article 4495b, §3.08(4)(H), (12), and (15)~~].

§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses.

(a) Purpose. The purpose of this section is to provide guidelines for implementation of the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060, [~~Texas Civil Statutes, Article 4495b, §3.06(d)(5) and (6),~~] which provide for the use by physicians of standing delegation orders, standing medical orders, physician's order, or other orders or protocols in delegating authority to physician assistants or advanced practice nurses at sites serving medically underserved populations, at a physician's primary practice site, or at a site described in subsection (j) of this section. In accord with Texas Occupations Code Annotated, §§157.051-157.060, [~~Texas Civil Statutes, Article 4495b, §3.06(d)(5) and (6),~~] this section establishes minimum standards for supervision by physicians of physician assistants and advanced practice nurses for provision of services at such sites. This section also provides for the signing of a prescription by an advanced practice nurse or a physician assistant after the person has been designated by the delegating physician and for the use of prescriptions presigned by the supervising physician which may be carried out by a physician assistant or advanced practice nurse according to protocols. Such protocols may authorize diagnosis of the patient's condition and treatment, including prescription of dangerous drugs. Proper use of protocols allows integration of clinical data gathered by the physician assistant or advanced practice nurse. Neither the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060 [~~Texas Civil Statutes, Article 4495b, §3.06(d)(5) or (6)~~], nor these rules authorize the exercise of independent medical judgment by physician assistants or advanced practice nurses, and the supervising physician remains responsible to the board and to his or her patients for acts performed under the physician's delegated authority. Advanced practice nurses and physician assistants remain professionally responsible for acts performed under the scope and authority of their own licenses.

(b) Physician supervision at site serving medically underserved populations. Physician supervision of a physician assistant or advanced practice nurse at a site serving a medically underserved population will be adequate if a delegating physician:

(1) receives a daily status report to be conveyed in person, by telephone, or by radio from the advanced practice nurse or physician assistant on any complications or problems encountered that are not covered by a protocol;

(2) visits the clinic in person at least once every ten business days during regular business hours during which the advanced

practice nurse or physician assistant is on site providing care, to observe and to provide medical direction and consultation to include, but not be limited to:

(A) reviewing with the physician assistant or advanced practice nurse case histories of patients with problems or complications encountered;

(B) personally diagnosing or treating patients requiring physician follow-up;

(C) verifying that patient care is provided by the clinic in accordance with a written quality assurance plan on file at the clinic, which includes a random review and countersignature of at least 10% of the patient charts by the supervising physician;

(3) is available by telephone or direct telecommunication for consultation, assistance with medical emergencies, or patient referrals.

(4) is responsible for the formulation or approval of such physician's orders, standing medical orders, standing delegation orders, or other orders or protocols and periodically reviews such orders and the services provided patients under such orders.

(c) Documentation of supervision. If the physician assistant or advanced practice nurse is located at a site other than the site where the physician spends the majority of the physician's time, physician supervision shall be documented through a log kept at the clinic where the physician assistant or advanced practice nurse is located. The log will include the names or identification numbers of patients discussed during the daily status reports, the times when the physician is on site, and a summary of what the physician did while on site. Said summary shall include a description of the quality assurance activities conducted and the names of any patients seen or whose case histories were reviewed with the physician assistant or advanced practice nurse. The supervising physician shall sign each log at the conclusion of each site visit. A log is not required if the physician assistant or advanced practice nurse is permanently located with the physician at a site where the physician spends the majority of the physician's time.

(d) Alternate physicians. If a delegating physician will be unavailable to supervise the physician assistant or advanced practice nurse as required by this section, arrangements shall be made for another physician to provide that supervision. The physician providing that supervision shall affirm in writing that he or she is familiar with the protocols or standing delegation orders in use at the clinic and is accountable for adequately supervising care provided pursuant to those protocols or standing delegation orders by fulfilling the requirements for registration as an alternate supervising physician as detailed in rules of the Texas State Board of Physician Assistant Examiners, 22 Texas Administrative Code, Chapter 185 of this title (relating to Physician Assistants).

(e) Supervision of clinics. A physician may not supervise more than three clinics without approval of the board. A physician may not supervise any number of clinics with combined regular business hours exceeding 150 concurrent hours per week without approval of the board.

(f) Exceptions to patient chart review. Exceptions to the percentage of patient chart reviews required by subsection (b)(2)(C) of this section and the provisions of subsection (e) of this section relating to the number of clinics or clinic hours supervised may be made by the board upon special request by a delegating physician. Such a request shall state the special circumstances and needs prompting the exception, the names and locations of the clinics and/or hours to be supervised, and a plan of supervision. In granting an exception, the board shall state the percentage of charts that must be reviewed and/or the number of clinics or the combined clinic hours that can be supervised.

(g) Delegation of prescriptive authority at site serving underserved populations. A physician may delegate to a physician assistant or advanced practice nurse the act or acts of administering, providing, or carrying out or signing a prescription drug order as authorized by the physician through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board in treating patients at a site serving a medically underserved population. The prescription form itself shall comply with applicable rules adopted by the Texas State Board of Pharmacy. Prescriptions issued pursuant to this section may only be written for dangerous drugs. No prescriptions for controlled substances may be authorized or issued. An appropriate signature on one of the two signature lines on the prescription shall convey instructions to a pharmacist regarding the pharmacist's authority to dispense a generically equivalent drug, if available. If the physician assistant or advanced practice nurse authorizes generic substitution, the protocol shall provide direction to the physician assistant or advanced practice nurse as to whether and under what circumstances product selection will be permitted by a pharmacist. A delegating physician is responsible for devising and enforcing a system to account for and monitor the issuance of prescriptions under his supervision.

(h) Violations. Violation of this section by the supervising physician may result in a refusal to approve supervision or cancellation of the physician's authority to supervise a physician assistant or advanced practice nurse under this section. Violation of this section may also subject the physician to disciplinary action as provided by the Medical Practice Act, Texas Occupations Code Annotated, §164.001 [~~Texas Civil Statutes, Article 4495b, §4.12~~]for violation of Texas Occupations Code Annotated, §164.051 [~~that Act, §3.08~~]. If an advanced practice nurse violates this section or the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) or (6), the board shall promptly notify the Texas Board of Nurse Examiners of the alleged violation. If a physician assistant violates this section or the Medical Practice Act, Texas Occupations Code Annotated, §§157.051-157.060, [~~Texas Civil Statutes, Article 4495b, §3.06(d)(5) or (6),~~]the board shall promptly notify the Texas State Board of Physician Assistant Examiners.

(i) Delegation at primary practice site. At a physician's primary practice site or a location as described by subsection (j) of this section, a physician licensed by the board may delegate to a physician assistant or an advanced practice nurse acting under adequate physician supervision the act or acts of administering, providing, carrying out or signing a prescription drug order as authorized through physician's orders, standing medical orders, standing delegation orders, or other orders or protocols as defined by the board. Providing and carrying out or signing a prescription drug order under this subdivision is limited to dangerous drugs and shall comply with other applicable laws. Physician supervision of the carrying out and signing of prescription drug orders shall conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the advanced practice nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(1) A physician's authority to delegate the carrying out or signing of a prescription drug order at his primary practice site under this section is limited to:

(A) three physician assistants or advanced practice nurses or their full-time equivalents practicing at the physician's primary practice site; and

(B) the patients with whom the physician has established or will establish a physician-patient relationship, but this shall not be construed as requiring the physician to see the patient within a specific period of time.

(2) "Primary practice site" means:

(A) the practice location where the physician spends the majority of the physician's time;

(B) a licensed hospital, a licensed long-term care facility, and a licensed adult care center where both the physician and the physician assistant or advanced practice nurse are authorized to practice, a clinic operated by or for the benefit of a public school district for the purpose of providing care to the students of that district and the siblings of those students, if consent to treatment at that clinic is obtained in a manner that complies with the Family Code, Chapter 32, or an established patient's residence; or

(C) where the physician is physically present with the physician assistant or advanced practice nurse.

(j) Delegation at facility-based practice. A physician licensed by the board shall be authorized to delegate, to one or more physician assistants or advanced practice nurses acting under adequate physician supervision whose practice is facility based at a licensed hospital or licensed long-term care facility, the carrying out or signing of prescription drug orders if the physician is the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice nurse practices, the chair of the facility's credentialing committee, a department chair of a facility department in which the physician assistant or advanced practice nurse practices, or a physician who consents to the request of the medical director or chief of medical staff to delegate the carrying out or signing of prescription drug orders at the facility in which the physician assistant or advanced practice nurse practices. A physician's authority to delegate under this subsection is limited as follows in paragraphs (1)-(5) of this subsection:

(1) the delegation is pursuant to a physician's order, standing medical order, standing delegation order, or other order or protocol developed in accordance with policies approved by the facility's medical staff or a committee thereof as provided in facility bylaws;

(2) the delegation occurs in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair;

(3) the delegation does not permit the carrying out or signing of prescription drug orders for the care or treatment of the patients of any other physician without the prior consent of that physician;

(4) delegation in a long-term care facility must be by the medical director and the medical director is limited to delegating the carrying out and signing of prescription drug orders to no more than three advanced practice nurses or physician assistants or their full-time equivalents; and

(5) under this section, a physician may not delegate at more than one licensed hospital or more than two long-term care facilities unless approved by the board.

(k) Delegation to certified registered nurse anesthetists.

(1) In a licensed hospital or ambulatory surgical center a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for a certified registered nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician. The physician's order for anesthesia or anesthesia-related services does not have to be drug-specific, dose-specific, or administration-technique-specific. Pursuant to the order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the appropriate medical devices necessary to accomplish the order and maintain the patient within a sound physiological status.

(2) This paragraph shall be liberally construed to permit the full use of safe and effective medication orders to utilize the skills and services of certified registered nurse anesthetists.

(l) Delegation related to obstetrical services.

(1) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice nurse recognized by the Texas State Board of Nurse Examiners as a nurse midwife the act or acts of administering or providing controlled substances to the nurse midwife's or physician assistant's clients during intra-partum and immediate post-partum care. The physician shall not delegate the use or issuance of a triplicate prescription form under the triplicate prescription program, the Health and Safety Code, section 481.075.

(2) The delegation of authority to administer or provide controlled substances under this paragraph must be under a physician's order, medical order, standing delegation order, or protocol which shall require adequate and documented availability for access to medical care.

(3) The physician's orders, medical orders, standing delegation orders, or protocols shall provide for reporting or monitoring of client's progress including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(4) The authority of a physician to delegate under this paragraph is limited to:

(A) three nurse midwives or physician assistants or their full-time equivalents; and

(B) the designated facility at which the nurse midwife or physician assistant provides care.

(5) The administering or providing of controlled substances under this paragraph shall comply with other applicable laws.

(6) In this paragraph, "provide" means to supply one or more unit doses of a controlled substance for the immediate needs of a patient not to exceed 48 hours.

(7) The controlled substance shall be supplied in a suitable container that has been labeled in compliance with the applicable drug laws and shall include the patient's name and address; the drug to be provided; the name, address, and telephone number of the physician; the name, address, and telephone number of the nurse midwife or physician assistant; and the date.

(8) This paragraph does not permit the physician or nurse midwife or physician assistant to operate a retail pharmacy as defined under the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(9) This paragraph shall be construed to provide a physician the authority to delegate the act or acts of administering or providing controlled substances to a nurse midwife or physician assistant but not as requiring physician delegation of further acts to a nurse midwife or as requiring physician delegation of the administration of medications to registered nurses or physician assistants other than as provided in this paragraph.

(m) Liability. A physician shall not be liable for the act or acts of a physician assistant or advanced practice nurse solely on the basis of having signed an order, a standing medical order, a standing delegation order, or other order or protocols authorizing a physician assistant or advanced practice nurse to perform the act or acts of administering, providing, carrying out, or signing a prescription drug order unless the physician has reason to believe the physician assistant or advanced practice nurse lacked the competency to perform the act or acts.

§193.7. Delegated Drug Therapy Management.

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of drug therapy management pursuant to the Medical Practice Act, Texas Occupations Code Annotated, §157.001 [~~§3.061~~] (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Drug therapy management. Drug therapy management is the performance of specific acts by pharmacists as authorized by a physician through written protocol. Drug therapy management does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician initiated protocol or the physician initiated record of deviation from a standing protocol. Drug therapy management may include the following listed in paragraphs (1)-(6) of this subsection:

(1) collecting and reviewing patient drug use histories;

(2) ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration;

(3) ordering drug therapy related laboratory tests;

(4) implementing or modifying drug therapy following diagnosis, initial patient assessment, and ordering of drug therapy by a physician, as detailed in the protocol;

(5) generically equivalent drug selection if the physician's signature does not clearly indicate that the prescription must be dispensed as written; or

(6) any other drug therapy related act delegated by a physician.

(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the written protocol and any patient-specific deviation from the protocol and review of the written protocol and any patient-specific deviations from the protocol at least annually and the services provided to a patient under the protocol on a schedule defined in the written protocol;

(2) has established and maintains a physician-patient relationship with each patient provided drug therapy management by a delegated pharmacist and informed the patient that drug therapy will be managed by a pharmacist under written protocol;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered;

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician's order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A)-(E) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of drug therapy management;

(B) a statement identifying the individual pharmacist authorized to dispense drugs and to engage in drug therapy management as delegated by the physician;

(C) a statement identifying the types of drug therapy management decisions that the pharmacist is authorized to make which shall include:

(i) a statement of the ailments or diseases, drugs, and type of drug therapy management authorized; and

(ii) a specific statement of the procedures, decision criteria, or plan the pharmacist shall follow when exercising drug therapy management authority;

(D) a statement of the activities the pharmacist shall follow in the course of exercising drug therapy management authority, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made. Documentation shall be recorded within a reasonable time of each intervention and may be performed on the patient medication record, patient medical chart, or in a separate log book; and

(E) a statement that describes appropriate mechanisms and time schedule for the pharmacist to report to the physician monitoring the pharmacist's exercise of delegated drug therapy management and the results of the drug therapy management.

(2) A standard protocol may be used, or the attending physician may develop a drug therapy management protocol for the individual patient. If a standard protocol is used, the physician shall record, what deviations if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of all services provided to the patient by the pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Article 4542a-1, Vernon's Texas Civil Statutes, §17(a)(5).

§193.8. Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol.

(a) Purpose. This section is promulgated to promote the efficient administration and regulation of the delegation by physicians to pharmacists of the administration of immunizations or vaccinations under written protocol pursuant to the Medical Practice Act, Texas Occupations Code Annotated, §157.001 [~~§3.061~~] (related to Delegation of Certain Functions).

(b) Delegation. A physician licensed to practice medicine in Texas may delegate to a properly qualified and trained pharmacist acting under adequate supervision the administration of immunizations and vaccinations authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as provided for in this section.

(c) Delegated Administration of Immunizations and Vaccinations under Written Protocol. Administration of Immunizations and Vaccinations does not include the selection of drug products not prescribed by the physician unless the drug product is named in the physician initiated protocol.

(d) Supervision. Physician supervision shall be considered adequate for purposes of this section if the delegating physician is in compliance with this section and the physician:

(1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically reviews the order or protocol and the services provided to the patient under the order or protocol on a schedule defined in the written protocol;

(2) has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist;

(3) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;

(4) receives, on a schedule defined in the written protocol, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(e) Written protocol. Written protocols for purposes of this section shall mean a physician's order, standing medical order, standing delegation order, or other written order.

(1) A written protocol must contain at a minimum the following listed in subparagraphs (A)-(F) of this paragraph:

(A) a statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of immunizations or vaccinations;

(B) a statement identifying the individual pharmacist authorized to administer immunizations or vaccinations as delegated by the physician;

(C) a statement identifying the location(s) at which the pharmacist may administer immunizations or vaccinations which may not include where the patient resides, except for a licensed nursing home or hospital;

(D) a statement identifying the immunizations or vaccinations that may be administered by the pharmacist;

(E) a statement identifying the activities the pharmacist shall follow in the course of administering immunizations or vaccinations including procedures to follow in the case of reactions following administration; and

(F) a statement that describes the content of, and the appropriate mechanisms for the pharmacist to report the administration of immunizations or vaccinations to the physician issuing the written protocol within 24 hours of administering the immunization or vaccination.

(2) A standard protocol may be used, or the physician may develop an immunization or vaccination protocol for the individual patient. If a standard protocol is used, the physician shall record, what deviations if any, from the standard protocol are ordered for that patient.

(f) Review and revision of protocols.

(1) At least annually, written protocols shall be reviewed by the physician and, if necessary, revised.

(2) Documentation of the administration of immunizations or vaccinations to the patient by a pharmacist shall be reviewed by the physician on the schedule established in the protocol.

(g) Construction and interpretation. This section shall not be construed or interpreted to restrict the use of a pre-established health care program or restrict a physician from authorizing the provision of patient care by use of a pre-established health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols. This section may not be construed to limit, expand, or change any provision of law concerning or relating to therapeutic drug substitution or administration of medication, including the Texas Pharmacy Act, Article 4542a-1, Vernon's Texas Civil Statutes, §17(a)(5).

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006181
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 194. NON-CERTIFIED RADIOLOGIC TECHNICIANS

22 TAC §§194.2 - 194.4

The Texas State Board of Medical Examiners proposes amendments to §§194.2-194.4, relating to non-certified radiologic technicians. The amendments will clarify that a non-certified technician must be listed on the current registry with the Texas Department of Health, must be under the supervision of a current and active licensed physician, and must submit a completed registration form as a part of annual renewal.

Michele Shackelford, Acting General Counsel, Texas State Board of Medical Examiners, has determined that for the first

five-year period the sections are in effect there will be no fiscal implications for state and local government as a result of enforcing the sections.

Ms. Shackelford also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification that a non-certified technician must be listed on the current registry with the Texas Department of Health, must be under the supervision of a current and active licensed physician, and must submit a completed registration form as a part of annual renewal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

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

The Texas Occupations Code, Annotated, §601.151 is affected by the amendments.

§194.2. Definitions.

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

(1) Board - The Texas State Board of Medical Examiners.

(2) Non-certified technician (NCT) or registrant - A person who is registered with the board and either:

(A) is listed on the current registry with the Texas Department of Health and meets one of the following qualifications listed in clauses (i) and (ii) of this subparagraph on or after January 1, 1998;

(i) has completed a mandatory training program under 25 Texas Administrative Code, §143.17 (Mandatory Training Programs for Non-Certified Technicians); or

(ii) if the person is licensed as a physician assistant in the State of Texas, has completed a mandatory training program under 25 Texas Administrative Code, §143.17 (Mandatory Training Programs for Non-Certified Technicians) or has met the alternate training requirements under 25 Texas Administrative Code, §143.20 (Alternate Training Requirements); or

(B) performs radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of Health within the previous year, as defined in 25 Texas Administrative Code, §143.19 (Hardship Exemptions).

(3) Supervision - Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic purposes.

§194.3. Registration.

(a) Any person in the State of Texas performing radiologic procedures, as defined in §194.5 of this title (relating to Non-Certified Technician's Scope of Practice), under the supervision of a current and active licensed Texas physician must be registered with the Texas State Board of Medical Examiners. The physician must be registered with the board to supervise the non-certified technician.

(b) This section does not apply to registered nurses or to persons certified by the Department of Health under the Medical Radiologic Technologist Certification Act.

(c) An applicant shall apply for registration with the board on a form provided by the board and shall pay the appropriate fee established by the board. Each physician, who supervises a non-certified technician, shall apply on a separate application form.

(d) Applicants shall be 18 years of age or older and either:

(1) provide proof of the applicant's registry with the Texas Department of Health and meet one of the following qualifications listed in subparagraphs (A) and (B) of this paragraph:

(A) receive training and instruction as required in 25 Texas Administrative Code, §143.17 (Mandatory Training Programs for Non-Certified Technicians); or

(B) if licensed as a physician assistant, receive training and instruction as required in 25 Texas Administrative Code, §143.17 (Mandatory Training Programs for Non-Certified Technicians) or meet the alternate training requirements in 25 Texas Administrative Code, §143.20 (Alternate Training Requirements); or

(2) perform radiologic procedures for a physician to whom a hardship exemption was granted by the Texas Department of Health within the previous year under 25 Texas Administrative Code, §143.19 (Hardship Exemptions).

§194.4. Annual Renewal.

(a) Registrants shall renew the registration annually by submitting a completed registration application, paying a fee, as specified by the board, to the Texas State Board of Medical Examiners by cashiers check or money order, and providing proof of the registrant's renewal of status on the Texas Department of Health registry.

(b) If the annual registration fee and if proof of the registrant's renewal status on the Texas Department of Health registry is not received on or before the expiration date of the registration, the following penalty as shown in paragraphs (1) and (2) of this subsection will be imposed:

(1) one to 90 days late - $25 plus the required annual registration fee;

(2) over 90 days late - registration will be submitted to the board for cancellation.

(c) The board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the expiration date is changed, registration fees payable on or before January 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee which is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration is payable.

(d) Registrants shall inform the board of address changes within two weeks.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006180

F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

PART 24. BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF AND MISCELLANEOUS

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners proposes amendments to §577.15 concerning Fee Schedule. The amendments reduce the required fees for renewals of regular veterinary licenses, inactive licenses, and special licenses by six dollars ($6) for each category of license renewals. The Board has determined that excess revenue will be collected unless the fees are reduced. The reduction in fees will provide sufficient revenue to cover the Board's expenses without creating excess funds while providing a reduction in renewal fees owed by veterinarians in fiscal year 2001.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amended section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The fee reductions will result in a loss of funds to the state's general revenue of $33,624 in fiscal year 2001; $34,500 in fiscal year 2002; $35,400 in fiscal year 2003; $36,318 in fiscal year 2004; and $37,260 in fiscal year 2005.

Mr. Allen has also determined that for the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be to reduce license renewal fees for those affected by the rule. There will be no effect on small businesses.

Comments on the proposed amendments may be submitted in writing to Judy Huppert, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone (512) 305-7555, and must be received by September 22, 2000.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, Chapter 801, §801.151 (a) which states that the Board may adopt rules necessary to administer the chapter. The amendments affect the Veterinary Licensing Act, Texas Occupations Code, §801.303 which pertains to Procedure for Renewal.

§577.15. Fee Schedule.
The following fees are adopted by the Board:
Figure: 22 TAC §577.15

This 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 August 28, 2000.

TRD-200006037
Ron Allen
Executive Director
Board of Veterinary Medical Examiners
Earliest possible date of proposal: October 15, 2000
For further information, please call: (512) 305-7563

♦ ♦ ♦

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER P. NEGOTIATION AND MEDIATION OF A CLAIM OF BREACH OF CONTRACT

28 TAC §§1.1801 - 1.1823

The Texas Department of Insurance proposes new Subchapter P §§1.1801 - 1.1823 concerning the negotiation and mediation of certain breach of contract claims asserted by contractors against the department. These new sections are necessary to establish procedures for negotiation and mediation in accordance with Section 9 of House Bill 826, 76th Leg. R.S., Chapter 68 (1999), codified at Government Code, Chapter 2260. The statute requires that the department adopt rules to govern the negotiation and mediation of certain claims for breach of contract.

Section 1.1801 states the purpose of the rules is the implementation of Government Code, Chapter 2260. Section 1.1802 states that the rules do not apply to certain types of contracts, which is based on model rules adopted by the Office of the Attorney General and published in the March 31, 2000, issue of the *Texas Register* (25 TexReg 2833). Section 1.1803 contains the definitions of terms in the proposed rules. Section 1.1804 indicates that the procedures in the proposed rules are prerequisites to suit under the Civil Practice & Remedies Code, Chapter 107, and the Government Code, Chapter 2260. Section 1.1805 states that the provisions do not waive sovereign immunity to suit or liability.

Section 1.1806 sets out the procedures for a contractor to file a claim with the department. Section 1.1807 sets out the procedures for the department if asserting a counterclaim against the contractor.

Section 1.1808 states the duty of the parties to negotiate. Section 1.1809 explains the timetable or time periods for negotiation. Section 1.1810 describes the conduct of negotiation. Section 1.1811 requires that the parties disclose their settlement approval procedures prior to negotiations. Section 1.1812 provides that an agreement to settle a claim must be in writing, signed by representatives of the contractor and the department with authority to bind each party. Section 1.1813 provides that each party is responsible for its own costs incurred in a negotiation.

Section 1.1814 describes the process by which a contractor may request a contested case hearing on an unresolved claim. Section 1.1815 describes the timetable for mediation of a claim. Sections 1.1816 through 1.1823 describes the mediation process and procedures.

Karen Phillips, Chief Financial Officer, 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. Phillips 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 the timely and effective resolution of contract disputes. The proposed rules provide an efficient process by which claims for breach of contract can be asserted and resolved. There is no probable economic cost to persons required to comply with the sections and no economic costs on micro, small, and large businesses. The negotiation provisions do not impose economic costs on persons required to comply with the proposed rules because the proposed rules do not require the use of any particular negotiation mode or method. The proposed rules require only that the parties negotiate their dispute, and the mode or method of negotiation is determined by the parties. The proposed rules provide that, absent an agreement to the contrary, the parties are responsible for costs they individually incur in the course of negotiation or other alternative dispute resolution process. Similarly, the mediation provisions do not impose economic costs on persons required to comply with the proposed rules unless the parties choose to mediate. If the parties choose to mediate a dispute, the rules provide that, absent an agreement to the contrary, the parties will share the costs of the mediator and each parties is individually responsible for additional costs incurred in the course of the mediation.

To be considered, comments on the proposal must be submitted no later than 5:00 p.m. on October 16, 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 Cynthia Villarreal-Reyna, Mail Code 110-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The sections are proposed under Government Code §2260.052 and Insurance Code §36.001. Section 2260.052(c) of the Government Code provides that each unit of state government with rulemaking authority shall develop rules to govern the negotiation and mediation of a claim of breach of contract. Section 36.001 of the Insurance Code 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.

The following articles are affected by this proposal: Government Code, §2260.052(c)

§1.1801. Purpose.

This subchapter governs the negotiation and mediation of a claim of breach of contract asserted by a contractor against the Texas Department of Insurance under Government Code Chapter 2260.

§1.1802. Applicability.

(a) This subchapter does not apply to an action of the department 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 department and the federal government or its agencies, another state or another nation;

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

(3) between the department 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 §1.1803 of this title (relating to Definitions);

§1.1803. Definitions.

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

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

(2) Commissioner - Commissioner of Insurance of the State of Texas.

(3) Contract - A written contract between the department 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 department; 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 department. 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 department; or

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

(5) Counterclaim - A demand by the department 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 which is not one of these days should be counted as the required day for purpose of that act.

(7) Department - The Texas Department of Insurance.

(8) Event - An act or omission or a series of acts or omissions giving rise to a claim.

(9) Goods - Supplies, materials or equipment.

(10) Parties - The contractor and the department that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

(11) 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.

(12) 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 department.

§1.1804. Prerequisites to Suit.

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

§1.1805. Sovereign Immunity.

The provisions of this subchapter do not waive the department's sovereign immunity to suit or liability.

§1.1806. Notice of Claim of Breach of Contract.

(a) 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.

(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 officer of the department 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 commissioner; 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) 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; provided, however, that a contractor shall deliver to the department notice of a claim that was pending before the department on August 30, 1999, no later than February 26, 2000.

§1.1807. Agency Counterclaim.

(a) To assert a counterclaim under the Government Code, Chapter 2260, the department shall file notice of the 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) The notice of counterclaim shall be delivered to the contractor no later than 90 days after the department's receipt of the contractor's notice of claim.

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

§1.1808. Duty to Negotiate.

The parties shall negotiate in accordance with the timetable set forth in §1.1809 of this subchapter (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

§1.1809. Timetable.

(a) Following receipt of a contractor's timely notice of claim, the commissioner or other designated representative shall review the contractor's claim(s) and the department's 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 department receives the contractor's notice of claim.

(c) The department 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 of the date on which the department is ready to begin negotiations.

(d) The parties may conduct negotiations according to an agreed schedule so 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 subchapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the department 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 department 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 §1.1814 of this subchapter (relating to Request for Contested Case

Hearing) after the 270th day after the department 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 department 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. The mediation shall be governed by §1.1816 of this subchapter (relating to Mediation of Contract Disputes).

(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.

§1.1810. Conduct of Negotiation.

(a) 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.

(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 §1.1816 of this subchapter (relating to Mediation of Contract Disputes). Parties may choose an assisted negotiation process other than mediation.

(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 section and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the Texas Public Information Act.

§1.1811. 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.

§1.1812. 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 representatives of the contractor and the department who have authority to bind each respective party.

(c) A 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.

§1.1813. 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.

§1.1814. 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 subchapter on or before the 270th day after the department receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §1.1809 of this subchapter (relating to Timetable), the contractor may file a request with the department 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 commissioner of the department 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 §1.1809 of this subchapter.

(c) The department 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 department 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.

§1.1815. Mediation Timetable.

(a) The contractor and the department may agree to mediate the dispute at any time before the 270th day after the department 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 department 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.

§1.1816. Mediation of Contract Disputes.

(a) The parties may agree to mediate a claim through an impartial third party. 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.

(b) 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.

§1.1817. Qualifications and Immunity of the Mediator.

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

§1.1818. 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 to which the department is a signatory that is reached as a result of the mediation is governed by Government Code Chapter 552.

§1.1819. Costs of Mediation.

Unless the contractor and the department 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 mediator shall be divided equally between the parties.

§1.1820. 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.

§1.1821. Initial Settlement Agreement.
Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the department, and shall describe any procedures required to be followed by the parties in connection with final approval of the agreement.

§1.1822. 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 representatives of the contractor and the department who have authority to bind each respective party.

(b) 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.

(c) 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.

§1.1823. 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 department. Nothing in this subchapter prohibits the contractor and the department from mediating their dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.

This 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 August 31, 2000.

TRD-200006143
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-6327

♦ ♦ ♦

CHAPTER 19. AGENTS' LICENSING
SUBCHAPTER T. INTERIM STUDY OF AGENTS AND AGENTS' LICENSES' STATUTES

28 TAC §19.901

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

The Texas Department of Insurance proposes repeal of Subchapter T, §19.1901, concerning an advisory committee for the interim study of agents and agents' licenses statutes. Repeal of this subchapter is necessary because the advisory committee completed its assigned tasks prior to the deadlines established in Insurance Code Article 21.15-7 and associated regulations. In addition, repeal of this subchapter is necessary because the advisory committee was automatically terminated effective December 31, 1998, as set out in §19.1901 (f). As a result, this subchapter is no longer necessary. Simultaneous to this proposed repeal, proposed new Subchapter T, §§19.1901 - 19.1910, is published elsewhere in this issue of the *Texas Register*.

Matt Ray, deputy commissioner, licensing division, has determined that during the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the proposed repeal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Ray has also determined that for each year of the first five years the repeal of the subchapter is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed subchapter will be the removal of outdated regulations. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

To be considered, written comments on the proposal must be submitted no later than 5 p.m. on October 16, 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 Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

Repeal of Subchapter T is proposed pursuant to Texas Civil Statutes Article 6252-33, Insurance Code Article 21.15-7 and §36.001. Texas Civil Statutes Article 6252-33 §5 requires a state agency that is advised by an advisory committee to adopt rules which state the purpose of the committee, and describe the committee's task and the manner in which the committee will report to the agency. Section 8 of Article 6252-33 requires a state agency that is advised by an advisory committee to establish by rule a date on which the committee will automatically be abolished. Insurance Code Article 21.15-7 directs the commissioner to appoint an advisory committee to assist in the evaluation and review of agents and agents' licenses statutes. 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.

The proposed repeal affects regulation pursuant to the following statute: Insurance Code Article 21.15-7.

§19.1901. Advisory Committee for the Interim Study of Agents and Agents' Licenses Statutes.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006209
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-6327

♦ ♦ ♦

SUBCHAPTER T. SPECIALTY INSURANCE LICENSE

28 TAC §§19.1901 - 19.1910

The Texas Department of Insurance proposes new Subchapter T, §§19.1901 - 19.1910 concerning specialty insurance licenses. The 76th Texas Legislature enacted Senate Bill 957 which added new Article 21.09 to the Texas Insurance Code establishing a specialty insurance agent license. The department proposes the new subchapter to implement new Article 21.09, define terms used in Article 21.09, and clarify the processes involved in making application for a specialty license from the department. Section 19.1901 specifies that the purpose of these rules is to implement the licensing of specialty agents as provided for by Article 21.09. Section 19.1902 defines terms used in the subchapter. Section 19.1903 sets forth the licensing requirements for individual and entity applicants. Section 19.1904 provides information necessary to properly complete a specialty license application including application for more than one license authority, the registration of an assumed name with the department, and availability of application and registration forms. Section 19.1905 requires applicants to register each location where insurance sales will be conducted under the specialty license and prohibits the solicitation of insurance from non-registered locations. Section 19.1906 establishes a two year expiration period for specialty licenses and provides for license renewal. Section 19.1907 provides for the licensure of persons not resident in Texas. Section 19.1908 requires licensees to notify the department of certain enumerated occurrences including change of address, the addition or removal of office locations, and administrative actions by other insurance regulators. Section 19.1909 contains requirements for the mandatory employee training program as set out in Article 21.09. Section 19.1910 sets forth the disciplinary procedures for specialty licensees including denial of issuance, refusal to renew, suspension, and revocation. Simultaneous to this proposed new Subchapter T, the proposed repeal of current Subchapter T is published elsewhere in this issue of the *Texas Register*.

Matt Ray, deputy commissioner, licensing division, 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 proposed rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed sections are in effect, the anticipated public benefit is that the convenience and availability of certain insurance products will be increased without compromising the level of consumer protection afforded to the citizens of Texas. In addition, the proposed sections will enhance regulation of the insurance industry in Texas and improve the effectiveness of regulation of specialty agents. The majority, if not the entirety, of the costs to comply with the proposed subchapter result from the legislative enactment of Article 21.09 and not as a result of the proposed subchapter. There is no difference in the costs of compliance between a large and small business as a result of the proposed sections. In addition, the cost of labor per hour is not affected by the proposed sections and thus there is no disproportionate economic impact on small or micro businesses. It is neither legal nor feasible to waive the provisions of the proposed subchapter for small or micro businesses since the requirements of Article 21.09 apply to all applicants for a specialty license.

To be considered, written comments on the proposal must be submitted no later than 5 p.m. on October 16, 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 comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The subchapter is proposed under Insurance Code Article 21.09 and §36.001. Article 21.09 §6 provides the Commissioner may adopt rules necessary to implement the specialty license. 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.

The following statute is affected by the proposed new subchapter: Insurance Code Article 21.09.

§19.1901. Purpose.

The purpose of this subchapter is to implement licensing of specialty agents as prescribed by Insurance Code Article 21.09 and to facilitate the supervision of such activities in the public interest. The purpose of a license issued under Insurance Code Article 21.09 and subject to the provisions of this subchapter is to authorize and enable the specialty licensee and its properly trained employees to actively engage in the solicitation or sale of insurance as specified in Article 21.09 with respect to the general public only in connection with an associated consumer transaction.

§19.1902. Definitions.

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

(1) Associated consumer transaction -- A retail exchange of goods or services other than insurance which is the basis of the relationship between the specialty license holder and its customer.

(2) Control -- The power to direct or cause the direction of the management and policies of a specialty license holder, whether directly or indirectly. For the purpose of this subchapter, a person is considered to control:

(A) a corporate specialty license holder if the person is an officer or director of the corporation or if the person, individually or acting with others, directly or indirectly, holds with the power to vote, owns, or controls, or holds proxies representing, at least 10 percent of the voting stock or voting rights of the corporate specialty license holder; or

(B) a partnership if the person through a right to vote or through any other right or power exercises rights in the management, direction, or conduct of the business of the partnership.

(3) Corporation -- A legal entity organized under the business corporations laws or limited liability company laws of this state, another state, or a territory of the United States.

(4) Credit accident and health insurance -- A type of insurance as set out in Insurance Code Article 3.53.

(5) Credit involuntary unemployment insurance -- A type of insurance as set out in Insurance Code Article 21.79E.

(6) Credit life insurance -- A type of insurance as set out in Insurance Code Article 3.53.

(7) Department -- The Texas Department of Insurance.

(8) Depository institution -- Any bank or savings association as defined under 12 U.S.C. §1813 including a state or federal credit union.

(9) Employee -- A person in the service of a specialty license holder under any contract of hire where the specialty license holder has the power or right to direct and control the person in the material details of how the work is to be performed.

(10) Franchisee -- A person that is granted a franchise by a franchisor or a person who is an agent or licensee of a travel agency, vehicle rental company or a self-service storage facility without regard to whether a franchise is granted to such person.

(11) Franchise location -- A place of business independently owned and operated by a franchisee.

(12) Franchisor -- A person that grants a franchise to a franchisee or a travel agency, vehicle rental company or self-service storage facility that authorizes an agent or licensee to conduct business under the company's name.

(13) Partnership -- An association of two or more persons organized under the partnership laws or limited liability partnership laws of this state, another state, or a territory of the United States.

(14) Person -- An individual, partnership, corporation, or depository institution.

(15) Specialty insurance product -- Any of the types of insurance set out in Insurance Code Article 21.09.

(16) Specialty license holder or specialty licensee -- A person who holds a license under Insurance Code Article 21.09.

§19.1903. Qualifications.

(a) An individual may qualify for a specialty license if the individual:

(1) is at least 18 years of age;

(2) has not committed an act for which a license may be denied under the Insurance Code or insurance regulations of this state or any other state; and

(3) satisfies the requirements of subsection (c) of this section.

(b) A corporation, partnership or depository institution may qualify for a specialty license if the entity:

(1) is organized under federal law or the laws of this or any other state or territory of the United States;

(2) is admitted to conduct business in this state by the secretary of state, if so required;

(3) provides a current franchise tax certificate from the Texas state comptroller's office;

(4) provides the name, address, date of birth and social security number of all officers, directors, members, managers, partners or any other person who has the right or ability to control the specialty license holder; and

(5) satisfies the requirements of subsection (c) of this section.

(c) To qualify for a license under Article 21.09, Insurance Code, a person must:

(1) submit a properly completed license application to the department;

(2) obtain a company appointment and certification from an insurance company authorized by the department to write the specific type of insurance in this state which the person requests authority to solicit under Article 21.09;

(3) remit all required license fees. All such fees are nonrefundable;

(4) be actively engaged in a finance or retail business at each location where insurance sales will be conducted under the specialty license with the primary purpose of providing goods or services other than insurance to customers in this state; and

(5) solicit and deliver the specialty insurance product authorized under Article 21.09 only in connection with an associated consumer transaction.

§19.1904. Application.

(a) Application for more than one specialty license authority. A first time applicant may seek licensure for more than one license authority on the same specialty license application. A $50 fee per license authority must accompany the application.

(b) Assumed name or trade name. An applicant desiring to use an assumed name in the conduct of an insurance business under a specialty insurance license shall be subject to the requirements of §19.902 of this title (relating to One Agent, One License) except that a separate filing with the department shall not be required for an applicant who conducts business under a single assumed name and registers that name with the department on the applicant's original specialty license application. No applicant for or holder of a specialty license shall be required to file multiple registrations with the department for a previously registered assumed name as a result of seeking more than one specialty license authority.

(c) Forms. Application and Registration forms are available by:

(1) contacting the department's licensing division customer service center; or

(2) through the department's website at www.tdi.state.tx.us.

§19.1905. Place of Business.

(a) An applicant may obtain a single specialty license which authorizes the applicant to conduct insurance business under Article 21.09 at locations owned and operated only by the applicant.

(b) An applicant for a specialty license under Article 21.09 is required to register with the department each location where insurance sales will be conducted under the specialty license. All existing business locations owned or operated by the license applicant where insurance sales will be conducted must be included with the applicant's original license application form. An applicant may submit a separate registration form as required under §19.902(c) of this title (relating to One Agent, One License) for each business location or a single notarized list containing the physical address of each location.

(c) The registration of an additional business location shall be treated as an expansion of the specialty license holder's authority, and a fee equal to the license fee shall be paid for each additional location as provided by §19.902 of this title.

(d) An applicant or specialty license holder that is also a franchisor may not register a business location which is independently owned or operated by a franchisee.

(e) An applicant or specialty license holder that is a franchisee may obtain a single specialty license which authorizes the person to conduct insurance business under Article 21.09 at locations owned and operated only by the franchisee. The independent owner of each franchise location must submit an application separate from any application submitted by the franchisor. A franchisee may not register a business location which is owned or operated by the franchisor or by another franchisee.

(f) A specialty license holder who transfers business locations, opens an additional business location or acquires a business location already in operation is required to register each new location where insurance sales will be conducted which was not owned or operated by the license holder at the time the original license application was filed with the department. The requirements set out in §19.902(c) of this title shall govern a registration under this subsection.

(g) No applicant for or holder of a specialty license shall be required to file multiple registrations for a previously registered business location as a result of seeking more than one specialty license authority.

(h) A specialty license holder may not solicit insurance from a business location which the license holder has not registered with the department under this section.

§19.1906. Expiration and Renewal of Licenses.

(a) Except as may be provided under §19.801 of this title (relating to General Provisions Regarding Licensing Fees and License Renewal), each specialty license issued by the department expires on the second anniversary of the date of issuance unless suspended or revoked by the commissioner. A specialty license holder may renew a license that has not expired or has not been suspended or revoked by filing a properly completed renewal application with the department in the form prescribed by the department and paying to the department before the expiration date of the license the required renewal fee as specified in §19.802 of this title (relating to Amounts of Fees). A renewal fee is nonrefundable.

(b) The provisions of Insurance Code Article 21.01-2 §2 concerning the renewal of an insurance agent license shall apply to the specialty license issued under Insurance Code Article 21.09 and this subchapter.

(c) When a complete renewal application is filed not later than the expiration date of the license and accompanied by the renewal fee specified in §19.802 of this title, the original license continues in force until:

(1) the department issues the renewal license; or

(2) the commissioner issues an order suspending or revoking the license.

§19.1907. Non-Residents.

A specialty license shall be issued to persons not resident in the State of Texas under the same requirements applicable to Texas residents.

§19.1908. Notice to department.

Each specialty license holder shall notify the department within 30 days of the occurrence of the following:

(1) a change of the specialty license holder's mailing address;

(2) an administrative action taken against the specialty license holder by the insurance regulator of another state;

(3) the addition or removal of a location or office from which insurance sales are conducted under the specialty license;

(4) a felony conviction of the specialty license holder or any individual who exercises control of the specialty license holder;

(5) the addition or removal of an officer, director, partner, member, manager, or any other person in control of the specialty license holder.

§19.1909. Employee Training.

(a) Each employee of a specialty license holder who performs any act of an insurance agent within the scope of the individual's employment shall complete a training program which satisfies the requirements of Article 21.09 §1(d).

(b) An insurance company authorized to write the specialty insurance product shall submit an outline of the training program to the department for approval prior to use by a specialty license holder.

(c) The training outline shall be sufficiently detailed to demonstrate that the specialty license applicant's employees will receive training in the disclosures required under the applicable statutes and regulations as well as training in each specific type of specialty insurance product which the applicant seeks authorization to solicit.

(d) An applicant for or holder of a specialty insurance license shall submit all employee training materials to the department upon request. If the department finds that a training program is deficient, misrepresents any aspect of the insurance transaction, contains inaccuracies misleading to the public, or is not properly administered by the specialty license holder, the department may take any disciplinary action authorized under §19.1910 of this title (relating to Denial or Refusal of Specialty License Application; Suspension or Revocation of Specialty Licenses; Discipline of Specialty License Holders) or institute a disciplinary action against the insurance company as appropriate.

§19.1910. Denial Or Refusal Of Specialty License Application; Suspension Or Revocation Of Specialty Licenses; Discipline Of Specialty License Holders.

(a) In addition to any other remedy available under Chapter 82 of the Insurance Code, the department may refuse to issue an original license, revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, assess an administrative penalty, or reprimand a specialty license holder for a violation of the Insurance Code, another insurance law of this state, or a rule of the department. If a license suspension is probated, the commissioner may require the license holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the commissioner in those areas that are the basis of the probation.

(b) If the department proposes to refuse to issue an original specialty license, or to suspend, revoke, or refuse to renew a specialty license, the person affected is entitled to a hearing conducted by the State Office of Administrative Hearings in accordance with Chapter 40 of the Insurance Code. Notice of the hearing shall be provided to the person and to any insurance company appearing on the application as desiring that the license be issued.

(c) The department may discipline a specialty license holder or deny a license application under this subchapter if the department determines that the applicant or specialty license holder, individually or through any officer, director, controlling shareholder or employee:

(1) has willfully violated any provision of the insurance laws of this state or any other state;

(2) has intentionally made a material misstatement in a license application;

(3) has obtained, or attempted to obtain, a license by fraud or misrepresentation;

(4) has misappropriated, converted to the applicant's or specialty license holder's own use, or illegally withheld money belonging to:

(A) an insurance company;

(B) a specialty license holder; or

(C) an insured, enrollee, or beneficiary;

(5) has engaged in fraudulent or dishonest acts or practices;

(6) has materially misrepresented the terms or conditions of an insurance policy or contract;

(7) is convicted of a felony;

(8) has offered or given a rebate of an insurance premium or commission to an insured or enrollee; or

(9) is not actively engaged in a finance or retail business at a location where insurance sales are conducted.

(d) If a specialty license holder does not maintain the qualifications necessary for issuance of the license, the department shall deny, revoke, or suspend the person's license as provided in this section.

(e) A person whose license application is denied or whose insurance license has been revoked under the laws of this or any other state may not apply for a license as a specialty insurance agent before the first anniversary of:

(1) the effective date of the denial or revocation; or

(2) if the applicant or specialty license holder seeks judicial review of the department's action, the date of the final court order or decree affirming that action.

(f) The department may deny a timely application filed under subsection (e) of this section if the applicant does not show good cause why the denial or revocation of the previous license application or license should not be considered a bar to the issuance of a specialty license. This subsection does not apply to an applicant whose license application was denied for failure to submit a properly completed license application.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006210
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-6327

♦ ♦ ♦

PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

CHAPTER 102. PRACTICE AND PROCEDURES--GENERAL PROVISIONS

28 TAC §102.10

The Texas Workers' Compensation Commission (the commission) proposes new rule §102.10, concerning Interest, General. The new rule is proposed to clarify the application of simple interest on accrued but unpaid benefits except where compounded interest is specifically provided for by statute or rule.

New §102.10 is added to clarify the method to be used when calculating interest required on workers' compensation benefits under the Texas Workers' Compensation Act (the Act). (The proposed rule does not address other references to interest in the Act and recognizes that there are laws outside the Act which may affect the payment of interest.) The fact that there is a specific statutory provision for *compound interest* in some parts of the Code and rules (for instance, for payments to the subsequent injury fund, see §403.007(b) and §132.10(f)), and not in others, indicates the legislature intended to require *compound interest* only where specifically provided. The interpretation of *simple interest* whenever the term *interest* appears with respect to interest due on workers' compensation benefits, is consistent with Johnson & Higgins of Texas v. Kenneco Energy, 962 S.W.2d 507, 533 (Tex. 1998), which called for uniformity in the law holding that prejudgment interest is to be computed as *simple interest*.

Commission Advisory 93-07 (Interest/Discount Rates Applicable to Commission Orders for Income Benefits) addressed interest on accrued income or death benefits and may have been misinterpreted by some to say that compound interest was to be applied to all commission orders. Subsequent Appeal Panel decisions have clarified that compound interest is limited to commuted death benefits paid to the Subsequent Injury Fund. It is understood that the possibility exists that this advisory may have been misconstrued to read that the application of compounded interest was to be applied to all benefits. However, the paragraph which addresses the application of compounded interest directly followed and addressed commuted death benefits paid to the Subsequent Injury Fund referred to in the preceding paragraph, and is limited to that situation. This limited application of the third paragraph of the advisory has further been supported by commission Appeal Panel decisions. The purpose of this rule is for clarification of the statute and commission rules.

By *simple interest* the proposal refers to interest computed for each interest period on the same amount of principle each period, regardless of any interest accrued in the past.

The *Texas Register* published text shows the text of the rule as proposed.

Nina Chamness, Finance Manager, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule because it merely clarifies the current commission policy regarding interest.

Local government and state government as a covered regulated entity will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Ms. Chamness has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be clarification of how interest is to be calculated for workers' compensation benefits. All system participants should benefit from a clear understanding of what is required to comply with specific rules regarding interest.

There will be no adverse economic impact on small businesses or micro-businesses. There is no difference in the costs of compliance for small or micro-businesses compared to the costs of compliance for large(st) businesses; there will be no anticipated increased economic costs to person who are required to comply with the rule as proposed because the rule reflects the current policy of the commission regarding the calculation of interest. The financial impact on any party which may have mistakenly been paying compounded interest based on Advisory 93-07 should be minimal. If there are system participants who have been paying compound interest in situations where compound interest is not specified, the payors of this interest will realize a slight savings (decreased costs) in interest in the future and the recipients will realize a slight decrease in interest payments. This will not differ for small or micro-businesses versus large or largest businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., October 16, 2000.. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Cherie Zavitson at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The new rule is proposed under the following statutes: Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §403.007, which provides for the insurance carrier to commute payments to the subsequent injury fund at the rate established in §401.023, compounded annually; Texas Labor Code §408.064, which directs interest to be paid on income or death benefits pursuant to an order; Texas Labor Code §408.081, which provides that the carrier must pay interest on accrued but unpaid income benefits; Texas Labor Code §408.147, which provides for the contest of an employee's entitlement to supplemental income benefits by an insurance carrier; Texas Labor Code §410.208, which provides for interest on benefits recovered by a judgment; Texas Labor Code §413.019, which directs that interest be paid on late payments, refunds, or overpayments; and Texas Labor Code §415.008, which directs that interest be paid on benefits fraudulently obtained or denied.

This proposed new rule affects the following statutes: Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code §403.007, which provides for the insurance carrier to commute payments to the subsequent injury fund at the rate established in §401.023, compounded annually; Texas Labor Code §408.064, which directs interest to be paid on income or death benefits pursuant to an order; Texas Labor Code §408.081, which provides that the carrier must pay interest on accrued but unpaid income benefits; Texas Labor Code §408.147, which provides for the contest of an employee's entitlement to supplemental income benefits by an insurance carrier; Texas Labor Code §410.208, which provides for interest on benefits recovered by a judgment; Texas Labor Code §413.019, which directs that interest be paid on late payments, refunds, or overpayments; and Texas Labor Code §415.008, which directs that interest be paid on benefits fraudulently obtained or denied.

The new rule is proposed under the following statutes: Texas Labor Code §§402.061, 403.007, 401.023, 408.064, 408.081, 408.147, 410.208, 413.019, and 415.008.

This proposed new rule affects the following statutes: Texas Labor Code §402.061, Texas Labor Code §403.007, Texas Labor Code §408.064, Texas Labor Code §408.147, Texas Labor Code §410.208, Texas Labor Code §413.019, and Texas Labor Code §415.008.

§102.10. Interest, General.

Unless otherwise specified by law, the term "interest" when applied to workers' compensation benefits shall mean simple interest (interest computed on the same amount of principal for each interest 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 September 1, 2000.

TRD-200006223
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 804-4286

♦ ♦ ♦

CHAPTER 164. HAZARDOUS EMPLOYER PROGRAM

28 TAC §§164.1 - 164.4, 164.6 - 164.12, 164.14 - 164.16

The Texas Workers' Compensation Commission (the commission) proposes amendments to §§164.1-164.4, 164.6-164.12, and §§164.14-164.16, concerning the Extra-Hazardous Employer Program. The amendments are proposed to implement a change in the name of this commission program contained in Texas Labor Code Chapter 411, Subchapter D.

The 76th Legislature, 1999, in House Bill 2514, amended the Texas Labor Code, Chapter 411, Subchapter D by changing the name of the "Extra-Hazardous Employer Program" to the "Hazardous Employer Program". This change in program name was

effective September 1, 1999. Because the change in program name was made by the legislature, in July of 1999 the *Texas Register* agreed to administratively change the references to the "Extra-Hazardous Employer Program" to the "Hazardous Employer Program" in the commission's rules. Recently, the *Texas Register* indicated that this change was not made administratively and therefore, it is necessary to incorporate this change of program name into the commission's rules through the formal rulemaking procedures of the Administrative Procedure Act. To incorporate this change into the commission rules which relate to this program, amendments to§§164.1-164.4, §§164.6-164.12, and §§164.14-164.16 are proposed which would change "Extra-Hazardous Employer Program" to "Hazardous Employer Program" and would also change references to this program. The proposed amendments make no substantive change to the rules.

In addition, the change of "an" to "a" is proposed in appropriate places throughout the rules and correction of the rule title reference in §164.2(b)(4) is proposed.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Nina Chamness, Finance Manager, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule, because the changes are non-substantive.

Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Ms. Chamness has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be the implementation of the statutory program name change to the Hazardous Employer Program.

There will be no additional anticipated economic costs to persons who are required to comply with the rule as proposed because the changes are non-substantive. There will be no adverse economic impact on small businesses or micro-businesses. There is no difference in the costs of compliance for small or micro-businesses compared to the costs of compliance for large or largest businesses because the amendment does nothing other than change the name of the Extra-Hazardous Program pursuant to legislative action.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., October 16, 2000. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to *RuleComments@twcc.state.tx.us* or by mailing or delivering your comments to Cherie Zavitson at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendments are proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §§411.041-411.068, which require the commission to identify hazardous employers and develop, implement, and enforce accident prevention programs.

These proposed amendments affect the following statutes: Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §§411.041-411.068, which require the commission to identify hazardous employers and develop, implement, and enforce accident prevention programs.

§164.1. Criteria for Identifying Hazardous [~~Extra Hazardous~~] Employers.

(a) The Texas Workers' Compensation Commission (the commission) shall identify employers subject to the Texas Labor Code, §411.041, as hazardous [~~extra hazardous~~] based on criteria established by the commission in Chapter 164 of this title (relating to Hazardous [~~Extra-Hazardous~~] Employer Program). Each employer identified, continued, or monitored shall have the right to administrative review of the findings of the commission by the Workers' Health and Safety Division (the division). In addition, each employer identified, continued in the program, or monitored shall have the right to request a hearing to contest the findings of the commission.

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

(1) (No change.)

(2) Employer subject to the program--Every employer who has workers' compensation insurance coverage to the extent that any finding as to hazardous [~~Extra- Hazardous~~] employer status made during such coverage shall continue, even if such coverage is terminated, until such status is removed pursuant to this chapter. In addition, this chapter applies to every employer who is not required to have such coverage and does not have such coverage and employs five or more non-exempt employees.

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

(8) Audit Period--The 12-month period to be used for obtaining employment data and for counting injuries, including occupational diseases and fatalities as specified in §164.14 of this title (relating to Values [~~and Criteria~~] Assigned for Computation of Hazardous [~~Extra-Hazardous~~] Employer Identification).

(9)-(12) (No change.)

(13) Threshold Level (X)--Specified in §164.14 and established so as to insure that an identified employer's injury frequency substantially exceeds that which may reasonably be expected in the employer's business or industry. Values for both thresholds will be selected such that no employer will be identified as a hazardous [~~an~~

~~Extra-Hazardous~~] employer who has only one lost time injury or occupational disease reported during the audit period nor will an employer be identified as hazardous [~~Extra-Hazardous~~] whose R does not exceed $R_{expected}$.

(c) The following calculation shall be used to determine hazardous [~~Extra-Hazardous~~] employer status. An individual employer's rate of injuries per 100 employees, for the specified audit period, calculated using the formula: R = (I/E) x 100. The computed R is divided by the expected injury rate ($R_{expected}$) and the result compared to the threshold level established in §164.14. If the ratio is greater than the threshold value, the employer is hazardous [~~Extra- Hazardous~~].

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

(f) An employer whose total employment in all SIC codes is less than 20 may be excluded from identification for the program.

(1) (No change.)

(2) If the employer requests a full OSHCON consultation within 30 days of receipt of the tentative identification and receives the consultation within 90 days of the notification, the employer will not be identified for the Hazardous [~~Extra- Hazardous Employer Program~~].

(3) (No change.)

(4) If the employer does not request and receive a full OSHCON consultation, the employer will be identified for the Hazardous [~~Extra-Hazardous~~] Employer Program.

(5) An employer tentatively identified for the program may request an administrative review of the facts used in the tentative identification as addressed in §164.2 of this title (relating to Notice to "Hazardous [~~Extra-Hazardous~~] Employers").

§164.2. Notice to Hazardous ~~[Extra-Hazardous]~~ Employers.

(a) The division shall notify the hazardous [~~Extra-Hazardous~~] employer and the employer's workers' compensation insurance carrier, if any. The notice shall be sent to:

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

(b) The notice shall be in writing and shall inform the employer of the following requirements:

(1) a statement that the employer has been identified as a hazardous [~~an Extra-Hazardous~~] employer;

(2) a statement of the facts on which the identification of the hazardous [~~Extra- Hazardous~~] employer is based;

(3) an outline of the actions, if any, the employer is required to take as an identified hazardous [~~Extra-Hazardous~~] employer;

(4) the information that, if the employer's records show facts that differ from those on which the identification of hazardous [~~Extra-Hazardous~~] employer is based, the employer may request an administrative review by the division. Subjects that may be resolved by administrative review include, but are not limited to, the proper SIC Code, the highest employment within the audit period, the status of claimants as employees or leased employees/independent contractors, duplicate claims, claims not belonging to the identified employer, companies that are out of business or no longer doing business in Texas, injury claims involving seven days or less lost time, and fatalities meeting the criteria in §164.14 of this title (relating to Values [~~and Criteria~~] Assigned for Computation of Hazardous [~~Extra- Hazardous~~] Employer Identification) that were not excluded prior to notification. Such review requires that the employer allow complete and open inspection of all employer records that may impact upon the determination of being designated as a hazardous [~~an Extra-Hazardous~~] employer and provide records upon request. The request for administrative review must be filed with the division no later than the 10th day after the date the notice was received. The Workers' Health and Safety Division is the final arbiter of administrative reviews. If the hazardous [~~Extra-Hazardous~~] employer identification cannot be resolved administratively, the employer will be offered the opportunity to refer it to a hearing. The hazardous [~~Extra-Hazardous~~] employer status will remain in effect until notified by the division that the status has been revoked (unless the status is suspended by a request for a hearing);

(5) the information that the employer has the right to contest "hazardous [~~Extra-Hazardous~~] employer" status by requesting a hearing within 20 days of notification of identification or failure to resolve the matter administratively, as provided by §148 of this title (relating to Hearings Conducted by the State Office of Administrative Hearings). The Workers' Health and Safety Division will offer the employer the opportunity to refer to a hearing request for an administrative review that is not resolved through the administrative process. A request for a hearing will suspend identification as a "hazardous [~~an "Extra-Hazardous~~] employer" pending the outcome of the hearing; [~~and~~]

(6) any penalties for failure to take the actions required under the *Hazardous* [~~Extra- Hazardous~~] Employer Program; and

(7) (No change.)

§164.3. Safety Consultation for Public Employers.

(a) Public employers who have not had an accident prevention plan developed and implemented in the last six months prior to notification shall, not later than 30 days following receipt of notice of identification as a hazardous [~~an Extra-Hazardous~~] employer, complete a safety consultation from a consultant who has been approved by the division as an approved professional source. The consultation may be provided by:

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

(b) Public employers who have had an accident prevention plan developed within the six months prior to notification as a hazardous [~~an Extra-Hazardous~~] employer must obtain division review of the plan for adequacy, to include an on-site visit.

(c)-(e) (No change.)

(f) If the initial consultation and report cannot be completed in the time allowed under this section, the public employer may apply to the commission for a waiver of the time requirements. In no case shall the initial consultation exceed 60 days following the receipt of notification of identification as a hazardous [~~an Extra-Hazardous~~] employer.

(g) The consultants identified in subsection (a) of this section may charge an employer for consultations provided under the Hazardous Employer Program [~~Extra-Hazardous employer program~~].

§164.4. Formulation of Accident Prevention Plan for Public Employers.

(a) (No change.)

(b) Public employers who have had an accident prevention plan developed and implemented within the six months prior to notification as a hazardous [~~an Extra-Hazardous~~] employer and verified and approved by the division pursuant to §164.3(b) of this title (relating to Safety Consultation for Public Employers) will continue implementation of the plan and obtain an inspection by the division as provided in §164.5 of this title (relating to Follow-up inspection for Public Employers by the Division).

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

(h) The public employer shall be responsible for filing the accident prevention plan that has been reviewed by the approved professional source and signed as meeting the criteria in subsection (a) of

this section with the division no later than 30 days after completion of the safety consultation and no later than 90 days after the employer received notification of identification as a hazardous [~~an Extra-Hazardous~~] employer. Delays requested for good cause may be granted by the division.

§164.6. Report of Follow-up Inspection, Public Employers.

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

(c) If the public employer is found not to have implemented the accident prevention plan, the report shall also contain:

(1) a notification that the public employer's hazardous [~~Extra-Hazardous~~] employer status is being continued;

(2)-(4) (No change.)

§164.7. Removal of Public Employers From Hazardous [~~Extra-Hazardous~~] Employer Status.

(a) A public employer shall be removed from hazardous [~~Extra-Hazardous~~] employer status if, on inspection, the division determines that the employer has complied with the terms of the accident prevention plan or implemented other acceptable corrective measures approved by the division.

(b) If the public employer has complied with the accident prevention plan but continues to exceed the injury frequency that may reasonably be expected in that public employer's business or industry, the public employer will be removed from hazardous [~~Extra-Hazardous~~] employer status and placed in a monitoring status. For purposes of placing a public employer in monitor status, the phrase "reasonably expected" is defined as: the Expected Injury Rate as defined in §164.1(b)(7) of this title (relating to Criteria For Identifying Hazardous [~~Extra- Hazardous~~] Employers). Injury data from the most recent 12-month period for which data is available will be used to determine placement on monitor status.

(c) (No change.)

(d) At the end of the six month monitoring period the public employer will be removed from the program. Such release from the program will not prevent the division from evaluating the employer in future audit periods. If identified in a future audit period, the employer will be required to fulfill all requirements of §§164.1-164.4 of this title (relating to Criteria For Identifying Hazardous [~~Extra-Hazardous~~] Employers; Notice To "Hazardous [~~Extra-Hazardous~~] Employers"; Safety Consultation for Public Employers; and Formulation of Accident Prevention Plan for Public Employers).

(e) (No change.)

§164.8. Continuation of Hazardous [~~Extra-Hazardous~~] Employer Status, Public Employers.

(a) A public employer shall remain on hazardous [~~Extra-Hazardous~~] employer status if the employer is found under §164.5 of this title (relating to Follow-up Inspection for Public Employers by the Division) to have failed or refused to implement an accident prevention plan or other suitable hazard abatement measures as approved by the division.

(b) If a public employer is not certified for removal from hazardous [~~Extra-Hazardous~~] employer status after the follow-up inspection, the employer shall take the actions specified in the follow-up inspection report, or other suitable hazard abatement measures as approved by the division, as a condition of future removal from hazardous [~~Extra-Hazardous~~] employer status.

(c) A public employer shall file a progress report with the division every 60 days until the employer has been removed from hazardous [~~Extra-Hazardous~~] employer status. The report shall include:

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

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

§164.9. Approval of Professional Sources for Safety Consultations.

(a) An individual seeking to become an approved professional source to provide safety consultations under the Hazardous [~~Extra-Hazardous~~] Employer Program shall apply to the division in the form and manner prescribed by the commission. Applications will be processed by the division within seven days of receipt of all required documentation.

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

(f) An individual who meets the requirements of subsections (b) or (c), and (e) of this section, shall be approved as an approved professional source to provide safety consultations for hazardous [~~Extra-Hazardous~~] employers.

(g) (No change.)

§164.10. Removal From the List of Approved Professional Sources.

(a) A safety consultant shall remain on the list of approved professional sources until removed by the commissioners because:

(1) (No change.)

(2) the safety consultant knowingly gives false or misleading information in any report required under the "Hazardous Employer Program [~~Extra-Hazardous employer program~~];

(3) the safety consultant, without good cause, fails to file or to timely file the reports required under the Hazardous Employer Program [~~Extra-Hazardous employer program~~];

(4)-(5) (No change.)

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

(h) If a consultant fails to attend an annual update seminar as prescribed in §164.9(e), the consultant will be placed on an "inactive" list by the division. Consultants on the inactive list are prohibited from conducting Hazardous [~~Extra-Hazardous~~] Employer Program consultations. The consultant will be notified by the division using certified mail, return receipt requested.

(i) (No change.)

§164.11. Request for Safety Consultation From the Division.

(a) An employer notified as hazardous [~~Extra-Hazardous~~] may request that the division perform the safety consultation.

(b) The request shall be in writing on the form prescribed by the commission and may be delivered to the division by mail, in person, or by telephonic document transfer. The form shall include:

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

(3) the date the employer received notice of identification as a hazardous [~~an Extra-Hazardous~~] employer.

(c) (No change.)

§164.12. Reimbursement of Division for Services Provided to Hazardous [~~Extra-Hazardous~~] Employer.

(a) An employer shall be required to reimburse the division for the services it renders when:

(1) (No change.)

(2) the division investigates accidents at the public employer's worksite(s) while the employer is designated a hazardous [~~an Extra-Hazardous~~] employer or is in monitor status;

(3) the division conducts a follow-up inspection of the public employer's premises under §164.5 of this title (relating to Follow-up Inspection for Public Employers by the Division) or other inspection under §164.8 of this title (relating to Continuation of Hazardous [~~Extra-Hazardous~~] Employer Status, Public Employers);

(4) the division formulates an accident prevention plan under §164.8 for a public employer who was not removed from hazardous [~~Extra-Hazardous~~] employer status after the follow-up inspection or was placed in monitor status; or

(5) the division conducts visits to the public employer after the public employer was not removed from hazardous [~~Extra-Hazardous~~] employer status; or

(6) (No change.)

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

§164.14. Values Assigned for Computation of Hazardous [~~Extra-Hazardous~~] Employer Identification.

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

(c) After December 31, 1998, the division will use a 12-month audit period made up of four calendar year quarters to be used for counting employment and injuries. The initial 12-month audit period is July 1, 1997 through June 30, 1998. Subsequent 12-month audit periods will advance by three months. The Hazardous [~~Extra-Hazardous~~] Employer Program will be reviewed at least once each year at the January public meeting, beginning January 2000, for authorization by the commissioners to continue the notification cycles for another year.

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

§164.15. Administrative Reviews and Hearings Regarding Identification as a Hazardous [~~an Extra- Hazardous~~] Employer.

(a) After a screening under §164.14 of this title (relating to Values Assigned for Computation of Hazardous Extra-Hazardous Employer Identification), if the commission decides to go forward with the identification of an employer as hazardous [~~Extra-Hazardous~~], based on the inclusion of a fatality, the Commission shall request a hearing to determine whether the employer or the work environment was a proximate cause(s) of the fatality. Proximate cause shall have the meaning given to it by the Texas courts in negligence cases.

(b) (No change.)

(c) After an employer has been identified as hazardous [~~Extra-Hazardous~~], the employer may contest the identification by requesting an administrative review within 10 days of notification of identification.

(d)-(g) (No change.)

§164.16. Removal of Private Employers from Hazardous [~~Extra-Hazardous~~] Employer Status.

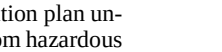
Unless the identification of a private sector employer as hazardous [~~Extra-Hazardous~~] in accordance with this chapter is removed by an administrative review or a hearing, the identification remains in effect for twelve months from the effective date of identification, regardless of any action the employer may have taken under these rules.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006224

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 804-4286



CHAPTER 165. REJECTED RISK: INJURY PREVENTIONS SERVICES

28 TAC §165.1

The Texas Workers' Compensation Commission (the commission) proposes an amendment to §165.1, concerning identification and notification of certain policyholders insured by the Texas Workers' Compensation Insurance Fund acting as the insurer of last resort. The amendment is proposed to eliminate the requirement for identified employers with corporate offices outside of Texas to provide information concerning their senior officials in Texas to the commission.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Subsection (c) of the current rule requires a policyholder whose corporate office is outside of Texas, who receives a notice from the Fund that injury prevention services are required as a condition of insurance, to provide information concerning its senior official in Texas to the Texas Workers' Compensation Insurance Fund and to the Texas Workers' Compensation Commission. The requirement to provide that information to the commission is proposed to be deleted. The commission intends to obtain that information exclusively from the Fund in the future.

Nina Chamness, Finance Manager, has determined that for the first five-year period the proposed rule is in effect there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the rule. The commission expects to see a small savings as a result of not having to process and store the information when it is received from the employer. Because the commission already receives this information from the Fund now, there will be no increase in costs to process the information.

Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rule as proposed.

Ms. Chamness has also determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be a savings to the employer in time and expense required to provide the information to the commission in addition to the Fund, and a reduction in the amount of paper processed.

There will be no anticipated increased economic costs to persons who are required to comply with the rule as proposed; there should be a savings to the employer in time and expense required to provide the information to the commission in addition to the Fund, and a reduction in the amount of paper processed. There will be no increased costs of compliance for small, micro, or large businesses. There is no difference in the cost of compliance for small or micro-businesses as compared to large(st) businesses. There will be no anticipated adverse economic impact on small or micro-businesses.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., October 16, 2000. You may comment via the Internet by accessing the Commission's website at www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Cherie Zavitson at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendment is proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code Chapter 415, which sets out prohibited acts, penalties, and procedures for administrative violations; and the Texas Insurance Code, Article 5.76-3, §10, which authorizes the commission to implement accident prevention plans, conduct follow-up inspections, and enforce the plans.

This proposed amendment affects the following statutes: Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; Texas Labor Code Chapter 415, which sets out prohibited acts, penalties, and procedures for administrative violations; and the Texas Insurance Code, Article 5.76-3, §10, which authorizes the commission to implement accident prevention plans, conduct follow-up inspections, and enforce the plans.

§165.1. Identification and Notification of Certain Policyholders Insured by the Texas Workers' Compensation Insurance Fund Acting as the Insurer of Last Resort.

(a) (No change.)

(b) A policyholder, subject to the Insurance Code, Article 5.76-3, 10(c), whose corporate office is located outside the state of Texas shall, upon receipt of notification by the Fund of the policyholders requirement to participate in the program as a condition of insurance, provide [~~the division and~~] the Fund [~~fund~~] the following information:

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

(c) Information required by subsection (b) of this section shall be mailed to the Fund at the appropriate address [~~and to the Texas Workers' Compensation Commission, Workers' Health and Safety Division, MS-28, 4000 S. IH-35, Austin, Texas, 78704, or provided by electronic document transfer (FAX) to the division at (512) 440-3714~~].

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006225
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 804-4286

♦ ♦ ♦

CHAPTER 166. WORKERS' HEALTH AND SAFETY--ACCIDENT PREVENTION SERVICES

28 TAC §166.7, §166.8

The Texas Workers' Compensation Commission (the commission) proposes amendments to §166.7 and §166.8, concerning Accident Prevention Services. The amendments are proposed to implement a change in the name of this commission program contained in Texas Labor Code Chapter 411, Subchapter D.

The 76th Legislature, 1999, in House Bill 2514, amended the Texas Labor Code, Chapter 411, Subchapter D by changing the name of the "Extra-Hazardous Employer Program" to the "Hazardous Employer Program." This change in program name was effective September 1, 1999. Because this change in program name was made by the legislature, in July of 1999 the *Texas Register* agreed to administratively change the references to the "Extra-Hazardous Employer Program" to the "Hazardous Employer Program" in the commission's rules. Recently, the *Texas Register* indicated that this change was not made administratively and therefore, it is necessary to incorporate this change of program name into the commission's rules through the formal rulemaking procedures of the Administrative Procedure Act. To incorporate this change into the commission rules which refer to this program, amendments to§166.7 and §166.8 are proposed which would change "Extra-Hazardous Employer Program" to "Hazardous Employer Program" and would also change references to this program. The proposed amendments make no substantive change to the rules.

The *Texas Register* published text shows words proposed to be added to or deleted from the current text, and should be read to determine all proposed changes.

Nina Chamness, Finance Manager, has determined that for the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

Local government and state government as covered regulated entities will be impacted in the same manner as described later in this preamble for persons required to comply with the rules as proposed.

Ms. Chamness has also determined that for each year of the first five years the rules as proposed are in effect the public benefits anticipated as a result of enforcing the rules will be the implementation of the statutory program name change to the Hazardous Employer Program.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. There will be no adverse economic impact on small businesses or micro-businesses. There is no difference in the costs of compliance for small or micro-businesses compared to the costs of compliance

for large or largest businesses because the amendment does nothing other than change the name of the Extra-Hazardous Program pursuant to legislative action.

Comments on the proposal or requests for public hearing must be received by 5:00 p.m., October 16, 2000. You may comment via the Internet by accessing the commission's website at www.twcc.state.tx.us and then clicking on "Proposed Rules." This medium for commenting will help you organize your comments by rule chapter. You may also comment by emailing your comments to RuleComments@twcc.state.tx.us or by mailing or delivering your comments to Cherie Zavitson at the Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

Commenters are requested to clearly identify by number the specific rule and paragraph commented upon. The commission may not be able to respond to comments that cannot be linked to a particular proposed rule. Along with your comment, it is suggested that you include the reasoning for the comment in order for commission staff to fully evaluate your recommendations.

Based upon various considerations, including comments received and the staff's or commissioners' review of those comments, or based upon the commissioners' action at the public meeting, the rule as adopted may be revised from the rule as proposed in whole or in part. Persons in support of the rule as proposed, in whole or in part, may wish to comment to that effect.

The amendments are proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §§411.041 - 411.068, which require the commission to identify hazardous employers and develop, implement, and enforce accident prevention programs.

These proposed amendments affect the following statutes: Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §§411.041- 411.068, which require the commission to identify hazardous employers and develop, implement, and enforce accident prevention programs.

§166.7. Inspection of Accident Prevention Services: Conducting and Reporting.

(a) Conducting the Inspection.

(1) The division inspector and the insurance company's representative shall review:

(A)-(C) (No change.)

(D) if appropriate, services rendered under the Hazardous Employer Program [~~extra-hazardous employer program~~] .

(2)-(4) (No change.)

(b) (No change.)

§166.8. Qualification of Field Safety Representatives.

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

(e) An insurance company intern program:

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

(4) shall include an additional 18-month phase or in the case of an intern with a degree in occupational health and safety, an additional six-month phase, during which the intern shall be permitted to service policyholders with manual premiums less than $100,000; with loss ratios in the previous policy year of less than 70%; and who are not active in the Hazardous Employer Program [~~Extra-Hazardous employer program~~], with the following requirements:

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

(5) (No change.)

(f) Qualification as a field safety representative under this section does not qualify the individual as a professional source approved by the division of workers' health and safety to provide consultations for hazardous [~~extra-hazardous~~] employers.

(g) (No change.)

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006226
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 804-4286

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.292

The Comptroller of Public Accounts proposes an amendment to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property. Tax Code, §151.3111(a), exempts services performed on tangible personal property qualifying for exemption based on its nature or use, or a combination of its nature and use. Tax Code, §151.3111(b), excludes from exemption services performed on tangible personal property sold by an organization qualified to make tax-free sales, tangible personal property exempt from use tax because sales tax has been paid, tangible personal property sold in a transaction qualifying as an occasional sale or as a joint ownership transfer, a boat or motor defined and taxed under Tax Code, §160.001, and equipment used in timber operations. These exclusions are unambiguous and have not been a part of the rule but are being added to the rule. The amendment also clarifies that tax is due on labor to repair, remodel, maintain, or restore clothing or footwear bought tax-free during a sales tax holiday, as set out in Senate Bill 441, 76th Legislature, 1999.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result

of enforcing the rule will be in providing taxpayers with information regarding their tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.3111.

§3.292. Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property.

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

(1) Commercial vessel - A ship of eight or more tons displacement that is used exclusively in a commercial enterprise including commercial fishing, but excludes any ship used for sports fishing or pleasure.

(2) Extended warranty or service policy - This contract is sold to the buyer of the product for an additional amount. The provisions of the contract become effective after the manufacturer's warranty expires.

(3) Maintenance - All work on operational and functioning tangible personal property necessary to sustain or support safe, efficient, continuous operations, or to keep in good working order by preventing the decline, failure, lapse, or deterioration of tangible personal property.

(4) Manufacturer's written warranty - A guarantee by the manufacturer that the product at the time of sale is operable and will remain operable for specified period of time. The manufacturer's warranty is provided without additional cost to the buyer.

(5) Remodel - To modify the style, shape, or form of tangible personal property belonging to another without causing a loss of its identity or without causing the item to operate in a new or different manner.

(6) Repair - To mend or restore to working order or operating condition tangible personal property that was broken, damaged, worn, defective, or malfunctioning.

(7) Repairman - Any person who, under either lump-sum or separated contracts, restores, repairs, performs maintenance services, or replaces a component of an inoperable or malfunctioning item.

(8) Private aircraft - An aircraft that is operated or used for a purpose other than as a certificated carrier of persons or property or by a flight school for the purpose of training pilots. Persons repairing aircraft belonging to or operated by a certificated carrier of persons or property or flight schools should refer to §3.297 of this title (relating to Carriers).

(b) Services to tangible personal property other than aircraft, commercial vessels, and motor vehicles. Persons who repair, restore, remodel, or maintain tangible personal property belonging to another are providing taxable services. Persons who remodel motor vehicles are also covered by this section. Persons who repair, maintain, or restore private aircraft should refer to subsection (i) of this section. Persons who repair, maintain, or restore motor vehicles should refer to §3.290 of this title (relating to Motor Vehicle Repair and Maintenance).

(1) A service provider is a retailer and must obtain a tax permit and collect sales or use tax on the entire charge for materials, parts, labor, consumable supplies, equipment, and any charges connected to the repair, remodeling, restoration, or maintenance service.

(2) A service provider may issue a resale certificate instead of paying sales or use tax to the supplier when purchasing materials that will be transferred to the care, custody, and control of a customer.

(3) A service provider must collect sales or use tax on services (labor) under an agreement which provides that the customer will furnish the parts and materials required for the repair.

(4) A service provider may accept an exemption certificate instead of sales or use tax when performing a taxable service for a customer exempt from tax or on an item that is exempt from tax.

(c) Consumable supplies and equipment. Sales or use tax must be paid by the service provider on supplies, tools, and equipment that are purchased for use in the performance of the repair but that are not transferred to the care, custody, and control of the customer.

(d) Responsibilities of remodelers. The responsibilities of remodelers of tangible personal property are the same as the responsibilities of persons providing taxable repair services.

(e) Repairs under warranties.

(1) Manufacturer's warranties. No tax is due on parts or labor furnished by the manufacturer to repair tangible personal property under a manufacturer's warranty or recall campaign.

(A) Records must be kept by the service provider that show that the service and parts were used in repairing an item under a manufacturer's warranty or recall.

(B) The service provider may purchase parts to be used in repairs under a manufacturer's warranty or recall tax free by issuing an exemption certificate to the supplier.

(2) Extended warranties and service contracts of tangible personal property with the exception of motor vehicles and private aircraft (see subsection (i)(4) of this section).

(A) Tax is due on the sale of an extended warranty, service contract or service policy for the repair or maintenance of tangible personal property.

(B) The person who warrants the item and is obligated to perform services under the terms of the agreement may issue a resale certificate for parts or service to be used in performing the repair or maintenance services covered by the contract.

(C) If the person obligated to perform the services uses a third party repairman to do the work, the repairman may accept a resale certificate from the warrantor of the item instead of collecting tax on the charges to the warrantor.

(D) The repairman or warrantor performing the service must collect tax on any charge to the owner for labor or parts not covered by the extended warranty.

(f) Contractors and persons who perform real property repair and remodeling. Persons who build new improvements to real property, or repair, restore, or remodel residential real property should refer to §3.291 of this title (relating to Contractors). Persons who repair or

remodel nonresidential real property should refer to §3.357 of this title (relating to Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property).

(g) Fabricating or processing. Persons who fabricate or process tangible personal property for another should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(h) Services performed on certain tangible personal property.

(1) Labor to repair, remodel, maintain, or restore certain tangible personal property that, if sold, leased, or rented, at the time of the performance of the service, would be exempted under Tax Code, Chapter 151, because of the nature of the property, its use, or a combination of its nature or use is exempted from sales and use taxes.

(2) The exemption provided in paragraph (1) of this subsection does not apply to:

(A) tangible personal property sold by an organization exempted by Tax Code, Chapter 151;

(B) tangible personal property exempted from use tax because sales tax was paid on the purchase;

(C) tangible personal property acquired tax free in a transaction qualifying as an occasional sale under Tax Code, §151.304, or as a joint ownership transfer exempted under Tax Code, §151.306;

(D) taxable boat or motor defined by Tax Code, §160.001;

(E) clothing and footwear purchased tax-free during a sales tax holiday; or

(F) machinery and equipment used in timber operations.

(i) [~~(h)~~] Exemption for labor to repair tangible personal property in a disaster area.

(1) Labor to repair, restore, remodel, or maintain tangible personal property is exempt if:

(A) the amount of the charge for labor is separately itemized; and

(B) the repair is to property damaged within a disaster area by the condition that caused the area to be declared a disaster area.

(2) The exemption does not apply to tangible personal property transferred as part of the repair.

(3) In this subsection, "disaster area" means:

(A) an area declared a disaster area by the Governor of Texas under [~~the~~] Government Code, Chapter 418; or

(B) an area declared a disaster area by the President of the United States under 42 United States Code, §5141.

(j) [~~(i)~~] Responsibilities of repairman or remodelers of private aircraft.

(1) Responsibilities under a lump-sum contract.

(A) Labor to repair or remodel private aircraft is not taxable. A person repairing or remodeling a private aircraft for a lump-sum price is not a retailer of a taxable item and may not issue a resale certificate for parts or material used or consumed in such repair or remodel.

(B) Under a lump-sum contract, the repairman or remodeler is the ultimate consumer of consumable supplies, tools, equipment, and all materials incorporated into the private aircraft. The lump-sum repairman or remodeler must pay the tax to suppliers at the time of purchase. The repairman will not collect tax from customers on the lump-sum charge or any portion of the charge. Under this type of contract, the repairman will pay the tax on materials even when the property is repaired for an exempt customer.

(C) A lump-sum repairman may use materials from inventory that were originally purchased tax free by use of a resale certificate. In those instances, the repairman incurs a tax liability based upon the purchase price of the materials and must report and remit the tax to the comptroller.

(2) Responsibilities under a separated repair or remodeling contract. Under a separated repair contract, the repairman of a private aircraft is a retailer and may issue a resale certificate in lieu of tax to suppliers for materials that will be incorporated into the private aircraft of the customer; the repairman must then collect tax from the customer on the agreed contract price of the materials, which must not be less than the amount the repairman paid to suppliers. The repairman must obtain a tax permit to be able to issue a resale certificate in lieu of tax when materials are purchased. The repairman may also use materials from inventory upon which tax was paid to the supplier at the time of purchase. In these instances, tax will be collected from the customer on the agreed contract price of the materials as if the materials had been purchased with a resale certificate; however, the repairman will remit tax to the comptroller only on the difference between the agreed contract price and the price paid to the supplier. See §3.338 of this title (relating to Multistate Tax Credits and Allowance of Credit for Tax Paid to Suppliers). A repairman of private aircraft is the ultimate consumer of consumable supplies, tools, and equipment used which are not incorporated into the private aircraft being repaired. The repairman must pay tax to suppliers of these items at the time of purchase. The repairman may not collect tax from customers on any charges for these items.

(3) Repairing jet turbine aircraft engines. Persons engaged in overhauling, retrofitting, or repairing jet turbine aircraft engines and their component parts should refer to §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(4) Warranties.

(A) Manufacturer warranties. Manufacturer's warranties are treated in the same manner as those for tangible personal property (see subsection (e)(1) of this section).

(B) Extended warranties and service contracts. A repairman performing services under an extended warranty covering a private aircraft must collect tax on the parts as required under paragraph (2) of this subsection.

(5) Maintenance. Tax is not due on the labor to maintain private aircraft. Refer to paragraphs (1) and (2) of this subsection for the repairman's responsibilities for tangible personal property used in maintenance.

This 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 August 30, 2000.

TRD-200006100

Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

34 TAC §3.302

The Comptroller of Public Accounts proposes an amendment to §3.302, concerning accounting methods, credit sales, bad debt deductions, repossessions, interest on sales tax, and trade-ins. Subsection (e) is amended to allow for bad debts on private label credit agreements, as directed by §2.24 of House Bill 3211, 76th Legislature, 1999, and renumbers subsections accordingly. The amendment applies to accounts deemed to be worthless and actually charged off for federal income tax purposes on or after October 1, 1999.

Subsection (a)(2) clarifies that subsection (a)(1) does not apply to the reporting of sales tax on rentals and leases. Subsection (b)(1) clarifies the type of sales by a retailer that are considered credit sales and provides that a credit sale also includes a sale by a retailer where another person extends credit to the purchaser under a private label credit agreement.

Additionally, subsection (d) is amended to allow persons who extend credit to purchasers under retailers' private label credit agreements or their assignees or affiliates to also claim a credit or deduction for tax paid accounts written off as bad debts. The amendment also sets out the records required for a retailer or other person to claim a bad debt deduction and allows for persons whose volume and character of uncollectible accounts warrants an alternative method of substantiating a reimbursement or credit for uncollectible accounts. Subsection (e) is amended to allow a person who extends credit to a purchaser under a retailer's private label credit agreement, or an assignee or affiliate to also claim a credit or deduction for tax paid but not collected on repossessions. Subsection (h) is added to direct readers to §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest), for information on interest on tax erroneously paid, as directed under Senate Bill 1321, 76th Legislature, 1999. Various subsections are amended to correct grammar usage and sentence construction, and to make the section easier to read and understand.

Mike Reissig, director of estimates, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. The amendment to the rule would have no fiscal impact on small business. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.005, 151.007, 151.008, and 151.426.

§3.302. Accounting Methods, Credit Sales, Bad Debt Deductions, Repossessions, Interest on Sales Tax, and Trade-Ins.

(a) Accounting methods.

(1) For sales and use tax purposes, retailers may use a cash basis, an accrual basis, or any generally recognized accounting basis that [~~which~~] correctly reflects the operation of their business. Retailers who wish to use an accounting system to report tax that [~~which~~] is not on a pure cash or accrual basis or that is not a commonly recognized accounting system should obtain prior written approval from the comptroller.

(2) Paragraph (1) of this subsection does not apply to the reporting of sales tax on rentals[~~Rentals~~] and leases of tangible personal property.[~~are not covered by this section.~~] See §3.294 of this title (relating to Rentals and Leases of Taxable Items) for the accounting of rentals and leases.

(b) Credit sales.

(1) Credit sales include all sales in which the terms of the sale provide for deferred payments of the purchase price. Credit sales include installment sales, sales under conditional sales contracts[~~,~~] and revolving credit accounts, and sales by a retailer for which another person extends credit to the purchaser under a retailer's private label credit agreement.

(2) Sales tax is due on insurance, interest, finance charges, and all other service charges incurred as a part of a credit sale unless these charges are stated separately to the customer by such means as an invoice, billing, sales slip, ticket, or contract.

(3) Tax is to be reported on a credit sale based upon the accounting method that [~~used by~~] the retailer uses.

(A) If the retailer is on an accrual basis, the entire amount of tax is due and must be reported at the time the sale is made.

(B) If the retailer is on a cash basis of accounting, the payment received from the customer includes a proportionate amount of tax, sales receipts, and may also include finance charges. Tax must be reported based upon the actual cash collected during the reporting period, excluding separately stated finance charges.

(C) If the retailer uses an accounting basis that [~~which~~] is not a pure cash or accrual basis, tax must be reported in a consistent manner that [~~which~~] accurately reflects the realization of income from the credit sales on the retailer's books and records.

(c) Transfer or sale of sales contracts and accounts receivable. A retailer may sell, factor, or assign to a third party the retailer's right to receive all payments due under a credit sale. At the time the contract or receivable is sold, factored, or assigned, the tax becomes due on all remaining payments. The retailer is responsible for reporting all remaining tax due under the credit sale to the comptroller in the reporting period in which the contract or receivable is sold, factored, or assigned. No reduction in the amount of tax to be reported and paid by the retailer is allowed if the transfer to the third party is for a discounted amount. This section does not apply to a seller's[~~the~~] assignment or pledge of contracts or accounts receivable [~~by a seller~~] to a third party as loan collateral.

(d) Bad debts.

(1) Any portion of the sales price of a taxable item that [~~which~~] the retailer or private label credit provider cannot collect is considered to be a bad debt.

(A) A retailer is not required to report tax on any amount that [~~which~~] has been entered in the retailer's books as a bad debt during the reporting period in which the sale was made, and that [~~which~~] will be taken as a deduction on the federal income tax return during the same or subsequent reporting period.

(B) A retailer is entitled to a credit for tax reported and paid on an account later determined to be a bad debt. A retailer may take a deduction on the retailer's report form, or obtain a refund from the comptroller, in the reporting period in which the retailer's books reflect the bad debt. Deductions and refunds due to bad debts are limited to four years from the date the account is entered in the retailer's books as a bad debt.

(C) A retailer who extends credit to a purchaser on an account that is later determined to be a bad debt, a person who extends credit to a purchaser under a retailer's private label credit agreement on an account that is later determined to be a bad debt, or an assignee or affiliate of either who extends credit on an account that is later determined to be a bad debt, is entitled to a credit or refund for the tax paid to the comptroller on the bad debt.

(2) The amount of the bad debt may include both the sales price of the taxable item and nontaxable charges, such as [~~freight or~~] finance charges, late charges, or interest that [~~which~~] were separately billed to the customer. A deduction may only be claimed on that portion of the bad debt that [~~which~~] represents the amount reported as subject to tax. In determining that amount, all payments and credits to the account may be applied ratably against the various charges that comprise[~~comprising~~] the bad debt, except as provided by paragraph (3) of this subsection.[~~subsection (d)(3) of this section.~~]

(3) A retailer, private label credit provider, or assignee or affiliate may not deduct from the amount subject to tax to be reported the expense of collecting a bad debt, or the amount that a third party has retained [~~by~~] or which has been paid to a third party for the service of collecting a bad debt.

(4) To claim bad deductions, the records of the person who claims the bad debt deduction[~~a retailer's records~~] must show:

(A) date of original sale and name and Texas sales tax permit number of the retailer;

(B) name and address of purchaser;

(C) amount that the purchaser contracted to pay;

(D) taxable and nontaxable charges;

(E) amount on which the retailer reported and paid Texas [~~retailer paid~~] tax;

(F) all payments or other credits applied to the account of the purchaser;

(G) evidence that the uncollected amount has been designated as a bad debt in the [~~retailer's~~] books and records of the person who claims the bad debt deduction, and that the amount [~~and~~] has been or will be claimed as a bad debt deduction for income tax purposes;[~~.~~]

(H) city, county, transit authority, or special purpose district to which local taxes were reported; and

(I) the unpaid portion of the assigned sales price.

(5) A person who is otherwise qualified to claim a bad debt deduction, and whose volume and character of uncollectible accounts warrants an alternative method of substantiating the reimbursement or credit, may:

(A) maintain records other than the records specified in paragraph (4) of this subsection if:

(i) the records fairly and equitably apportion taxable and nontaxable elements of a bad debt, and substantiate the amount of Texas sales tax imposed and remitted to the comptroller with respect to the taxable charges that remain unpaid on the debt; and

(ii) the comptroller approves the procedures used; or

(B) implement a system to report its future tax responsibilities based on a historical percentage calculated from a sample of transactions if:

(i) the system utilizes records provided by the person claiming the credit or reimbursement and the person who reported and remitted such tax to the comptroller; and

(ii) the comptroller approves the procedures used.

(6) The comptroller may revoke the authorization to report under paragraph (5)(B) of this subsection if the comptroller determines that the percentage being used is no longer representative because of:

(A) a change in law, including a change in the interpretation of an existing law or rule; or

(B) a change in the taxpayer's business operations.

(7) A person who is not a retailer may claim a credit or reimbursement authorized by paragraph (1)(C) of this subsection only for taxes imposed by Tax Code, §151.051 or §151.101.

(8) For purposes of this section, "affiliate" means any entity or entities that would be classified as a member of an affiliated group under 26 U.S.C. §1504.

(9) [~~(5)~~] If a retailer or other person later collects all or part of an account for which a bad debt deduction or write-off was claimed, the amount collected must be reported as a taxable sale in the reporting period in which such collection was made.

(10) [~~(6)~~] Credit or installment sales may not be labeled as bad debts merely for the purpose of delaying the payment of the tax.

(e) Repossessions.

(1) When taxable items upon which the retailer or other person has paid tax [~~has been paid by the retailer~~] are repossessed, the retailer or other person is allowed a credit or deduction for that portion of the actual purchase price that remains[~~remaining~~] unpaid. The deduction must not include any nontaxable charges that [~~which~~] were a part of the original sales contract. Any payments that [~~made by~~] the purchaser made prior to repossession must be applied ratably against the various charges in the original sales contract.

(2) A retailer or other person may not deduct from the tax to be reported the expense of collecting an account receivable, or the amount that a third party has retained or that has been paid to[~~retained by or paid to~~] a third party for the service of collecting an account or repossessing or selling a repossessed item.

(3) To claim a deduction or credit the person who claims the deduction or credit must be able to provide detailed records that[~~the retailer's records must~~] show:

(A) date of original sale and name and Texas sales tax permit number of retailer;

(B) name and address of purchaser;

(C) amount that the purchaser contracted to pay;

(D) taxable and nontaxable charges;

(E) amount on which retailer reported and paid Texas tax;

(F) all payments or other credits applied to the account of the purchaser;[.]

(G) city, county, transit authority or special purpose district to which local taxes were reported; and

(H) the unpaid portion of the sale price assigned.

(4) Sales tax is due on the sale of a repossessed item, irrespective of whether [~~sold by~~] a vendor, mortgagee, secured party, assignee, trustee, sheriff, or an officer of the court has sold the item, unless the sale is otherwise exempt. If the vendor, mortgagee, secured party, assignee, trustee, sheriff, or officer of the court does not collect the tax, the purchaser must remit the tax directly to the comptroller.

(f) Interest on sales tax. This section will refer to the terms "interest" and "time price differential" [~~For the purposes of this section, the terms interest and time price differential will be referred to~~] as interest. The term "credit"[~~credit~~] includes all deferred payment agreements.

(1) Sellers[~~Effective January 1, 1982, sellers~~] on a cash basis of accounting who sell taxable items on credit and charge interest on the amount of credit extended, including sales tax, are required to remit to the comptroller a portion of the interest that has been collected on the state, city, and metropolitan transit authority taxes. [~~This section applies to all interest collected on or after January 1, 1982, on sales occurring before, on, and after January 1, 1982.~~]

(2) If the amount of interest charged on the tax is 18% or less, the seller must remit to the comptroller one-half of the interest charged on the tax.

(3) If the amount of interest charged on the tax is greater than 18%, the seller must remit the amount of interest charged less 9%. For example, [~~i.e.,~~] 21% charged less 9% deduction equals[~~equal~~] 12% interest remitted. A seller will not be allowed the 9% deduction if the interest rate charged on sales tax differs[~~is different from the interest rate charged on sales tax is different~~] from the interest rate charged on the sales price of the taxable item.

(4) In determining the amount of interest to be remitted to the comptroller, [~~it is not necessary for~~] a seller does not need to calculate the interest on each individual account. A formula for the calculation may be used if the formula correctly reflects the amount of interest collected. The formula will be subject to verification upon audit of the taxpayer's records.

(5) Except for the provisions of Texas Tax Code, §151.423 and §151.424, all reporting, collection, refund, and penalty provisions of Texas Tax Code, Chapter 151, including assessment of penalty and interest, apply to interest due.

(g) Trade-ins. In[~~For the purpose of~~] this subsection, a trade-in is considered as a taxable item that [~~which~~] is being used to reduce the purchase price of another taxable item.

(1) The sales price of a taxable item does not include the value of a trade-in that a seller takes[~~taken by a seller~~] as all or part of the consideration for a sale of a taxable item of the same type that is normally sold in the regular course of business. For example, sales tax will be due only on the difference between the amount allowed on an old piano[~~typewriter~~] taken in trade and the sales price of a new piano[~~typewriter~~].

(2) The sales price of a taxable item does include the value of a trade-in that a seller takes[~~taken by a seller~~] as all or part of the consideration for the sale of a taxable item, if the trade-in is [~~of~~] a different type from the type normally sold in the regular course of business. For example, a seller of pianos who takes[~~a typewriter taking~~] a desk in trade as part of the sales price of a piano[~~typewriter~~] would collect sales tax on the retail sales price of the piano[~~typewriter~~] without any deduction for the value of the desk. In this situation, the seller and buyer are considered to be bartering. However, if a seller of pianos[~~typewriters~~] is also a seller of desks, the value of the desk would be allowed as a trade-in.

(3) Persons who remove[~~removing~~] items from a tax-free inventory for use as a trade- in owe sales tax on the cost price of the items. If both parties to a transaction remove[~~are removing~~] items from a tax-free inventory to trade for other items that[~~to be used by~~] each party will use, the transaction will be regarded as barters by both parties. Each party to the barter will be required to collect sales tax on the retail sales price of the item being transferred. For example, a retailer of drill pipe trades pipe to a retailer of aircraft in exchange for an aircraft. Both retailers are trading the respective items for use, not resale. The pipe retailer must collect sales tax on the retail sales price of the pipe. The aircraft retailer must collect sales tax on the retail sales price of the aircraft.

(4) See §3.336 of this title (relating to Sales of Gold, Silver, Coins, and Currency) for information on persons who barter for taxable items with gold, silver, diamonds, or precious metals.

(h) Tax Code, §111.064, provides that interest will be paid on tax amounts found to be erroneously paid and claimed on a request for refund or in an audit. See also §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest).

(1) A refund of tax paid on an account later determined to be uncollectible and written off for federal tax purposes will accrue interest 60 days after the account is determined to be uncollectible and entered into the books as a bad debt.

(2) A request for refund, or an overpayment of tax in an audit, for a report period due before January 1, 2000, does not accrue interest.

This 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 August 30, 2000.

TRD-200006099
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

34 TAC §3.316

The Comptroller of Public Accounts proposes an amendment to §3.316, concerning occasional sales and other tax-free sales. This section is being amended to reflect changes to Tax Code, §151.310 and §151.321, enacted by the 76th Legislature, 1999, allowing for tax-free sales by certain organizations of items selling for over $5,000. Additionally, the amendment deletes the requirement that a college or university re-certify its status to the comptroller every two years. The legislature also amended the Tax Code by adding §151.343, exempting adoption fees paid to

nonprofit animal shelters. The rule name is being changed to more clearly reflect the contents of the rule.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with information regarding their tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.310, 151.321, and 151.343.

§3.316. Occasional Sales; Joint Ownership Transfers; Sales by Senior Citizens' Organizations; Sales by University and College Student Organizations; and Sales by Nonprofit Animal Shelters.[~~and Other Tax-Free Sales.~~]

(a) Sales exempt. Except as provided by subsection (i) of this section, a taxable item sold or purchased by way of an occasional sale is exempt from sales and use taxes.

(b) Occasional sales by persons not in the business of selling, leasing, or renting.

(1) One or two sales of taxable items, other than an amusement service, during any 12-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling taxable items are occasional sales.

(2) The third sale of a taxable item in a 12-month period by a person not previously in the business of selling, leasing, or renting taxable items causes that person to become a retailer. Tax must be collected and reported on the third sale and all subsequent sales unless the sale qualifies for exemption under subsection (d) or (e) of this section. If three or more sales are made in a 12- month period, then the person must obtain a permit. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Example: A lump-sum contractor sells a backhoe in October, a typewriter in December and a crane in February. The contractor has not sold, leased or rented any construction equipment prior to the sale of the backhoe; therefore, the contractor can sell the backhoe and typewriter tax free as occasional sales. The sale of the crane is the third sale within 12 months from the sale of the back-hoe. The sale of the crane is not an occasional sale. The contractor must obtain a permit, collect tax on the sale of the crane and, until an intervening 12 months have passed between sales, all subsequent sales of taxable items.

(3) The sale of not more than ten admissions for amusement services during a 12-month period by a person who does not hold himself out as engaging (or who does not habitually engage) in the provision of amusement services are occasional sales.

(4) The exemption provided under subsection (b) of this section does not apply to a rental or lease of a taxable item.

(c) Persons holding permits.

(1) Persons engaged in the business of selling, leasing, or renting taxable items and persons selling, leasing, or renting three or more taxable items in a 12-month period are retailers for the purposes of this section. Also, persons selling more than ten admissions for amusement services during a 12-month period are retailers for the purposes of this section.

(2) Sales made by a retailer and other persons holding sales or use tax permits that are not made in the regular course of business are not occasional sales. All sales by a retailer are subject to tax except for sales that qualify for exemption under subsection (d) or (e) of this section.

(3) Sales made by persons holding direct payment permits are not occasional sales. All sales by direct payment permit holders are subject to tax except for sales that qualify for exemption under subsection (d) or (e) of this section.

(d) Sale of a business or an identifiable segment of a business.

(1) The sale of the entire operating assets of a business or of a separate division, branch, or identifiable segment of a business is an occasional sale. The lease or rental of an identifiable segment does not qualify as an occasional sale.

(2) The sale of the entire operating assets of a separate division, branch or identifiable segment of a business is an occasional sale if, prior to the sale, the income and expenses attributable to the separate division, branch or identifiable segment could be separately established from the books of account or record.

(3) For the purposes of this section, a "separate division, branch or identifiable segment" means an enterprise engaged in providing a product or service to customers, usually for a profit. "Income" means revenue generated by the enterprise in providing that product or service. "Expenses" mean those operating expenses incurred by the enterprise in providing the product or services that are directly traceable to that enterprise. "Operating assets" means tangible personal property used exclusively by the enterprise in providing the product or service but does not mean tangible personal property maintained and used both for general business purposes and by the specific enterprise. Inventory and intangible property are not operating assets for purposes of the exemption.

(4) The entire operating assets of the business or of the division, branch or identifiable segment of the business must be sold in a single transaction to a single purchaser. The sale of the entire operating assets through several transactions to several purchasers will not qualify as an occasional sale under this section.

(e) Transfer without change in ownership.

(1) Any transfer of all or substantially all the property held or used by a person in the course of an activity, when after such transfer the real or ultimate ownership of such property is substantially similar to that which existed before such transfer, is an occasional sale. Since ownership must be transferred, "transfer" does not include the lease or rental of property.

(2) For the purposes of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having the "real or ultimate ownership" of the property of such corporation or other entity. Ownership is "substantially similar" if the person transferring the property owns 80% or more of the stock in the corporation to which the transfer is being made. Ownership is "substantially similar" if 80% or more of the stock in the corporation making the transfer is owned by the transferee.

(3) "All or substantially all" of the property will be considered to have been transferred if 80% or more is transferred.

(f) Occasional sales as defined in subsections (d) and (e) of this section are not restricted by subsections (a) and (b) of this section. Three or more sales of the type defined in subsections (d) and (e) of this section would not result in the loss of the occasional sale exemption.

(g) Resale certificates - occasional sales - leases.

(1) When a lessor purchases a taxable item tax free for rental or lease and later sells, leases or rents the item by way of an occasional sale as provided in subsection (d) or (e) of this section, then the lessor owes tax on the amount by which the lessor's purchase price exceeds the amount of rent, if any, upon which tax has been collected and reported from the prior rental or lease of the item.

(2) If the item was exempt from sales tax when originally purchased by the lessor or if tax was paid on the full purchase price at the time of purchase by the lessor, then the lessor does not incur sales tax liability on the original purchase price when sold by way of an occasional sale as provided in subsection (d) or (e) of this section.

(h) Purchases exempt from tax. Except as provided in subsection (i) of this section, the purchase price of an item sold by means of an occasional sale is not subject to tax.

(i) Exception to subsection (h) of this section. A person who holds a permit issued pursuant to the Tax Code, Chapter 151, who makes a purchase in a transaction on which the seller is not required to collect tax under subsection (b) of this section, must accrue and remit tax to the comptroller on the transaction.

(j) Senior citizens' organizations. Sales made by senior citizens' organizations will be exempt from tax if all of the following qualifications are met:

(1) all of the taxable items sold are manufactured, produced, made, or assembled exclusively by persons 65 years old or older;

(2) the sale is part of a fund-raising drive held or sponsored by a nonprofit organization created for the sole purpose of providing assistance to elderly persons;

(3) all net proceeds from the sale go to either the organization or the person who produced the taxable item sold or both; and

(4) the organizations have not conducted more than four separate fund-raising drives each calendar year for a total of not more than 20 days per year.

(k) University and college student organizations.

(1) A sale of a taxable item by a qualified student organization is exempted from sales tax if:

(A) the student organization sells the items at a sale that lasts for one day only the primary purpose of which is to raise funds for the organization;

(B) the qualifying organization holds not more than one fund-raising sale each calendar month for which the exemption is claimed; [~~and~~]

(C) the qualifying organization has as its primary purpose a purpose other than engaging in business or performing an activity designed to make a profit; and[~~.~~]

(D) the sales price of a taxable item sold is $5,000 or less, except that a taxable item manufactured by or donated to the organization may be sold tax free during the one-day sale, regardless of sales price, provided the item is not sold to the donor.

(2) A taxable item acquired tax free under paragraph (1) of this subsection is exempt from use tax on its storage, use, or consumption until the item is resold or subsequently transferred.

(3) A qualifying student organization must be affiliated with an institution of higher education as defined by [~~the~~] Education Code, §61.003, or a private or independent college or university that is located in this state and that is accredited by a recognized accrediting agency under [~~the~~] Education Code, §61.003. A student organization must file with the comptroller a certification issued by the institution, college, or university showing that the organization is affiliated with the institution, college, or university. A college, university, or institution may designate one of its departments or officers to compile a list of registered or certified student organizations and submit the list to the comptroller in lieu of having each student organization submit individual certifications. The certification is valid until the institution, university, or college notifies the comptroller that a student organization is decertified, suspended, or otherwise loses its campus privileges or affiliation with the institution, university, or college. [~~for two years after the date the comptroller receives it. After the two-year period, the organization must re-certify with the comptroller.~~]

(l) Sales by religious, educational, charitable organizations, and organizations classified as 501(c)(3), (4), (8), (10), or (19).

(1) A religious, educational, charitable, eleemosynary organization, or an organization exempt under Internal Revenue Code, §501(c)(3), (4), (8), (10), or (19) that has qualified for exemption under this section, and each bona fide chapter of a qualifying organization, is not required to collect sales tax on the sales price of taxable items sold for $5000 or less at a sale or auction held by the organization or chapter only twice a calendar year and each sale or auction lasting only one day. Additionally, a taxable item may be sold tax free during a one-day tax-free sale or auction, regardless of price, if the item is manufactured by the organization or donated to the organization and is not sold to the donor.

(2) One day is a consecutive 24-hour period. If a designated tax-free sale or auction exceeds a consecutive 24-hour period, the organization or chapter may not hold another tax-free sale or auction that calendar year. An organization or chapter may hold the two tax-free sales or auctions consecutively, but the two tax-free sales or auctions by that organization or chapter cannot exceed a maximum of 48 consecutive hours in a calendar year.

(3) The organization may employ an auctioneer to conduct the sale or auction and pay the auctioneer a reasonable fee not to exceed 20% of the gross receipts.

(4) If two or more exempt organizations or chapters jointly hold a tax-free sale or auction, each is considered to have held a tax-free sale or auction during that calendar year.

(m) Sales by nonprofit animal shelters. The sale, including the acceptance of a fee for adoption, of an animal by a nonprofit animal shelter is exempt from sales and use taxes. The term "animal shelter" is defined in Health and Safety Code, §823.001, as a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

This 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 August 30, 2000.

TRD-200006098

Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

SUBCHAPTER LL. OYSTER SALES FEE

34 TAC §3.1261

The Comptroller of Public Accounts proposes a new §3.1261, concerning reports, payments, and record keeping requirements. This rule is proposed to establish comptroller guidelines for the collection of the oyster sales fee. Senate Bill 1685, 76th Legislature, 1999, amended Health and Safety Code, Chapter 436, to transfer the responsibility for collecting the oyster sales fee from the Texas Department of Health to the comptroller. The bill requires the comptroller to collect a $1.00 per barrel fee from the first certified shellfish dealer who harvests, purchases, handles, stores, packs, labels, unloads at dockside, or holds oysters taken from Texas waters.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with information regarding their tax responsibilities. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The new section implements Health and Safety Code, §436.103.

§3.1261. Reports, Payments, and Record Keeping Requirements.

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

(1) Barrel--Three 100-pound containers of oysters.

(2) Certificate (Shellfish Certificate of Compliance)--A numbered document that the Seafood Safety Division of the Texas Department of Health issues and that authorizes a dealer to process oysters for sale.

(3) Certified location--A plant or place of business that the Seafood Safety Division of the Texas Department of Health has inspected and for which that department has issued a Shellfish Certificate of Compliance.

(4) Certified shellfish dealer--A person to whom the Texas Department of Health has issued a Certificate of Compliance that authorizes the activities of molluscan shell stock shipper, shucker- packer, repacker, or depuration processor.

(5) Container--For the purposes of this section, any material holding oysters.

(6) Harvest--The process of gathering or removing oysters from their growing areas.

(7) Pack--All activities involved in placing oysters in containers.

(8) Shell stock--Live oysters in the shell.

(9) Shucked oysters--Oysters, whole or in part, from which one or both shells have been removed.

(10) Take--To catch, hook, net, snare, trap, kill, or capture by any means, including the attempt to take, oysters from their growing areas.

(b) Fee imposed. A fee of $1.00 for each barrel is imposed on the first certified shellfish dealer who harvests, purchases, handles, stores, packs, labels, unloads at dockside, or holds oysters taken from Texas waters.

(c) Reporting period. A certified shellfish dealer must file a report with the comptroller on or before the 20th day of the month following the month in which the barrels of oysters were handled. The report must include the total number of barrels of oysters upon which the fee is imposed. A certified shellfish dealer must file a report, even if the dealer owes no fee for the report period.

(d) Report forms. Each certified shellfish dealer must report the oyster sales fee on the forms prescribed by the comptroller. A certified shellfish dealer who does not receive the forms or does not receive the correct forms from the comptroller is not relieved of the responsibility of paying the required fee and any penalties and/or interest owed.

(e) Reporting Waiver Request. Using a form prescribed by the Comptroller, a certified shellfish dealer may request a waiver from the requirement to file the monthly reports when the dealer does not, at a specified location, harvest, purchase, handle, store, pack, label, unload at dockside, or hold oysters taken from Texas waters. If the certified shellfish dealer intends to change plant operations at a later date at the specified location in a manner that will require payment of the oyster sales fee, the dealer must inform the Comptroller, in writing, prior to implementing the change.

(f) Payment of the fee. Not later than the 20th day of each month, each certified shellfish dealer shall remit to the comptroller the total fee amount due.

(g) Payment of penalties.

(1) Overweight penalty. A certified shellfish dealer who purchases or packs oysters in containers that exceed 110 pounds in weight is liable for a penalty of $5.00 for each container purchased or packed that exceeds 110 pounds. Payment of an overweight penalty is due with the filing of the report for the month in which the overweight container was handled.

(2) Late filing penalty. A certified shellfish dealer who does not file a monthly report required in subsection (c) of this section or pay the fee required in subsection (b) of this section or the overweight penalty required by paragraph (1) of this subsection in full, is liable for a late filing penalty of 10% of the sum of the fee amount due and the total overweight penalty amount due.

(h) Enforcement provisions. Tax Code, Title 2, Subtitles A and B, apply to the comptroller's administration, collection, and enforcement of Health and Safety Code, §436.103.

(1) Compliance inspections by the comptroller. The comptroller may conduct periodic inspections of plant operations to ensure compliance with the provisions of this section.

(2) Weighing oyster containers. During compliance inspections, the comptroller may weigh all oyster containers in the certified shellfish dealer's possession or use a projection method to determine the number of overweight oyster containers. Containers that weigh more than 110 pounds are overweight and are subject to an overweight penalty. The projection method consists of weighing a portion of oyster containers in the certified shellfish dealer's storage facility or offloading facility. The penalty amount is calculated and assessed based on the percentage of total containers that are overweight. The percentage is determined by dividing the total number of containers that are overweight by the total number of containers weighed. For example, if 15 containers are weighed and five of the 15 are overweight, the comptroller will project that 33% of all oyster containers in the dealer's possession at the time of the inspection are overweight.

(3) Past due fees and penalties. The comptroller may certify to the Texas Department of Health that a fee, overweight penalty, or late filing penalty is past due. On certification from the comptroller, the Texas Department of Health may suspend the shellfish certificate of the certified shellfish dealer until the fee, overweight penalty, or late filing penalty is paid in full.

(4) Refusal to pay past due fees and penalties. The comptroller may certify to the Texas Department of Health that a certified shellfish dealer refuses to pay a fee, overweight penalty, or late filing penalty after written demand by the comptroller. On certification from the comptroller, the Texas Department of Health may revoke the shellfish certificate of a certified shellfish dealer who refuses to pay a fee, overweight penalty, or late filing penalty.

(i) Interest. Interest due on delinquent fees or overweight penalties shall be imposed as provided by Tax Code, §111.060.

(j) Records required.

(1) A certified shellfish dealer must keep all invoices, purchase contracts, installment or credit agreements, and any other records relating to harvesting, purchasing, handling, storing, packing, labeling, unloading at dockside, or holding oysters taken from Texas waters for at least four years after the date each report is filed with the comptroller.

(2) Any person liable for the oyster sales fee must make the person's records or equipment available to the comptroller or the comptroller's representative for examination to verify the accuracy of any report made or to determine the fee liability if no report is filed.

This 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 August 31, 2000.

TRD-200006136
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.93

The Texas Department of Public Safety proposes amendments to §23.93, concerning vehicle emissions inspection requirements. The most immediate change concerns Minimum Expenditure Amounts. The minimum expenditure amount for all program areas is the same, at least $450.00 or that amount as adjusted by the Consumers Price Index. This amendment removes the differences in the minimum expense waiver between the different program areas.

The proposed amendment makes changes to correspond to the Texas Natural Resource Conservation Commission rule changes which include: adding Denton and Collin counties to designated counties on May 1, 2002; and Ellis, Johnson, Kaufman, Parker, and Rockwall counties on May 1, 2003. This amendment is necessary to enforce the Vehicle Emissions Inspection and Maintenance Program as modified by the adoption of amendments to 30 Texas Administrative Code, §114.52, by the Texas Natural Resource Conservation Commission.

The proposed amendment updates definitions of program areas, loaded mode testing to include Acceleration Simulation Mode 2, and On-Board Diagnostics. The proposed amendment also deletes time-dated events that have passed and cleans up language to show current program requirements.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect, there would be significant fiscal implications for state government as a result of enforcing or administering the rules. There would be fiscal implications for local governments involved in the inspection program because of additional equipment requirements and inspection fee increases.

Mr. Haas also has determined that for each of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be improved air quality by the reduction of emissions of hydrocarbons, carbon monoxide and other pollutants from mobile sources in the additional counties. A clearer interpretation and understanding of the vehicle emissions inspection program requirements is expected. Additional costs to the public is expected due to an increase in the inspection fee. Small businesses, micro-businesses and individuals involved in the inspection of vehicles would be required to purchase additional emission-testing equipment to comply with this rule.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspection and Emissions, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2777.

The amendment is proposed pursuant to Texas Transportation Code, §548.301 and Texas Government Code, §411.004(3), which provide the Public Safety Commission of the Texas Department of Public Safety with the authority to establish

rules for the conduct of the work of the Texas Department of Public Safety, and which authorizes the Commission to adopt rules establishing a motor vehicle emission inspection and maintenance program.

Texas Transportation Code, §548.301 and Texas Government Code, §411.004(3) are affected by this proposal.

§23.93. Vehicle Emissions Inspection Requirements.

(a) General. The rules of the Texas Department of Public Safety set out herein are to maintain compliance with the Texas Clean Air Act. The department is authorized to establish and implement a vehicle emissions testing program that is a part of the annual vehicle safety inspection program, in accordance with the Health and Safety Code, Chapter 382 and rules adopted thereunder.

(b) Terms and/or Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Department of Public Safety (DPS), the terms used by the DPS have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjusted annually--refers to the percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

(2) Department--refers to the Texas Department of Public Safety.

(3) Designated Counties--refers to Dallas:[~~and Tarrant counties effective July 1, 1996, through December 31, 1996. Dallas, El Paso, Harris and Tarrant counties effective January 1, 1997, and thereafter.~~]

(A) Dallas, Tarrant, Harris, and El Paso counties;

(B) Dallas, Tarrant, Denton, Collin, Harris, and El Paso counties, effective May 1, 2002 through April 31, 2003; and

(C) Dallas, Tarrant, Denton, Collin, Ellis, Johnson, Kaufman, Parker, Rockwall, Harris and El Paso counties effective May 1, 2003 and thereafter.

(4) Designated Vehicles--refers to all motor vehicles, as defined in the Texas Transportation Code, §541.201, unless otherwise exempted or excepted, that are:

(A) capable of being powered by gasoline;

(B) from two years old to and including 24 years old; and

(C) registered in or required to be registered in and primarily operated in a designated county.

(5) Director--refers to the director of the Texas Department of Public Safety or the designee of the director.

(6) Emissions control component--refers to a device designed to control or reduce the emissions of substances from a motor vehicle or motor vehicle engine installed on or incorporated in a motor vehicle or motor vehicle engine in compliance with requirements imposed by the Motor Vehicle Air Pollution Control Act (42 United States Code §1857 et seq) or other applicable law. This term shall include, but not be limited to the following components: air injection system (AIS); catalytic converter; coil; distributor; evaporative canister; exhaust gas recirculation (EGR) valve; fuel filler cap/gas cap; ignition wires; oxygen sensor; positive crank case ventilation (PCV) valve; spark plugs; thermal reactor/thermostatic air cleaner; and hoses, gaskets, belts, clamps, brackets, filters or other accessories and maintenance items related to these emissions control components and systems.

(7) Emissions tune-up--refers to a basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

(8) EPA--refers to the United States Environmental Protection Agency; the federal agency that monitors and protects air and water resources.

(9) Exempt vehicles--refers to vehicles otherwise considered "designated vehicles" that are:

(A) antique vehicles, as defined by Texas Transportation Code, §502.275;

~~[(B) circus vehicles, defined as vehicles registered to an entity engaged in the business of a commercial variety show featuring animal acts for public entertainment, and which are licensed by the Texas Board of Health under the Health and Safety Code, Chapter 824.]~~

(B) [~~(C)~~] slow-moving vehicles, as defined by Texas Transportation Code, §547.001; or

(C) [~~(D)~~] motorcycles, as defined by Texas Transportation Code, §502.001.

(10) I/M--refers to Inspection and Maintenance.

(11) Inspection station--refers to an inspection station/facility as defined in the Texas Transportation Code, §548.001.

(12) Inspector--refers to an inspector as defined in the Texas Transportation Code, §548.001.

(13) Loaded mode I/M test-[~~refers to an emissions test that measures the tailpipe exhaust emissions of a vehicle while the drive wheel rotates on a dynamometer, which simulates the full weight of the vehicle driving down a level roadway.~~] Loaded mode I/M test equipment specifications shall meet EPA requirements for Acceleration Simulation Modes equipment. The Acceleration Simulation Mode (ASM-2) test is an emissions test using a dynamometer (a set of rollers on which a test vehicle's test vehicle's tires rest) which applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

(A) the 50/15 mode--in which the vehicle is tested on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second at a constant speed of 15 mph; and

(B) the 25/25 mode--in which the vehicle is tested on the dynamometer simulating the use of 25% of the vehicle available horsepower to accelerate at a rate of 3.3 mph per second at a constant speed of 25 mph.

(14) Motorist--refers to a person or other entity responsible for the inspection, repair, maintenance or operation of a motor vehicle, which may include, but is not limited to, owners or lessees.

(15) Non-attainment area--refers to any portion of an air quality control region where any pollutant exceeds the National Ambient Air Quality Standards (NAAQS) [~~national ambient air quality standards~~] for the pollutant as designated pursuant to the Federal Clean Air Act (FCAA).

(16) Out-of-cycle test--refers to an emissions test not associated with the annual vehicle safety inspection testing cycle.

(17) OBD (On-board diagnostic system)-Computer system installed in a 1996 and newer vehicles by the manufacturer which monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards.

(18) [~~(17)~~] Person--refers to a human being, a partnership or a corporation that is recognized by law as the subject of rights and duties.

(19) [~~(18)~~] Primarily operated in--refers to the use of a motor vehicle greater than 60 days per calendar year in designated counties. It is presumed that a vehicle is primarily operated in the county in which it is registered; the burden is on the motorist to overcome this presumption by a preponderance of the evidence.

(20) [~~(19)~~] Program area--refers to county or counties in which the Texas Department of Public Safety administers the vehicle emissions inspection and maintenance program contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan. These program areas include: [~~Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Galveston, Liberty, Montgomery, Tarrant and Waller counties.~~]

(A) Dallas/Fort Worth (DFW) program area which consists of the following counties: Dallas and Tarrant counties. Effective May 1, 2002, this program area will consist of Dallas, Denton, Colin, and Tarrant counties;

(B) El Paso program area which consists of El Paso County;

(C) Houston/Galveston program area which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties; and

(D) Extended DFW (EDFW) program area which consists of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties will become part of the program area as of May 1, 2003.

(21) [~~(20)~~] Re-test--refers to a successive vehicle emissions inspection following the failure of an initial emissions test by a vehicle.

(22) [~~(21)~~] Revised Texas I/M SIP--refers to the most current Texas Inspection and Maintenance State Implementation Plan.[~~which includes the procedures and requirements of the vehicle emissions inspection and maintenance program as adopted May 29, 1996, in accordance with Chapter 40, Code of Federal Regulations (CFR), Part 51, Subpart S, issued November 5, 1992; the EPA flexibility amendments dated September 18, 1995; and the National Highway Systems Designation Act of 1995.~~]

(23) [~~(22)~~] Safety inspection--refers to a compulsory vehicle inspection performed as required by Texas Transportation Code, Chapter 548, by an official inspection station issued a certificate of appointment by the department.

(24) [~~(23)~~] Safety inspection certificate--refers to an inspection certificate issued under Texas Transportation Code, Chapter 548, after a safety inspection as defined herein.

(25) [~~(24)~~] Tampering-related repairs--refers to repairs to correct tampering modifications, including but not limited to engine modifications, emissions system modifications, or fuel-type modifications disapproved by the TNRCC or the EPA.

(26) [~~(25)~~] Testing cycle--refers to an annual [~~or biennial~~]cycle for which a motor vehicle is subject to a vehicle emissions inspection.

(27) [~~(26)~~] Test-only facilities--refers to inspection stations certified to do emissions testing that are not engaged in repairing, replacing and/or maintaining emissions control components of vehicles. Acceptable repairs in test-only facilities shall be oil changes, air filter changes, repairs and/or maintenance of non-emissions control components, and the sale of auto convenience items.

(28) [~~(27)~~] Test-and-repair facilities--refers to inspection stations certified to do emissions testing that engage in repairing, replacing and/or maintaining emissions control components of vehicles.

(29) [~~(28)~~] TNRCC--refers to the Texas Natural Resource Conservation Commission.

(30) [~~(29)~~] Two years old--refers to a vehicle upon the expiration of the initial two-year [~~safety~~]inspection certificate or any time the vehicle is presented for inspection or required to be inspected during the year when the vehicle model year is two years less than the current calendar year (current calendar year minus two years), whichever comes first.

(31) [~~(30)~~] Twenty-four years old--refers to a vehicle when the vehicle model year is 24 years less than the current calendar year (current calendar year minus 24 years).

(32) [~~(31)~~] Uncommon part--refers to a part that takes more than 30 days for expected delivery and installation.

(33) [~~(32)~~] VIR--refers to the Vehicle Inspection Report.

(34) [~~(33)~~] VRF--refers to the Vehicle Repair Form.

(c) Applicability. The[~~Beginning July 1, 1996, the~~] requirements of this section and those contained in the Revised Texas I/M SIP shall be applied to motorists, vehicles, vehicle inspection stations and inspectors certified by the department to inspect vehicles, and to Recognized Emissions Repair Facilities of Texas and Recognized Emissions Repair Technicians of Texas, as defined herein.

(d) Control requirements.

(1) In designated counties, in order to be certified by the department as a vehicle inspection station, the vehicle inspection station must be certified by the department to do vehicle emissions testing. This[~~Until inspection station recertification in 1997, this~~] provision does not apply [~~to vehicle inspection stations certified by the department as vehicle inspection stations prior to July 1, 1996, in Dallas and Tarrant counties, or prior to January 1, 1997, in Harris and El Paso counties or~~]to vehicle inspection stations certified by the department as vehicle inspection stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial windshield certificates, commercial trailer certificates.

(2) In designated counties, only department certified inspection stations that are certified by the department to do emissions testing may perform the annual vehicle safety inspection on designated vehicles.

(3) An inspection station in a county not "designated" as a designated county herein shall not inspect a vehicle that is capable of being powered by gasoline, from two years old to and including twenty-four years old and registered in a designated county unless the inspection station is certified by the department to do emissions testing, or unless the motorist presenting the vehicle signs an affidavit on a form provided by the department stating one of the following: (The affidavit will be held by the inspection station for collection by the department.)

(A) the vehicle is not a designated vehicle;

(B) the vehicle no longer qualifies as a designated vehicle; or

(C) the vehicle will not return to a designated county prior to the expiration of the current inspection certificate however immediately upon return to a designated county the vehicle will be reinspected at an inspection station certified to do vehicle emissions testing.

(4) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a DPS certified inspection station that is certified to do vehicle emissions testing. The exceptions to this provision are for:

(A) commercial motor vehicles as defined by the Texas Transportation Code, §548.001, that meet the definition of "designated vehicle" as defined herein. Said "designated" commercial motor vehicles must be emissions tested at a DPS certified inspection station that is certified to do vehicle emissions testing and must have a unique emissions test-only inspection certificate, as authorized by Texas Transportation Code, §548.251, affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker, prior to receiving a commercial motor vehicle safety inspection certificate pursuant to Texas Transportation Code, Chapter 548. The unique emissions test-only inspection certificate must be issued within 15 calendar days of the issuance of the commercial motor vehicle safety inspection certificate. The unique emissions test-only inspection certificate will expire at the same time the newly issued commercial motor vehicle safety inspection certificate expires; and

(B) vehicles presented for inspection by motorists in counties not designated herein that meet the requirements of paragraph (3) (C) of this subsection.

(5) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old to and including 24 years old, presented for the annual vehicle safety inspection in designated counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection.

(6) Vehicles registered in designated counties will be identified by a distinguishing validation registration sticker as determined by the Texas Department of Transportation.

(7) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be passed by the certified inspector, who will thereafter affix to the windshield a unique emissions inspection certificate pursuant to Texas Transportation Code, §548.251. The only valid inspection certificate for designated vehicles shall be a unique emissions inspection certificate issued by the department, unless otherwise provided herein.

(8) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days, not including the date of the emissions test being challenged or questioned.

(9) Federal and State governmental or quasi-governmental agency vehicles that are primarily operated in designated counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP.

(10) Any motorist in a designated county whose designated vehicle has been issued an emissions-related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(11) Inspection certificates issued prior to the effective date of this section shall be valid and shall remain in effect until the expiration date thereof.

(12) A unique emissions test-only inspection certificate expires at the same time the annual vehicle safety inspection certificate it relates to expires.

(13) The department will perform quarterly gas audits on all vehicle exhaust gas analyzers used to perform vehicle emissions tests. If a vehicle exhaust gas analyzer fails the calibration process during the gas audit, the department shall cause the appropriate inspection station to cease vehicle emissions testing with the failing exhaust gas analyzer until all necessary corrections are made and the vehicle exhaust gas analyzer passes the calibration process.

(14) Pursuant to the Revised Texas I/M SIP, the department shall administer and monitor a follow-up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in 40 CFR 51.353(c)(3). A contractor(s) may be used to assist in collecting, reviewing and evaluating program data.

(e) Waivers and extensions. Under this section, the department may issue an emissions testing waiver or time extension to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver or time extension. An emissions testing waiver or a time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test. Applications for emissions testing waivers and time extensions shall be accepted by the department. There are four types of emissions testing waivers and time extensions: Minimum Expenditure Waiver; Individual Vehicle Waiver; Parts Availability Time Extension; and Low-Income Time Extension. The motorist may apply once each testing cycle for the Minimum Expenditure Waiver, Individual Vehicle Waiver, and Parts Availability Time Extension. The motorist may apply every other testing cycle for the Low-Income Time Extension.

(1) Minimum Expenditure Waiver.

(A) Eligibility. A vehicle may be eligible for a Minimum Expenditure Waiver provided that it has:

(i) failed both its initial emissions inspection and re-test; and

(ii) incurred qualified emissions-related repairs, as defined herein, whose cost is equal to or are in excess of the minimum expenditure amounts, as defined herein for the county in which the vehicle is registered.

(B) Qualified Emissions-Related Repairs. Qualified emissions-related repairs are those repairs to emissions control components, including diagnosis, parts and labor, that count toward a minimum expenditure waiver. In order to be considered qualified emissions-related repairs, the repair(s):

(i) must be directly applicable to the cause for the emissions test failure;

(ii) must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;

(iii) must not be tampering-related repairs, as defined herein;

(iv) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(v) [~~after January 1, 1997,~~]for 1981 and newer model year vehicles, must be performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas in order to include the labor cost and/or diagnostic costs. When [~~After January 1, 1997, when~~]repairs are not performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas, only the purchase price of parts, applicable to the emissions test failure, qualify as a repair expenditure for the minimum expenditure waiver.

(C) Minimum expenditure amounts. The minimum expenditure waiver in any program area shall be at least $450 or that amount adjusted by the Consumer Price Index. [~~The following minimum expenditure amounts are applicable:~~]

~~*(i)* In Dallas and Tarrant counties, the minimum expenditure waiver amount shall be $200 for 1981 and newer vehicles and $75 for 1980 and older vehicles.~~]

~~*(ii)* In El Paso and Harris counties, the minimum expenditure waiver amount shall be $300 in 1997. After January 1, 1998, the minimum expenditure waiver amount in el Paso and Harris counties shall be $450 (1989 dollars) and shall be adjusted annually thereafter.~~]

(D) Validity. A Minimum Expenditure Waiver shall be valid through the end of the twelfth month from the date of issuance.

(E) Conditions. The following conditions must be met in order to receive a Minimum Expenditure Waiver:

(i) the vehicle must pass a visual inspection performed by a department representative to insure that the emissions repairs being claimed have actually been performed;

(ii) the diagnosis, parts and labor receipts for the qualified emissions-related repairs must be presented to the department and support that the emissions repairs being claimed have actually been performed; and

(iii) the valid re-test Vehicle Inspection Report (VIR) and valid Vehicle Repair Form (VRF) for the applicant vehicle must be presented to the department. If[~~After January 1, 1997, if~~] labor and/or diagnostic charges are being claimed towards the minimum expenditure amount, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas.

(2) Low-Income Time Extension. A Low-Income Time Extension may be granted in accordance with the following conditions:

(A) The applicant must supply to the department proof in writing that:

(i) the vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed VIR;

(ii) the vehicle has not been granted a Low-Income Time Extension in the previous testing cycle;

(iii) the applicant is the owner of the vehicle that is the subject of the Low-Income Time Extension; and

(iv) the applicant receives financial assistance from the Texas Department of Human Services due to indigence (subject to approval by the director) or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation authorized by the director that the applicant certifies as true and correct.

(B) After a vehicle receives an initial Low-Income Time Extension, the vehicle must pass an emissions test prior to receiving another Low-Income Time Extension.

(3) Parts Availability Time Extension. A Parts Availability Time Extension may be granted in accordance with the following conditions:

(A) The applicant must demonstrate to the department:

(i) reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers; and

(ii) emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part, as defined herein.

(B) The applicant shall provide to the department:

(i) an original VIR indicating the vehicle failed the emissions test;

(ii) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address and phone number of parts distributor; and expected delivery and installation date(s). The[~~After January 1, 1997, the~~] original itemized document must be prepared by a Recognized Emissions Repair Technician of Texas before a Parts Availability Time Extension can be issued.

(C) A Parts Availability Time Extension is not allowed for tampering-related repairs, as defined herein.

(D) If the vehicle does not pass an emissions re-test prior to the expiration of the Parts Availability Time Extension, the applicant must provide to the department, adequate documentation that one of the following conditions exists:

(i) the motorist qualifies for a Minimum Expenditure Waiver, Low-Income Time Extension or Individual Vehicle Waiver; or

(ii) the motor vehicle will no longer be operated in the program area, as defined herein.

(E) A vehicle that receives a Parts Availability Time Extension in one testing cycle must have the vehicle repaired and re-tested prior to the expiration of such extension or must qualify for another type of waiver or time extension, in order to be eligible for a Parts Availability Time Extension in the subsequent testing cycle.

(F) The length of a Parts Availability Time Extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts Availability Time Extensions will be issued for either 30, 60 or 90 days.

(G) The department shall issue a unique time extension sticker for Parts Availability Time Extensions.

(4) Individual Vehicle Waiver. If a vehicle has failed an emissions test, a motorist may petition the director for an Individual Vehicle Waiver. Upon demonstration that the motorist has taken every reasonable measure to comply with the requirements of the vehicle emissions I/M program contained in the Revised Texas I/M SIP and such waiver shall have minimal impact on air quality, the director may

approve the petition, and the motorist may receive a waiver. Motorists may apply for the Individual Vehicle Waiver each testing cycle.

(f) Prohibitions.

(1) No person may operate or allow to be operated any motor vehicle that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection administered by the department, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a designated vehicle in a designated county unless the vehicle has complied with all applicable vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP, unless otherwise provided for herein.

(3) No person may issue or allow the issuance of a Vehicle Inspection Report (VIR), as authorized by the department, unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by the department and the TNRCC.

(4) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548 and the Revised Texas I/M SIP.

(5) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Revised Texas I/M SIP and the rules and regulations of the department.

(6) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas or a Recognized Emissions Repair Facility of Texas, as defined in[~~this~~] subsections (h) and (i) of this section, without first obtaining and maintaining recognition by the department.

(g) Violation/Penalties. Pursuant to Texas Transportation Code, §548.601, any person who operates a designated vehicle in a designated county without displaying a valid unique emissions inspection certificate, may be subject to a fine in an amount not to exceed that set out in Texas Transportation Code, §548.604.

(h) Requirements for Recognized Emissions Repair Technicians of Texas. The department will recognize automotive repair technicians that meet the qualifications as set forth herein.

(1) In order to be recognized by the department as a Recognized Emissions Repair Technician of Texas, the technician must:

(A) have a minimum of three years full-time automotive repair service experience;

(B) possess current certification in the following areas based on the following tests offered by the National Institute of Automotive Service Excellence (ASE):

(i) Engine Repair (ASE Test Al);

(ii) Electrical/Electronic Systems (ASE Test A6);

(iii) Engine Performance (ASE Test A8); and

(iv) [~~beginning January 1, 1998,~~] Advanced Engine Performance Specialist (ASE Test Ll); and

(C) must be employed by a Recognized Emissions Repair Facility of Texas, as defined herein.

(2) A Recognized Emissions Repair Technician of Texas shall perform the following duties:

(A) complete and certify the VRF form(s); and

(B) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein may result in the department ceasing to recognize the technician.

(i) Requirements for Recognized Emissions Repair Facilities of Texas.

(1) In order to be recognized by the department as a Recognized Emissions Repair Facility of Texas, the facility must:

(A) employ at least one full-time Recognized Emissions Repair Technician of Texas, as described in subsection (h) of this section; and

(B) possess equipment to perform the functionality of the following items:

(i) ammeter;

(ii) alternator, regulator or starting circuit tester;

(iii) battery load tester;

(iv) compression tester;

(v) cooling system tester;

(vi) dwellmeter;

(vii) engine analyzer;

(viii) exhaust gas analyzer (which meets department and TNRCC specifications) [~~(with at least hydrocarbon (HC), CARBON DIOXIDE (CO2)measurement capability)~~];

(ix) fuel pressure/pressure drop tester;

(x) ohmmeter;

(xi) propane gas bottle (carburetor lean drop check);

(xii) repair reference information;

(xiii) scan tool;

(xiv) tachometer;

(xv) timing light;

(xvi) vacuum/pressure gauge;

(xvii) vacuum pump;[~~and~~]

(xviii) volt meter;[~~.~~]

(xix) a department-approved device with required adapters for checking fuel cap pressure; and

(xx) OBD testing equipment.

(2) A Recognized Emissions Repair Facility of Texas shall:

(A) notify the DPS in writing within 14 days of changes in the facility's technicians' ASE testing status or employment status and the facility's equipment functionality status; and

(B) agree in writing upon application for recognition by the department to maintain compliance with the qualifications enumerated in paragraph (1) of this subsection, in order to maintain recognition by the department.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein, may result in the department ceasing to recognize the facility.

(j) Certified emissions inspection station requirements.

(1) In order to be certified by the department as an emissions inspection station, for purposes of the emissions I/M program, the station must:

(A) be licensed by the department as an official vehicle inspection station;

(B) comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department;

(C) complete all applicable forms and reports as required by the department;

(D) purchase or lease emissions testing equipment that is currently certified by the TNRCC to emissions test vehicles, or upgrade existing emissions testing equipment to meet the current certification requirements of the TNRCC;

(E) have a designated telephone line dedicated for each vehicle exhaust gas analyzer to be used to perform vehicle emissions tests; and

(F) enter into and maintain a business arrangement with the Texas Datalink contractor to obtain a telecommunications link to the Texas Datalink System Vehicle Identification Database (VID) for each vehicle exhaust gas analyzer to be used to inspect vehicles as described in the Revised Texas I/M SIP.

(2) Failure to comply with these rules may result the in denial, suspension or revocation of an inspection station's certificate of appointment, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(k) Certified emissions inspector requirements.

(1) To qualify as a certified inspector, an individual must:

(A) be licensed by the department as an official vehicle inspector;

(B) must complete the training required for the Vehicle Emissions Inspection Program and receive the department's current inspector's certificate for such training;

(C) must comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department; and

(D) complete all applicable forms and reports as required by the department.

(2) Failure to comply with these rules may result in the denial, suspension or revocation of a certified inspector's certificate, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(l) Inspection and Maintenance Emissions Testing Fees. The fees for emissions testing will be set by the TNRCC. The fee for an emissions test shall provide for one free re-test for each failed initial emissions inspection, provided that the motorist has the re-test performed at the same inspection station where the vehicle originally failed and the re-test is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(m) Audits.

(1) The department is authorized to perform covert and overt audits pertaining to the emissions testing program.

(2) The department may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(n) Authority to publish manuals. The Public Safety Commission authorizes the director of the Department of Public Safety to promulgate, publish and distribute necessary manuals of instruction and procedure for the implementation of the emissions I/M testing program in a manner not inconsistent with these rules. The department adopts by reference the VEHICLE EMISSIONS INSPECTION AND MAINTENANCE RULES AND REGULATIONS MANUAL FOR OFFICIAL VEHICLE INSPECTION STATIONS AND CERTIFIED INSPECTORS as the standard for conducting emissions inspections in designated counties. Any violation of these rules and regulations may result in the suspension or revocation of the certificate of appointment of the vehicle inspection station or certificate of the certified inspector. Such manual(s) shall be available for public inspection at reasonable times at offices of the department as designated by the director

This 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 August 31, 2000.

TRD-200006140
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 424-2135

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES

SUBCHAPTER E. SICK LEAVE POOL PROGRAM

43 TAC §§4.50, 4.51, 4.56

The Texas Department of Transportation proposes amendments to §§4.50, 4.51, and 4.56, concerning the department's sick leave pool program.

EXPLANATION OF PROPOSED AMENDMENTS

Sections 4.50, 4.51, and 4.56 are amended to eliminate the requirement that employees must use all of their vacation leave and compensatory time before being eligible to receive leave from the sick leave pool. With this change, employees will be required to only use all of their sick leave before being eligible to receive pool leave. This amendment benefits those employees who have accrued large amounts of vacation leave and/or compensatory time balances by not requiring them to exhaust all types of leave. Also, this amendment would result in more sick leave pool hours being granted. The number of hours in the sick leave pool has remained consistently high during the past fiscal year. The pool balance as of August 10, 2000, was 144,079 hours. At the current usage rate, an extremely high balance will continue to be maintained.

Section 4.51 is amended to eliminate the definition for "accrued leave time" since this phrase no longer appears in this subchapter. It is also amended to change the definition of a severe psychological condition. The current definition states that a psychological condition qualifies as severe when the patient is suicidal and/or homicidal and he or she has been hospitalized (inpatient) for at least one week. The amendment changes the "one week" to "five days" since managed health care has resulted in shorter psychiatric hospital stays. The amendment also adds another criterion that a psychological condition will be considered severe if the patient is given electroshock treatments. It is believed that a psychological condition is considered "severe" when a patient is given electroshock treatments although the patient may not be suicidal and/or homicidal and has not been hospitalized for the five-day period.

FISCAL NOTE

James M. Bass, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Diana L. Isabel, Director, Human Resources Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Ms. Isabel has also determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing or administering the amendments will be to enhance employee benefits without adversely affecting the integrity of the sick leave pool program. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Diana L. Isabel, Director, Human Resources Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on October 16, 2000.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Government Code, Chapter 661, Subchapter A, which requires the department to create a sick leave pool program.

No statutes, articles, or codes are affected by these proposed amendments.

§4.50. Purpose.

The purpose of the sick leave pool program is to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust sick [~~all~~] leave time [~~earned and lose compensation from the state~~]. Authority for the creation of the sick leave pool program is contained in Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

§4.51. Definitions.

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

[~~(1) Accrued leave time - Vacation leave, sick leave, and compensatory time.~~]

(1) [~~(2)~~] Catastrophic illness or injury - A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all sick leave [~~time~~] earned by that employee [~~and to lose compensation from the state~~].

(2) [~~(3)~~] Contribute - To give sick leave from an employee's personal sick leave account to the department sick leave pool.

(3) [~~(4)~~] Different but related condition - A secondary catastrophic condition that occurs at a later date and is caused by a primary catastrophic condition [~~which occurs at a later date,~~] such as cancer, which spreads from one part of the body to another.

(4) [~~(5)~~] Discipline - Written reprimand, probation, suspension with pay, suspension without pay, involuntary demotion, or involuntary transfer.

(5) [~~(6)~~] Employee - A person, other than the executive director, who is employed by the department.

(6) [~~(7)~~] Health care provider - A medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law.

(7) [~~(8)~~] Human resources officer - An employee in a district, division, or office who is responsible for verifying the accuracy of all employee sick leave [~~time~~] records. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

(8) [~~(9)~~] Immediate family - Individuals related by kinship, adoption, or marriage who are living in the same household, foster children living in the same household and certified by the Texas Department of Protective and Regulatory Services, or a spouse, child, or parent of the employee who does not live in the same household and who needs care and assistance as a direct result of a documented medical condition.

(9) [~~(10)~~] Licensed psychiatrist - A psychiatrist licensed by a state medical licensing board.

(10) [~~(11)~~] Pool administrator - The Director of the Human Resources Division or designee who administers the department's sick leave pool program.

(11) [~~(12)~~] Request - An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

(12) [~~(13)~~] Severe physical condition - A physical illness or injury that will likely result in death or causes the employee to be off work for 10 continuous weeks or more for the current episode.

(13) [~~14~~)] Severe psychological condition - A psychological illness that results in:

(A) a [~~the~~] patient being suicidal or capable of harming themselves or others and requires five days [~~one week~~] or more inpatient hospitalization; or

(B) electroshock treatment.

(14) [~~(15)~~] Sick leave - Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his immediate family who is actually ill.

(15) [~~(16)~~] Sick leave pool - A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

(16) [~~(17)~~] Withdrawal - An approved transfer of sick leave hours from the department sick leave pool.

§4.56. Withdrawals.

(a) Restrictions.

(1) An employee or an employee's immediate family must have a catastrophic illness or injury to be eligible to withdraw from the pool. The patient's health care provider must certify in writing that the illness or injury of the employee or member of the employee's immediate family is catastrophic.

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. Requests related to severe psychological conditions must be certified by a licensed psychiatrist. The certification:

(A) shall include:

(i) the diagnosis and prognosis of the condition or combination of conditions;

(ii) the date the employee or employee's immediate family member will be able to return to normal activities; and

(iii) the amount of time the employee will be needed to provide primary care if the certification is for the employee's immediate family member;

(B) shall be in a form prescribed by the pool administrator; and

(C) is confidential, unless otherwise required by law, and may only be released to the human resources officer.

(3) With the request for withdrawal, an employee who has been formally disciplined for abuse of sick leave must provide, at his or her expense, a second health care provider certification from a different doctor chosen by the department. The pool administrator will deny the request if the second health care provider does not certify that a catastrophic condition exists.

(4) The employee must submit an updated health care provider's certification that certifies that the catastrophic illness or injury still exists, and that it is necessary for the employee to be off work to recover or assist in the recovery from the catastrophic illness or injury before an extension may be approved.

(5) An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

(6) The maximum number of hours that may be granted per catastrophic condition per employee is 720 hours (90 work days) or one third of the pool balance, whichever is less at the time a request is received. If there is a different but related physical catastrophic condition, an employee may receive a second grant of up to 720 hours (90 work days) or one-third of the pool balance, whichever is less at the time the request is received.

(7) When the pool balance is below 7200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours. Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(8) The time transferred will begin on the date and time the employee exhausted all sick [~~accrued~~] leave or, in cases which are eligible for workers' compensation payments, after the period covered by the last workers' compensation check distributed.

(9) An employee who uses pool sick leave in accordance with this subchapter is not required to pay back that leave.

(10) An employee must exhaust all sick [~~accrued~~] leave [~~time~~] before using hours approved from the sick leave pool.

(11) All withdrawals from the pool must be used solely for the catastrophic illness or injury for which they were granted.

(12) An employee who is in need of additional sick leave after exhausting all sick [~~accrued~~] leave [~~time~~] shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(13) An employee who is injured on the job, who is entitled to receive worker compensation payments, and who chooses to integrate his or her sick leave, and vacation leave, or compensatory time is also eligible to receive a withdrawal in accordance with this subchapter.

(14) Hours from the sick leave pool may be granted in a block of time and used on an as needed basis. The pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists.

(15) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or not available. If the employee is determined to be able to return to work sooner than indicated on a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require the unused portion of a withdrawal be returned to the sick leave pool.

(16) Unused sick leave from the pool shall be returned to the pool when the need for such leave ceases to exist or the pool administrator requires it in accordance with this subchapter.

(17) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

(b) Procedures.

(1) The employee shall complete the application for withdrawal. The human resources officer shall assist the employee by verifying sick leave balances and the date and time all sick [~~accrued~~] leave [~~time~~] was or will be exhausted.

(2) The employee shall submit the application and the health care provider's certification form and a copy of the employee's functional job description to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification form and mail it, with the completed application, directly to the employee's human resources officer.

(3) The pool administrator will consider applications for withdrawal in the order in which they are received and shall approve or deny the request within five working days of that date.

(4) If the pool administrator questions the validity of the certification completed by the employee's health care provider, based on the average expected duration or severity of the condition, the administrator may request a health care provider, contracted by the department, to review the patient's medical records. The contracted health care provider may consult with the patient's health care provider if more information is needed. If the determination of the contracted health care provider differs from the patient's health care provider, the pool administrator may request that the patient's medical records be reviewed by a third health care provider who is not under contract with the department. The pool administrator and the employee must agree on the third health care provider. The determination of the third health care provider is binding. The department will pay for both reviews. If the employee fails to cooperate with the medical records review, the pool administrator may deny the request.

(5) The pool administrator may require that the unused portion of the withdrawal be returned to the sick leave pool if the employee:

(A) fails to cooperate with a medical records review;

(B) submits false information;

(C) remains off work because the employee is not following the doctor's prescribed treatment; or

(D) is abusing sick leave pool hours.

(6) The pool administrator will determine the amount of sick leave transferred for each request based on:

(A) the number of hours requested by the employee;

(B) the health care provider's certification which indicates the approximate date the patient will be able to return to light and normal duties or the amount of time that the employee is needed to provide primary care for the immediate family member;

(C) the date and time all sick [~~accrued~~] leave [~~time~~] was or will be exhausted; and

(D) the balance of the pool.

(7) The pool administrator shall approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

(8) The human resources officer shall inform the pool administrator of the amount of leave the employee used for the illness or injury at the end of each month, and, if the employee has returned to work, the total number of hours used and how many hours are being returned.

(9) The pool administrator shall return all unused hours to the pool.

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

Filed with the Office of the Secretary of State, on September 1, 2000.

TRD-200006177
Richard Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: October 15, 2000
For further information, please call: (512) 463-8630

♦ ♦ ♦

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 74. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

16 TAC §74.80

The Texas Department of Licensing and Regulation has withdrawn from consideration a proposed amendment to §74.80, which appeared in the August 4, 2000, issue of the *Texas Register* (25 TexReg 7288).

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006208
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: September 1, 2000
For further information, please call: (512) 463-7348

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 171. INSTITUTIONAL PERMITS

22 TAC §171.3

The Texas State Board of Medical Examiners has withdrawn from consideration the proposed amendment to §171.3, which appeared in the June 23, 2000 issue of the *Texas Register* (25 TexReg 6025).

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §171.2 and §171.3 elsewhere in this issue of the *Texas Register*.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006201
F.M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: September 1, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §61.1

The Office of the Texas State Chemist/Feed and Fertilizer Control Service adopts an amendment to 4 TAC §61.1 - Definitions - with changes to the proposed text as published in the June 9, 2000 issue of the *Texas Register* (25 TexReg 5534).

The amendments are being proposed to clarify terms now used inconsistently in the marketplace to ensure products are not being misbranded. The need for a definition is evident from the comments received from the industry in response to the proposed rule, e.g., "Admittedly the term natural has been used by some manufacturers in both the human and food industry in a misleading manner." "... the continued absence of any suitable names for interpretation of the term 'natural' has reeked (sic) havoc on the marketplace for both regulator and regulated. Most feed control officials lack the direction to take action against products that misleading bear the term or their labels.... The industry is confused and frustrated by this inconsistency."

The rule defining "natural" (§61.1(10)) and "organic" (§61.1(11)) will allow those manufacturers wishing to enter (1) the "natural" or "organic" markets to compete on the same basis and (2) consumers can compare products more easily.

Comments were received in writing and during the requested open hearing (18 July 2000). The Service notes that no one objected to the creation of a rule defining these terms. The objections were exclusively directed towards the proposed definition of "natural" and fall into three categories: 1. The Service should work with the Association of American Feed Control Officials (AAFCO) to develop a definition. Alternatively, the Service should cooperate with a small working group to develop a definition. Either course would provide a uniform standard. If states develop separate definitions apart from AAFCO, distributing products in the Texas marketplace would be more difficult. 2. The definition of "natural" (§61.1(10)) is too narrow. Processes such as rendering, extrusion and cooking should be allowed. 3. Solvent-extracted meals should be termed natural.

The following disagreed with the definition of "natural" as written American Feed Industry Association American Pet Products Manufacturers Association Birkhold, Sarah (TAEX, Poultry Science Department) Chickasha Cotton Oil Company Corn Refiners Association Darling International Doane Pet Products Dzanis Consulting & Collaborations Elgin Cotton Oil Mill Griffin Industries LaCour-Dalton Company, Inc. Morrison Milling Nathan Segal & Company National Cottonseed Products Association National Oilseed Processors Association National Renderers Association Nutro Products Pet Food Institute Texas Farm Products Texas Grain & Feed Association Valley Coop Oil Mill Valley Proteins

No one spoke in favor of the definition of "natural" as set forth in 4 TAC §61.1(10).

The Association of American Feed Control Officials (AAFCO) sent a letter regarding "natural" neither favoring nor disagreeing with the definition, but laying out a possible timetable for AAFCO to develop a definition.

The following agreed with the definition of "organic" as set forth in 4 TAC §61.1(11). The American Feed Industry Association, Inc. (AFIA)

No one spoke against the definition of "organic" as set forth in 4 TAC §61.1(11).

As many comments noted, "the State of Texas (the Office of the Texas State Chemist) has always been a leader in encouraging and promoting uniformity among the various state feed laws as most notably reflected by its continued support and participation in the Association of American Feed Control Officials." For the Service to promulgate a definition of "natural" unilaterally would disrupt this uniformity and cause confusion in the marketplace.

The Service disagrees with the comments that the Service's adoption of a definition for "natural" would conflict with the concept of uniformity promoted by AAFCO. There is no official AAFCO definition nor can one "reasonably" be expected until August 2001. Even then, there is no assurance that (1) a definition would be ready (AAFCO has been working on a natural guideline for pet foods since 1997) or (2) that the definition would be accepted by the AAFCO membership. Based on the actions of the annual meeting in Aug. 2000 of the organization, it did not appear to the Service that either AAFCO or the industry was willing to expedite the creation of a definition.) The Service disagrees with the suggestion that the adoption of a definition by the Service will cause confusion in the marketplace. Indeed, the Service maintains that the absence of a definition is directly the cause of the present confusion, misbranding and abuse.

The Service maintains that adoption of a definition will (1) permit it to work with manufacturers and (2) allow manufacturers who choose to enter the "natural" marketplace in Texas to compete on a level playing field. Delay does not serve the interests of the feed industry or consumers.

As an alternative to working with AAFCO, some comments suggested the Service work with a "small" working group which represents the "many" segments of the feed industry to develop a definition. The Service does not believe this course of action best serves state control officials or the consumer: (1) the terms "small" and "many" are not reconcilable; (2) this group's definition of natural would be outside AAFCO, contrary to the wishes of those who urged working with AAFCO; (3) there is no time line for completion of such work; (4) the Service has already discussed the rule with its Advisory Committee whose membership included representatives of the animal feed and pet food communities and there was no comment or criticism of the proposal

Most of those returning comments objected to the definition per se because heat-treated products - specifically cooking, rendering and extruding - were excluded. The Service recognizes that some degree of heat-treatment of commercial animal feeds may be necessary to minimize loss of spoilage and to protect both animal and public health. Some comments suggest that any natural product which must be heat-treated for either commercial or safety reasons is still natural after such heat treatment. The Service rejects any linkage between safety and natural. The Service also notes that many heat treatments are often done for the specific purpose of altering the natural components of a natural product, e.g., altering the extrusion temperature of soybeans from 100 to 160°C results in an increase in bypass protein from 15.9% to 69.6% (*Feed Tech* 4 (2) pp. 10-12). However, the Service recognizes that the processes allowed in the definition, e.g., aging, sun-drying and rotting, can affect the chemical nature of the end product in the same way that commercial heat does, that the outcome of such "natural" processes can be manipulated by simply waiting a given amount of time, and that natural processes can generate sufficient heat that many reactions induced by "cooking" take place. Therefore, the Service has amended the rule so that products using traditional "cooking" processes can be described as "natural" (1) when the treatment necessary is the minimum required and reflects the generally-recognized practices of the industry, (2) when the inherent nature of the original material remains generally intact, and (3) when the process is not manipulated to produce a product which is then described as possessing a property which it did not possess naturally.

A number of comments urge the inclusion of solvent-extracted meals under the rule. They note that the AAFCO proposed definition is intended to allow for solvent extraction. The Service disagrees and notes that there was disagreement during the annual meeting on that interpretation of the AAFCO definition; even some respondents specifically state that natural means "devoid of any synthetic or artificial ingredients." The Service does not take the position that materials which have been exposed to man-made materials are inherently incapable of meeting the definition of "natural." If the Service can only detect the presence of a man-made contaminant, additive or processing aid in amounts which are unavoidable and consistent with good processing practices, it has no basis for disagreeing with a manufacturer's description.

The Service notes that feeds exposed to radiation are adulterated under 4 TAC §141.148(10) unless the use conforms with a regulation or an exemption under 21 U.S.C., §348. However, ingredients or products irradiated even under regulation or with an exemption cannot be referred to as "natural" under this rule.

The Service does not consider any materials containing transspecies genes to be "natural" under this rule.

Despite the absence of comment on the definition of "organic," the Service believes only the U.S. Department of Agriculture and the Texas Department of Agriculture should designate which feed ingredients are "organic." AAFCO and the Service can still play an important role in helping these agencies meet their responsibilities by providing definitions or standards of identity. The rule has been modified to reflect these changes. The Service notes that the term "accepted" is ambiguous with regard to products which have restricted use. All products allowed or allowed by restriction by either USDA or the Texas Department of Agriculture are "organic." The rule has been modified to clarify the term. The Service also wishes to make it clear that products which can legitimately be described as organic must still conform to the requirements of the Texas Commercial Feed Control Act.

The amendment is adopted under the Texas Agriculture Code 141, §141.004 which provides the Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

§61.1. Definitions.

Except where otherwise provided, the terms and definitions adopted by the Association of American Feed Control Officials in the last published edition of the annual Official Publication are hereby adopted by reference as the terms and definitions to control in this title. The publication is available from the Association of American Feed Control Officials. In addition, the following words and terms, when used in this title, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Act - Texas Commercial Feed Control Act, Texas Agriculture Code, Chapter 141, 1981, as amended.

(2) Additive - An ingredient or combination of ingredients added to the basic feed mix or parts thereof to fulfill a specific need which becomes a component of or affects the characteristics of a feed or food if such substance is not generally recognized as safe under the conditions of its intended use.

(3) Ammoniated Corn - The product obtained by treating whole corn containing no more than 1000 parts per billion (ppb) aflatoxin with anhydrous ammonia under specified conditions of temperature and pressure approved by the Service. Ammoniated corn is not to be considered a single ingredient product. It is to be used solely in feeds for ruminants.

(4) Ammoniated Cottonseed - The product obtained by treating whole cottonseed containing no more than 1000 parts per billion (ppb) aflatoxin under specified conditions of temperature and pressure approved by the Service. Ammoniated cottonseed is not to be considered a single ingredient product. It is to be used solely in feeds for ruminants.

(5) Ammoniated Cottonseed Meal - The product obtained when cottonseed meal is treated with anhydrous ammonia until a pressure of 50 pounds per square inch gauge is reached. It is to be used in the feed of ruminants in an amount not to exceed 20% of the total ration. Ammoniated cottonseed meal is not to be considered a single ingredient product.

(6) Annual Products - Commercial feed product packaged in individual containers of five pounds or less only.

(7) Bagged - Enclosure of feed in any container.

(8) Chemical Adulterant - Any compound - natural or synthetic - possessing little or no intrinsic nutritional value, avoidably present at levels inconsistent with its generally accepted use in a feed or unavoidably present at levels in a feed above those authorized by the Service.

(9) Container - A bag, box, carton, bottle, object, barrel, package, apparatus, device, appliance, or other item of any capacity into which a feed is packed, poured, stored, or placed for handling, transporting, or distributing.

(10) Natural - Describes a feed or feed ingredient produced solely by or derived solely from plants, animals or minerals, whether unprocessed or processed according to generally accepted industry standards, which has not been exposed to ionizing radiation and does not contain any man-made materials except in such amounts as might occur unavoidably in good processing practices. The term is understood to include as "natural" flavors and flavorings so designated under 21 CFR 501.22(a)(3).

(11) Organic - When applied to a product, to a compound, to a mixture of compounds or to a specific constituent used as an ingredient means that the claim of the product, compound, mixture of compounds, or constituent to be organic has been allowed or allowed with restriction by the United States Department of Agriculture's National Organic Program or the Texas Department of Agriculture's Organic Certification Program. (Materials described as organic must still conform to the Texas Commercial Feed Control Act if they are used in feeds.)

(12) Person - Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

(13) Pet Food - Any commercial feed prepared and distributed for consumption by a dog or cat or an animal normally maintained in a cage or tank in or near the household(s) of the owner such as, but not limited to, gerbils, hamsters, birds, fish, snakes and turtles.

(14) Salvage - When applied to an ingredient or combination of ingredients, refers only to those products that have been damaged by natural causes, such as fire, water, hail, or windstorm, or by conveyance mishap. Does not apply to recovered production line products which are suitable for reprocessing.

(15) Service - Texas Feed and Fertilizer Control Service.

(16) Toxin - Any compound causing adverse biological effects including, but not limited to, poisons, carcinogens or mutagens, produced by an organism avoidably present at any level or unavoidably present at levels in a feed above those authorized by the Service.

(17) Weed seeds - Those seeds declared prohibited or restricted noxious weed seeds by the Texas Agriculture Code, §61.008 (concerning Noxious Weed Seeds).

(18) Wildlife - Any feral animal, any animal not normally considered as domesticated in Texas or any animal living in a state of nature.

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 August 28, 2000.

TRD-200006036

Dr. George W. Lattimer, Jr.

Asst. to the Assoc. Vice Chancellor of Agriculture

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: September 17, 2000

Proposal publication date: June 9, 2000

For further information, please call: (979) 845-1121

♦ ♦ ♦

TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §85.102

The Office of Consumer Credit Commissioner (the agency) adopts the amendment of §85.102 concerning definitions for the Texas Pawnshop Act, Chapter 371, Texas Finance Code. The amendment is adopted without changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6875).

The agency received no comments on the proposed amendment.

The amendment adds two new definitions to the existing rule. The new definitions are for law enforcement agency and for month. These terms are used in other rules and the addition of the definitions will aid in the understanding and application of other rules in this chapter.

The amendment is adopted under §371.006 of the Texas Pawnshop Act, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Act.

This rule affects the Texas Pawnshop Act, Chapter 371 of the Texas Finance Code. The effective date of this rule is October 1, 2000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006162

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: October 1, 2000

Proposal publication date: July 21, 2000

For further information, please call: (512) 936-7640

♦ ♦ ♦

SUBCHAPTER E. INSPECTIONS AND EXAMINATION

7 TAC §§85.501 - 85.503

The Office of Consumer Credit Commissioner (the agency) adopts new §§85.501 - 85.503 concerning examinations of pawnshops with nonsubstantive changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6884).

The agency received comments on the proposed new sections from the following interested parties: Action Pawn; Bill's Pawn & Jewelry; Handy Super Pawn; H & F Pawn, Inc.; Galaxy Pawn, Inc.; Pawn Management, Inc.; Phoenix Pawn; Wright Pawn & Jewelry, Inc.; SWAT'S Loans; Mr. Money Holdings, Inc., and; Champion Pawn & Jewelry.

Section 85.501 explains the accommodations required to permit an examiner of the agency to conduct an examination of the pawnshop's records. The rule is necessary to advise pawnshops of physical requirements for an examination. The examiner must be provided with a physical working space in order to review the appropriate records. Additionally, access to an electrical outlet is required for the examiner to use a notebook computer to prepare the examination report. Three commenters similarly suggested that the agency provide a week's notice prior to conducting an examination. The commenters state that providing notice will enable them to provide the accommodations required by the rule. The rule as proposed does not address the scheduling or notice of examinations. It has been the agency's longstanding practice that examinations of pawnshops are unannounced and the agency has found that pawnshops seldom have difficulty in providing the accommodations necessary for the examiners to conduct the examinations. Since the rule does not address a notice provision, the agency declines to introduce new provisions to the rule at this time.

Section 85.502 prescribes the requirements for an annual examination report. This information is necessary to ensure that the agency has the appropriate information to adequately schedule examinations. The volume of activity within a pawnshop is an important factor in assessing the compliance risk to determine the priority and frequency of pawnshop examinations. The agency may also summarize and aggregate the information for the use of public policy makers in evaluating the pawn industry. One commenter objected to this section claiming that "an additional audit report is unnecessary because during an examination this information is already collected." The section proposes to collect the information annually and replace the collection of the same information during the examination. Obtaining the information in advance of an examination will enhance the scheduling procedure of examinations, since the volume of pawn transactions is a risk factor associated with the risk-based scheduling methodology. The rule does not require the submission of audited financial statements. Furthermore, by obtaining the information at a single point in time (with the license renewal), the agency will be able to aggregate and analyze industry statistics. The current method of collecting this information is not conducive to competent analysis. Collecting the information with the renewal may potentially decrease the time associated with the examination as the licensee is able to collect the information over an extended period of time as opposed to trying to collect the information during the examination. Collecting the information annually with the renewal will also potentially result in only reporting one or two years of data versus several years that are collected at the time of examination. For these reasons, the agency disagrees with the commenter and retains the rule as proposed.

Section 85.503 outlines the fee structure for examinations. The rule is necessary to recover the costs of examinations as required in the Texas Pawnshop Act §371.207. This fee structure is currently in place and has been in use since March, 1999. Five commenters expressed concern about subsection (d) pertaining to the assessment for a return examination within ninety days of the original examination. The subsection states if a return examination visit is required within ninety days from the original examination that the charge for the return examination may be assessed at twice the normal rate. An example of a return examination is a situation where an examiner arrives at a location to conduct an examination and the records that are required to conduct the examination are unavailable for the examiner to review. When the licensee is not able to produce the records in a reasonable period of time, the examiner must reschedule not only this examination, but several others to make a special return trip to examine the required records. Often, this substantially impacts the examination travel and scheduling requirements resulting in increased costs to the agency because the licensee did not appropriately maintain the required records. The agency believes that the licensee should be responsible financially for the impact of rescheduling. This affects not only the agency's examination of this licensee, but others as well. The impact is a direct result of the licensee's failure to maintain records in compliance. It is not uncommon for a regulatory agency to require an additional cost for return or special examinations that result from the licensee's failure to maintain compliance. See 7 TAC §25.24 (prepaid funeral contracts); 7 TAC §26.21 (perpetual care cemeteries); §29.2 (sale of checks); 7 TAC §97.113 (credit unions); 7 TAC §3.36 (specialty exam fees for state banks); and 7 TAC §63.5 (special examination of state savings banks). The agency believes that the provision requiring an assessment at twice the normal rate for return or special examinations is appropriate to adequately recover the additional costs associated with performing the return examination. The agency disagrees with the commenters and retains the rule as proposed, with grammatical nonsubstantive changes.

The new rules are adopted under §371.006 of the Texas Pawnshop Act, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Act.

These rules affect the Texas Pawnshop Act, Chapter 371 of the Texas Finance Code. The effective date of these rules is October 1, 2000.

§85.501. Examination Accommodations.

When a representative of the commissioner appears at a pawnshop to make an examination, the pawnshop must make available a desk or table providing adequate working space. The pawnshop must also provide a suitable chair, adequate lighting, and convenient access to a 110 volt electrical outlet in an area reasonably suited for office and administrative work.

§85.502. Annual Examination Report.

As part of an annual examination, a report must be filed in conjunction with the pawnshop license renewal providing certain information on a form furnished by the commissioner. These submissions will be collected under the examination authority of Texas Finance Code, §371.201, and will be treated as confidential under the provisions of Texas Finance Code, §371.206. The commissioner may publish an aggregated report. A report for each licensed location must be filed for the period of January 1st to December 31st of the preceding year and include:

(1) Number of pawn loans made during the year;

(2) Amount advanced in connection with the pawn loans made during the year;

(3) Number of pawn loans outstanding on the December 31st immediately preceding the due date of the report; and

(4) Amount of pawn loans outstanding on the December 31st immediately preceding the due date of the report.

§85.503. Examination fees.

(a) Assessment. The commissioner will assess and collect a nonrefundable examination fee designed solely to recover agency expenditures applicable to the examination function, according to the formula set out below:

(1) General administrative fee per exam ($150.00) - The administrative and overhead costs necessary to cover agency expenditures related to an examination (e.g., computer support, examination function administration);

(2) Administrative fee for each additional day ($100.00) - The administrative and overhead costs necessary to cover agency expenditures for each additional day required to conduct the examination; and

(3) Hourly examination rate ($60.00) - The direct and indirect examiner cost including travel costs.

(b) Calculation of a day. A day is measured as eight (8) business hours spent on site conducting an examination.

(c) Due date. Unless specifically stated by the commissioner any examination fee is due at the time of billing.

(d) Return Examinations. A follow-up examination visit may be required within ninety (90) days after a written deficiency report given as a result of a failure to comply with Texas Finance Code, Chapter 371, this chapter, or the special instructions section of the examination report. The follow-up examination may result in an assessment at two (2) times the rates provided in subsection (a), paragraph (3) of 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 September 1, 2000

TRD-200006163
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: October 1, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 936-7640

♦ ♦ ♦

SUBCHAPTER F. LICENSE REVOCATION, SUSPENSION, AND SURRENDER

7 TAC §§85.604 - 85.608

The Office of Consumer Credit Commissioner (the agency) adopts new 7 TAC §§85.604 - 85.608 concerning license revocation, suspension and surrender. The new rules are adopted with changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6885).

The agency received comments on the proposed rules from the following interested parties: Bill's Pawn & Jewelry; Lone Star Gold Exchange; EZPawn, L.P.; Mr. Money Holdings, Inc.; SWAT'S Loans; Action Pawn; The Wright Pawn & Jewelry Company, Inc.; Shaw's Jewelry & Loan; and Texas Association of Pawnbrokers.

Section 85.604 describes the types of administrative action that the commissioner may take and the basis for taking administrative action. This section is necessary to describe the types of actions that the agency will pursue in enforcement actions. The agency is not necessarily limited to the actions described by the rule, but the rule describes common enforcement situations. The rule also requires reporting of any criminal enforcement actions. This information will assist the agency in determining whether an enforcement action should be initiated. All of the comments received pertain to this section.

One commenter urged several changes in subsection (b)(2) pertaining to character and fitness as impacted by violations of federal firearms law and actions by the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF). The commenter stated that the subsection was confusing and might require a pawnshop to report routine compliance examinations by ATF to the agency. The rule is not intended to require this type of reporting. The rule has been modified to clarify this and adopt several other suggestions made by the commenter. The commenter also urged that the reporting of only final actions of revocation or suspension by the ATF be required. The agency believes that it is important for the agency to be aware of a notice of proposed revocation, suspension, or imposition of civil fine as this may indicate compliance concerns that the agency needs to investigate. The agency clarifies the term adverse action as previously used in the rule by defining the specific proposed actions that must be reported, but retains the requirement of reporting proposed actions by the ATF.

Several commenters requested that the language "knowingly or without exercise of due care" be added in subsection (b)(4) relating to a pawnbroker or pawnshop employee who "knowingly or without exercise of due care" accepts property that is stolen or is represented to be stolen. Some commenters expressed concern that the language was vague and needed clarification. The agency agrees with the commenters and amends the rule accordingly. One commenter stated that only property that is found by a court to be stolen in which a defendant has been found guilty of stealing the property should apply in this section. The agency disagrees, specifically in light of §371.181(a) of the Texas Pawnshop Act which states: "A pawnbroker shall monitor goods purchased, accepted in pawn, or otherwise acquired by the pawnbroker to identify and *prohibit* transactions involving stolen goods (emphasis added)." If an item is represented to be stolen, a pawnbroker has a duty to refuse to engage in the transaction regardless of whether a court has found that the item was indeed stolen, or not.

One commenter questioned the meaning of due care and how it is determined if that standard has been met. The concept of due care is contained in §371.251 of the Texas Pawnshop Act. The determination of whether the due care standard has been exercised would be a matter adjudicated in a contested enforcement action which would employ basic legal principles relating to the due care standard.

Two commenters expressed concern about subsection (b)(7) stating that a pawnbroker is responsible for acts of its officers, employees, and agents. One commenter states that the pawnbroker should only be responsible if they knowingly or without

exercise of due care allowed an action. The second commenter stated that being responsible for financial obligations to the customer is understandable but that the pawnbroker should not be open to any action taken by an employee. A pawnbroker has a duty to ensure that the pawnshop is being operated lawfully and fairly; this includes adequately supervising and monitoring an employee. It is a fundamental principles of law that employers are responsible for the acts of their employees and agents. The agency disagrees with the commenters and retains the subsection as proposed.

Section 85.605 describes the procedures for redemption of pawned merchandise after a pawnshop license has been revoked. The pledgors must be given an opportunity to redeem their goods, even if a license has been revoked. The pawn ticket gives the pledgors a contractual right to redeem the goods until the appropriate grace period has expired.

Section 85.606 explains the procedures for a licensee who desires to surrender the pawn license or wind down operations. The rule is necessary to ensure that the licensee is aware of certain responsibilities that may not be avoided by simply surrendering the license. For example, a licensee is required to permit pledgors to redeem pledged goods before the expiration of the grace period and the licensee may not avoid this responsibility by surrendering the license.

Section 85.607 references the applicable statutes and rules that will be used in connection with an administrative hearing.

Section 85.608 details the procedure for obtaining a certificate of good standing as required by §371.259 of the Texas Pawnshop Act.

The new rules are adopted under §371.006 of the Texas Pawnshop Act, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Act.

These rules affect the Texas Pawnshop Act, Chapter 371 of the Texas Finance Code. The effective date of these rules is October 1, 2000.

§85.604. Revocation or Suspension of Pawnshop License or Pawnshop Employee License.

(a) The commissioner may initiate an administrative action for the reasons in subsection (b) of this section and assess any or all of the penalties below:

(1) revoke or suspend a license;

(2) assess an administrative penalty.

(b) Basis for administrative actions.

(1) Eligibility. A pawnbroker who does not continue to meet the eligibility requirements in Texas Finance Code, Chapter 371, Subchapter B or a pawnshop employee who does not continue to meet the eligibility requirements in Subchapter C and the administrative rules promulgated by the commissioner, is subject to suspension or revocation.

(2) Character and fitness. A pawnbroker or a pawnshop employee must report to the commissioner knowledge of any arrest, charge, indictment, or conviction of any person named on a pawnshop or pawnshop employee license or application filed with the commissioner. Traffic violations and any action previously reported to the commissioner are not required to be reported. Any known investigation of potential violations by the pawnbroker of federal laws or rules relating to firearms must be reported to the commissioner, but this does not include compliance inspections by the United States Bureau of Alcohol, Tobacco, and Firearms. A notice of revocation, suspension, or imposition of civil fine issued by the United States Bureau of Alcohol, Tobacco and Firearms (Form 4500 notice) against the federal firearms license must also be reported. Reports must be made within three (3) business days.

(3) Failure to comply with the law. A pawnbroker or pawnshop employee who fails to comply with this chapter or the provisions of the Texas Finance Code, Chapter 371, is subject to suspension, revocation, or an administrative penalty.

(4) Accepting stolen property. A pawnbroker or pawnshop employee who knowingly or without exercise of due care accepts stolen property or accepts property which has been represented to be stolen without reporting it to law enforcement may be subject to suspension, revocation, or an administrative penalty. A pawnbroker or pawnshop employee who has personal knowledge of a pawnbroker or a pawnshop employee accepting stolen property without reporting it to law enforcement is subject to suspension or an administrative penalty.

(5) Failure to comply with commissioner's order. A pawnbroker or pawnshop employee who fails to comply with an order of the commissioner is subject to suspension, revocation, or an administrative penalty.

(6) Responsibility for compliance. Any licensed pawnbroker or pawnshop employee who knowingly or without exercise of due care violates the purposes of the Texas Finance Code, Chapter 371, or this chapter is subject to suspension, revocation, or an administrative penalty.

(7) Responsibility for acts of others. Any person who holds a pawnshop license will be responsible for the acts of its officers, directors, employees, and agents in the conduct of the pawnshop business.

§85.605. Redemption of Goods after License Revocation or Suspension.

A pawnshop that ceases operation must make reasonable accommodations to ensure that a pledgor has an opportunity to redeem pledged goods. A sign must be posted in compliance with §85.401(b) of this title that informs a pledgor of the process of redemption. A copy of the posting along with additional contact information must be submitted to the commissioner. The opportunity for redemption may be made by allowing the pledgor to redeem even though the pawnshop is no longer in business or by providing accommodations so that the pledgor may redeem goods through another licensed pawnshop.

§85.606. Surrender of License.

(a) Winding down. When a licensee surrenders its license or ceases business operations, the licensee must comply with §85.605 of this title.

(b) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the agency.

§85.607. Hearings.

Hearings held under this chapter will be held in accordance with Administrative Hearing Process and Rules of Procedures in the Finance Commission Agencies, §9.1 et seq. of this title, the Administrative Procedures Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

§85.608. Certificate of Standing; Copies.

Upon request, a certificate of good standing must be provided in accordance with §82.2 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006164
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: October 1, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 936-7640

♦ ♦ ♦

SUBCHAPTER G. ENFORCEMENT; PENALTIES

7 TAC §85.701, §85.703

The Office of Consumer Credit Commissioner (the agency) adopts new 7 TAC §85.701 and §85.703 concerning enforcement and penalties. The new rules are adopted with changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6886).

The agency received comments on the proposed rules from the following interested parties: Yoakum Pawn & Jewelry; H & F Pawn Inc.; Bill's Pawn & Jewelry; Champion Pawn & Jewelry; Estrada's Pawn Shop; Mr. Money Holdings, Inc.; Galaxy Pawn, Inc.; SWAT'S Loans; Dock VII Inc.; Phoenix Pawn, Ltd.; The Wright Pawn & Jewelry Company, Inc.; Ken's Pawn and Jewelry; Handy Super Pawn #1 & 2; Shaw's Jewelry & Loan; and Texas Association of Pawnbrokers.

Section 85.701 details the penalty provisions that will be applied for failure to timely file a pawnshop employee application. Section 371.101 requires that a pawnshop employee must apply for a license not later than the 75th day after the date employment begins. The commissioner finds that this is an area of concern for non-compliance. In order to discourage noncompliance with the requirement as well as to consistently and uniformly enforce the provisions, the rule provides standard penalties for non-compliance with the requirement. Two commenters expressed concern about the time frame for approval of new licenses and the perceived relationship of new licenses being issued simultaneously with renewals. The rule as proposed only addresses the actions associated with the failure to file an application timely. The agency has experienced difficulties in the last year related to receiving criminal history background information on applicants. This problem appears to be almost resolved. The agency understands the concern and is attempting to correct any problems. Since the rule does not pertain to processing, but to failure to timely file, the agency retains the rule as proposed.

Section 85.702 details the enforcement procedures that will be applied for accepting prohibited merchandise. The remainder of the comments received pertain to §85.702. Section 85.702 is being withdrawn and will be reproposed with substantive changes to address some of the issues raised by the commenters.

Section 85.703 is a savings clause stating that if any rule or portion of this chapter is found invalid or unenforceable, that fact shall not affect or impair the remainder of the chapter.

The new rules are adopted under §371.006 of the Texas Pawnshop Act, which authorizes the Consumer Credit Commissioner to adopt rules to enforce the Act.

These rules affect the Texas Pawnshop Act, Chapter 371 of the Texas Finance Code. The effective date of these rules is October 1, 2000.

§85.701. Failure to Timely File a Pawnshop Employee Application.

(a) Reasonable ground for denial. Failure to file a pawnshop employee application with the Office of Consumer Credit Commissioner within seventy-five (75) calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), shall be a reasonable ground for denial of the license. Should the commissioner find that no other ground is present on which to base a denial of the license, the commissioner may grant the license with an agreed suspension as set out in subsection (b) of this section.

(b) Agreed suspension. As stated in subsection (a) of this section, if the commissioner finds that no grounds other than failure to timely file is present, the parties may agree upon one of the following options in lieu of denial:

(1) if the applicant has not previously held a pawnshop employee license, the application will be granted and then immediately suspended for the number of days equal to 20% of the total number of days past the seventy-fifth (75th) calendar day which the applicant worked without a license;

(2) if the applicant has previously held a pawnshop employee license, the application will be granted and then immediately suspended for the number of days equal to 30% of the total number of days past the seventy-fifth (75th) calendar day which the applicant worked without a license;

(3) in cases where the pawnshop accepts responsibility for failure to timely file, and the suspension calculated under paragraph (1) or (2) of this subsection results in a suspension period in excess of fourteen (14) days, the pawnshop may pay thirty dollars ($30) per suspension day to reduce the suspension period; or

(4) some other option agreeable to all parties.

(c) Suspension calculations. There will be no suspension of less than one (1) complete day. All calculations resulting in fractions shall be rounded up to the next full day.

(d) A pattern of violations may result in an additional administrative action, denial, or the forfeiture of the options in this section.

§85.703. Savings Clause.

If any portion or provision of this chapter is found to be illegal, invalid, or unenforceable, such illegality, invalidity, or lack of enforceability shall not affect or impair the legality, validity, and enforceability of the remainder hereof, all of which shall remain in full force and effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006165

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: October 1, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 936-7640

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 9. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§9.1-9.5, 9.9-9.11

The Texas Department of Housing and Community Affairs (TDHCA) adopts amendments to §§9.1, 9.2, 9.3, 9.4, 9.5, 9.9, 9.10, and 9.11 concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP) without changes to the proposed text published in the July 14, 2000, issue of the *Texas Register* (25TexReg6629).

The amendments establish the standards and procedures by which TDHCA will allocate 2001 and 2002 fiscal years' community development, planning capacity building, and housing rehabilitation funds and fiscal year 2000 colonia, housing infrastructure, disaster relief, disaster recovery initiative, and TCDP Small Town Environment Program funds.

The amendments make changes to the application and selection criteria for the program fund categories.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 2306, §2306.098, which provides TDHCA with the authority to allocate Community Development Block Grant non-entitlement area funds to eligible counties and municipalities according to department rules.

Texas Administrative Code, Title 10, Part I, Chapter 9, is affected by the adoption of the amendments to §§9.1, 9.2, 9.3, 9.4, 9.5, 9.9, 9.10, and 9.11.

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 August 28, 2000.

TRD-200006033
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Effective date: September 17, 2000
Proposal publication date: July 14, 2000
For further information, please call: (512) 475-3726

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PRACTICE AND PROCEDURE

The Public Utility Commission of Texas (commission) adopts an amendment to §22.33 relating to Tariff Filings and §22.305 relating to Compulsory Arbitration with no changes to the proposed text as published in the June 23, 2000, *Texas Register* (25 TexReg 6019). The proposed amendments replace references to repealed sections in Chapter 23 with the correct references in Chapter 25 and/or Chapter 26. The amendments are adopted under Project Number 22470.

The commission received no comments on the proposed amendments.

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

16 TAC §22.33

This amendments is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

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 August 31, 2000.

TRD-200006129
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 20, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

SUBCHAPTER P. DISPUTE RESOLUTION

16 TAC §22.305

This amendments is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998, Supplement 2000) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

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

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 August 31, 2000.

TRD-200006130
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 20, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 936-7308

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas State Board of Medical Examiners adopts an amendment to §166.2, regarding administrative penalties relating to continuing medical education, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6023).

The amendment will make Chapter 166 consistent with §187.39(f)(5) relating to administrative penalties.

No comments were received regarding adoption of the amendment.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006200
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 183. ACUPUNCTURE

The Texas State Board of Medical Examiners adopts amendments to §§183.1-183.5, repeal of §§183.6-183.23 and new §§183.6-183.21, concerning acupuncture, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register (25 TexReg 6027).*

The sections are being updated due to the agency rule review.

No comments were received regarding adoption of the amendments, repeals, and new sections.

22 TAC §§183.1 - 183.5

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006199
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§183.6 - 183.23

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006198
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§183.6 - 183.21

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006197
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 185. PHYSICIAN ASSISTANTS

The Texas State Board of Medical Examiners adopts amendments to §§185.2, 185.4-185.7, 185.14, 185.16, 185.17, repeal of §§185.18-185.29 and new §§185.18-185.28, concerning physician assistants, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6048).

The sections are being updated due to the agency rule review. Numerous amendments were made to streamline application processing and allow expansion of the number of physicians assistants that may be supervised by a physician. This will allow greater access to healthcare for the citizens of Texas.

No comments were received regarding adoption of the amendments, repeals, and new sections.

22 TAC §§185.2, 185.4 - 185.7, 185.14, 185.16, 185.17

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

The Occupations Code, Chapter 204 is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006196
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§185.18 - 185.29

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

The Occupations Code, Chapter 204 is affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006195
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

22 TAC §§185.18 - 185.28

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

The Occupations Code, Chapter 204 is affected by the new sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006194
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 187. PROCEDURE
SUBCHAPTER D. POSTHEARING

22 TAC §187.33

The Texas State Board of Medical Examiners adopts an amendment to §187.33, concerning procedure and posthearings, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6065).

Oral argument in proposals for decision is being amended.

No comments were received regarding adoption of the amendment.

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

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

The Occupations Code, §164.007 is affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006193
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.10

The Texas State Board of Medical Examiners adopts new §193.10, concerning pronouncement of death and collaborative management of glaucoma, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6065).

New §193.10 is adopted to implement the mandate of the 76th Legislature as it relates to the Optometry Act, Article 4552, § 1.03, Vernon's Texas Civil Statutes, regarding the minimum standards for the collaborative management of glaucoma.

Several comments were received regarding adoption of the new section. The comments are as follows:

A state legislator commented that he supported the requirement of a registry in order to measure the efficacy of this type of healthcare delivery system.

Two state legislators commented that it was not the intent of the legislature to require ophthalmologists or optometrists who work together to register with the state.

A licensed physician commented that he disagreed with the collaborative management of glaucoma between an ophthalmologist and optometrist if an actual examination of the patient by an ophthalmologist is not performed.

The following are the reasons why the Board disagrees with the submissions and proposals set forth above:

In order to expedite the delivery of health care in the co-management of glaucoma and to not delay implementation of the rules, the board will consider the suggestion regarding the inclusion of a registry at a future date.

Based on comments from a previous publication of the rule, the Board determined that a face-to-face consultation was not warranted and was not the intent of the legislation.

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

The Occupations Code, §157.001 is affected by the proposed new 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 September 1, 2000.

TRD-200006192
F.M. Langley, DVM, MD, JD.
Executive Director
Texas State Board of Medical Examiners
Effective date: September 21, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 305-7016

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.282

The Comptroller of Public Accounts adopts an amendment to §3.282, concerning auditing taxpayer records, without changes to the proposed text as published in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2296).

The amendment adds subsections that set out guidelines for managed audits by taxpayers, a percentage-based optional reporting method, and the determination of overpaid amounts, as authorized by Senate Bill 1319, 76th Legislature, 1999, effective October 1, 1999. Subsection (h)(4) is added and refers the reader to Tax Code, §111.064 and §3.325 of this title (relating to Refunds, Interest, and Payments Under Protest), for interest paid by the state on tax paid in error. The amendment defines managed audit and percentage-based reporting method, and as a result of this additional information, several subsections are renumbered.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§151.022-151.026, 151.0231, 151.054, 151.4171, 151.430, 151.504, 151.515, and 111.004-111.0042.

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 August 30, 2000.

TRD-200006101
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 19, 2000
Proposal publication date: March 17, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

34 TAC §3.295

The Comptroller of Public Accounts adopts an amendment to §3.295, concerning natural gas and electricity, with changes to the proposed text as published in the March 3, 2000, issue of the *Texas Register* (25 TexReg 1851).

This amendment reflects changes to Tax Code, §151.317, enacted by the 76th Legislature, 1999, and clarifies the agency's long-standing policy of using predominant use to determine the taxability of gas or electricity used for exempt and taxable purposes and measured through a single meter.

Comments on the proposal were received from an attorney expressing concerns that the reference in subsection (c)(4)(A) that allows an exemption for gas and electricity used in equipment that qualifies for exemption under Tax Code, §151.318(a)(2) and (5) would disallow exemptions for natural gas and electricity used to operate equipment permanently affixed to realty. Changes were made to subsection (c)(4)(A) to clarify that natural gas and electricity used to operate such equipment are exempt. A minor change was made to subsection (e)(3) to clarify the reference to another subsection of this section.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.317.

§3.295. Natural Gas and Electricity.

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

(1) Electric utility--Any entity owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity whose rates for the sale of electric power are set by the Public Utilities Commission under the Public Utility Regulatory Act. The term does not include:

(A) a qualifying small power producer or qualifying co-generator, as defined in the Federal Power Act, §3(17)(D) and §3(18)(C), as amended (16 United States Code §796(17)(D) and §796(18)(C)); or

(B) any person not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for the person's own consumption.

(2) Fabrication--To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(3) Manufacturing--Every operation commencing with the first stage of production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production and it does not include acts in preparation for production. For example, a manufacturer gathering, arranging, or sorting raw material or inventory is preparing for production. When production is completed, maintaining the life of tangible personal property or preventing its deterioration is not a part of the manufacturing process. Tangible personal property is complete when it has the physical properties, including packaging, if any, that it has when transferred by the manufacturer to another. Also see §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(4) Remodeling--To make tangible personal property belonging to another over again without causing a loss of its identity, or without causing the property to work in a new or different manner.

(5) Processing--The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The property being processed may belong either to the processor or the customer, the only tests being whether the property is processed and whether it will ultimately be sold. Direct use of natural gas or electricity in processing will be referred to as exempt use. Processing does not include remodeling or any action taken to prolong the life of tangible personal property or to prevent a deterioration of the tangible personal property being held for sale. The repair of tangible personal property belonging to another by restoring it to its original condition is not considered processing of that property. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that product.

(6) Residential use--Use in a family dwelling or in a multifamily apartment complex or housing complex or nursing home or in a building or portion of a building occupied as a home or residence when the use is by the owner of the dwelling, apartment, complex, home, or building or part of the building occupied. Residential use also includes use in a dwelling, apartment, complex, house, or building or part of a building occupied as a home or residence when the use is by a tenant who occupies the dwelling, apartment, complex, house, or building or part of a building under a contract for an express initial term of more than 29 consecutive days. Absent a contract, only the period exceeding 29 consecutive days will be considered residential use, when supported by valid documentation (i.e., receipts, canceled checks, etc.). For purposes of the exemption for residential use of natural gas and electricity, nursing homes qualify for exemption only for periods beginning after December 31, 1987.

(b) Sales tax applicable. The furnishing of natural gas or electricity is a sale of tangible personal property. All the provisions in the Tax Code, Chapter 151, applying to the sale of tangible personal property, apply to the sale of natural gas or electricity.

(c) Gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(3) direct or indirect use or consumption, including electricity lost in the lines, by an electric utility engaged in the purchase of electricity for resale;

(4) direct use in:

(A) powering equipment that qualifies for exemption under Tax Code, §151.318, (including equipment that is permanently

affixed to or incorporated into realty) to process tangible personal property for sale as tangible personal property, other than preparation of or the storage of food for immediate consumption;

(B) lighting, cooling and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal property, other than preparation or storage of food for immediate consumption;

(C) exploring for, producing, or transporting a material extracted from the earth;

(D) electrical processes, such as electroplating, electrolysis, and cathodic protection;

(E) the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property; or

(F) providing, under contract with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(G) the repair, maintenance, or restoration of rolling stock.

(d) Use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the activities described in subsection (c)(4) of this section is considered use by the purchaser of the gas or electricity.

(e) Predominant use.

(1) Natural gas or electricity used during a regular monthly billing period for both exempt and taxable purposes under a single meter is totally exempt or taxable based upon the predominant use of the natural gas or electricity measured by that meter. A person who performs a processing, manufacturing, or other exempt function continually must establish predominant use on 12 consecutive months of use.

(2) If, in the regular course of business, a person performs a processing, manufacturing, or other exempt function only part of the year and a nonprocessing, nonmanufacturing, or other taxable function for the remainder of the year, the predominant use may be established for that period of time the processing, manufacturing, or other exempt function occurs based on the predominant use during that period.

(3) When determining the predominant use of natural gas or electricity, utilities used to operate machinery exempt under subsection (c)(4)(A) of this section and for lighting, cooling, and heating in the manufacturing area during actual manufacturing or processing of tangible personal property for sale are exempt. Gas and electricity used to operate lighting, cooling, and heating in manufacturing support areas are taxable. Manufacturing support areas include, but are not limited to, storage, engineering, office and accounting areas, research and development, and break, eating, and restroom facilities. Utilities used in an area open to the public for the purpose of marketing a product ready for sale are taxable. Utilities used to operate other nonproduction machinery or equipment are taxable.

(f) Determining predominant use: utility studies.

(1) Persons claiming a sales tax exemption because the predominant use of natural gas and electricity through a single meter is for processing, manufacturing, fabricating, or other taxable use must have performed a utility study to establish this predominant exempt use. The study must list all uses of the utility, both exempt and taxable, the times of usage, the energy used, and whether the use was taxable or exempt. Twelve consecutive months of utility usage must be a part of the study. The kilowatt rating or BTU rating, duty factor, where needed for cycling equipment, and electrical or natural gas computations must be certified by a registered engineer or a person with an engineering degree from an accredited engineering college. The owner of the business must certify that all items using natural gas or electricity (depending on which utility is covered by the study) are listed and that the hours of use for each item are correct. The certification of both the engineer and the owner must appear on the face of the study. If the owner of the business appoints an agent to act on the owner's behalf, the power of attorney must clearly state that the agent is attempting to qualify the principal for a sales tax exemption, and if a refund of sales tax is involved, the power of attorney must also state that a sales tax refund will be made by the state through the utility company. A person in business less than 12 consecutive months may still apply for a sales tax exemption if a registered engineer or a person with an engineering degree performs a study based upon projected uses which shows the predominant use as exempt. A person claiming an exemption based upon estimated use must be able to support the claimed exemption with a study of actual use after 12 consecutive months of operation if so requested by the comptroller.

(2) The study must be completed and on file at the location of the person claiming the exemption at the time an exemption certificate is submitted to the utility company. Without the study, the claim for exemption will be presumed to be invalid. Persons obtaining a sales tax refund without a valid study will be assessed tax, penalty, and interest by the comptroller on the full amount of the refund, if the exemption is not proved. If the exemption certificate is fully completed with all information required by this section and bears an original seal of a registered engineer or is attached to a signed statement with an original signature from the owner of the business and a person with an engineering degree from an accredited engineering college, as required by paragraph (1) of this subsection, the utility company is not required to make any additional inquiry before honoring the exemption request.

(3) The comptroller may request a copy of the study for review, either before or after the sales tax exemption is granted. Neither the comptroller by reviewing a study nor the utility company by accepting an exemption certificate is confirming the study's accuracy. Tax, penalty, and interest will be assessed on the business owner if the study is proven to be incomplete or inaccurate to the extent that the predominant use of the natural gas or electricity is taxable.

(4) If a sales tax refund is being claimed retroactively, the study must take into account any changes in equipment or other items using utilities, any changes in business activities, and any changes in square footage being served by the meter.

(5) This subsection does not apply to persons whose use of natural gas or electricity is for processing, manufacturing, or other exempt function if an industry-wide study for that particular industry reflects that the natural gas or electricity used would always qualify as exempt use. The industry-wide study must be submitted to the comptroller's office for review and approval. A subsequent study may be required, in the future, if factors relative to the original study change.

(g) Exemption certificates.

(1) Exempt users must issue exemption certificates to the utility company to claim a sales tax exemption or to obtain a refund of sales tax. The exemption certificate must be specific as to the reason for the claimed exemption. For example, if a person is claiming that the predominant use of the utility is for processing, the reason for the exemption must state, "A valid and complete study has been performed which shows that (insert the actual exempt percentage) of the natural gas or electricity is for processing tangible personal property for sale in the regular course of business."

(2) The exemption is valid only as long as the person continues to use natural gas and electricity in a manner which is for predominantly exempt purposes. At the time the uses of the utilities change so that the predominant use is taxable, it is the person's responsibility to immediately notify the utility company in writing that the exemption is no longer valid.

(3) Persons whose use of natural gas or electricity is solely in family dwellings will not be required to furnish exemption certificates.

(4) A person whose use of natural gas and electricity is in multifamily apartment complexes, housing complexes, nursing homes, or other residential buildings may be required to issue an exemption certificate if one is necessary for the utility company to distinguish exempt residential use from taxable use.

(h) Transportation of a material extracted from the earth.

(1) Sales or use tax is not due on natural gas or electricity used to transport a material or its components extracted from the earth. Examples of materials or components extracted from the earth would be oil, natural gas, coal or coal slurry, crushed stone, sand and gravel, and water.

(2) Sales or use tax is due on natural gas or electricity used to transport a product which was manufactured from a material extracted from the earth. Products which were manufactured from a material extracted from the earth include substances which do not exist in nature or are not components of crude oil, natural gas, coal, or other minerals extracted from the earth.

(3) A material will not be considered to be manufactured when an additive is combined with a material for ancillary reasons, for example, odorant added to natural gas.

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 August 31, 2000.

TRD-200006135
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 20, 2000
Proposal publication date: March 3, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.579

The Comptroller of Public Accounts adopts a new §3.579, concerning child care credits, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6082).

This new section is the result of Tax Code, new Subchapter N, §§171.701 - 171.707, and new Subchapter R, §§171.831 - 171.836. This new section is in accordance with Senate Bill 441 passed by the 76th Legislature, 1999. The section provides franchise tax guidelines for eligibility and calculation of two credits: day care and after school care. These credits are for expenditures made in Texas on or after January 1, 2000.

We received one comment on this proposed rule. Texas Workforce Commission suggested that the rule allow a corporation to take credit for reimbursements paid directly to employees for day care expenses, rather than amounts paid directly to child care providers. We cannot change the rule to include this suggestion because the statute says the employer must purchase the child-care services and, therefore, a credit would not be allowed for reimbursement.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §§171.701 - 171.707 and §§171.831 - 171.836.

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 August 31, 2000.

TRD-200006131
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 20, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-4062

♦ ♦ ♦

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.102

The Comptroller of Public Accounts adopts a new §9.102, concerning certification of property value reduction, with changes to the proposed text as published in the July 28, 2000, issue of the *Texas Register* (25 TexReg 7121).

The new rule is adopted to implement Senate Bill 7, 76th Legislature, 1999, effective September 1, 1999, which requires the comptroller to adopt rules necessary to implement the certification to the Texas Education Agency of the reduction in a school district's property value caused by electric utility restructuring. The rule sets out the method by which public input may be submitted to the comptroller.

Minor nonsubstantive syntactical and punctuation changes were made to the section to improve readability.

No comments were received regarding adoption of the new section.

This new section is adopted under Utilities Code, Chapter 39, Subchapter Z, §39.901(g), which requires the comptroller to adopt rules necessary to implement the certification to the Texas Education Agency of the reduction in a school district's property value caused by electric utility restructuring, including rules providing for public input.

The new section implements Utilities Code, Chapter 39, Subchapter Z, §39.901(g).

§9.102. Certification of Property Value Reduction.

The public may, at any time, provide information or input to the comptroller concerning the certification to the Texas Education Agency of each school district's property value reduction caused by electric utility restructuring by writing the Manager, Property Tax Division or the manager's designee at Comptroller of Public Accounts, Property Tax Division, Post Office Box 13528, Austin, Texas 78711-3528 or by calling 1-800-252-9121.

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 August 31, 2000.

TRD-200006137
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: September 20, 2000
Proposal publication date: July 28, 2000
For further information, please call: (512) 463-3699

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT
SUBCHAPTER A. COMMITMENT AND RECEPTION

37 TAC §85.3

The Texas Youth Commission (TYC) adopts an amendment to §85.3, concerning Admission Process, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6085).

The justification for amending the section is consistency in the time and day Marlin Orientation and Assessment Unit will receive youths and to notify parents that chemical agents will be used as necessary to control conduct that meets certain criteria.

The amendment will change the time and days on which the Marlin Orientation and Assessment Unit will receive youth committed to TYC; and establish the requirement that the youth's parents are notified that chemical agents will be used as necessary to control conduct that meets certain criteria.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0385 concerning crisis intervention and assessment centers which provides the Texas Youth Commission authority to establish and operate an assessment center.

The adoption implements the Human Resource Code, §61.034 concerning policies and rules which gives TYC the authority to make rules appropriate to the proper accomplishment of its functions.

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 August 31, 2000.

TRD-200006113
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.25

The Texas Youth Commission (TYC) adopts an amendment to §85.25, concerning Minimum Length of Stay, without changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6941).

The justification for amending the section is consistency with language in use in the statue regarding the credit given for time that will go toward a TYC youth's sentence completion.

The amendment to the section is made to more closely track the language used in the statue, using the term *committing case* for consistency. Other minor changes are made with no affect on the meaning.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine the treatment of a youth committed to TYC including permitting the youth's liberty or ordering the youth's confinement.

The adopted amendment affects the Human Resource Code, §61.034.

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 August 31, 2000.

TRD-200006114
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: July 21, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.61

The Texas Youth Commission (TYC) adopts an amendment to §87.61, concerning Substance Abuse, without changes to the proposed text as published in the July 28, 2000 issue of the *Texas Register* (25 TexReg 7127).

The justification for amending the section is to expand the services of the chemical dependency treatment program to TYC youth who are receiving substance abuse counseling.

The amendment to the section will allow qualified credentialed counselors to provide chemical dependency treatment services to TYC youth in substance abuse counseling in addition to the already allowed, licensed chemical dependency counselors and interns supervised by licensed or credentialed counselors.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0812, which provides the Texas Youth Commission with the authority to Provide substance abuse treatment to TYC youth.

The adopted rule affects the Human Resource Code, §61.034.

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 August 31, 2000.

TRD-200006115
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: July 28, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.17

The Texas Youth Commission (TYC) adopts new §93.17, concerning Access to Personal Minister, Pastor, or Religious Counselor, without changes to the proposed text as published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6686).

The justification for the new rule is increased services for TYC youth in the form of ministers, pastors, or religious counselors through visitation.

The new rule will provide TYC youth with access to their personal ministers, pastors, or religious counselors through visitation. Staff will verify the religious affiliation prior to the visitation requested by the youth.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority and responsibility for the welfare, custody, and rehabilitation of the children in a facility.

The adopted rule implements the Human Resource Code, §61.034.

This 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 August 31, 2000.

TRD-200006116
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: September 25, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 95. YOUTH DISCIPLINE
SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.21

The Texas Youth Commission (TYC) adopts new §95.21, concerning the aggression management program, with changes to the proposed text as published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6687). Changes to the proposed text consist of a minor edit to subsection (f)(5) to clarify that TYC youth on stage V of the aggression management program will function in the general population in the institution during daily activities.

The justification for the new rule is to provide a program of control and rehabilitation for youth who meet specific criteria.

The AMP program will be used for youth who have not been responsive to other less restrictive interventions and pose a continuous threat of danger to other youth and/or staff. The AMP is a highly structured program designed to safely manage and treat the aggressive behavior in a self-contained unit. The program will provide a system of graduated reintegration into the campus general population. The program will be implemented and occupy part of the TYC program only at the McLennan County State Juvenile Corrections Facility in Mart, Texas.

No comments were received regarding adoption of the new rule.

The new section is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public.

The adopted rule implements the Human Resource Code, §61.034.

§95.21. Aggression Management Program.

(a) Purpose. The purpose of this rule is to provide criteria for removing from the general population youth assigned to a Texas Youth Commission (TYC) institution for dangerously aggressive behavior and placing a youth in the Aggression Management Program (AMP). The goal of the program is to safely manage and treat the aggressive behavior in a self-contained unit. The AMP program will be used for youth who have not been responsive to other less restrictive interventions and pose a continuous threat of danger to other youth and/or staff. The AMP is a highly structured program designed to address aggressive behavior modification and provide a system of graduated reintegration into the general population. Placement in the aggression management program is a major disciplinary consequence.

(b) Authorized Facilities.

(1) The McLennan County State Juvenile Corrections Facility (MCSJC) in Mart, Texas is the only facility authorized to administer the AMP.

(2) TYC contract programs shall not develop an AMP. TYC contract programs shall not place TYC youth residing in the contract program in the TYC AMP program.

(c) Eligibility Criteria. A youth is eligible for the aggression management program:

(1) if, at the youth's current institutional placement, a level II hearing has been held and a finding made that the youth engaged in eligible conduct for the AMP with no extenuating circumstance; and

(2) the youth committed, attempted to commit, or helped someone else to commit at least one of the following offenses:

(A) assault resulting in substantial bodily injury that involves more than a passing discomfort or fleeting pain; or

(B) intentionally participating in a riot; or

(C) using or threatening to use either an object defined as a weapon by the *Penal Code* or an object that could be used as a weapon, which placed the victim in fear of imminent bodily injury.

(3) If the disposition at the level II hearing held pursuant to this policy resulted in a transfer to AMP, but bed space is not available in AMP, the youth may be assigned to a placement in Disciplinary Segregation Program (DSP) pending admission to AMP (at the youth's current placement) with an assigned maximum length of stay, pending admission to AMP. However, if the youth completes the maximum length of stay in the DSP prior to admission to AMP, the youth shall not be admitted to AMP as a result of the conduct determined at the level II hearing that resulted in the current assignment to DSP.

(4) The following are specifically disqualified from placement in the AMP.

(A) females;

(B) sentenced offenders who are eligible for transfer to the Institutions Division of the Texas Department of Criminal Justice.

(d) Admission Criteria.

(1) The local AMP Admission Review Committee at the McLennan County State Juvenile Correctional Facility is composed of at least the assistant superintendent, AMP psychologist and the AMP program administrator.

(2) The AMP Admission Review Committee shall approve admission to the AMP based on the following considerations.

(A) Evidence that the youth is not suffering from a major emotional disturbance and/or psychiatric disorder but the behavior is the primary result of a conduct disorder or antisocial personality disorder.

(B) Documentation that less restrictive interventions have been attempted without successfully reducing the behavior and that the AMP represents the least restrictive available and appropriate intervention.

(3) The AMP Admission Review Committee shall not approve admission to the AMP for a youth who was placed in DSP pending admission to AMP if the maximum length of stay assigned for that DSP placement has been completed.

(4) The AMP Admission Review Committee should not approve admission to the AMP if a youth has substantially completed a placement in DSP without an incidence of aggression.

(5) Priority is given to youth with the most dangerous, recent and chronic aggressive behavior, greater frequency of the use of weapons, and older age.

(e) Release from AMP.

(1) Program Completion Requirements.

(A) Youth are released from AMP upon successful completion of requirements:

(i) stages I through V of the AMP program; and

(ii) phase II of the resocialization program.

(I) Stage I. Youth must complete a minimum of 15 consecutive days without an aggressive act or credible threat of one; and

(II) Stages II - V. Youth must:

(-a-) complete a minimum of 30 consecutive days on each stage without an aggressive act or credible threat of one; and

(-b-) have 30 days on each stage of program compliance; and

(-c-) phase II of the resocialization program.

(B) Program compliance is defined as completion of the resocialization phases (phase components) required for each of the stages as specified in this policy.

(i) Progress is based on successful completion of the ICP objectives established in each of the five stages of AMP.

(ii) Progress is assessed by the AMP treatment team consisting of the youth's PSW, the AMP program administrator, AMP psychologist, a JCO staff, and a teacher (or representative of education department.) Additional members may be appointed to the team as needed.

(iii) The treatment team will staff youth weekly to review progress in the behavioral and treatment objectives.

(iv) The treatment team will determine the appropriate stage for each youth using compliance with ICP objectives as the criteria. A youth may be retained on or promoted to the next stage based on completing ICP objectives. However, youth may be assigned to a lower stage based only on specific acts of aggressive behavior. The treatment team shall document the reasons used to support their decisions and may make recommendations for modification of the treatment objectives or strategies.

(v) The treatment team will conduct assessments to determine the youth's resocialization phase at least every 30 days.

(C) The AMP treatment team will determine when a youth has successfully completed all the criteria for release from the AMP, and the youth shall be released from AMP.

(D) The superintendent or designee will determine whether the youth will be permanently assigned to the MCSJC general campus program or be referred for placement elsewhere. If the youth is to be transferred, the superintendent or designee will refer the case to the Centralized Placement Unit (CPU) for placement assignment.

(2) Mental Health Release. Youth may be released from AMP at any time for mental health reasons based on a recommendation by the AMP psychologist and approval by the director of clinical services at MCSJCF.

(f) Stage Requirements and Conditions. A youth obtains stages in the AMP based upon the following criteria.

(1) Stage I.

(A) Youth must complete 15 consecutive days without an aggressive act or the credible threat of one.

(B) Youth are confined to single occupancy rooms except for periods of highly supervised and structured activity in the self-contained unit.

(C) Youth will spend up to two hours a day out of the locked room.

(2) Stage II.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth must have 30 days of program compliance including successful completion of six components of phase 1 of the resocialization program.

(C) Youth are confined to single occupancy rooms except for periods of specific, highly supervised, and structured activities with limited numbers of other youth in the self contained program.

(D) Youth will spend up to four hours a day out of the locked room.

(3) Stage III.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth must have 30 days of program compliance including successful completion of all components of phase 1 of the resocialization program.

(C) Youth are confined to single occupancy rooms except for periods of specific, highly supervised, and structured activities with limited numbers of other youth in the self contained program.

(D) Youth will spend up to six hours a day out of the locked room.

(4) Stage IV.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth are confined to self-contained program and closely supervised.

(C) Youth begin transition to the general population by attending campus school for half a day and complete all school assignments for specific periods.

(D) Youth must complete six components of phase 2 of the resocialization program.

(E) Youth will spend up to eight hours a day out of the locked room.

(5) Stage V.

(A) Youth must complete 30 consecutive days without an aggressive act or credible threat of one.

(B) Youth must successfully complete all components of phase 2 of the Resocialization program.

(C) Youth will participate in regular scheduled activities in the general population during the day.

(D) Youth will spend up to 14 hours a day out of the locked room.

(g) Program Components.

(1) Confined to Rooms. Youth will be confined in their rooms at all times unless otherwise provided for in this policy or if they engage in aggressive or inappropriate conduct.

(2) Use of Mechanical Restraints. Approved and appropriate mechanical restraints may be used on youth on stage I while not confined to their rooms.

(3) Locked Doors. Doors to individual rooms may be locked when youth are confined to the rooms.

(4) Individual Case Plan. Within the first week of admission to AMP, an ICP will be developed for each youth. The plan will consist of behavior modification strategies and treatment objectives necessary to reduce aggressive behavior. The ICP shall be developed and reviewed according to case management standards.

(5) Education Component. All youth are expected to participate in an individualized educational program for a minimum of four hours per day. Youth that were enrolled in a special education program shall have a temporary Admission Review and Dismissal (ARD) Committee meet and enroll the youth in special education services.

(6) Individual Counseling.

(A) Youth in stage I will receive at least one hour a week of individual counseling from either the Primary Service Worker (PSW) or unit psychologist.

(B) Youth in stage II will receive at least 30 minutes a week of individual counseling from either the PSW or AMP psychologist.

(C) Youth on stages III -V shall receive individual counseling according to case management standards.

(7) Group Therapy.

(A) Group therapy will be offered on stages I-III in the AMP. The emphasis will be on individual resocialization work in stages I and II and on core group in stage III.

(B) On stages IV and V, the youth will attend core groups.

(8) Behavior Management. Youth are expected to follow their prescribed schedules and commit no rule violations per (GAP) §95.3 of this title (relating to Rules of Conduct, Contraband, and Dress). Youth will be entitled to earn privileges within the AMP with progression through the stages.

(9) Physical Exercise.

(A) Large muscle exercise will be offered to youth daily and will be offered in an exercise yard if safety permits.

(B) On stage IV and V physical exercise may be held on the general campus.

(10) Medical and Psychological Treatment.

(A) The AMP program psychologist will continually assess the mental status of youth to identify any therapeutic contraindications for continued confinement on the unit. If such indications are assessed and with approval by the director of clinical services, the youth shall be released from AMP.

(B) Youth will be seen by medical and/or psychiatric staff as needed, and treatment will be provided as ordered.

(h) Program Monitoring and Youth Rights.

(1) Youth will be seen daily by a caseworker.

(2) Youth will be offered the opportunity to meet with the youth rights specialist weekly.

(3) The AMP will be visited daily by the superintendent or assistant superintendent (or their designees) and the director of clinical services or his/her designee.

(i) Independent Review.

(1) If a youth remains on any one stage for more than 45 days, his case shall be reviewed by an Independent Review Team (IRT). The IRT shall continue to review the case every 45 days after the initial review until the youth progresses to the next stage.

(2) The IRT shall include the assistant superintendent and the director of clinical services. Additional members may be appointed as needed.

(3) The IRT reviews the justification and documentation of the reasons the youth has failed to progress in the program stages and to determine if appropriate interventions are being provided to the youth. The IRT may direct changes in the youth's individual case plan to enhance the youth's ability to progress in the program stages.

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 August 31, 2000.

TRD-200006124
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 20, 2000
Proposal publication date: July 14, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.9, §97.10

The Texas Youth Commission (TYC) adopts an amendment to §97.9, concerning searches and new §97.10, concerning Entry Searches, without changes to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6302).

The justification for rules is to clarify searches within TYC. Searches were divided into two rules, one entitled Youth Searches and the other entitled Entry Searches.

The amendment to §97.9 will add the word *Youth* to the title to distinguish between the rules that effect procedures for searching Texas Youth Commission (TYC) for contraband from other search procedures. Amendment also requires that when body cavity searches are necessary to detect contraband carried by a TYC youth, the services of medical staff in local clinics and hospitals will be sought rather than using services of medical personnel with whom TYC contracts directly for services. New rule §97.10 regarding entry searches, establishes procedures whereby visitors to TYC facilities will be asked to submit to a search for contraband to detect and prevent contraband from entering the facility. The rule states the methods that will be used for searching, a list of items prohibited from entering the facility, and possible disposition of contraband found.

No comments were received regarding adoption of the amendment and new rule.

The amendment and new section are adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to be responsible for the welfare, custody, and rehabilitation of youth committed to TYC.

The adopted rules implement the Human Resource Code, §61.034.

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 August 31, 2000.

TRD-200006120
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

37 TAC §97.27

The Texas Youth Commission (TYC) adopts an amendment to §97.27, concerning Riot Control, without changes to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 5283).

The justification for amending the section is greater efficiency for the use of a special tactical team of TYC staff in case of an emergencies at TYC high restriction facilities.

The amendment will update the name of the emergency team at TYC facilities from *Emergency Response Team* to *Special Tactics and Response Team*. The team's function remains unchanged, i.e., to be available on call to respond to emergencies occurring on institutional campuses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to operate programs with responsibility for the welfare, custody, and rehabilitation of the youth in school, facility, or program operated or funded by the commission.

The adopted rule implements the Human Resource Code, §61.034.

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 August 31, 2000.

TRD-200006117
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

CHAPTER 99. GENERAL PROVISIONS

SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.51

The Texas Youth Commission (TYC) adopts an amendment to §99.51, concerning Death of a Youth, without changes to the proposed text as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6303).

The justification for amending the section is the updating of the title to be consistent with current title change within the agency.

The amendment to the section will correct the position title from youth rights administrator to chief of complaint resolution and correct other minor edits.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the Texas Youth Commission with the authority to be responsible for the welfare, custody, and rehabilitation of youth committed to TYC.

The adopted amendment implements the Human Resource Code, §61.034.

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 August 31, 2000.

TRD-200006118
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

37 TAC §99.67, §99.69

The Texas Youth Commission (TYC) adopts an amendment to §99.67, concerning Court Ordered Child Support and adopts new §99.69 Collection of Delinquent Obligations, without changes to the proposed text as published in the July 28, 2000, issue of the *Texas Register* (25 TexReg 7128).

The justification for rules is for clarification of the child support system within TYC and to comply with the State Comptroller's Accounting Policy Statement #027 - Accounting for Uncollectible Accounts. The child support system is divided into two rules, one entitled Court Ordered Child Support and the other entitled Collection of Delinquent Obligations.

The amendment to the §99.67 will clarify who payments for certified Title IV-E payments are to be sent to and correct the name of the agency automated *child care system*. The new §99.69 will establish an agency debt collection policy pursuant to the Texas Government Code and to comply with the State Comptroller's Accounting Policy Statement #027 - Accounting for Uncollectible Accounts.

No comments were received regarding adoption of the amendment and new rule.

The amendment is adopted under Texas Family Code §54.06, which provides TYC with the authority to receive court ordered child support payments for youth committed to the agency's care. The new section is adopted under §2107.002 of the Texas Government Code, which provides TYC with the authority to establish procedures and determine the liability establish a process for collecting delinquent obligations.

The adopted rules affect the Human Resource Code, §61.034.

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 August 31, 2000.

TRD-200006119
Steve Robinson
Executive Director
Texas Youth Commission
Effective date: September 25, 2000
Proposal publication date: July 28, 2000
For further information, please call: (512) 424-6301

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

The Texas Department of Transportation adopts the repeal of §§1.21-1.61 and new §§1.21-1.33, concerning procedures in contested cases. The repealed and new sections are adopted without changes to the proposed text as published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6692) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

Government Code, §2003.050, enacted in 1997, provides that in contested cases before the State Office of Administrative Hearings (SOAH), all proceedings are governed by SOAH's procedural rules unless SOAH has specifically adopted the procedural rules of the agency. In addition, the 76th Legislature, 1999, enacted Senate Bill 757, which amended Government Code, §2003.051, and provided that a state agency may take no adjudicative action in a contested case that is pending before SOAH until the SOAH administrative law judge issues a proposal for decision.

The new sections delete large portions of the former rules governing procedures in contested cases because those rules have been superceded by the procedural rules of SOAH. Minor nonsubstantive changes have been made to correct spelling, enhance clarity, and improve grammar. Changes are also made to streamline and clarify contested case procedures.

Former §§1.26-1.34, §§1.37-1.41, §§1.43-1.52, §§1.56-1.58, §1.60, and §1.61 are eliminated entirely. In the case of former §1.50 and §§1.56-1.58, the former sections are unnecessary because they merely repeat standards clearly set forth in Government Code, Chapter 2001. In the case of the other eliminated sections, Government Code, §2003.050 provides that all proceedings before SOAH are governed by SOAH's procedural rules. Because all the department's contested cases

are conducted before SOAH, the former sections no longer apply to any proceedings and are therefore unnecessary.

New §1.21 sets out the scope and purpose of the subchapter. It excludes contested cases arising under the Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36), or under Transportation Code, Chapter 503. These cases are litigated before administrative law judges in the department's Motor Vehicle Division and are governed by procedural rules contained in 16 TAC Chapter 111. New §1.21 also clarifies that contested cases are governed generally by the procedural rules of the State Office of Administrative Hearings, as provided by Government Code, §2003.050.

New §1.22 is based on former §1.21. Definitions of APA, Commission, Hearing Officer, Intervenor, and Pleading are eliminated as unnecessary because they are not contained in the new sections. A new definition of administrative law judge is added to replace the former definition of Hearing Examiner. The new definition of contract claim better reflects the scope of contract claims under Transportation Code, §201.112, which authorizes the promulgation of procedural rules governing certain contract claims. The definition of executive director is changed to include a designee, if permitted by law. Minor changes are made in the definitions of party, person, petition, and petitioner to clarify the meaning of those terms.

New §1.23 is based on former §1.22. The new section eliminates the requirement that signed copies of a petition must be filed for the executive director and for each commissioner, for a total of four originals. When this provision was originally adopted, all contested cases were decided by the commission, except contract claims. Now motor carrier and vehicle storage facility cases are decided by the executive director or his designee. It would be cumbersome and confusing to specify different numbers and types of copies for each kind of case, and so the filing requirement is simplified to the filing of an original and four copies in all cases. This allows for an original for the files and copies for the executive director and each commissioner, if necessary. The language in this section is otherwise simplified without any substantive change.

New §1.24 is based on former §1.23. No substantive change is intended, except that the new language strengthens the prohibition against mentioning settlement offers or proceedings before the contract claim committee.

New §1.25 is based on former §1.24. Subsection (a) clarifies the scope of the preliminary review by the executive director as including both a technical review and a substantive legal review to ensure that the petitioner has a legal right to initiate a contested case. To be consistent with current practice, subsection (b) establishes a minimum time in which the petitioner may file a corrected petition. Subsection (c) provides that a petitioner will not be permitted to correct an already-corrected petition, if it is rejected a second time. Subsection (d) clarifies that the executive director's preliminary determination of the petition's sufficiency does not prevent the Attorney General's Office from seeking to dismiss a case on the grounds that the petition is insufficient. This is intended to eliminate any risk that the preliminary review by the executive director will be seen as binding on the administrative law judge or the Attorney General's Office.

New §1.26 is based on former §1.25. The new language eliminates many of the detailed provisions in former §1.25 because the procedure for initiating a contested case is now governed by SOAH's procedural rules. The last sentence in §1.26(b) is added to conform to the State Office of Administrative Hearings' procedural rules governing service in default proceedings.

New §1.27 is based on former §1.35 and §1.36. Subsection (a) incorporates the substance of former §1.35 regarding depositions, subsection (b) incorporates the substance of former §1.36(2) regarding subpoenas for the production of documents, and subsection (c) incorporates the substance of former §1.36(1) regarding subpoenas for the attendance of witnesses at hearings. Subsection (d) includes provisions drawn from former §1.35, former §1.36, and Government Code, Chapter 2001, to limit the risk that discovery will be used to abuse or harass an opposing party.

New §1.28 is based on former §1.42. The new section incorporates the substance of the former section and strengthens the ban on the admissibility of settlement offers or references to contract claims proceedings.

New §1.29 is added to clarify the ability of the administrative law judge to withdraw or amend a proposal for decision until a final order is issued. This provision is intended to ensure that proposal's for decision represent the administrative law judge's most complete analysis of the relevant issues.

New §1.30 is based on former §1.53. Subsection (a) incorporates the substance of former §1.53 without substantive change. Subsection (b) adds a new requirement providing that exceptions must be filed directly with the department, with a copy provided simultaneously to the administrative law judge. This permits but does not require the administrative law judge to consider withdrawing or amending a proposal for decision under §1.29 in response to exceptions. Subsection (c) provides that motions for an extension of time must be filed at least three days before a due date and must be served, if possible, by hand delivery or facsimile on the same day, or if not, by overnight delivery service. This is intended to eliminate the possibility that a party, in order to obtain a strategic advantage, will file a motion for an extension of time at the last minute and serve it on the opposing party after the opposing party's due date.

New §1.31 is based on former §1.54. The new section incorporates the substance of the former section without substantive change, except that specific exceptions must now be separately numbered for ease of reference.

New §1.32 is based on former §1.56. While the former section focused on the standards for granting a rehearing, the new section instead focuses on the procedural requirements for filing a motion for a rehearing. These standards are made to mirror those for filing exceptions and replies, except that a motion for an extension of time will not be granted because Government Code, §2001.144(a)(1) provides that an order automatically becomes final when a motion for rehearing is not filed within the specified time.

New §1.33 is based on former §1.59. The new section directs the administrative law judge to announce at the end of a hearing that the time for a final decision will be extended if a final order cannot reasonably be issued within 60 days, as required by Government Code, §2001.143. The announcement must be incorporated in the proposal for decision, and the extension must be for at least 45 days to allow the parties time to file exceptions and replies.

COMMENTS

No comments were received on the proposed repealed and new sections.

SUBCHAPTER E. CONTESTED CASE PROCEDURE

43 TAC §§1.21 - 1.61

STATUTORY AUTHORITY

The repeals and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation; and more specifically Transportation Code, §201.112, which provides the Texas Transportation Commission with the authority to establish rules governing procedures in certain contract claims; and under Government Code, §2001.004, which requires each agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006174
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 21, 2000
Proposal publication date: July 14, 2000
For further information, please call: (512) 463-8630

SUBCHAPTER E. PROCEDURES IN CONTESTED CASES

43 TAC §§1.21 - 1.33

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation; and more specifically Transportation Code, §201.112, which provides the Texas Transportation Commission with the authority to establish rules governing procedures in certain contract claims; and under Government Code, §2001.004, which requires each agency to adopt rules stating the nature and requirements of all available formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006175
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 21, 2000
Proposal publication date: July 14, 2000
For further information, please call: (512) 463-8630

♦ ♦ ♦

CHAPTER 5. FINANCE

SUBCHAPTER C. HARDSHIP FINANCING FOR UTILITY ADJUSTMENTS, RELOCATIONS, AND REMOVALS

The Texas Department of Transportation adopts the repeal of §5.24 and §5.25, amendments to §5.22, and new §5.24 and §5.25, concerning hardship financing for utility adjustments, relocations, and removals. The repeals, amendments, and new sections are adopted without changes to the text as proposed by publication in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5604), and will not be republished.

EXPLANATION OF ADOPTED REPEALS, AMENDMENTS AND NEW SECTIONS

In 1997, the 75th Legislature amended Transportation Code, §203.092 and §203.093, and added Transportation Code, §203.0921 to enable the department to finance a utility relocation that is not eligible for state reimbursement when a short term financial condition exists that prevents the utility from being able to fund the relocation. By financing these utility adjustments, the department will be able to complete its highway projects in a more timely manner, and displaced utilities will be allowed to maintain continuous service to the public during highway construction.

The department has generally decentralized the responsibility for constructing highway projects. That responsibility is handled by each of the 25 department districts throughout the state, each overseen by a district engineer. As part of that responsibility, each district must ensure that all necessary utility relocations are completed before construction may begin. This requires the districts to work closely with the relevant utility, and to ascertain if conditions exist that may prevent the utility from paying for the relocation in a timely manner. Accordingly, the district engineer of each department district is in the best position to perform an initial review of utility relocations and to determine if a particular utility is in need of financing under this subchapter.

Transportation Code, §203.0921 requires that a finding be made that a short term financial condition exists that would prevent a utility from being able to pay the cost of relocation at the time of relocation or, if paid at that time, would adversely affect the utility's ability to operate or provide essential services to its customers. Under that section, the utility must reimburse the department within five years of completion of the relocation work. Under those requirements, the financial condition need not exist prior to the time funding for relocation work is needed.

Section §5.22 is amended to delete words and terms no longer used in the subchapter, including cash and near cash assets, CPA, and executive director. This section is also amended to define new words and terms used in the subchapter, namely district and district engineer. The definition of short term financial condition is amended to be more consistent with the meaning of the phrase in Transportation Code, §203.0921.

Existing §5.24 and §5.25 are adopted for repeal and simultaneously adopted as new §5.24 and §5.25 in an amended form. The order of the procedures in those two sections was reversed, as it is more appropriate for the memorandum of understanding required by Transportation Code, §203.0921 to be obtained after a preliminary review of a request for financial assistance. The preliminary review will establish whether a request meets initial

eligibility requirements. Only those requests meeting those requirements must be followed with the memorandum of understanding required before commission approval of a request for financing.

New §5.24, Request, sets forth revised requirements for a request to the commission for financing. This section specifies that the district engineer of the district in which the utility relocation work is located shall submit a request for financing. This will ensure that there is another level of preliminary review of the need for financing, and also ensure that this review is completed by the person or persons most familiar with prior steps taken by the utility to pay for or finance needed relocation work.

The list of items that must be included in or attached to a request for financing has been revised to delete a number of those items. The revised list requires a utility to provide a statement of hardship and a financing plan for paying a loan. These two, and the remaining requirements, comply with the eligibility conditions set out in Transportation Code, §203.0921, and enable the department to process requests for financing more efficiently, thereby ensuring the timely completion of highway projects. The amendments to the definition of short term financial condition makes the requirement for financial statements covering the prior three years unnecessary. The information provided by the other deleted items is either already provided by the remaining items or not necessary to make a determination of eligibility.

New §5.25, Memorandum of Understanding, includes the requirements of the former §5.24 with no change, other than a change to the title of that section and to specify that the memorandum of understanding must be entered into prior to consideration by the commission of a request for financing, rather than as a prerequisite to an application for financing.

COMMENTS

No comments were received on the proposed repealed, amended and new sections.

43 TAC §§5.22, 5.24, 5.25

STATUTORY AUTHORITY

The repeals, amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §203.095, which provides the Texas Transportation Commission with the authority to establish rules to implement Transportation Code, Chapter 203, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006178
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 21, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 463-8630

♦ ♦ ♦

43 TAC §5.24, §5.25

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §203.095, which provides the Texas Transportation Commission with the authority to establish rules to implement Transportation Code, Chapter 203, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006176
Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 21, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 463-8630

♦ ♦ ♦

CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER D. TEXAS HIGHWAY TRUNK SYSTEM

43 TAC §§15.40 - 15.42

The Texas Department of Transportation adopts amendments to §§15.40-15.42, concerning the Texas Highway Trunk System. Sections 15.40-15.42 are adopted without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5607).

EXPLANATION OF ADOPTED AMENDMENTS

Current §§15.40-15.42 provide criteria by which routes are chosen for the Texas Highway Trunk System. This system is a planned rural network of four-lane or better divided roadways that will serve as a principal connector of all Texas cities with over 20,000 population as well as major ports and points of entry, not to exceed a total system mileage of 11,500 miles. Subsequent to adoption of §§15.40-15.42, the Texas Transportation Commission selected the system of routes based on the criteria listed in §15.42.

The commission also ordered that periodic updates be performed to ensure the timeliness of the system. These updates would review the existing selection criteria and subsequently the existing system to determine if both are meeting the changing needs of rural transportation within the state. With the ratification of the North American Free Trade Agreement (NAFTA) and its subsequent effects on the state's highway system, it was determined that a review of the selection criteria was now needed.

The department recently held public meetings throughout the state to obtain input on possible criteria additions the public felt important. Meetings were held in Childress, San Angelo, Uvalde, Corsicana, and Huntsville. Approximately 280 people attended these meetings and suggested proposed changes.

After reviewing and analyzing the current criteria and the public comments, the department concluded that two additional criteria be added. Amendments to §15.42 will give consideration to closing gaps in the system and providing system connectivity. These additional selection criteria will allow the commission to amend the system so that it will provide more statewide coverage and more directional opportunities to meet the new demands placed on it by the growing economy and NAFTA.

Non-substantive revisions have been made to §15.40 and §15.41 to acknowledge that these rules now comprise a subchapter, to correct a typographical error, and to update titles to the commission, department, and the department's executive director.

COMMENTS

A public hearing was held on June 23, 2000, and various oral and written comments were received and are responded to as follows.

Comment:

Ms. Gaynelle Riffe, representing the Stratford Chamber of Commerce and the Coalition of Spirit 54, requested some clarity on the intent of the proposed additions to §15.42 as to whether these included the high priority corridors.

Response:

The department notes that including a provision for the high priority corridors in the selection criteria would, in essence, be specifying specific routes and would not be applicable statewide. As such, the explicit inclusion of high priority corridors is not appropriate.

Comment:

Ms. Kristen Olsen, representing the Sherman County Economic Development Committee, requested that safety issues be addressed in rural transportation.

Response:

For the department, the issue of safety is integral in all planning activities and does not need to be added as a criteria per se.

Comment:

Mr. Ray Ortega, Mayor of Pecos, requested the inclusion of U.S. Highway 285 on the trunk system.

Response:

The rule change has to do with selection criteria. This comment cannot be considered.

Comment:

Mr. Jimmy Galindo, Reeves County Judge, fully supports the proposed criteria changes.

Comment:

Mike George, representing the Midland-Odessa Transportation Alliance expressed his appreciation for being receptive to public suggestions and recommends that the proposed criteria be adopted.

Comment:

Two resolutions were submitted on behalf of the citizens of Grayson County, including Sherman, Denison, Whitewright, and Howe in support of adding U.S. Highway 69 to the trunk system.

Response:

The rule change has to do with selection criteria. This comment cannot be considered.

Comment:

The county judges of Nueces and San Patricio counties wrote in to support the inclusion of U.S. Highway 181 and S.H. 123 on the trunk system to aid in hurricane evacuation and relief of traffic on I.H. 35.

Response:

The rule change has to do with selection criteria that could be applied to the entire system. Because these criteria narrowly focused the possible selections, this comment cannot be considered.

Comment:

Jeff Austin, Vice-Chairman of the Highway 79 Corridor Association, wrote in support of the two new proposed criteria.

Comment:

Representative Tommy Merritt, Texas House of Representatives, wrote in support of the proposed criteria.

Comment:

Gary B. Streit, Wilbarger County Judge and representing the Vernon/Wilbarger County Transportation Committee, requested the addition of two selection criteria. He requested that we consider those rural communities that have suffered the loss of rail service and to develop the infrastructure of the entire state.

Response:

TxDOT continually monitors the traffic conditions throughout the state. The effects of rail line abandonment, that is the movements of goods from rail line onto the adjacent highway system, would be taken into consideration in the original trunk system criteria (8) which included major truck routes. There is currently along the abandoned rail lines sufficient highway capacity to absorb any increase that would result from rural abandoned trail lines. As such TxDOT is not recommending this as an additional criterion.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.103, which requires the commission to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 1, 2000.

TRD-200006179

Richard Monroe
General Counsel
Texas Department of Transportation
Effective date: September 21, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 463-8630

♦ ♦ ♦

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance, at a public hearing under Docket No. 2459 on October 19, 2000, at 10:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendments to the Texas Addendum to the Fire Suppression Rating Schedule (Texas Addendum) which would establish credit points for compressed air foam systems. Staff's petition (Ref. No. P-0900-22-I), was filed on September 5, 2000.

Staff proposes adoption of amendments to the Texas Addendum, which would establish credit points for compressed air foam systems. The proposed amendments: (1) implement Senate Bill 1610, 76th Legislature, which provides that the use of compressed air foam technology in fire fighting equipment shall constitute a reduction in hazard by policyholders; (2) revise the Texas Addendum to add an additional 1.5 credit points for compressed air foam systems, thus raising the total possible additional credit points from 5.0 to 6.5; and (3) update the Texas Addendum in its references to the State Fire Marshal's office and through editorial and clarifying changes and through requiring monthly-only reporting under the Texas Fire Incident Reporting System.

Additionally, in the implementation of the credits, there will be a procedural change in the use of the FSRS that interprets the existing foam credit points in table 512.A of the FSRS to apply also to Class A foam.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Texas Addendum, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. P-0900-22-I).

To be considered, all comments on the proposed changes must be submitted in writing no later than 5 p.m. on October 16, 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 comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 108-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200006260
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: September 6, 2000

♦ ♦ ♦

Final Action on Rules

AMENDMENTS TO THE TEXAS STANDARD PROVISIONS FOR AUTOMOBILE INSURANCE POLICIES TO ELIMINATE COUNTERSIGNATURE REQUIREMENTS

The Commissioner of Insurance, at a public hearing under Docket No. 2450 held at 10:00 a.m., August 16, 2000 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Standard Provisions for Automobile Insurance Policies (the Standard Provisions), to eliminate countersignature requirements from all such policies. Staff's petition (Ref. No. A-0700-16-I) was published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6815).

The adopted amendments eliminate the requirements for countersignatures from all policies and instructions in the Standard Provisions. Primarily, exhibits attached to Staff's petition show how this proposal is implemented. The exhibits are arranged in the order in which the policy forms and instructions appear in the Standard Provisions as follows: Personal Auto Policy (page 15, and its Declarations - page 16); Reference notes for commercial policies (page 62); Business Auto Declarations (page 64); Garage Declarations (page 68); Truckers Declarations (page 80); Non-Resident Texas Auto Policy (Reference Notes - page 89); Mechanical Breakdown Policy (Reference Notes - page 101, Declarations - page 102, New Vehicle/Select Component pages 103 and 108, New Vehicle - pages 109 and 114, Used Vehicle - pages 115 and 120); Single Interest Automobile Physical Damage Insurance Policy (Reference Notes - page 125, Master Policy Declarations - page 126,

Master Policy - page 131, Individual Policy Declaration - page 132, Individual Policy - page 136, Master Policy Certificate - page 137); Excess Liability Policy (Reference Notes - page 143, Declarations - page 144, policy form - page 145); and Mobilowners Policy (Declarations - page 149, policy form - page 158).

At the hearing Staff introduced some additional exhibits into the record, and those exhibits supplement those attached to Staff's petition, as explained herein. The additional exhibits concerning three endorsements in the standard provisions are needed to show removal of each signature blank for "(duly authorized representative)" in order to prevent the possible interpretation that a countersignature would be required. Those endorsements are amendatory endorsements 593D (Texas Personal Auto Policy), 4J (Mobilowners Policy), and 4Q (Mobilowners Policy). The other exhibits are needed to show the change of a footnote from "2" to "1" in two places on the first page of two policy forms: Single Interest Automobile Physical Damage Insurance Policy (Master Policy Reporting Form) and (Individual Policy Form). These footnote changes are needed because of changes being made to the reference notes for both of those policies, to eliminate references to countersignatures.

Current automobile policy forms and their instructions, promulgated under the Insurance Code, Article 5.06, require countersignatures on all such policies. Former Insurance Code, Article 21.09 prohibited insurers from allowing any nonresident to countersign such a policy, and it provided that countersigning could not be done "except through regularly licensed local recording agents of such companies in Texas."

Through House Bill 3391, the 75th Texas Legislature repealed Insurance Code, Article 21.09, and amended Article 21.11 to delete the reference to countersigning. Since a countersignature is no longer required by statute, it should no longer be required for any policy contained in the Standard Provisions.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0700-16-I, which are incorporated by reference into Commissioner's Order No. 00-1000.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06, 5.10, 5.96, and 5.98.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Standard Provisions are amended as described herein, and the amendments are adopted to become effective on the 15th day after publication of the notification of the Commissioner's action in the Texas Register. However, in order to allow insurers to use up at least some existing supplies of their forms, the amendments will not become mandatory for any policy that becomes effective prior to 12:01 A.M., April 1, 2001.

A company will have the option of whether to require a countersignature on a current form that has a countersignature blank, at any time between the effective date of the order and April 1, 2001.

TRD-200006134
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: August 31, 2000

REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Agency Rule Review Plans

Texas Council on Alzheimer's Disease and Related Disorders

Title 25, Part 12

Filed: August 31, 2000

♦ ♦ ♦

Texas Animal Health Commission

Title 4, Part 12

Filed: August 31, 2000

♦ ♦ ♦

Advisory Board of Athletic Trainers

Title 25, Part 1, Chapter 313

Filed: August 31, 2000

♦ ♦ ♦

Texas Commission on the Arts

Title 13, Part 3

Filed: August 31, 2000

♦ ♦ ♦

Texas Board of Chiropractic Examiners

Title 22, Part 3

Filed: August 31, 2000

♦ ♦ ♦

Coastal Coordination Council

Title 31, Part 16

Filed: August 31, 2000

♦ ♦ ♦

Texas Diabetes Council

Title 25, Part 9

Filed: August 31, 2000

♦ ♦ ♦

Texas State Board of Examiners of Dietitians

Title 22, Part 31

Filed: August 31, 2000

♦ ♦ ♦

State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Title 22, Part 7

Filed: August 31, 2000

♦ ♦ ♦

General Land Office

Title 31, Part 1

Filed: August 31, 2000

♦ ♦ ♦

Texas Department of Health

Title 25, Part 1

Filed: August 31, 2000

♦ ♦ ♦

Texas Health Care Information Council

Title 25, Part 16

Filed: August 31, 2000

♦ ♦ ♦

Texas Board of Licensure for Professional Medical Physicists

Title 22, Part 26

Filed: August 31, 2000

♦ ♦ ♦

Texas State Board of Examiners of Marriage and Family Therapists

Title 22, Part 35

Filed: August 31, 2000

♦ ♦ ♦

Texas Medical Disclosure Panel

Title 25, Part 7

Filed: August 31, 2000

♦ ♦ ♦

Texas Midwifery Board

Title 22, Part 38

Filed: August 31, 2000

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Title 30, Part 1

Filed: August 31, 2000

♦ ♦ ♦

Texas Board of Orthotics and Prosthetics

Title 22, Part 37

Filed: August 31, 2000

♦ ♦ ♦

Texas State Board of Examiners of Perfusionists

Title 22, Part 32

Filed: August 31, 2000

♦ ♦ ♦

State Preservation Board

Title 13, Part 7

Filed: August 31, 2000

♦ ♦ ♦

Texas State Board of Examiners of Professional Counselors

Title 22, Part 30

Filed: August 31, 2000

♦ ♦ ♦

School Land Board

Title 31, Part 4

Filed: August 31, 2000

♦ ♦ ♦

Council on Sex Offender Treatment

Title 22, Part 36

Filed: August 31, 2000

♦ ♦ ♦

Texas State Board of Social Worker Examiners

Title 22, Part 34

Filed: August 31, 2000

♦ ♦ ♦

State Board of Examiners for Speech-Language Pathology and Audiology

Title 22, Part 32

Filed: August 31, 2000

♦ ♦ ♦

Statewide Health Coordinating Council

Title 25, Part 6

Filed: August 31, 2000

♦ ♦ ♦

Toxic Substances Coordinating Committee

Title 25, Part 14

Filed: August 31, 2000

♦ ♦ ♦

Veteran's Land Board

Title 40, Part 5

Filed: August 31, 2000

♦ ♦ ♦

Proposed Rule Review

Texas Commission for the Blind

Title 40, Part 4

The Texas Commission for the Blind files this notice of its intent, beginning September 1, to review all sections in Chapter 174 pertaining to Endowment Loan Fund 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 readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

The rules implement provisions of Human Resources Code, Title 5, Chapter 91, §91.0301. Loans for Visual Aids, which authorizes the Commission to establish a program to make loans to finance the purchase of technological aids for visually handicapped persons. The public is invited to make comments on the rules as they exist in Title 40 TAC, Part 4, Chapter 163. The comment period will last 30 days beginning with the publication of this notice of intention to review.

The Commission's Board will consider comments received in response to this notice at a meeting tentatively scheduled in November 2000. Any changes to the rules proposed by the Commission after the Board's review and considering comments received in response to this notice will appear thereafter in the proposed rules section of the *Texas Register* and will be adopted in accordance with state rule-making requirements.

Comments or questions regarding this rule review may be submitted in writing to Jean Crecelius, Policy & Rules Coordinator, Texas Commission for the Blind, P. O. Box 12866, Austin, TX 78711 or via facsimile at (512) 377-0682.

TRD-200006237

Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: September 5, 2000

♦ ♦ ♦

Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners proposes to review Chapter 170 (§§170.1-170.3), concerning Authority of Physician to prescribe for the treatment of pain, to be in compliance with Senate Bill 1233.

There were no recommended amendments to the existing rules.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§170.1. Purpose

§170.2. Definitions

§170.3. Guidelines

TRD-200006166
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 174 (§§174.1-174.16), concerning telemedicine, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §174.13 and §174.15 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§174.1. Purpose

§174.2. Definitions

§174.3. Qualifications for Special Purpose License for Practice of Medicine Across State Lines

§174.4. Limits on Special Purpose License To Practice Medicine Across State Lines

§174.5. Denial of Application for Special Purpose License To Practice Medicine Across State Lines

§174.6. Revocation and Limitation of Special Purpose License

§174.7. Cooperation

§174.8. Appearances

§174.9. Patient Medical Records

§174.10. Informed Consent

§174.11. Address Changes

§174.12. Delegation and Supervision

§174.13. Exemptions

§174.14. Temporary Suspension of Special Purpose License

§174.15. Fees and Failure To Submit Fees

§174.16. Registration Requirements

TRD-200006167
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 177 (§§177.1-177.16), concerning certification of non-profit organizations, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §§177.1, 177.2, 177.6-177.8, 177.11, 177.13, 177.15, and 177.16 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§177.1. Definitions

§177.2. Initial Certification

§177.3. Qualifications for Certification

§177.4. Applications for Certification

§177.5. Special Requirements

§177.6. Biennial Report

§177.7. Establishment of Fees

§177.8. Failure To Submit Reports or Fees

§177.9. Denial of Certification

§177.10. Revocation of Certification

§177.11. Review of Applications and Reports

§177.12. Procedure for Denial of Certification or Decertification

§177.13. Approved Form

§177.14. Compliance Date

§177.15. Migrant, Community or Homeless Health Centers

§177.16. Complaint Procedure Notification

TRD-200006168
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 186 (§§186.1-186.3), concerning supervision of physician assistant students, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing an amendment to §186.1 and the repeal of §186.2 and §186.3 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§186.1. Registration

§186.2. Supervision

§186.3. Exemption

TRD-200006169
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 193 (§§193.1-193.9), concerning standing delegation orders, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §§193.1-193.8 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§193.1. Purpose

§193.2. Definitions

§193.3. Exclusion from the Provisions of This Chapter

§193.4. Scope of Standing Delegation Orders

§193.5. Enforcement

§193.6. Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses

§193.7. Delegated Drug Therapy Management

§193.8. Delegated Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol

§193.9. Pronouncement of Death

TRD-200006170
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 194 (§§194.1-194.11), concerning non-certified radiologic technicians, to be in compliance with Senate Bill 1233.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §§194.2-194.4 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018.

§194.1. Purpose

§194.2. Definitions

§194.3. Registration

§194.4. Annual Renewal

§194.5. Non-Certified Technician's Scope of Practice

§194.6. Suspension, Revocation or Nonrenewal of Registration

§194.7. Procedure--General

§194.8. Procedure--Prehearing

§194.9. Procedure--Hearing

§194.10. Procedure--Posthearing

§194.11. Construction

TRD-200006171
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 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 145 concerning Dispute Resolution Hearings Under the Administrative Procedure and Texas Register Act. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §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 this chapter does not continue to exist and it proposes to repeal these rules through the Administrative Procedure Act process.

Comments regarding whether the reason for adoption of these rules continues to exist must be received by 5:00 p.m. on October 16, 2000, and submitted to Cherie Zavitson, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

Chapter 145. Dispute Resolution - Hearings Under the Administrative Procedure and Texas Register Act

§145.1 Scope and Applicability

§145.2 Definitions

§145.3 Requesting a Hearing

§145.4 Notice of Hearing

§145.5 Statement of Matters Asserted

§145.6 Venue

§145.7 Appearance and Representation

§145.8 Withdrawal of Hearing Request

§145.9 Informal Disposition

§145.10 Filing Instruments: Furnishing Copies

§145.11 APTRA Prehearing Conference

§145.12 Request for Alternative Dispute Resolution

§145.13 Discovery and Production of Documents and Things for Inspection, Copying, or Photographing

§145.14 Subpoenas; Depositions

§145.15 Ex Parte Communications

§145.16 Conduct and Decorum

§145.17 Hearing Officer's Authority

§145.18 Parties' Rights in Hearings

§145.19 Failure to Appear

§145.20 Recording the Hearing

§145.21 Evidence

§145.22 Reimbursement, Travel Expenses, and Fees for Witnesses and Deponents

§145.23 Decision of the Hearing Officer

§145.24 Special Provisions for Imposing Sanctions Pursuant to Section 2.09(f) of the Act

§145.25 Special Provisions for Administrative Penalties

§145.26 Record of the Hearing

§145.27 Transcript or Duplicate of the Hearing Audiotape

§145.28 Expenses To Be Paid By Petitioner

TRD-200006123
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: August 31, 2000

♦ ♦ ♦

Adopted Rule Review

Texas State Board of Medical Examiners

Title 22, Part 9

The Texas State Board of Medical Examiners adopts the review of Chapter 183 (§§183.1-183.23), concerning Acupuncture, to be in compliance with Senate Bill 1233, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6174).

The Texas State Board of Medical Examiners is contemporaneously adopting amendments to §§183.1-183.5, repeal of §§183.6-183.23 and new §§183.6-183.21 elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review to this chapter.

§183.1. Purpose.

§183.2. Definitions

§183.3. Meetings

§183.4. Licensure

§183.5. Annual Renewal of License

§183.6. Schedule of Fees

§183.7. Denial of License; Discipline of Licensee

§183.8. Investigations

§183.9. Procedure--General

§183.10. Procedure--Prehearing

§183.11. Procedure--Hearing

§183.12. Procedure--Posthearing

§183.13. Patient Records

§183.14. Complaint Procedure Notification

§183.15. Medical Board Review and Approval

§183.16. Construction

§183.17. Acudetox Specialist

§183.18. Automatic Licensure

§183.19. Use of Professional Titles

§183.20. Texas Acupuncture Schools

§183.21. Acupuncture Advertising

§183.22. Continuing Acupuncture Education

§183.23. Continuing Auricular Acupuncture Education for Acudetox Specialists

This concludes the review of Chapter 183.

TRD-200006172
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

The Texas State Board of Medical Examiners adopts the review of Chapter 185(§§185.1-185.29), concerning Physician Assistants, to be in compliance with Senate Bill 1233, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6174).

The Texas State Board of Medical Examiners is contemporaneously adopting amendments to §§185.2, 185.4-185.7, 185.14, 185.16, 185.17, repeal of §§185.18-185.29 and new §§185.18-185.28 elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review to this chapter.

§185.1. Purpose

§185.2. Definitions

§185.3. Meetings

§185.4. Licensure

§185.5. Relicensure

§185.6. Annual Renewal of License

§185.7. Temporary License

§185.8. Schedule of Fees

§185.9. Inactive License

§185.10. Reinstatement of License Following Cancellation for Cause

§185.11. Physician Assistant Scope of Practice

§185.12. Tasks Not Permitted To Be Delegated of a Physician Assistant

§185.13. Identification Requirements

§185.14. Notification of Intent to Practice and Supervise

§185.15. Physician Supervision

§185.16. Supervising Physician

§185.17. Employment Guidelines

§185.18. Exceptions

§185.19. Grounds for Denial of Licensure and for Disciplinary Action

§185.20. Discipline of Physician Assistants

§185.21. Administrative Penalty

§185.22. Complaint Procedure Notification

§185.23. Investigations

§185.24. Procedure--General

§185.25. Procedure--Prehearing

§185.26. Procedure--Hearing

§185.27. Procedure--Posthearing

§185.28. Medical Board Review and Approval

§185.29. Construction

This concludes the review of Chapter 185.

TRD-200006173
F. M. Langley, DVM, MD, JD
Executive Director
Texas State Board of Medical Examiners
Filed: September 1, 2000

♦ ♦ ♦

State Preservation Board

Title 13, Part 7

The State Preservation Board adopts the review of Chapter 111, concerning Rules and Regulations of the Board, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167.

The proposed review was published in the July 30, 1999, issue of the *Texas Register* (24 TexReg 5889).

The Board approved the re-adoption of Chapter 111 at its April 4, 2000, meeting. The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of chapter 111. Rules and regulations of the Board.

TRD-200006122
Richard L. Crawford
Executive Director
State Preservation Board
Filed: August 31, 2000

♦ ♦ ♦

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission adopts the review of Chapter 535 (§§535.131 - 535.133, 535.141 - 535.161, 535.71, 535.181, 535.191, 535.192), Provisions of The Real Estate License Act, in accordance with the Texas Government Code, §2001.039, and the General Appropriations Act of 1999, Article IX, Section 167. The proposed review appeared in the April 7, 2000, issue of the *Texas Register* (25 TexReg 3064).

In conjunction with this review, the agency repealed §§535.148, 535.150 - 535.152, 535.157, 535.158, 535.191 and 535.192 , amended §§535.131, 535.132, 535.141, 535.143 - 535.147, 535.154, 535.156, and 535.159 and adopted new §535.148. The adopted repeals and amendments were published in the September 1, 2000, issue of the *Texas Register* (25 TexReg 8645). The agency has determined that with these changes, the reasons for adopting the chapter continue to exist.

TRD-200006261
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: September 6, 2000

♦ ♦ ♦

Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §§9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the June 2, 2000 issue of the *Texas Register* (25 TexReg 5385), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting these rules continues to exist.

No comments were received regarding the review of these rules. (Some of the rules in Chapters 110 and 142 were amended subsequent to this rule review, including some rule titles.)

Chapter 110. Required Notice of Coverage General Provisions.

§110.1. Requirements for Notifying the Commission of Insurance Coverage.

§110.101. Covered and Non-Covered Employer Notices to Employees.

§110.108. Employer Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests.

§110.110. Reporting Requirements for Building or Construction Projects for Governmental Entities.

Chapter 142. Dispute Resolution Benefit Contested Case Hearing.

§142.1. Application of the Administrative Procedure and Texas Register Act.

§142.2. Authority and Duties of the Hearing Officer.

§142.3. Ex Parte Communications.

§142.4. Delivery of Copies to All Parties.

§142.5. Sequence of Proceedings to Resolve Benefit Disputes.

§142.6. Setting a Benefit Contested Case Hearing.

§142.7. Statement of Disputes.

§142.8. Summary Procedures.

§142.9. Stipulations, Agreements, and Settlements.

§142.10. Continuance.

§142.11. Failure to Attend a Benefit Contested Case Hearing.

§142.12. Subpoena.

§142.13. Discovery.

§142.14. Permission to use Court Reporter.

§142.16. Decision.

§142.17. Transcript or Duplicate of the Hearing Audiotape.

§142.18. Special Provisions for Cases on Remand from the Appeals Panel.

§142.19. Form Interrogatories.

As a result of the review, the commission has determined that the reason for adoption of the rules continues to exist. Therefore, the commission readopts Chapters 110 and 142. If the commission determines that any of these rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

TRD-200006222

Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: September 1, 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.

C. Kirk Root Designs

OBVERSE

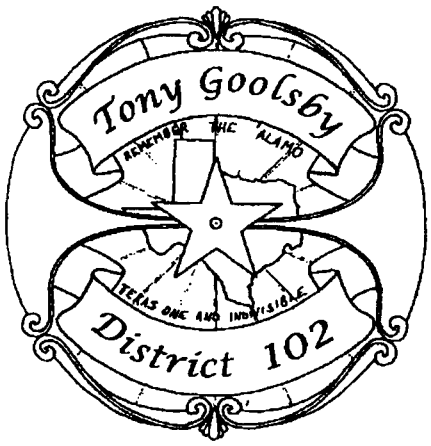
18kt yellow gold with platinum star
Victorian design, typical style of 1880
Scroll work and satin finish unique to the period
The center star is brightly polished and is made of pure platinum
The Texas seal wreath design is shown around the center star
The legislative session number is at the top of the wreath
The year of the session is below the star (inside the wreath)
"TEXAS HOUSE" is written in a typical 1880's Calligraphy style print
Shells on the top and bottom of the pin are symbolic of the Texas coast
Actual Size 21.0mm (U.S. Nickel)

1802 W. Koenig Lane • Austin, Texas 78756 • (512) 458-8258 • (800) 299-5475

Figure 2: 1 TAC §113.148(2)(A)

C. Kirk Root Designs

REVERSE



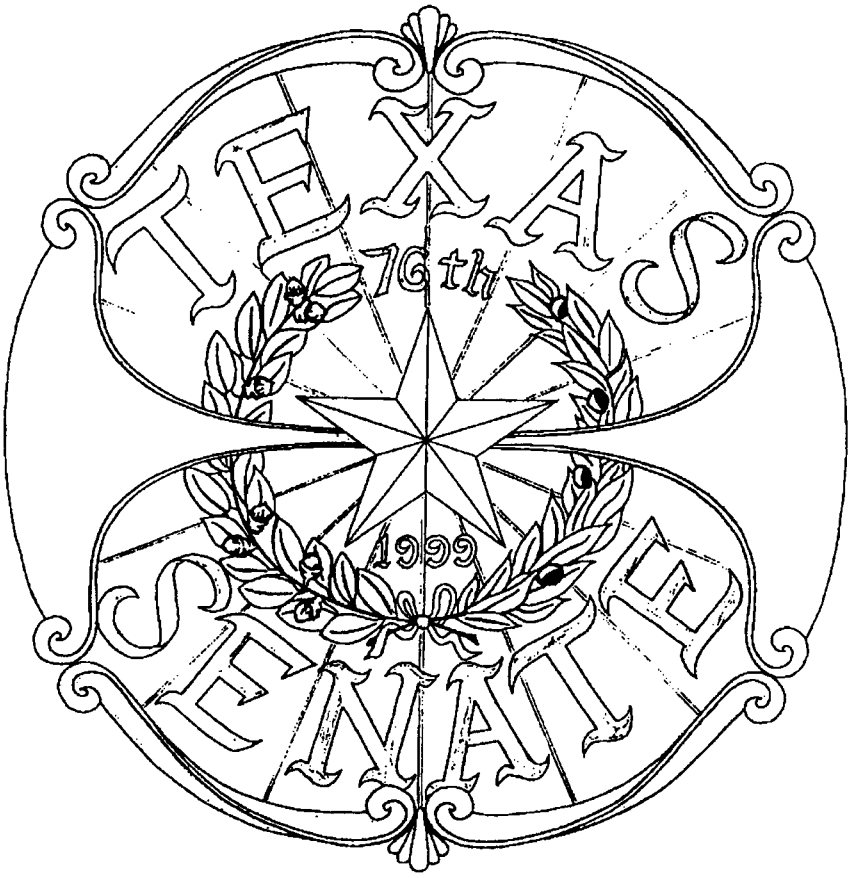
Each members name is hand-engraved in the upper ribbon
Each members district number is hand-engraved in the lower ribbon
"Remember the Alamo" & "Texas One And Indivisible" are inside the ribbons
(the above quotes from the back of the state seal)
A star and the outline of Texas form the center of the back
The same detail is featured on the back as is on the front, except the back is flat
The center circle is the pin itself
The back is all 18kt yellow gold

1802 W. Koenig Lane • Austin, Texas 78756 • (512) 458-8258 • (800) 299-5475

Figure 1: 1 TAC §113.148(2)(B)

C. Kirk Root Designs

OBVERSE



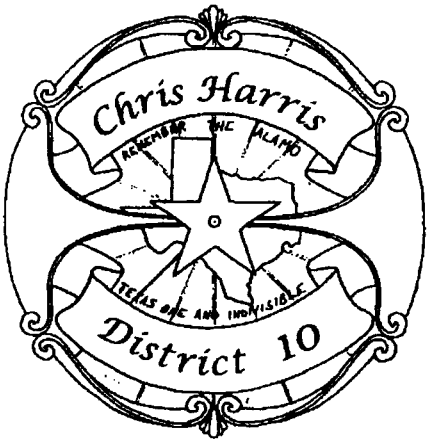
18kt yellow gold with platinum star
Victorian design, typical style of 1880
Scroll work and satin finish unique to the period
The center star is brightly polished and is made of pure platinum
The Texas seal wreath design is shown around the center star
The legislative session number is at the top of the wreath
The year of the session is below the star (inside the wreath)
"TEXAS SENATE" is written in a typical 1880's Calligraphy style print
Shells on the top and bottom of the pin are symbolic of the Texas coast
Actual Size 21.0mm (U.S. Nickel)

1802 W. Koenig Lane • Austin, Texas 78756 • (512) 458-8258 • (800) 299-5475

Figure 2: 1 TAC §113.148(2)(B)

C. Kirk Root Designs

REVERSE



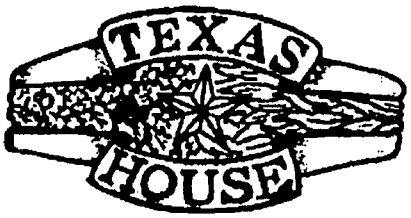
Each members name is hand-engraved in the upper ribbon
Each members district number is hand-engraved in the lower ribbon
"Remember the Alamo" & "Texas One And Indivisible" are inside the ribbons
(the above quotes from the back of the state seal)
A star and the outline of Texas form the center of the back
The same detail is featured on the back as is on the front, except the back is flat
The center circle is the pin itself
The back is all 18kt yellow gold

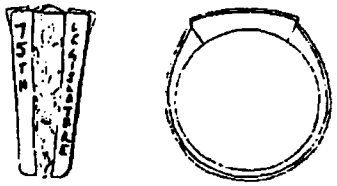
1802 W. Koenig Lane • Austin, Texas 78756 • (512) 458-8258 • (800) 299-5475

Figure: 1 TAC §113.148(7)

Texas House of Representative Ring

C. Kirk Root Designs



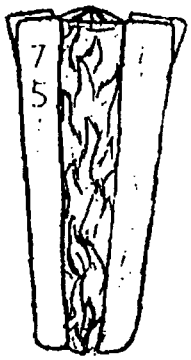


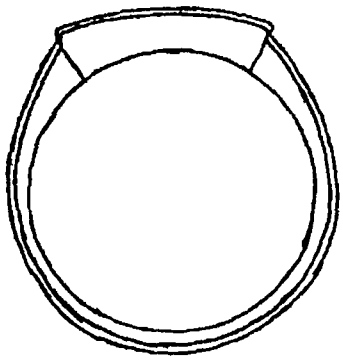
1802 W. Koenig Lane • Austin, Texas 78756 • (512) 458-8258 • (800) 299-5475

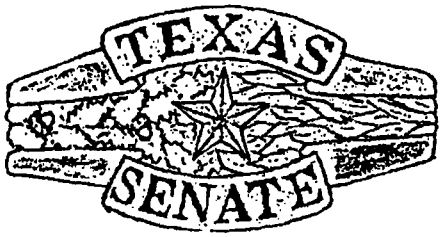
Figure: 1 TAC §113.148(8)

C. Kirk Root Designers

Texas Senate Ring







1802 W. Koenig Lane • Austin, Texas 78756 • (512) 458-8258 • (800) 299-5475

Statutory/Rule Violation Section	Violation	Range of Penalty and Sanction
91.11	Engaging in staff leasing services or offering to engage in the provision of staff leasing services without a license.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation Third offense - $25,000 to $50,000 per violation and denial of license
91.11	Failing to maintain or demonstrate minimum net worth as required.	First offense - $5,000 to $10,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revoke or suspend license
91.15	Failing to file with the Department a written application and fee for a controlling person.	First offense - $1,000 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $50,000 per violation revocation or suspension
91.15(c)	Failing to properly notify the Department of the addition of a controlling person.	First offense - $1,000 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $50,000 per violation plus revocation or suspension
91.018(a)	Conducting business under a name not specified in the license or conducting business under more that one name without obtaining a separate license for each name.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation with suspension Third offense - $35,000 to $50,000 per violation and denial or suspension or revocation
91.020(a)(1)(A), (B), (C), (D), and (E)	Being convicted or having a controlling person of the license holder who is convicted of: (A) bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license; (B) a crime that relates to the operation of a staff leasing service or the ability of the license holder or any controlling person of the license holder to operate a staff leasing service; (C) a crime that relates to the classification, misclassification, or under-reporting of employees under Subtitle A, Title 5; (D) a crime that relates to the establishment or maintenance of a self-insurance program, whether health insurance, workers' compensation insurance, or other insurance; or (E) a crime that relates to fraud, deceit, or misconduct in the operation of a staff leasing service.	Revocation, suspension or denial of license

Statutory/Rule Violation Section	Violation	Range of Penalty and Sanction
91.020 (a) (2)	Engaging in staff leasing services or offering to engage in the provision of staff leasing services without a license.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation Third offense - $25,000 to $50,000 per violation and denial of license
91.020 (a) (3)	Transferring or attempting to transfer a license issued under this chapter.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation or suspension
91.020 (a) (4)	Violating this chapter or any order or rule issued by the Department or Commissioner under this chapter.	First offense - $7,500 to $15,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.020 (a) (5)	Failing after the 31st day after effective date on which a felony conviction of a controlling person is final to notify the Department in writing of the conviction.	First offense - $1,000 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.020 (a) (6)	Failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by the Texas Department of Insurance.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $50,000 per violation and revocation
91.020 (a) (7)	Failing after the 31st day after the effective date of a change in ownership, principle business address, or the address of accounts and records to notify the Department and the Texas Department of Insurance of the change.	First offense - $1,000 to $2,500 per violation Second offense - $2,500 to $5,000 per violation and suspension Third offense - $10,000 to $25,000 per violation and revocation
91.020 (a) (8)	Failing to correct any tax filings or payment deficiencies within a reasonable time frame as determined by the commissioner.	First offense - $10,000 to $25,000 per violation Second offense - $25,000 to $40,000 per violation and suspension Third offense - $40,000 to $50,000 per violation and revocation
91.020 (a) (9)	Refusing after reasonable notice, to meet reasonable health and safety requirements within the license holder's control and made known to the license holder by a federal or state agency.	First offense - $1,000 to $10,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.020 (a) (10)	Being delinquent in the payment of the license holder's insurance other than those subject to a legitimate dispute.	First offense - $10,000 to $15,000 per violation Second offense - $15,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.020 (a) (11)	Being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute.	First offense - $10,000 to $15,000 per violation Second offense - $15,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation

Violation Section	Violation	Range of Penalty and Sanction
91.020 (a) (13)	Failing to maintain net worth requirements required under §91.014.	First offense – suspension Second offense – revocation
91.020 (a) (14)	Using staff leasing services to avert or avoid an existing collective bargaining agreement.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $50,000 per violation and revocation
91.031 (a)	Failing to establish the terms of a staff leasing services agreement by a written contract between the license holder and the client company.	First offense - $5,000 to $10,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.031 (b)	Failing to give written notice to each employee of an agreement between the client company and the staff leasing service as it effects each employee assigned to client company worksite.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $50,000 per violation and revocation
91.032	The contract between the staff leasing service and the client company failed to provide for the minimum requirements found in §91.032(1), (2), (3), (4) and (5).	First offense - $5,000 to $10,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation.
91.041 (b)	Failing to disclose the type of coverage, the identity of each insurer for each type of coverage, the amount of benefit provided by each type of coverage and to whom or in whose behalf benefits are paid, policy limits on each insurance policy and whether the policy is fully insured, partially insured, or fully self funded.	First offense - $10,000 to $25,000 per violation Second offense - $25,000 to $40,000 per violation and suspension Third offense - $40,000 to $50,000 per violation and revocation
91.043 (a)	Sponsoring a plan of self insurance not permitted by the Employee Retirement Income Security Act of 1974.	First offense - $10,000 to $20,000 per violation Second offense - $20,000 to $35,000 per violation and suspension Third offense - $35,000 to $50,000 per violation and revocation
91.044 (a)	Failing to report to the Texas Workforce Commission the name, address, telephone number, federal income tax identification number, and classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget of each client company.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $25,000 per violation and revocation
91.045 (a)	Failing to post in a conspicuous place in the license holder's principal place of business in this state the license issued under the Labor Code, §91.	First offense - $1,000 to $2,500 per violation Second offense - $2,500 to $5,000 per violation and suspension Third offense - $5,000 to $10,000 per violation and Revocation

Section	Violation	Range of Penalty and Sanction
91.045 (b)	Failing to display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the Department and that any questions or complaints should be directed to the Department.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $25,000 per violation and revocation
91.046	Failing to be responsible for the license holder's contractual duties and responsibilities to manage, maintain collect, and make timely payments for: insurance premiums; benefit welfare plans; other employee withholding; and any other expressed responsibility within the scope of the contract for fulfilling the duties imposed under this section and the Texas Labor Code, §§91.032, 91.047 and 91.048.	First offense - $5,000 to $10,000 per violation Second offense - $10,000 to $20,000 per violation and suspension Third offense - $20,000 to $50,000 per violation and revocation
91.047	Failing to comply with all appropriate state and federal laws relating to reporting, sponsoring, filing, and maintaining benefit and welfare plans.	First offense - $10,000 to $15,000 per violation Second offense - $15,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.048 (1)	Failing to maintain adequate books and records regarding the license holder's duties and responsibilities.	First offense - $2,500 to $10,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.048 (2)	Failing to maintain the following information: the correct name, address, and telephone number of each client company; each client company contract; a listing by classification cards as described in the "Standard Classification Manual" published by the United States Office of Management and Budget, of each client company.	First offense - $5,000 to $10,000 per violation Second offense - $10,000 to $25,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation
91.049	Failing to maintain a registered agent for service of process in this state.	First offense - $1.000 to $2,500 per violation Second offense - $2,500 to $5,000 per violation and suspension Third offense - $5,000 to $10,000 per violation and revocation
91.061 (1)	Engaging in or offering staff leasing services without holding a license under the Texas Labor Code, §91.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and denial of license
91.061 (2)	Using the name or title; staff leasing company; licensed staff leasing company; staff leasing services company; professional employer organization; administrative employer; or otherwise represent that the entity is licensed under the Texas Labor Code, §91.	First Offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $25,000 per violation and denial of license

Section		
91.061 (3)	Representing as the person's own the license of another person or represent that a person is licensed if the person does not hold a license.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and revocation or denial of license
91.061 (4)	Giving materially false of forged evidence to the Department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under the Texas Labor Code, §91.	First offense - $10,000 to $20,000 per violation Second offense - $20,000 to $30,000 per violation and suspension Third offense - $30,000 to $50,000 per violation and denial of license
91.061 (5)	Using or attempting to use a license that has expired or been revoked.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and denial of license
72.20 (a)	Performing or offering to perform staff leasing services, as defined by the Texas Labor Code, §91, without first obtaining a license from the Texas Department of Licensing and Regulation.	First offense - $10,000 to $25,000 per violation Second offense - $15,000 to $35,000 per violation and suspension Third offense - $25,000 to $50,000 per violation and denial of license
72.70 (a) or (b)	Failing to notify assigned employees and clients, as required by 16 Texas Administrative Code, Chapter 72, §72.70 (a) or (b) (1) (2) (3).	First offense - $5,000 to $10,000 per violation Second offense - $10,000 to $15,000 per violation and suspension Third offense - $15,000 to $50,000 per violation and revocation
72.71 (a)	Failing, upon notification, to allow the Commissioner or his designee to audit records required by the Texas Labor Code, §91 and any records required by 16 Texas Administrative Code, Chapter 72.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $10,000 to $50,000 per violation and revocation
72.71 (b)	Failing to maintain documents for two years following termination of a staff leasing services contract as required by 16 Texas Administrative Code, Chapter 72.	First offense - $2,500 to $5,000 per violation Second offense - $5,000 to $10,000 per violation and suspension Third offense - $15,000 to $25,000 per violation and revocation

(a) **EXAMINATIONS**			
State Board Exam (SBE)	$100		
Special License	$100		
(b) **APPLICATION PROCESSING** (except for Provisional License)	$50		
(c) **RENEWALS**	**BOARD FEE**	**PROF. FEE**	**TOTAL FEE**
License Renewals (current)	$115	$200	$315
Delinquent Renewals (90 days or less)	$165	$200	$365
Delinquent Renewals (over 90 days but less than one year)	$215	$200	$415
Inactive Renewals	$115	-0-	$115
Delinquent Inactive Renewals (90 days or less)	$165	-0-	$165
Delinquent Inactive Renewals (over 90 days but less than one year)	$215	-0-	$215
Special License	$115	$200	$315
Delinquent Special License Renewals (90 days or less)	$165	$200	$365
Delinquent Special License Renewals (over 90 days but less than one year)	$215	$200	$415
(d) **PROVISIONAL LICENSE**	$250	-0-	$250
(e) **OPEN RECORDS**	Charges for all open records and other goods/services such as tapes, disks, will be in accordance with General Services Commission rules 111.61-11.71, "Charges for Public Records."		
(f) **RETURNED CHECK FEE**	$25		

Figure: 31 TAC §719.136(f)

Reduction Stage	J-17 Well Level	TD 69-47-306 Well Level	J-27 Well Level	Maximum Allowable Withdrawals (1)	Transfer Withdrawals
I	650	670	845	95% of the authorized pumping amount for that corresponding month.	95%
II	640	660	840	90% of the authorized pumping amount for that corresponding month.	90%
III Emergency Springflow Protection Measures	630	655	835	85% of the authorized pumping amount for that corresponding month.	85%

(1) See definition of authorized pumping amount and maximum allowable withdrawals in §719.1 of this title (relating to Definitions).

Figure: 31 TAC §719.142(4)

Last Digit of Address	Day
0-1	Monday
2-3	Tuesday
4-5	Wednesday
6-7	Thursday
8-9	Friday

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearing

In accordance with the Texas Agriculture Code, Chapter 74, §74.113, the Texas Department of Agriculture (the department) will hold two public hearings on September 18, 2000, to take public comment on its proposed maximum assessment for the Southern High Plains/Caprock Boll Weevil Eradication Zone. The hearings will be held as follows:

Beginning at 11:30 a.m., at the Morton Auditorium, 200 West Taylor, Morton, Texas; and, beginning at 2:30 p.m., at the Texas A&M Experiment Station Auditorium, 1102 East FM 1294 (1 3/4 miles East of Interstate Highway 27 on FM1294), Lubbock, Texas.

For more information, please contact , John McFerrin, Producer Relations Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711 (512)463-7593.

TRD-200006236
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: September 5, 200

♦ ♦ ♦

Texas Commission for the Blind

Notice of Public Hearing

The Texas Commission for the Blind will conduct a public hearing at 2:00 p.m., on September 29, 2000, at Criss Cole Rehabilitation Center, in the Staff Training Room, 4800 North Lamar, Austin, Texas. The purpose of the hearing is to receive comments on proposed payment rates for the purchase of professional medical services from doctors, professional services of other medically related providers, and for purchase of medical and related items for consumers of this Commission (e.g., eye glasses, eye prostheses). The proposed rates have been developed in accordance with 40 TAC §159.6.

The public is invited to offer comments at the hearing or send written comments on the proposed rates on or before September 29, 2000. Oral comments at the hearing shall be heard by the order of registration upon arrival at the meeting. A copy of the proposed rates will be available at the hearing for viewing and is available prior to the hearing upon request by contacting Nansi Morris, 4800 North Lamar, Austin, Texas 78756; phone: (512) 377-0669; fax: (512) 377-0592; e-mail: Nansi.Morris@tcb.state.tx.us

TRD-200006096
Terrell I. Murphy
Executive Director
Texas Commission for the Blind
Filed: August 30, 2000

♦ ♦ ♦

Texas Cancer Council

Request for Applications

Introduction:

The Texas Cancer Council announces the availability of state funds to be awarded to support the *Texas Cancer Plan* and the *Action Plan on Colorectal Cancer for the State of Texas*. Funds will be awarded to selected entities to plan and execute a collaborative, innovative, and effective program that will increase the number of African Americans age 50 or above who receive colorectal cancer screening according to American Cancer Society guidelines.

It is anticipated that this will be a 2-year project, with the maximum funding received by any single applicant to be $75,000 for the first year (remainder of FY 2001) and $100,000 for the second year (FY 2002). Truly innovative projects may be considered for additional funding for statewide dissemination.

Purpose:

The purpose of the Request for Applications (RFA) is to solicit statewide applications for projects that will promote and provide colorectal cancer screening to African Americans in a Texas community of at least 50,000 residents, of which the African American population is at least 10%. The selected project(s) will develop awareness in the at-risk population of risk factors for colorectal cancer and the importance of screening. Project will direct members of the at-risk population to providers of screening services, and document resulting changes in levels of awareness and the number of screenings. The project is intended to serve as a prototype for successful interventions in communities throughout the state.

Eligibility requirements:

All applicants must meet the following criteria: The proposal must be made on behalf of an entity with demonstrated partnerships or linkages with health care providers, community agencies, organizations or interested individuals from the community. Letters of intent and support must be submitted. The lead entity may be a governmental agency, educational institution, a nonprofit organization, or a for-profit organization.

FY 2001 contractors of the Texas Cancer Council are not eligible to apply for funding under this initiative.

Letter of intent requirements:

To be considered for funding, letters of intent must be received in the Council office by 5:00 p.m. on September 29, 2000. The Council will acknowledge the receipt of letters of intent in writing. Letters of intent may be mailed to P.O. Box 12097, Austin, Texas 78711; or sent by facsimile machine to (512) 475-2563. Applicants are encouraged to contact the Council office by telephone at (512) 463-3190 to ensure the letter of intent is received.

Letters of intent should not exceed five (5) pages and should succinctly identify the lead contractor, members of the partnership, problem to be addressed, population to be reached, and geographic area covered. Additionally, for each fiscal year of the 2 year initiative, the letter of intent should state the project goals, objectives, major activities to attain the objectives, expected outcomes, number of people to be reached, and requested budget amounts. Letters of intent must be submitted in a font-size no smaller that 12 point.

Semi-finalist selection and application preparation workshop:

Council staff will review letters of intent and semi-finalists will be selected, based on the criteria outlined in this funding announcement. By October 2, semi-finalists will be notified telephonically of their selection as a semi-finalist, overnight mailed a funding application packet, and invited to attend an application technical assistance workshop. The applicants' workshop will be held in Austin on October 10, 2000. This workshop will be open to semi-finalists and will be conducted to clarify RFA requirements, provide technical assistance on application preparation, and delineate Council expectations. Semi-finalists are responsible for any travel expenses (parking, transportation, lodging, et cetera.) incurred to attend the workshop.

Project requirements:

Projects funded under this initiative must provide:

•A culturally-relevant information and awareness initiative based on the needs of African-American residents of the community;

•Communications through a variety of channels and modalities known to be successful in reaching African Americans in the community;

•Ability to interact with local community leaders and media representatives on behalf of the project;

•Colorectal cancer risk and screening information that includes a specific call to action (e.g., to actively seek screening services);

•Assurances that follow up diagnostics and treatment are available to participants regardless of eligibility to pay;

•Follow-up contact with recipients of colorectal cancer screening services to facilitate their receiving appropriate care;

•Documentation of project outcomes and written evaluation, including recommendations for statewide implementation.

Project(s) must also:

•Address a community with a diverse population that includes a significant African-American population;

•Provide the secured agreement of one or more providers to furnish FOBT kits of the type proven in value by randomized control trials, laboratory services, follow-up screening in accordance with ACS guidelines for those with positive FOBT results, and treatment for those diagnosed with polyps and/or colorectal cancer;

•Actively collaborate with the local American Cancer Society unit in project planning, development and execution;

•Demonstrate previous successful experience or background knowledge in providing culturally-relevant health promotion services, preferably in the area of cancer prevention and/or control;

•Document the selected population's needs and how the proposed project will address these needs;

•Provide assurances that the proposed project utilizes existing credible educational materials (such as those from the National Cancer Institute, Centers for Disease Control, and the American Cancer Society), wherever appropriate;

•Document strong community support for this initiative and community collaboration through the sharing of resources (such as equipment, personnel, volunteers, educational resources, et cetera) from a variety of community agencies/organizations;

•Document collaboration with established programs and agencies addressing cancer concerns, such as the American Cancer Society, American Association of Retired Persons, and Texas Department of Health;

•Provide assurances that the project does not duplicate existing programs in the community.

•Provide evidence that the project has the capability of being sustained within the community after termination of Council funding (favorable weight will be given to proposals that indicate, where appropriate, that active attempts will be made to solicit additional funds or continuation funds for the project - including a list of sources to be approached).

•Document an in-kind contribution of at least ten percent. In-kind contributions may include applicant funds committed to the project, donated services, or other in-kind contributions. The Council reserves the right to waive this requirement, on a case-by-case basis.

Application requirements:

Applications from the semi-finalists will be due at the Texas Cancer Council office by 5:00 p.m. on October 23, 2000. Applications must be submitted according to the Texas Cancer Council's application instructions and forms. Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials, a copy of the *Texas Cancer Plan*, and recommendations from the *Action Plan on Colorectal Cancer for the State of Texas* are available at www.tcc.state.tx.us or can be obtained by calling (512) 463-3190. **Applications sent by facsimile machine or e-mail attachments will not be accepted.**

Funding awards:

Applications will be reviewed by Council staff for completeness and technical merit. The Texas Cancer Council will make final funding decisions on or about November 3, 2000. Written notification of approval can be expected by November 10, 2000. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

•The degree to which the application addresses the goals of the *Texas Cancer Plan* and the *Action Plan on Colorectal Cancer for the State of Texas*, as described in the purposes and requirements of the funding announcement;

•The scope of the project, including the anticipated number of people served;

•Innovative aspects of the proposed project;

•Applicant's collaboration with other relevant community groups and/or state-level organizations/agencies who provide cancer services;

•Applicant's qualifications to conduct the proposed project;

•Reasonableness of budgeted amounts and appropriateness of budget justifications;

•Evidence of a sound plan for continuity of the project beyond Council funding; and

•Completeness and clarity of the application.

The Texas Cancer Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

It is anticipated that up to two projects will be selected under this initiative to receive Council funding through August 31, 2001. The Council may fund more, or fewer projects, based on the merit of applications received and the availability of funding. The Council reserves the right to take the needs of geographic locations and population served into consideration when selecting projects.

Funded projects must submit annual continuation applications. The Council will award annual continuation contracts, based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding.

Use of funds:

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings to accommodate health services, purchase of clinic equipment, reduction of deficits from pre-existing operations, clinical research, or to duplicate existing resources of services. Additionally, Council funds may not be used for clinical services such as mammograms, Pap smears, or other cancer screening tests. Projects are to provide such services through other funding sources or donations.

Additional information:

For additional information about this funding announcement, contact Don Ray, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200006233
Mickey L. Jacobs, M.S.H.P.
Executive Director
Texas Cancer Council
Filed: September 5, 2000

♦ ♦ ♦

Request for Application

Introduction:

The Texas Cancer Council announces the availability of state funds to be awarded to support the *Texas Cancer Plan* and the *Action Plan on Colorectal Cancer for the State of Texas*. Funds will be awarded to one or more selected entities that propose a collaborative, innovative, and effective program to increase and enhance public awareness about colorectal cancer risk and the benefits of screening, especially for individuals age 50 and above who are asymptomatic. The optimal outcome will be to increase to 80% the proportion of the targeted population who are aware that colorectal cancer screening can detect adenomatous polyps, that removal of adenomatous polyps can prevent colorectal cancer and that colorectal cancer is curable if detected early.

It is anticipated that this will be a 2-year project, with the maximum funding received by any single applicant to be $75,000 for the first year (remainder of FY 2001) and $100,000 for the second year (FY 2002). Truly innovative or model projects may be considered for continued funding for statewide dissemination.

Purpose:

The purpose of the Request for Applications (RFA) is to solicit statewide applications for projects that will significantly increase the awareness of individuals of the risk factors of colorectal cancer and the importance of screening. Tailored messages that appeal to the interests and values of specific audiences and utilize a variety of communication methods and venues are thought to be most effective in reaching those audiences. The project is intended to serve as a prototype for successful public information and awareness campaigns statewide.

Eligibility requirements:

All applicants must meet the following criteria: The proposal must be made on behalf of an entity with demonstrated collaborative relationships with community agencies, organizations or interested individuals from the community. Letters of intent and support must be submitted as evidence of partnership agreements for project planning and implementation. The lead entity may be a governmental agency, educational institution, a nonprofit organization, or a for-profit organization.

FY 2001 contractors of the Texas Cancer Council are not eligible to apply for funding under this initiative.

Letter of intent requirements:

To be considered for funding, letters of intent to apply must be received in the Council office by 5:00 p.m. on September 29, 2000. The Council will acknowledge the receipt of letters of intent in writing. Letters of intent may be mailed to P.O. Box 12097, Austin, Texas 78711; or sent by facsimile machine to (512) 475-2563. Applicants are encouraged to contact the Council office by telephone at (512) 463-3190 to ensure the letter of intent is received.

Letters of intent should not exceed five (5) pages and should succinctly identify the lead contractor, members of the partnership, problem to be addressed, population to be reached, and geographic area covered. Additionally, for each fiscal year of the 2 year initiative, the letter of intent should state the project goals, objectives, major activities to attain the objectives, expected outcomes, number of people to be reached, and requested budget amounts. Letters of intent must be submitted in a font-size no smaller that 12 point.

Semi-finalist selection and application preparation workshop:

Council staff will review letters of intent and semi-finalists will be selected, based on the criteria outlined in this funding announcement. By October 2, semi-finalists will be notified telephonically of their selection as a semi-finalist, overnight mailed a funding application packet, and invited to attend an application technical assistance workshop. The applicants' workshop will be held in Austin on October 10, 2000. This

workshop will be open to semi-finalists and will be conducted to clarify RFA requirements, provide technical assistance on application preparation, and delineate Council expectations. Semi-finalists are responsible for any travel expenses (parking, transportation, lodging, et cetera.) incurred to attend the workshop.

Project requirements:

Projects funded under this initiative must provide:

•Quantified measures of baseline knowledge, attitudes and practices among the general public and selected populations in the targeted area regarding colorectal cancer risk factors, prevention and screening. (Baseline data must be collected in the project's first 6 months. This information will be the basis for the second year's evaluation to determine if funded activities are successful and should be continued.)

•A plan and timeline for determining and disseminating key prevention and education messages through cost effective channels.

•Quantified measures of program impact on public knowledge, attitudes and practices.

•Evaluation of the project's effectiveness and recommendations for implementation statewide.

Project must:

•Demonstrate previous successful experience or background knowledge in providing culturally relevant health promotion campaigns, preferably in the area of cancer prevention and/or control.

•Document the selected population's needs and how the proposed project will address them.

•Involve and coordinate with local American Cancer Society offices in planning and executing the program.

•Provide assurances that the proposed project utilizes existing credible educational materials (such as those from the National Cancer Institute, Centers for Disease Control, and the American Cancer Society), wherever appropriate.

•Document strong community support for this initiative and community collaboration through the sharing of resources (such as equipment, personnel, volunteers, educational resources, et cetera) from a variety of community agencies/organizations.

•Demonstrate the ability to interact with area community leaders and media representatives on behalf of the project.

•Document collaboration with established programs and agencies addressing cancer concerns, such as the American Cancer Society, American Association of Retired Persons, and Texas Department of Health.

•Provide assurances that the project does not duplicate existing programs in the community.

•Provide evidence that the project has the capability of being sustained within the community after termination of Council funding (favorable weight will be given to proposals that indicate, where appropriate, that active attempts will be made to solicit additional funds or continuation funds for the project - including a list of sources to be approached).

•Document an in-kind contribution of at least ten percent. In-kind contributions may include applicant funds committed to the project, donated services, or other in-kind contributions. The Council reserves the right to waive this requirement, on a case-by-case basis.

Application requirements:

Applications from the semi-finalists will be due at the Texas Cancer Council office by 5:00 p.m. on October 23, 2000. Applications must be submitted according to the Texas Cancer Council's application instructions and forms. Application instructions provide information about disallowable expenses, reimbursement policies, and reporting requirements. Application materials, a copy of the *Texas Cancer Plan*, and recommendations from the *Action Plan on Colorectal Cancer for the State of Texas*, are available at www.tcc.state.tx.us or can be obtained by calling (512) 463-3190. **Applications sent by facsimile machine or e-mail attachments will not be accepted**.

Funding awards:

Applications will be reviewed by Council staff for completeness and technical merit. The Texas Cancer Council will make final funding decisions on or about November 3, 2000. Written notification of approval can be expected by November 10, 2000. All applicants will receive written notification of the Council's decisions regarding their applications.

The Council's funding decision will be based on:

•The degree to which the application addresses the goals of the *Texas Cancer Plan* and the *Action Plan on Colorectal Cancer for the State of Texas*, as described in the purposes and requirements of the funding announcement;

•The scope of the project, including the anticipated number of people served;

•Innovative aspects of the proposed project;

•Applicant's collaboration with other relevant community groups and/or state-level organizations/agencies who provide cancer services;

•Applicant's qualifications to conduct the proposed project;

•Reasonableness of budgeted amounts and appropriateness of budget justification;

•Evidence of a sound plan for continuity of the project beyond Council funding; and

•Completeness and clarity of the application.

The Texas Cancer Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

It is anticipated that one project will be selected under this initiative to receive Council funding through August 31, 2001. The Council may fund more, or fewer projects, based on the merit of applications received and the availability of funding. The Council reserves the right to take the needs of geographic locations and population served into consideration when selecting projects.

Funded projects must submit annual continuation applications. The Council will award annual continuation contracts, based upon a review of the contractor's achievement of the prior year's work plan objectives and performance measure projections, the merits of the contractor's continuation application, and the availability of Council funding.

Use of funds:

Council funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses. Funds may not be used for indirect costs, remodeling of buildings to accommodate health services, purchase of clinic equipment, reduction of deficits from pre-existing operations, clinical research, or to duplicate existing resources of services. Additionally, Council funds may not be used for clinical services such as

colonoscopies or other cancer screening tests. Projects are to provide such services through other funding sources or donations.

Additional information:

For additional information about this funding announcement, contact Don Ray, Program Manager, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

TRD-200006234
Mickey L. Jacobs, M.S.H.P.
Executive Director
Texas Cancer Council
Filed: September 5, 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 August 24, 2000 through August 31, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: UNOCAL Corporation; Location: The project is located in the Neches River approximately 0.5 mile below the lower end of the Smith's Bend Cut-off and approximately 1 mile north of Port Neches in Jefferson County, Texas. Approximate UTM coordinates: Zone 15; Easting: 406400; Northing: 332000. CCC Project No.: 00-0312-F1; Description of Proposed Action: The applicant proposes to perform maintenance dredging at the UNOCAL Corporation facility docks. A total of approximately 27,000 cubic yards of material will be removed by hydraulic dredging and placed in Dredged Material Placement Areas 18, 21, or 22, depending upon availability. Type of Application: U.S.A.C.E. permit application #22071 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Port of Beaumont; Location: The project is located at 1225 Main Street in Beaumont, along the south bank of the Neches River, just south of Interstate 10 and north of the turning basin, Jefferson County, Texas. Approximate UTM coordinates: Zone 15; Easting: 3328200; Northing: 395500. CCC Project No.: 00-0313-F1; Description of Proposed Action: The applicant proposes to construct and backfill a 305-foot-long sheetpile bulkhead, dredge approximately 1,000 cubic yards (0.1 acre) in front of the bulkhead, and install rubber tire fenders and pile-supported bollards for berthing and mooring barges at the shoreline. The dredging may be accomplished either mechanically or hydraulically to a depth of 12 feet. The dredged material will be discharged in Corps of Engineers Disposal Site 27-B, across the river and northeast of the project site. The backfill behind the bulkhead will involve discharging 250 cubic yards (approximately 0.03 acre) of fill material below the mean high tide line. Type of Application: U.S.A.C.E. permit application #22061 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Lamar Oil and Gas, Inc.; Location: The project is located in State Tract 302 in the Laguna Madre, Kenedy County, Texas. The site is approximately 25 miles north of Port Mansfield. Approximate UTM coordinates: Zone 14; Easting: 650677; Northing: 2981841. CCC Project No.: 00-0314-F1; Description of Proposed Action: The applicant proposes to retain an existing well (Well No. 1) and well protector. The applicant proposes to complete the well as the No. 1-A Salt Water Disposal Injection Well. The applicant also proposes to install, by trenching, a 2 7/8 inch diameter saltwater disposal pipeline from an existing production facility in State Tract 302 to the No. 1-A Well. Type of Application: U.S.A.C.E. permit application #22085 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: The Dow Chemical Company; Location: The project is located on a 7.0-acre tract at the Dow Chemical Company plant, northwest of the intersection of FM 523 and 332 in Freeport, Brazoria County, Texas. Approximate UTM coordinates: Zone 14; Easting: 271900; Northing: 3207900. CCC Project No.: 00-0315-F1; Description of Proposed Action: The applicant proposes to place fill material in 7.0 acres of wetland area. To compensate for wetland impacts, the applicant proposes to deduct 7 credits from a recently completed mitigation project at the Texas Parks and Wildlife Department's Peach Point Wildlife Management Area (PPWMA). The completed project will create 197 acres of new wetlands and enhance 105 acres of existing wetland areas. Type of Application: U.S.A.C.E. permit application #22033 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Gulf Copper & Manufacturing Corporation; Location: The project is located in the Taylor's Bayou Turning Basin, between the Sabine-Neches Canal and Alligator Bayou at 2170 South Gulfview Drive in Port Arthur, Jefferson County. Approximate UTM coordinates: Zone 15; Easting: 406000; Northing: 3301800. CCC Project No.: 00-0316-F1; Description of Proposed Action: The applicant proposes to construct a 1,275-foot-long by 60-foot-wide vessel trolley structure, a 225-foot-long by 200-foot-wide side haul rail support structure, and a 250-foot-long retaining wall at their maintenance facility. In addition, the applicant requests authorization to perform dredging to accommodate the proposed side haul rail support structure. Approximately 30,000 cubic yards of material will be dredged from the channel to a depth of 42 feet and placed in Corps of Engineers Dredged Material Placement Areas 8 and 9. A 50-foot dredging buffer area will be maintained around all new permanent construction. Type of Application: U.S.A.C.E. permit application #22113 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Trans-Global Solutions, Inc.; Location: The project is located at the southeast intersection of the Houston Ship Channel and the Beltway 8 Bridge in Houston, Harris County. Approximate UTM coordinates: Zone 15; Easting: 292600; Northing: 3291000. CCC Project No.: 00-0317-F1; Description of Proposed Action: The applicant proposes to construct a petroleum coke storage and handling facility. The project will involve the construction of a 804-foot-long by 54-foot-wide ship dock with associated support structures. These include 2 approaches, 2 abutments, and a walkway for access to the dock. In addition, the applicant proposes to erect 4 mooring dolphins and a series of 14 breasting dolphins along the dock. Approximately 450,000 cubic yards of material will be hydraulically dredged to a depth of 42 feet from the proposed slip to accommodate the new dock facility. No wetlands or vegetated shallows will be impacted by the proposed activities. Type of Application: U.S.A.C.E. permit application #22130 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-200006266
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: September 6, 2000

♦ ♦ ♦

Comptroller of Public Accounts

Correction of Error

The Comptroller of Public Accounts proposed an amendment to 34 TAC §3.171 which appeared in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7597).

Due to errors by the Texas Register §3.171(a)(9) and (b)(3) were published incorrectly.

In subsection (a)(9) the first sentence is new text and should have been underlined. Subsection (a)(9) should read as follows:

(9) A person who claims a deduction or exclusion authorized by law must keep records that substantiate the claim. [~~(8) Additional records must be kept to substantiate any claimed deductions or exclusions authorized by law.~~] When records regarding the amount and applicability of any deductions or exclusions from the motor fuels tax are insufficient, the comptroller may estimate deductions or exclusions based on any records available or may disallow all deductions and exclusions. No exclusions for loss by fire, accident, or theft will be allowed unless accompanied by fire department, environmental regulatory agency, or police department reports that verify [~~verifying~~] the fire, accident, or theft.

In subsection (b)(3) there should be a space between the words "has issued."

TRD-200006416

♦ ♦ ♦

Correction of Error

The Comptroller of Public Accounts proposed an amendment to 34 TAC §3.173 in the August 11, 2000 issue of the *Texas Register* (25 TexReg 7599).

Due to an error by the Texas Register in subsection (d)(13) the last sentence is new and should have been underlined. Subsection (d)(13) should read as follows:

(13) Refund claims by commercial transportation companies [~~commercial transportation companies' claim for refund~~] on tax-paid purchases. A commercial transportation company may file a claim for refund of state taxes paid on gasoline and diesel fuel that has been used to provide public school transportation services exclusively for a Texas public school district. Records that the company maintains must include original invoices that show that the state tax was assessed [~~Records maintained by the company must include original invoices showing that the state tax was assessed~~].

TRD-200006417

♦ ♦ ♦

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 403, Texas Government Code and Section 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for the purpose of obtaining investment manager services in connection with the administration of a prepaid higher education tuition program. The program is administered by a seven-member Prepaid Higher Education Tuition Board (Board). The Comptroller is the executive director of the Board. The funds to be managed are funds from contracts and investments of the program known as the Texas Tomorrow Fund. The Comptroller and Board request proposals for international growth equity investment management services for the Texas Tomorrow Fund's portfolio. The Comptroller, as Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary investment manager. If approved by the Board, the successful respondent ! will be expected to begin performance of the contract on or about December 1, 2000.

Contact: Parties interested in submitting a proposal should contact David R. Brown, Assistant General Counsel at the Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on September 15, 2000, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after September 15, 2000, 2:00 p.m. CZT. The website address is www.marketplace.state.tx.us.

Questions: All questions concerning the RFP must be in writing. All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Tuesday, September 26, 2000. Prospective proposers are encouraged to fax Questions to (512) 475-0973 to ensure timely receipt. Questions received after this time and date will not be considered. On or before Monday, October 2, 2000, the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice on the issuance of this RFP.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2:00 p.m. CZT, on October 11, 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 set forth in the RFP. The Board will make the final decision.

The Comptroller and the Board reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. The Comptroller and the Board shall pay 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 - September 15, 2000, 2:00 p.m. CZT; Questions Due - September 26, 2000, 2 p.m. CZT; Proposals Due - October 11, 2:00 p.m. CZT; Contract Execution - November 27, 2000 or as soon thereafter as practical; Commencement of Work - December 1, 2000.

TRD-200006248

David R. Brown
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 6, 2000

♦ ♦ ♦

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and §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 Dallas Independent School District (Dallas ISD). The services sought under this RFP will culminate in a final report, which shall contain findings, recommendations, implementation strategies and timelines, commendations, plans, and be a component part of the review of the Dallas ISD. The successful respondent will be expected to begin performance of the contract on or about November 13, 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 will be made available for pick-up at the above-referenced address on Friday, September 15, 2000, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also will make the complete RFP available electronically on the Texas Marketplace after Friday, September 15, 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, October 2, 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 will be posted on Wednesday, October 4, 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 Thursday, October 12, 2000. Proposals received after this time and date will not be considered.

Proposals will not be accepted from firms that do not submit Letters of Intent by the deadline specified above.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay 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 - September 15, 2000, 2 p.m. CZT; Mandatory Letters of Intent and Questions Due - October 2, 2000, 2 p.m. CZT; Responses to Questions - October 4, 2000; Proposals Due - October 12, 2000, 2 p.m. CZT; Contract Execution - November 1, 2000, or as soon thereafter as practical; Commencement of Project Activities - November 13, 2000.

TRD-200006250
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: September 6, 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 09/11/00 - 09/17/00 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 09/11/00 - 09/17/00 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200006246
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 6, 2000

♦ ♦ ♦

Texas Department of Criminal Justice

Notice of Award - Requisition Number: 696-FD-0-B039

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for Asbestos Air Monitoring, Requisition Number: 696-FD-0-B039.

The Contract was awarded to Environmental Technologies, 200 Brantley Lane, Magnolia, Texas 77364, on September 1, 2000, Contract Number: 696-FD-1-1-C0016, for a dollar amount of $69,687.50.

TRD-200006243
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 6, 2000

♦ ♦ ♦

Notice of Award - Requisition Number: 696-FD-0-B040

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for Asbestos Dumpster Rental, Requisition Number: 696-FD-0-B040.

The Contract was awarded to USA Waste Industrial Services, Inc., 100 Genoa Red Bluff Road, Houston, Texas 77034, on September 1, 2000, Contract Number: 696-FD-1-1-C0015, for a dollar amount of $47,000.

TRD-200006241

Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 6, 2000

♦ ♦ ♦

Notice of Award - Requisition Number: 696-FD-0-R0002-4

The Texas Department of Criminal Justice hereby gives notice of a Contract Award for the Texas Youth Commission FY 2000-2001 Building Program, Requisition Number: 696-FD-0-R0002-4.

The Contract was awarded to HLM Design USA, Inc., 2711 N. Haskell, Suite 2200-LB37, Dallas, Texas 75204, on March 16, 2000, Contract Number: 696-TY-0-2-C0287, for a dollar amount of $178,550.22.

TRD-200006242
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: September 6, 2000

♦ ♦ ♦

Texas Education Agency

Notice of Intent to Extend Contract for the Texas Library Connection

Description. The Texas Education Agency (TEA) solicited a contractor through a competitive Request for Proposals (RFP) #701-95-017 for developing, maintaining, and making accessible over the Internet, a United States Machine Readable Catalog (USMARC) database of school library holdings. The RFP appeared in the January 24, 1995, issue of the *Texas Register* (20 TexReg 393). Auto-Graphics, Inc., 3201 Temple Avenue, Pomona, California, (800 776-7939), was awarded the contract in the amount of $550,099.71. A Notice of Intent to Extend Contract for the Texas Library Connection (TLC) has been published in the *Texas Register* each year, most recently in the August 13, 1999, issue (24TexReg 6342). The contract was last extended in the amount of $997,050 with a beginning date of September 1, 1999, and an ending date of August 31, 2000.

The contractor, Auto-Graphics, Inc., successfully completed the first five years of the project, creating the database and merging over 44 million records from 4,200 sites into more than 3.4 million unique records. As additional libraries are accepted into the TLC, the following tasks will need to be performed with the intent of including more than 7,000 school libraries serving 4 million Texas students and 450,000 educators: filter records submitted by campus libraries; build local holdings fields; merge and deduplicate records; match failed filter records against the database; perform MARC field cleanup on unmatched records including addition of proper subfielding, punctuation indicators, etc.; process incoming records through automation heading validation and replacement, standard normalization, and database cleanup for authority control purposes; establish hardware connections with full public online catalog administration, cataloging, downloading of records, and interlibrary loan operation; perform all maintenance processing with annual strip and reload for all campus libraries; provide statewide software license for search module, statewide software license for interlibrary loan module meeting ISO 10160/161 standards, and statewide license for MARC download and holdings maintenance; extraction, merging, and deduplicating of Government Document MARC records with attachment URLS for retrieval purposes; and provide Z39.50 search compatibility.

Under the provisions of RFP #701-95-017, TEA intends to award a continuation contract to the current contractor, Auto-Graphics, Inc., unless a better offer is received in the TEA by 5:00 p.m. (Central Time) Friday, December 1, 2000. Any vendor wishing to submit such a proposal may contact the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701- 1494; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Request the Texas Library Connection Union Catalog Request for Proposal.

Dates of Project. All services and activities related to this contract will be conducted within specified dates. The continuation contractor shall plan for a starting date of no earlier than September 1, 2000, and an ending date of no later than August 31, 2001.

Project Amount. The contractor may receive funding not to exceed $1,200,000 during the contract period. Subsequent project funding will be based on satisfactory progress of objectives and activities, on funding being available, and authorization to continue.

The issuance of this notice does not obligate the TEA to award a contract or pay any costs incurred in preparing a response.

Further Information. For clarifying information, contact Gloria McClanahan, Educational Technology Division, TEA, by telephone at (512) 475-3255 or by e-mail at gmcclana@tmail.tea.state.tx.us.

TRD-200006251
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: September 6, 2000

♦ ♦ ♦

Office of the Governor

Notice of Request for Grant Applications for Juvenile Justice and Delinquency Prevention Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that provide prevention, diversion, intervention and training to prevent juvenile delinquency under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to provide a variety of prevention, diversion, intervention, and training projects that prevent juvenile delinquency and teach young offenders how to change their lives and be accountable for their actions.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 1974, section 221-223, Public Law 93-415, as amended, Public Laws 95-115, 96-509, 98-473, 100-690, and 102-586, codified as amended at 42 U.S.C. 5631-5633. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 28 C.F.R. Section 31.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code Section 3.19 and Section 3.53.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants: (1) state agencies; (2) units of local government; (3) nonprofit corporations; (4) Indian tribes performing law enforcement functions; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for Juvenile Justice and Delinquency Prevention Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide statewide programs that focus on juvenile delinquency prevention and intervention.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2001.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006093
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Local and Regional Juvenile Justice and Delinquency Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that provide prevention, diversion, intervention and training to prevent juvenile delinquency under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to provide a variety of prevention, diversion, intervention, and training projects that prevent juvenile delinquency and teach young offenders how to change their lives and be accountable for their actions.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 1974, §§221-223, Public Law 93-415, as amended, Public Laws 95-115, 96-509, 98-473, 100-690, and 102-586, codified as amended at 42 U.S.C. 5631-5633. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 28 C.F.R.§31.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.53.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants: (1) state agencies; (2) units of local government; (3) nonprofit corporations; (4) Indian tribes performing law enforcement functions; (5) crime control and prevention districts; and (6) faith-based organizations are eligible to apply for grants under this fund. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested applicants should call or write to the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional councils of governments.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on juvenile delinquency prevention and intervention.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional councils of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006105
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Local and Regional Safe and Drug-Free Schools and Communities Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that provide services to children, youths, and families that help prevent drug use and promote safety in schools and communities under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to promote safe and drug-free neighborhoods, fostering individual responsibility, promote respect for the rights of others, and improve school attendance, discipline, and learning.

Available Funding: Federal funding is authorized under the Elementary and Secondary Education Act, Title IV, Part A, Subpart 1, sections 4011-4118, as amended, Public Law 103-382, 20 U.S.C. 7111-7118. All grants awarded from this fund must comply with the requirements contained therein. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 348 C.F.R. Section 76, which are hereby adopted by reference.

Standards: Grantees must comply with the applicable grant management standards adopted under TAC §3.19 and §3.53.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants:

(1) Councils of Governments (COGs);

(2) cities;

(3) counties;

(4) universities;

(5) colleges;

(6) independent school districts;

(7) nonprofit corporations;

(8) crime control and prevention districts;

(9) state agencies;

(10) native American tribes;

(11) faith-based organizations;

(12) regional education service centers;

(13) community supervision and corrections departments; and

(14) juvenile boards.

Faith-based organizations must be tax exempt nonprofit entities as certified by the Internal Revenue Service.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested applicants should call or write to the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional councils of governments.

Preferences: Preference will be given to applicants who provide local and regional programs that target neighborhoods with high rates of violence, drug abuse, gang-related activities, weapons violations, truancy, and school dropouts.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional councils of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006103
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Local and Regional State Criminal Justice Planning (421) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects to provide support of programs that are designed to reduce crime and improve the criminal and juvenile justice systems under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to support a wide range of programs designed to reduce crime and improve the criminal and juvenile justice systems locally.

Available Funding: State funding is authorized for these projects under §772.006 of the Texas Government Code designating CJD as the Fund's administering agency. The Criminal Justice Planning Fund is established by §102.056 and §102.075, Texas Code of Criminal Procedure. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 as well as meet the rules set forth in Texas Administrative Code §3.53 and §3.55.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants: (1) state agencies; (2) units of local government; (3) school districts; (4) nonprofit corporations; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

CJD may approve grants for the renovation or retrofitting of existing facilities that provide additional beds for juvenile detention in compliance with the Texas Family Code.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested applicants should call or write to the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional councils of governments.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on reducing crime and improving the criminal and juvenile justice systems.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional councils of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006109
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 31, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Local and Regional Victims of Crime Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that provide services to victims of crime under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following: (1) responding to the emotional and physical needs of crime victims; (2) assisting victims in stabilizing their lives after a victimization; (3) assisting victims to understand and participate in the criminal justice system; and (4) providing victims with safety and security.

Available Funding: Federal funding is authorized under the Victims of Crime of 1984 (VOCA), as amended, Public Law 98-473, Chapter XIV, 42 U.S.C. 10601, et seq., §1402, §1404; Children's Justice and Assistance Act of 1986, as amended, Public Law 99-401, §102(5)(b)(a)(ii); Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, Public Law 100-690; Crime Control Act of 1990, Public Law 101-647; Federal Courts Administration Act of 1992, Public Law 102-572; Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1994; Violent Crime Control and Law Enforcement Act of 1994, Subtitle C, Public Law 104-132; Anti-Terrorism and Effective Death Penalty Act of 1996. All grants awarded from this fund must comply with the requirements contained therein.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19 and §3.503. All grantees, other than Native American Tribes, must provide matching funds equal to at least 20 percent of total project expenditures. Native American Tribes must provide a five percent match. Grantees must satisfy this requirement through direct funding contributions, in-kind contributions, or a combination of the two.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship. Grant funds may also not be used to pay for indirect costs. Grantees may not use grant funds for nursing-home care (except for short-term emergencies), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims. . Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments. Grantees may not use grant funds to pay salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs.

Grantees may not use grant funds to pay for the following services, activities, and costs: (1) lobbying and administrative advocacy; (2) perpetrator rehabilitation and counseling; (3) needs assessments, surveys, evaluations, and studies; (4) prosecution activities; (5) fundraising activities; (6) property loss; (7) most medical costs; (8) relocation expenses; (9) administrative staff expenses; (10) development of protocols, interagency agreements, and other working agreements; (11) costs of sending individual crime victims to conferences; (12) activities exclusively related to crime prevention; (13) non-emergency legal representation such as for divorces or civil restitution recovery efforts; (14) victim-offender meetings that serve to replace criminal justice proceedings; and (15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

Eligible applicants: (a) State agencies, units of local government, nonprofit corporations, Native American tribes, crime control and prevention districts, and faith-based organizations who provide direct services to victims of crime are eligible to apply for grants under this fund. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service. (b) All applicants must meet one of the following criteria: (1) the applicant has a record of providing effective services to crime victims; or (2) if an applicant does not have a demonstrated record of providing such services, it must show that at least 25 percent of its financial support comes from non-federal sources. (c) All applicants must meet each of the following criteria: (1) applicants must use volunteers, unless CJD determines that a compelling reason exists to grant an exception; (2) applicants must promote community efforts to aid crime victims; (3) applicants must help victims apply for compensation benefits; (4) applicants must maintain and display civil rights information; (5) applicants must provide services to victims of federal crimes on the same basis as victims of state and local crimes; (6) applicants must provide grant-funded services at no charge to victims, and any deviation requires prior written approval by CJD; and (7) applicants must maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested applicants should call or write to the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional councils of governments.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on providing services and assistance to victims of crime and aiding them through the criminal justice process.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional councils of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006110
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 31, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Local and Regional Violence Against Women Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional projects that reduce and prevent violence against women under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized under the Violent Crime Control and Law Enforcement Act of 1994; Omnibus Crime Control and Safe Streets Act of 1968, as amended, §§ 2001-6, 42 U.S.C. 3796gg to gg5.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19. In addition to the rules related to the funding source, applicants and grantees must comply with the federal regulations in 28 C.F.R. §90.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants: (1) state agencies; (2) units of local government; (3) nonprofit corporations; (4) faith-based organizations; (5) Indian tribal governments; and (6) crime control and prevention districts.

Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Grantees must provide matching funds of at least 25 percent of total project expenditures. This requirement may be satisfied through direct funding contributions, in-kind contributions, or a combination of the two. Nonprofit corporations are exempt from this matching requirement.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested applicants should call or write to the regional council of governments for their county for information on application deadlines and submission requirements. Applicants may be required by a regional council to attend an application workshop prior to submitting their applications for funding. The applicant must contact the criminal justice planner at the regional council of governments for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the application kits, which is available from the regional councils of governments.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on assisting in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Closing Date for Receipt of Applications: All application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional councils of governments for relevant deadlines.

Selection Process: Applications are prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the need for the program. Priority listings will be approved by the executive committees of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006108
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 31, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Residential Substance Abuse Treatment Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects to provide residential substance abuse treatment to adults incarcerated or confined in detention and/or correctional facilities.

Purpose: The purpose of the projects is to develop and implement residential substance abuse treatment programs in facilities where offenders are incarcerated for a period of time sufficient to permit effective treatment. The substance abuse project must: (1) ensure that each offender participates in the program for not less than six nor more than 12 months, unless he or she drops out or is terminated; (2) provide treatment in residential facilities that are set apart from the general correctional population or are in a dedicated housing unit for the exclusive use of program participants; (3) focus on the substance abuse problems of the offender; (4) develop the offender's cognitive, behavioral, social, vocational, and other skills to resolve the substance abuse and related problems; and (5) require urinalysis or other reliable methods of drug and alcohol testing.

Available Funding: Federal funding is authorized for these projects under the Omnibus Crime Control and Safe Streets Act of 1968, Section 1001, as amended (42 U.S.C. 3796ff). The federal government has not yet appropriated funding for this program for FY 2001. Grants will not be awarded until after funds have been appropriated. Grantees must provide matching funds of at least 25 percent of total project expenditures. This requirement must be met in cash.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code Section 3.19.

Prohibitions: Grantees may not use grant funds to pay for non-residential treatment provided through the aftercare component of the program. Grant funds may also not be used to pay for indirect costs.

Eligible applicants: (1) state agencies; (2) counties operating residential detention and/or correctional facilities; and (3) community supervision and corrections departments (CSCDs) operating community corrections facilities, as defined in § 509.001, Government Code.

Applicants who receive grants may provide services directly in correctional facilities that they operate or they may contract with qualified service providers who meet all licensing and certification requirements.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for residential substance abuse programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide aftercare services to program participants. Aftercare services should coordinate service provisions between the correctional treatment program

and other human service and rehabilitation programs, such as education and job training, halfway houses, and self-help rehabilitation.

Closing Date for Receipt of Applications: All applications must be submitted directly to the Criminal Justice Division and must be received or postmarked by October 6, 2000.

Contact Person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006090
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Safe and Drug-Free Schools and Communities Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that provide services to children, youths, and families that help prevent drug use and promote safety in schools and communities under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to promote safe and drug-free neighborhoods, fostering individual responsibility, promote respect for the rights of others, and improve school attendance, discipline, and learning.

Available Funding: Federal funding is authorized under the Elementary and Secondary Education Act, Title IV, Part A, Subpart 1, sections 4011-4118, as amended, Public Law 103-382, 20 U.S.C. 7111-7118. All grants awarded from this fund must comply with the requirements contained therein. In addition to the rules related to this funding source, applicants and grantees must comply with the federal regulations at 348 C.F.R. Section 76.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code Section 3.19 and Section 3.53.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants:

(1) COGs;

(2) cities;

(3) counties;

(4) universities;

(5) colleges;

(6) independent school districts;

(7) nonprofit corporations;

(8) crime control and prevention districts;

(9) state agencies;

(10) native American tribes;

(11) faith-based organizations;

(12) regional education service centers;

(13) community supervision and corrections departments; and

(14) juvenile boards.

Faith-based organizations must be tax exempt nonprofit entities as certified by the Internal Revenue Service.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for Safe and Drug-Free Schools and Communities Act Fund programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide statewide programs that target neighborhoods with high rates of violence, drug abuse, gang-related activities, weapons violations, truancy, and school dropouts.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2001.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006102
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for State Criminal Justice Planning (421) Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects to provide support of programs that are designed to reduce crime and improve the criminal and juvenile justice systems under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to support a wide range of programs designed to reduce crime and improve the criminal and juvenile justice systems throughout the state.

Available Funding: State funding is authorized for these projects under Section 772.006 of the Texas Government Code designating CJD as the Fund's administering agency. The Criminal Justice Planning Fund is established by sections 102.056 and 102.075, Texas Code of Criminal Procedure. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code Section 3.19 as well as meet the rules set forth in Texas Administrative Code Section 3.53 and Section 3.55.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants: (1) state agencies; (2) units of local government; (3) school districts; (4) nonprofit corporations; (5) crime control and prevention districts; and (6) faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service.

CJD may approve grants for the renovation or retrofitting of existing facilities that provide additional beds for juvenile detention in compliance with the Texas Family Code.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for State Criminal Justice Planning Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide statewide programs that focus on reducing crime and improving the criminal and juvenile justice systems.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2001.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006092
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Texas Narcotics Control Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local and regional special projects and multi-jurisdictional efforts that target drug-related crime, violent crime, and serious offenders under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to reduce and prevent illegal drug activity, crime, and violence and to improve the functioning of the criminal justice system.

Available Funding: Federal funding is authorized for these projects under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, Title I, codified as amended at 42 U.S.C. §3750.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code §3.19.

Prohibitions: Grantees will not approve grant funds to pay for indirect costs.

Eligible applicants: (1) state agencies; (2) units of local government; (3) crime control and prevention districts; and (4) Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior) are eligible to apply for grants under this fund.

All projects must meet at least one of the following purpose areas: (1) multi-jurisdictional and multi-county task force projects that integrate federal, state and local drug enforcement agencies and prosecutors for the purpose of enhancing interagency coordination, acquiring intelligence information, and facilitating multi-jurisdictional investigations. TNCP task forces must use the Texas Narcotics Information System (TNIS) and provide input of task force drug intelligence information into the System; (2) projects designed to target the domestic sources of controlled and illegal substances, such as precursor chemicals, diverted pharmaceuticals, clandestine laboratories, and cannabis cultivation; (3) projects that will improve the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, schoolyard violator projects, and gang related and low income housing drug control projects; (4) law enforcement and prevention projects that address problems with gangs or youth who are at risk of becoming involved in gangs; (5) financial investigation projects that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems; (6) projects that improve the operational effectiveness of the court process by expanding prosecution, defender, and judicial resources and by implementing court delay-reduction programs; (7) criminal justice information systems, including automated fingerprint identification systems, that assist law enforcement, prosecution, courts and corrections' organizations; (8) Innovative projects that demonstrate new and different approaches to the enforcement, prosecution, and adjudication of drug offenses and other serious crimes; (9) drug control evaluation projects that state and local units of government may use to evaluate projects directed at state drug-control activities; (10) projects to develop and implement antiterrorism training projects and to procure equipment for use by local law enforcement authorities; or (11) improving or developing forensic laboratory capability to analyze DNA samples.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for Texas Narcotics Control Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide local and regional programs that focus on reducing and preventing illegal drug activity, crime, and violence and improving the functioning of the criminal justice system.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by January 15, 2001.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006111
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 31, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Victims of Crime Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that provide services to victims of crime under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following: (1) responding to the emotional and physical needs of crime victims; (2) assisting victims in stabilizing their lives after a victimization; (3) assisting victims to understand and participate in the criminal justice system; and (4) providing victims with safety and security.

Available Funding: Federal funding is authorized under the Victims of Crime of 1984 (VOCA), as amended, Public Law 98-473, Chapter XIV, 42 U.S.C. 10601, et seq., Section 1402, Section 1404; Children's Justice and Assistance Act of 1986, as amended, Public Law 99-401, Section 102 (5)(b)(a)(ii); Anti-Drug Abuse Act of 1988, Title VII, Subtitle D, Public Law 100-690; Crime Control Act of 1990, Public Law 101-647; Federal Courts Administration Act of 1992, Public Law 102-572; Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1994; Violent Crime Control and Law Enforcement Act of 1994, Subtitle C, Public Law 104-132; Anti-Terrorism and Effective Death Penalty Act of 1996. All grants awarded from this fund must comply with the requirements contained therein.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code Section 3.19 and Section 3.503. All grantees, other than Native American Tribes, must provide matching funds equal to at least 20 percent of total project expenditures. Native American Tribes must provide a five percent match. Grantees must satisfy this requirement through direct funding contributions, in-kind contributions, or a combination of the two.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship. Grant funds may also not be used to pay for indirect costs.

Grantees may not use grant funds to pay for the following services, activities, and costs: (1) lobbying and administrative advocacy; (2) perpetrator rehabilitation and counseling; (3) needs assessments, surveys, evaluations, and studies; (4) prosecution activities; (5) fundraising activities; (6) property loss; (7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergencies), home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims; (8) relocation expenses. Grant funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments; (9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantees incur the expenses while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs; (10) development of protocols, interagency agreements, and other working agreements; (11) costs of sending individual crime victims to conferences; (12) activities exclusively related to crime prevention; (13) non-emergency legal representation such as for divorces or civil restitution recovery efforts; (14) victim-offender meetings that serve to replace criminal justice proceedings; and (15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

Eligible applicants: (a) State agencies, units of local government, nonprofit corporations, Native American tribes, crime control and prevention districts, and faith-based organizations who provide direct services to victims of crime are eligible to apply for grants under this fund. Faith-based organizations must be tax-exempt nonprofit entities certified by the Internal Revenue Service. (b) All applicants must meet one of the following criteria: (1) the applicant has a record of providing effective services to crime victims; or (2) if an applicant does not have a demonstrated record of providing such services, it must show that at least 25 percent of its financial support comes from non-federal sources. (c) All applicants must meet each of the following criteria: (1) applicants must use volunteers, unless CJD determines that a compelling reason exists to grant an exception; (2) applicants must promote community efforts to aid crime victims; (3) applicants must help victims apply for compensation benefits; (4) applicants must maintain and display civil rights information; (5) applicants must provide services to victims of federal crimes on the same basis as victims of state and local crimes; (6) applicants must provide grant-funded services at no charge to victims, and any deviation requires prior written approval by CJD; and (7) applicants must maintain the confidentiality of all client-counselor information and research data, as required by state and federal law.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for Victims of Crime Act Programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide statewide programs that focus on providing services and assistance to victims of crime and aiding them through the criminal justice process.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2001.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006088
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Notice of Request for Grant Applications for Violence Against Women Act Fund Programs

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for statewide projects that reduce and prevent violence against women under the fiscal year 2002 grant cycle.

Purpose: The purpose of the projects is to assist in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Available Funding: Federal funding is authorized under the Violent Crime Control and Law Enforcement Act of 1994; Omnibus Crime Control and Safe Streets Act of 1968, as amended, Section 2001-6, 42 U.S.C. 3796gg to gg5.

Standards: Grantees must comply with the applicable grant management standards adopted under Texas Administrative Code Section 3.19. In addition to the rules related to the funding source, applicants and grantees must comply with the federal regulations in 28 C.F.R. Section 90, which are hereby adopted by reference.

Prohibitions: Grantees may not use grant funds or program income for proselytizing or sectarian worship.

Eligible applicants: (1) state agencies; (2) units of local government; (3) nonprofit corporations; (4) faith-based organizations; (5) Indian tribal governments; and (6) crime control and prevention districts.

Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Grantees must provide matching funds of at least 25 percent of total project expenditures. This requirement may be satisfied through direct funding contributions, in-kind contributions, or a combination of the two. Nonprofit corporations are exempt from this matching requirement.

Beginning Date: Grant-funded projects must begin on or after January 1, 2001.

Application Process: Interested parties should request an application kit for Violence Against Women Act Fund programs from the Office of the Governor, Criminal Justice Division, P.O. Box 12428, Austin, TX 78711, telephone (512) 463-1919. Completed applications will be reviewed for eligibility by CJD and rated competitively by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

Preferences: Preference will be given to applicants who provide statewide programs that focus on assisting in developing and strengthening effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in such cases.

Closing Date for Receipt of Applications: All original applications plus an additional copy must be submitted directly to the Criminal Justice Division and must be received or postmarked by February 26, 2001.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at the appropriate regional council of governments.

TRD-200006089
John Orton
Assistant General Counsel
Office of the Governor
Filed: August 30, 2000

♦ ♦ ♦

Texas Department of Human Services

Correction of Error

The Texas Department of Human Services adopted amendments, repeal and new sections to 40 TAC Chapter 54 which appeared August 18, 2000 issue of the *Texas Register* (25 TexReg 8051).

Due to an error by the Texas Register the first paragraph of the preamble was incorrect. It should read as follows:

The Texas Department of Human Services (DHS) adopts the repeal of §54.410 and §54.526 without changes to the proposed text as published in the February 25, 2000, issue of the Texas Register (25 TexReg 1566). Amendments to §§54.101, 54.204, 54.406, 54.521, 54.703, and 54.804, and new §§54.1001, 54.1005, 54.1101, 54.1207, 54.1302, 54.1403, 54.1404, and 54.1501 - 54.1503, are adopted with changes to the proposed text. Amendments to §§54.203, 54.205, 54.306, 54.308, 54.310 - 54.312, 54.402, 54.405, 54.407, 54.409, 54.414, 54.502, 54.504, 54.505, 54.507, 54.519, 54.606, 54.706, 54.707, 54.709, 54.710, 54.713, 54.718, 54.801, 54.806, and 54.808 - 54.811; new subchapters I, J, K, L, M, N, and O; and new §§54.410, 54.526, 54.527, 54.901 - 54.904, 54.1002 - 54.1004, 54.1006 - 54.1008, 54.1102 - 54.1114, 54.1201 - 54.1206, 54.1301, 54.1303, 54.1402, and 54.1405 - 54.1414, are adopted without changes to the proposed text and will not be republished.

TRD-200006418

♦ ♦ ♦

Public Hearing on Proposed Amendment to Suspension of Admissions

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive public comment on the proposed amendment to suspension of admissions in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter, which was published in the July 14, 2000, issue of the *Texas Register* (25 TexReg 6692). The public hearing will be held on September 25, 2000, at 1:00 P.M. in the Public Hearing Room, 125E at the Winters Building at 701 W. 51st Street, Austin, Texas. Written comments regarding the proposed amendment to suspension of admissions may be submitted in lieu of testimony until 11:30 A.M. the day of the hearing. Written comments may be delivered by U.S. mail or express delivery to the attention of Linda Williams, Texas Department of Human Services, P.O. Box 149030, Mail Code W- 519, Austin, Texas 78714-9030. Hand deliveries will be accepted at 701 W. 51st Street, Austin, Texas. Alternatively, written comments may be delivered by facsimile, attention Linda Williams, at (512) 374-9987.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Julie Mayton, TDHS, P.O. Box 149030, Mail Code W-519, Austin, Texas 78714-9030, or call (512) 438-3161 by September 22, 2000, so that appropriate arrangements can be made.

TRD-200006112
Paul Leche
General Counsel
Texas Department of Human Services
Filed: August 31, 2000

♦ ♦ ♦

Public Meeting on a Draft for the Consolidated Waiver Program

The Texas Department of Human Services (TDHS) will hold a public meeting to receive public input on a draft of the 1915(c) waiver for the Consolidated Waiver Program, a pilot project to provide home and community-based services to individuals of all ages who qualify for nursing facility or ICF-MR level of care, in a single 1915(c) Medicaid waiver. Members of the public, participants of 1915(c) Medicaid waivers, providers of 1915(c) waiver services, and other interested parties are encouraged to attend.

The meeting will be held on September 29, 2000, from 1:30 to 3:30 p.m., at the Texas Department of Human Services in Public Hearing Room 125WC, Winters Building, 701 West 51st Street, Austin, Texas. Individuals unable to provide input in person may address written comments to the attention of Cindy Eilertson, Texas Department of Human Services, Community Care W-521, P.O. Box 149030, Austin, Texas 78714-9030 until 1:00 p.m. the day of the meeting.

The waiver may be viewed at the meeting or you may request a copy by contacting Cindy Eilertson at (512) 438-3443 or by electronic mail at cindy.eilertson@dhs.state.tx.us. Individuals are encouraged to view the waiver before preparing comments.

TRD-200006245

Paul Leche
General Counsel
Texas Department of Human Services
Filed: September 6, 2000

♦ ♦ ♦

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of COMPDENT INSURANCE COMPANY to COMPBENEFITS INSURANCE COMPANY, a domestic life company. The home office is in Houston, Texas.

Application to change the name of MOBILE USA INSURANCE COMPANY, INC. to MOBILE USA INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Pinellas Park, Florida.

Application to change the name of WISCONSIN NATIONAL LIFE INSURANCE COMPANY to HUMANADENTAL INSURANCE COMPANY, a foreign life company. The home office is in Green Bay, Wisconsin.

Application for admission to the State of Texas by WILLIAM PENN LIFE INSURANCE COMPANY OF NEW YORK, a foreign life company. The home office is in Garden City, New York.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200006265
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 6, 2000

♦ ♦ ♦

Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2459 on October 19, 2000 at 10:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendments to the Texas Addendum to the Fire Suppression Rating Schedule (Texas Addendum) which would establish credit points for compressed air foam systems. Staff's petition (Ref. No. P-0900-22-I), was filed on September 5, 2000.

Staff proposes adoption of amendments to the Texas Addendum, which would establish credit points for compressed air foam systems. The proposed amendments: (1) implement Senate Bill 1610, 76th Legislature, which provides that the use of compressed air foam technology in fire fighting equipment shall constitute a reduction in hazard by policyholders; (2) revise the Texas Addendum to add an additional 1.5 credit points for compressed air foam systems, thus raising the total possible additional credit points from 5.0 to 6.5; and (3) update the Texas Addendum in its references to the State Fire Marshal's office and through editorial and clarifying changes and through requiring monthly-only reporting under the Texas Fire Incident Reporting System.

Additionally, in the implementation of the credits, there will be a procedural change in the use of the FSRS that interprets the existing foam credit points in table 512.A of the FSRS to apply also to Class A foam.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Texas Addendum, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. P-0900-22-I).

To be considered, all comments on the proposed changes must be submitted in writing no later than 5 p.m. on October 16, 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 comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 108-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200006258
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 6, 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 admission to Texas of IOA RE, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200006259
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: September 6, 2000

♦ ♦ ♦

Lower Rio Grande Valley Workforce Development Board

Public Notice - Request for Proposals

Management and Operation of Workforce Development Programs

The Lower Rio Grande Valley Workforce Development Board dba "WorkFORCE Solutions" is requesting proposals for the management and operation of its Workforce Centers and for the administration of the following programs: WIA Title I, TANF/Choices, Food Stamp E&T, and Welfare to Work, and other special programs. The successful entity will be responsible for providing integrated workforce development services in coordination with workforce network partners. WorkFORCE Solutions serves Hidalgo and Willacy Counties. The contract will include the operation of 12 Workforce Centers throughout the region. The period of performance for these services will be from January 1, 2001, to August 31, 2002.

ISSUE DATE: September 14, 2000

Interested Parties May Request a RFP from:

Stella Garcia, Vice-President of Program Operations

Cassandra Moreno, Welfare Programs Manager

WorkFORCE Solutions

3406 W. Alberta, Edinburg, Texas 78539.

Phone: (956) 928-5000.

A MANDATORY BIDDERS' CONFERENCE will be held on September 21, 2000, at 9:00 a.m. at WorkFORCE Solutions Administrative Offices 3406 W. Alberta, Edinburg, Texas. All interested parties MUST attend this conference to be considered. One copy of the Board's Integrated Plan and Adopted Workforce Center Guidelines will be made available to each organization at the Bidders' Conference.

RESPONSE DEADLINE: November 15, 2000 by 5:00 p.m.

WORKFORCE SOLUTIONS DOES NOT DISCRIMINATE ON THE BASIS OF RACE, RELIGION, NATIONAL ORIGIN, AND POLITICAL AFFILIATION OR BELIEF.

WORKFORCE SOLUTIONS IS AN EQUAL OPPORTUNITY EMPLOYER.

TRD-200006235

Carlos Herrera

President/CEO

Lower Rio Grande Valley Workforce Development Board

Filed: September 5, 2000

♦ ♦ ♦

Texas Department of Mental Health and Mental Retardation

Notice of Availability of Draft Request for Applications for Review and Comment

Pursuant to Texas Government Code §533.011, the NorthSTAR Managed Behavioral Healthcare draft Request for Applications (RFA) and appendices, including the proposed contract, are available for public review and comment. This draft RFA is issued by the Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Commission on Alcohol and Drug Abuse (TCADA).

Interested individuals may obtain a copy of the draft RFA by contacting Dave Wanser, Ph.D., NorthSTAR Director, at 909 West 45th Street, Austin, Texas, 78751, or (512) 206-4533 or by viewing online at the following web site: www.tcada.state.tx.us/NorthSTAR

Comments must be submitted in the format and by the due date specified in the draft RFA.

TRD-200006263

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: September 6, 2000

♦ ♦ ♦

Notice of Medicaid State Plan Amendment for Case Management Services

The Texas Department of Mental Health and Mental Retardation (TDMHMR) plans to submit a Medicaid state plan amendment with an effective date of October 1, 2000, to allow for the provision of reintegration planning within 180 days of discharge.

Copies of the state plan amendment (Transmittal No. 00-13, Amendment No. 578) will be available for review after October 30, 2000, by writing the Medicaid Office, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711.

TRD-200006264

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: September 6, 2000

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted amendments to 30 TAC Chapter 307 which appeared in the August 11, 2000 issue of the *Texas Register* (25 TexReg 7722).

Due to an error by the Commission in Table 1 (25 TexReg 7795) 12th row, fourth column, there was a clerical mistake in transmitting the final adopted version of §307.6(c)(1). An exponent for the Freshwater Chronic Criteria for Nickel was inadvertently submitted to the Texas Register as the adopted rule without the appropriate decimal place, it should read: "(0.8460 (In(hardness)) + 1.1645)."

The commission will interpret and apply this rule as if the published version contains the appropriate decimal place in the exponent. The commission will correct this error through the rule amendment process.

TRD-200006419

♦ ♦ ♦

Enforcement Orders

An agreed order was entered regarding DIAMOND SHAMROCK REFINING & MARKETING COMPANY, Docket No. 1998-0225-IHW-E; SOAH Docket No. 1998-0225-IHW-E; SWR No. 81094 on August 24, 2000 assessing $60,120 in administrative penalties with $12,024 deferred.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DANIEL SALINAS, SR. AND ASTRO PLATING, INC., Docket No. 1998-1071-IHW-E; SOAH Docket No. 582-99-2091; SWR No. 37656 on August 24, 2000 assessing $167,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KACY CHEMICAL, INC., Docket No. 1999-0901-IHW-E; SOAH Docket No. 582-00-0640; SWR No. 85917 on August 24, 2000 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTH-TEX CONCRETE, INC., Docket No. 1999-0728-AIR-E; SOAH Docket No. 582-00-1464; Account No. 90-8371-F on August 24, 2000 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Sumner, Staff Attorney at (512) 239-0497, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VIRGINIA POWELL DBA CEDAR BLUFF CAMP, Docket No. 2000-0146-PWS-E; PWS No. 0460142 on August 24, 2000 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Stewart, Enforcement Coordinator at (512) 239-6684, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOIS CLARK DBA COUNTRY VILLAGE, Docket No. 2000- 0003-PWS-E; PWS No. 0790236 on August 24, 2000 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DOUBLE DIAMOND UTILITIES COMPANY, Docket No. 2000- 0100-PWS-E; PWS ID No. 1090073 on August 24, 2000 assessing $813 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kyle Headley, Enforcement Coordinator at (254) 772-9240, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVID FENOGLIO DBA PERRIN WATER SYSTEMS DBA SUNSET WATER SYSTEM, Docket No. 2000-0031-PWS-E; PWS No. 1690007 on August 24, 2000 assessing $1,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jayme Brown, Enforcement Coordinator at (512) 239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BILL BALLARD DBA BALLARD'S SEPTIC TANK SERVICE, Docket No. 1999-1052-SLG-E; Sludge Transporter Registration No. 22493 on August 24, 2000 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DALLAS-FORT WORTH INTERNATIONAL AIRPORT BOARD, Docket No. 1999-1171-MLM-E; SWR No. 72593 on August 24, 2000 assessing $31,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RICHARD VILLANUEVA DBA BRADY'S PAINT AND BODY, Docket No. 2000-0075-AIR-E; Air Account No. BG-0674-N on August 24, 2000 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210) 403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BROWNWOOD ROSS COMPANY DBA JOHNSON-ROSS CORPORATION., Docket No. 2000-0160-AIR-E; Air Account No. BQ-0013-E on August 24, 2000 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara Dudash, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON CHEMICAL COMPANY, Docket No. 1999-1551- AIR-E; Air Account No. HG-0310-V on August 24, 2000 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONTIGROUP COMPANIES, INC. DBA CONTINENTAL GRAIN COMPANY, Docket No. 1999-1472-AIR-E; Air Account No. JE-0026-Won August 24, 2000 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 899-8704, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CROCKETT GAS PROCESSING COMPANY, Docket No. 2000- 0250-AIR-E; Air Account No. CZ-0011-M on August 24, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915) 655-9479, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GNB TECHNOLOGIES, INCORPORATED, Docket No. 2000- 0162-AIR-E; Air Account No. CP-0029-G on August 24, 2000 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 469-7650, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GROENDYKE TRANSPORT, INC., Docket No. 1999-1588-AIR- E; Air Account No. EE-0331-R on August 24, 2000 assessing $375 in administrative penalties with $75 deferred.

Information concerning any aspect of this order may be obtained by contacting Corey Burke, Enforcement Coordinator at (512) 239-5259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE HERTZ CORPORATION, Docket No. 1999-1566-AIR-E; Air Account No. EE-1145-J on August 24, 2000 assessing $1,250 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting Corey Burke, Enforcement Coordinator at (512) 239-5259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. CLEO THOMPSON COMPANY, Docket No. 2000-0262-AIR- E; Air Account No. CZ-0035-V on August 24, 2000 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915) 655-9478, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELECTRA RESOURCES, INC., Docket No. 2000-0257-AIR-E; Air Account No. WI-0016-D on August 24, 2000 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kara Dudash, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED STATES ARMY, CAMP BULLIS TRAINING SITE, Docket No. 1999-0779-IHW-E; TNRCC ID No. HW-50335 on August 24, 2000 assessing $7,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Sumner, Staff Attorney at (512) 239-0497, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COPELAND CORPORATION, Docket No. 1999-1499-IHW-E; SWR No. None on August 24, 2000 assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Fara O'Neal, Enforcement Coordinator at (956) 425-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WILLIS REED, Docket No. 1998-0915-PST-E; SOAH Docket No. 582-99-0690; PST ID No. 3548 on August 24, 2000 assessing $4,017.90 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding BELL POINT REFINING LLC, Docket No. 1998-1507-IHW-E; SOAH Docket No. 582-99-1126 on August 23, 2000 assessing $40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G.B.'S SELF SERVE, INC., Docket No. 1999-0058-PST-E; Facility ID No. 27370 on August 24, 2000 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding CCM DEVELOPMENT, INC., Docket No. 1998-1409-PST-E; SOAH Docket No. 582-99-3326 on August 23, 2000 assessing $7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney at (512) 239-6224, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711- 3087.

An agreed order was entered regarding ANGELINA & NECHES RIVER AUTHORITY, Docket No. 1998-1384-MWD-E; SOAH Docket No. 582-00-0028; Expired WQ Permit No. 13801-001; PWS ID No. 1210020 on August 24, 2000 assessing $19,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. DUPONT DE NEMOURS & COMPANY, Docket No. 1999- 0812-IWD-E; WQ Permit No. 00474; TPDES Permit No. TX0007293 on August 24, 2000 assessing $22,500 in administrative penalties with $4,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OXID L.P., Docket No. 1999-1493-IWD-E; WQ Permit No. 02102 on August 24, 2000 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding AIRPORT SAND & GRAVEL, INC. Docket No. 1999-1460-MSW- E; Enforcement ID No. 14327 on August 24, 2000 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711- 3087.

An agreed order was entered regarding HIDALGO COUNTY MUNICIPAL UTILITY DISTRICT NO. 1, Docket No. 1999-0790-MWD-E; WQ Permit No. 12854-001on August 24, 2000 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Fara O'Neal, Enforcement Coordinator at (956) 430-6041, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF LITTLE ELM, Docket No. 2000-0023-MWD-E; WQ Permit No. 11600-001; NPDES Permit No.TX0053783 on August 24, 2000 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EVADALE INDEPENDENT SCHOOL DISTRICT, Docket No. 2000-0281-MWD-E; TPDES Permit No. 13933-001on August 24, 2000 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHET ANDREWS DBA OAK HILL MOBILE HOME PARK, Docket No. 2000-0292-MWD-E; No TNRCC Permit on August 24, 2000 assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512) 239-0572, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Docket No. 1999-1437-MWD-E; WQ Permit No. 10659-001on August 24, 2000 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DEREK T. WILLIAMS, Docket No. 2000-0028-OSI-E; Installer ID No. 4948 on August 24, 2000 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OSCAR D. GRAHAM DBA SOUTH TEXAS WASTEWATER TREATMENT, Docket No. 1999-1441-OSI-E; Installer ID No. OS283 on August 24, 2000 assessing $2,650 in administrative penalties with $530 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott McDonald, Staff Attorney at (512) 239-6005, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding KUYKENDALL OIL CO. INC., Docket No. 1999-1198-PST-E; PST Facility ID No. 9828 on August 24, 2000 assessing $18,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding ADDISON ENTERPRISES, INC., Docket No. 1999-1125-PST-E; PST Facility ID Nos. 0050396 and 0032940 on August 24, 2000 assessing $12,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AZTECH RENTALS OF SAN ANTONIO, Docket No. 2000- 0126-PST-E; PST Facility ID No. 34504 on August 24, 2000 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210) 403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OMAR ELHAMAD DBA DALLAS FOOD STORE, Docket No. 1999-0454-PST-E; PST Facility ID No. 0018556 on August 24, 2000 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NADIR ALI DBA GET N GO #1 AND GET N GO #4, Docket No. 1999-1575-PST-E; PST Facility ID Nos. 35540 and 28367 on August 24, 2000 assessing $19,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at (361) 825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAHIMI, INC. DBA TICK TOCK, Docket No. 1999-1359-PST- E; PST Facility ID No. 0027205 on August 24, 2000 assessing $12,250 in administrative penalties with $11,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Lewison, Enforcement Coordinator at (713) 767-3607, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LIAQAT HUSSIAN DBA HUFFMAN GAS & GROCERY, Docket No. 2000-0068-PST-E; PST Facility ID No. 48837 on August 24, 2000 assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Bill Davis, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding SYLL HOLD DBA WALNUT BEND WATER SUPPLY, Docket No. 1998-1326-PWS-E; SOAH Docket No. 582-00-0029 on August 17, 2000 assessing $5,812 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512) 239-5528, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding DIAMOND STUDS, INC. DBA D'ORO COSMETICS, Docket No. 1998-0627-IHW-E; SOAH Docket No. 582-99-1340 on August 16, 2000 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200006252

LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 6, 2000

♦ ♦ ♦

Notice of Public Hearing (E.V. Spence Reservoir)

Notice is hereby given that pursuant to the requirements of the Federal Clean Water Act, Texas Water Code, Chapter 26, and Part 25 of Title 40 of the Code of Federal Regulations, the Texas Natural Resource Conservation Commission (TNRCC or commission) has made available for public comment draft Total Maximum Daily Loads (TMDL) concerning sulfate and total dissolved solids in E. V. Spence Reservoir near Robert Lee, Texas, in Coke County. TNRCC will also conduct a non-adjudicatory public hearing to complete the public comment period. This announcement constitutes notice that a change to the State Water Quality Management Plan will occur upon approval of these TMDLs by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the 1972 Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water to restore and maintain designated uses.

The TNRCC will conduct a non-adjudicatory public hearing on these TMDLs concerning sulfate and total dissolved solids in E. V. Spence Reservoir. The purpose of the public hearing is to provide the public an opportunity to comment on these proposed TMDLs. The commission requests comment on each of the six major components of the TMDL: Problem Definition, Endpoint Identification, Source Analysis, Linkage Between Sources and Receiving Waters, Margin of Safety, and Loading Allocations. The commission particularly requests comment on the aspects of probability exceedance associated with the load allocation. After the public comment period, TNRCC staff may revise the TMDLs, if appropriate. The final TMDLs will then be brought to the commission for approval. These TMDLs will then be submitted to EPA Region 6 for approval as an update to the State of Texas Water Quality Management Plan.

A non-adjudicatory public hearing will be held in Midland, Texas, on October 12, 2000, at 7:00 p.m., at the University of Texas at the Permian Basin, Center for Energy and Economic Diversification, located at 1400 North FM 1788, Room 1324. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the matter 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments should be submitted to Angela Slupe, TNRCC 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 must be received by 5:00 p.m., October 16, 2000, and should reference Docket Number 2000-0958-TML. For further information regarding these proposed TMDLs, please contact Bill Saunders, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4535. Copies of the document summarizing these proposed TMDLs can be obtained via the commission's Web Site at *www.tnrcc.state.tx.us/water/quality/tmdl*, or by calling Angela Slupe at (512) 239-4712.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200006239
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 5, 2000

♦ ♦ ♦

Notice of Public Hearing (Fort Worth Legacy TMDL)

Notice is hereby given that pursuant to the requirements of the Federal Clean Water Act, Texas Water Code, Chapter 26, and Part 25 of Title 40 of the Code of Federal Regulations, the Texas Natural Resource Conservation Commission (TNRCC or commission) has made available for public comment draft Total Maximum Daily Loads (TMDL) concerning legacy pollutants in sections of the Trinity River and certain municipal lakes in Tarrant County. TNRCC will also conduct a non-adjudicatory public hearing to complete the public comment period. This announcement constitutes notice that a change to the State Water Quality Management Plan will occur upon approval of these TMDLs by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies under the 1972 Federal Clean Water Act, §303(d). A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water to restore and maintain human uses or aquatic life.

The TNRCC will conduct a non-adjudicatory public hearing on these TMDLs concerning chlordane in the Trinity River (Segments 0829 and 0806); DDE, PCB, Chlordane, and Dieldrin in Lake Como and Fosdic Lake; and PCB in Echo Lake. The purpose of the public hearing is to provide the public an opportunity to comment on these proposed TMDLs. The commission requests comment on each of the six major components of the TMDL: Problem Definition, Endpoint Identification, Source Analysis, Linkage Between Sources and Receiving Waters, Margin of Safety, and Loading Allocations. After the public comment period, TNRCC staff may revise the TMDLs, if appropriate. The final TMDLs will then be brought to the commission for approval. These TMDLs will then be submitted to EPA Region 6 for approval as an update to the State of Texas Water Quality Management Plan.

A non-adjudicatory public hearing will be held in Fort Worth, on October 9, 2000, at 7:00 p.m., at the City Hall Building, located on 1000 Throckmorton Street (2nd Floor, City Council Chambers). Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the matter 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments should be submitted to Lisa Martin, TNRCC Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments must be received by 5:00 p.m., October 16, 2000, and should reference 2000-0910-TML. For further information regarding these proposed TMDLs, please contact Roger Miranda, Office of Environmental Policy, Analysis, and Assessment, (512) 239-6278. Copies of the document summarizing these proposed TMDLs can be obtained via the commission's Web Site at *www.tnrcc.state.tx.us/water/quality/tmdl*, or by calling Lisa Martin at (512) 239-1966.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200006240

Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: September 5, 2000

♦ ♦ ♦

Notice of Water Rights Application

The CITY OF IRVING, applicant, 825 W. Irving Boulevard, Irving, Texas, 75060, seeks an amendment to Certificate of Adjudication No. 03-4799, as amended, pursuant to §11.122 and §11.042 of the Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, et seq. Certificate of Adjudication No. 03-4799 authorizes the City of Irving to impound in the U. S. Army Corps of Engineer's Lake Chapman (formerly referred to as Cooper Reservoir) on the South Sulphur River, tributary of the Sulphur River, Sulphur River Basin, Delta and Hopkins Counties, between elevation 415.5 msl and 440.0 msl, not to exceed 100,625 acre-feet of water and below elevation 415.5 msl, an amount not to exceed 13,640 acre-feet of water for a total impoundment of 114,265 acre-feet of water. The certificate also authorizes the certificate owner, with a time priority of November 19, 1965, to divert and use not to exceed 44,820 acre-feet of water per annum for municipal purposes and 9,180 acre-feet of water per annum for industrial purposes within the service area of the City of Irving in the Trinity River Basin. Certificate No. 03-4799 contains a special condition (Special Condition 5 A) requiring water diverted but not consumed to be returned to the Trinity River Basin at the owner's disposal plant and the disposal plants of the industrial users. Certificate No. 03-4799 also contains a special condition (Special Condition 5B) requiring that construction of all works authorized under the certificate commence and be completed within time limits established by the Commission and a special condition (Special Condition 5C) that allowed the State of Texas to retain the right to regulate, by permit from the Commission, introductions into and withdrawals from Cooper Reservoir of such volumes of water downstream or other sources as may be developed under the Texas Water Plan. The certificate also required the City of Irving, prior to construction or installation of diversion facilities, to provide information concerning the diversion point, method and maximum rate of diversion to the Commission. Certificate of Adjudication No. 03-4799A, issued April 12, 2000, established a diversion point at the City of Irving's diversion facility on Lake Chapman, a maximum diversion of 220 mgd and a maximum diversion rate of 340.36 cfs. The certificate, as amended, also authorized the City of Irving to use the 9180 acre-feet of water per annum previously authorized for industrial use for industrial and municipal use. The applicant seeks to amend Certificate of Adjudication No. 03-4799, as amended, by deleting Special Conditions 5B and 5C. Special Condition 5B is no longer relevant because the construction of all works authorized by the certificate has been completed. Special Condition 5C was included in anticipation of the possible participation in the reservoir project by the Texas Water Development Board (TWDB). The TWDB subsequently decided not to participate in the Lake Chapman project, therefore, Special Condition C is no longer relevant. The applicant also seeks to amend the certificate by authorizing the City of Irving to use the bed and banks of Doe Branch, tributary of the Elm Fork Trinity River and the Elm Fork Trinity River to convey the City of Irving's Lake Chapman water to the City of Dallas's Elm Fork Water Treatment Plant for subsequent diversion. The City of Irving will transport their Lake Chapman water via a water transmission pipeline to a delivery point on Doe Branch upstream of Lake Lewisville located N 61øE, 1,075 feet from the southwest corner of the Phillip Barns Survey, Abstract No. 179, Denton County, also being 33.219ø N Latitude and 96.889ø W Latitude. This water will then flow down Doe Branch and into Lewisville Lake. Pursuant to a contract dated January 8, 1998 between the City of Irving and the City of Dallas, Irving's Lake Chapman water will be stored in Lewisville Lake, released from the lake by the City of Dallas, conveyed down the bed and banks of the Elm Fork Trinity River and diverted at the City of Dallas' Elm Fork Treatment plant at a diversion point authorized by the City of Dallas' Certificate of Adjudication No. 08-2456, as amended, and subsequently delivered to Irving. The estimated amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses from the point of discharge into Doe Branch to the point of diversion from the Elm Fork of the Trinity River downstream of Lewisville Lake is specified in the contract dated January 8, 1998 between the City of Irving and the City of Dallas. The rate of discharge of Irving's Lake Chapman water into Doe Branch, the flow through Doe Branch and Lewisville Lake will not exceed a maximum rate of 340.36 cfs and the annual amount of water discharged into Doe Branch will not exceed the 54,000 acre-feet of water per annum authorized by Irving's Certificate No. 03-4799, as amended. The quality of the Lake Chapman water discharged into Doe Branch and conveyed through Lewisville Lake to Dallas' Elm Fork Treatment Plant will meet or exceed the Commission's Water Quality stream standards for Segment No. 0823. The interbasin transfer of Irving's Lake Chapman water originating in the Sulphur River Basin and discharged into the Trinity River Basin is an existing authorized interbasin transfer. As such, this application for a bed and banks authorization to convey and subsequently divert Irving's Lake Chapman water does not require TNRCC to find additional water available for appropriation. This notice is being sent to you as a water right holder of record in the Trinity River Basin downstream of the discharge point into Doe Branch of Irving's Lake Chapman water.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 25, 2000. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by September 25, 2000. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by September 25, 2000. 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;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at (800) 687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200006253

LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: September 6, 2000

♦ ♦ ♦

Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on September 1, 2000. Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Mana Inc, Respondent; SOAH Docket No. 582-00-0857 ;TNRCC Docket No.1999-0647-PST-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087, Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200006254
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: September 6, 2000

♦ ♦ ♦

Texas Department of Protective and Regulatory Services

Request for Proposal-Facility-Based Youth Enrichment Activities

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, announces a Request for Proposals (RFP) for contracts to provide Facility-Based Youth Enrichment Activities at two sites in Texas. The RFP will be released on or about September 18, 2000.

Brief Description of Services: PRS is soliciting two contractors to provide community- based educational, recreational, and leadership programs to youth ages 6 to 17, with a focus on youth who are in at-risk situations. All programs must offer services in the following five core areas: character and leadership development; education and career development; health and life skills; the arts; and sports, fitness, and recreation. Services must be facility-based and must be provided on a daily basis (at least six days weekly) during the entire year, beginning with contract initiation on January 1, 2001.

Services required include the following: assessment of community needs for youth enrichment programs; outreach to youth in the community; implementation of a structured curriculum/program which covers the five core elements; maintenance of a "dedicated facility" for youth activities; collaboration/networking with the community; provision of qualified staff; record keeping (youth registration and monthly reporting); and annual evaluation.

Eligible Applicants: Eligible offerors include community-based, nonprofit corporations and organizations.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. PRS reserves the right to fund no proposals, or to fund successful proposals at a lesser dollar amount than the amounts indicated below. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due November 1, 2000, at 2:00 p.m. The effective dates of contracts awarded under this RFP will be January 1, 2001, through August 31, 2001, with minimum/maximum amounts of $50,000 to $90,000 being available to fund the two contracts during this eight-month period. If contracts are renewed for the following fiscal year, minimum/maximum amounts up to $75,000 to $135,000 may be available. No offers will be accepted if requested PRS funding is less than $50,000 or more than $90,000 for the eight-month period. PRS lacks sufficient funding to fund two contracts at the maximum amount.

Contact Person: Potential offerors may obtain a copy of the RFP on or about September 18, 2000. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Judy Mayfield, Mail Code E-541; c/o Jacqueline Gomez; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: (512) 438-2031.

TRD-200006238
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: September 5, 2000

♦ ♦ ♦

Public Utility Commission Of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 4, 2000, Genesis Communications International, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60365. Applicant intends to reflect the merger of itself with American TeleSource International, Inc. Merger Corp, a direct and wholly-owned subsidiary of American TeleSource International, Inc., with the Applicant surviving the merger as a wholly-owned subsidiary of American TeleSource International, Inc.

The Application: Application of Genesis Communications International, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22881.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than September 20, 2000. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22881.

TRD-200006213
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2000

♦ ♦ ♦

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 30, 2000, Diamond Telco - Your Home Telephone Store filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60094. Applicant intends to reflect a change in ownership/control to Donald W. Booth, President/Sole Owner.

The Application: Application of Diamond Telco - Your Home Telephone Store for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22975.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than September 20, 2000. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22975.

TRD-200006215
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2000

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On August 14, 2000, Southwestern Bell Telephone Company and Northpoint Communications, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 22910. 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 22910. 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 September 22, 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 Customer Protection Division 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 22910.

TRD-200006211
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2000

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On August 15, 2000, Southwestern Bell Telephone Company and TCG Dallas/Teleport Communications Houston, Inc., collectively referred to as applicants, filed a joint application for approval of an 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 22917. 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 22917. 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 September 22, 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 Customer Protection Division 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 22917.

TRD-200006212
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2000

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On August 30, 2000, Southwestern Bell Telephone Company and Texas UM, Inc. (Urban Media) 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 22976. 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 22976. 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 September 26, 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 Customer Protection Division 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 22976.

TRD-200006257
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 6, 2000

♦ ♦ ♦

Public Notice of Amendment to Interconnection Agreement

On August 31, 2000, Southwestern Bell Telephone Company and ICG ChoiceCom, LP, 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 22986. 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 22986. 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 September 26, 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 Customer Protection Division 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 22986.

TRD-200006262
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 6, 2000

♦ ♦ ♦

Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission), of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for Asynchronous Transfer Mode (ATM) Service Pursuant to P.U.C. Substantive Rule §26.215 on or after September 4, 2000, Docket Number 22951.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 22951. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200006214
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 1, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On August 28, 2000, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint, and GTE Communications Corporation, 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 22965. 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 22965. 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 September 25, 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 Customer Protection Division 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 22965.

TRD-200006094
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 30, 2000

♦ ♦ ♦

Public Notice of Interconnection Agreement

On August 30, 2000, Southwestern Bell Telephone Company and Accutel of Texas, Inc. doing business as 1-800-4-A-Phone, 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 22977. 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 22977. 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 September 26, 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 Customer Protection Division 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 22977.

TRD-200006256
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: September 6, 2000

♦ ♦ ♦

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1, P.O. Box 170, Natalia, Texas, 78059, received July 31, 2000, application for financial assistance in the amount of $3,765,000 from the Texas Water Development Funds.

Harris County Municipal Utility District No. 50, P.O. Box 3529, Crosby, Texas, 77532, received June 29, 2000, application for financial assistance in the amount of $725,000 from the Texas Water Development Funds.

Holiday Beach Water Supply Corporation, P.O. Box 19, Katy, Texas, 77492, received August 1, 2000, application for financial assistance in the amount of $470,000 from the Texas Water Development Funds.

Trinity River Authority of Texas - Northern Region (Denton Creek Regional Wastewater Treatment System), P.O. Box 240, Arlington, Texas, 76004, received June 20, 2000, application for financial assistance in the amount of $8,480,000 from the Clean Water State Revolving Fund.

Bolivar Peninsula Water Supply Corporation, 1840 Highway 87, Crystal Beach, Texas, 77650, received January 27, 2000, application for financial assistance in the amount of $16,645,000 from the Drinking Water State Revolving Fund and the Texas Water Development Funds.

City of San Benito, 485 North Sam Houston Street, San Benito, Texas, 78586, received May 16, 2000, application for loan/grant assistance in the total amount of $109,000 from the Colonia Plumbing Loan Program.

TRD-200006249
Gail L. Allan
Director of Project-Related Legal Services
Texas Water Development Board
Filed: September 6, 2000

♦ ♦ ♦

Notice of Request for Public Comment

The Texas Water Development Board is requesting public comments on its current Regional Water Planning Process authorized by the 75th Legislature, Senate Bill 1 (SB1).

Background: The Texas Water Development Board (board) is responsible for designating the regional water planning area boundaries, and adopting rules for the implementation of the SB1 regional planning process (31 Texas Administrative Code Chapters 355, 357, and 358). The board also has provided regional water planning requirements through its contracts for funding regional water planning. The board is required to review the designation of regional water planning area boundaries at least every five years, or when necessary. The rules, regional planning area boundaries, and contract provisions can be found at http://www.twdb.state.tx.us/assistance/rwpg/main-docs/rwpg-main.htm.

Purpose and timelines: The board welcomes comments on the current designation of regional water planning boundaries, its rules, and its contractual requirements. These comments will allow the board to evaluate needed changes that can be adopted for the next round of regional water planning. Comments will be accepted until October 13, 2000 and will be used to evaluate any changes needed for the next five-year planning cycle. Any proposed revisions to the rules, (31 Texas Administrative Code Chapters 355, 357, and 358), and to regional planning boundaries will be published at a later date. Please send all comments to the attention of:

Phyllis Thomas

P.O. Box 13231

Austin, TX 78711-3231

Fax (512) 463-9893

Email phyllis.thomas@TWDB.state.tx.us

TRD-200006255
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: September 6, 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 additonal entry offices
_____
_____