TEXAS REGISTER

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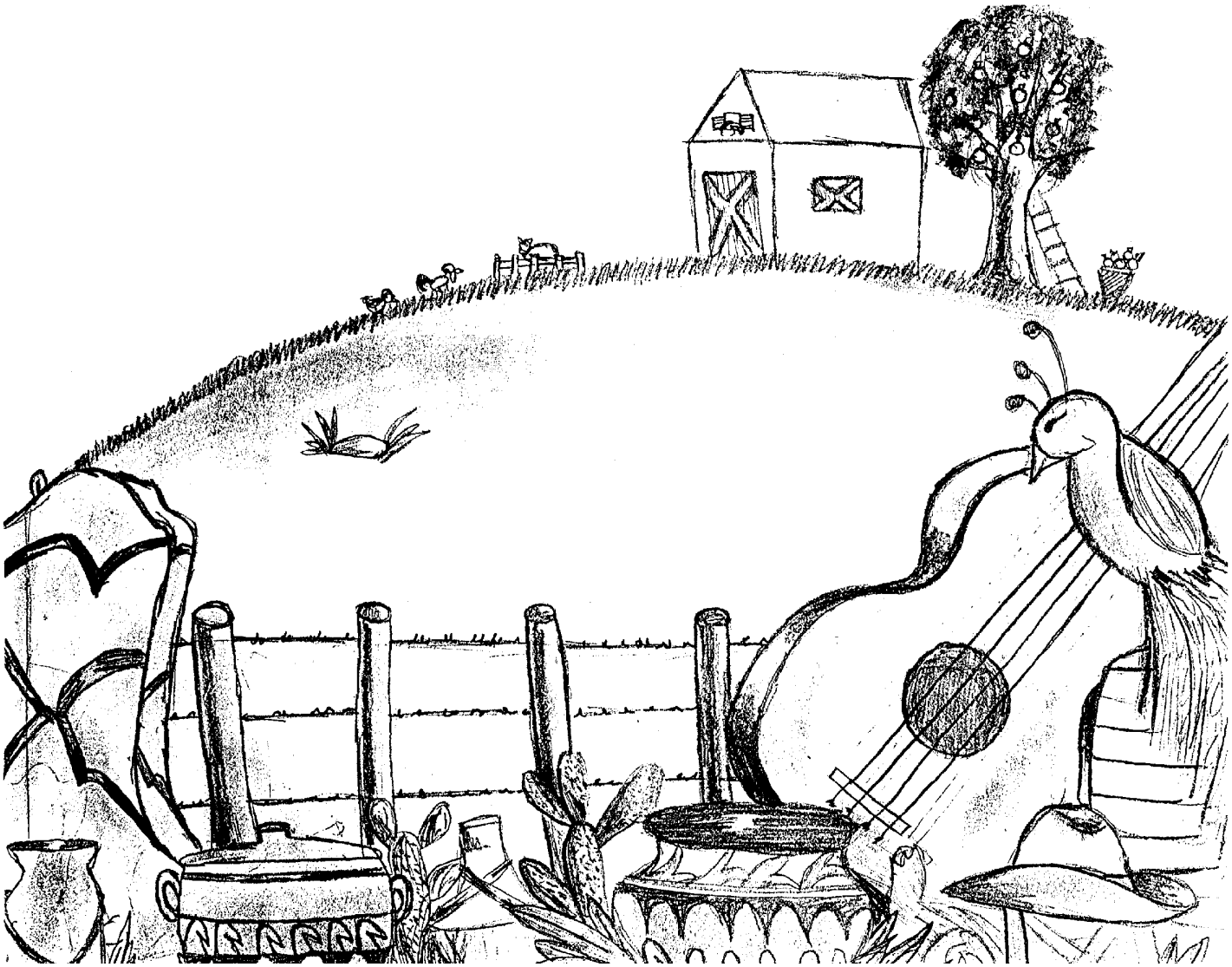

This month's front cover artwork:

Artist: *Christina Luna*
8th Grade
Dr. Armando Cuellar M.S.

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*.

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ADOPTED RULES

Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
http://www.sos.state.tx.us/texreg

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is http://www.oag.state.tx.us. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. http://www.state.tx.us/Government

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 3, 2002.

Appointed to the Texas Cancer Council for a term to expire on February 1, 2006, Fedricker Diane Barber of Richmond (replacing Patricia Castiglia of El Paso who resigned).

Appointed to the Texas Cancer Council for a term to expire on February 1, 2008, A. Clare Buie Chaney, PhD of Dallas (reappointed).

Appointed to the Texas Council for the Humanities for terms to expire on December 31, 2003, Randolph D. Hurt, Jr. of Fort Stockton (reappointed), Curtis Wright of Austin (replacing Kathleen Bay of Austin whose term expired).

Appointed to the Texas Violent Gang Task Force for terms at the pleasure of the Governor, Angela Adkins of Dallas (replacing Durrand Hill of Dallas who resigned), Edward Enrique Castro of El Paso (replacing MaryLou Carrillo of El Paso who resigned).

TRD-200202179

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Executive Order

RP 12

Relating to Emergency Management.

WHEREAS, the Legislature of the State of Texas has enacted the Texas Disaster Act (the "Act") of 1975, Chapter 418 of the Texas Government Code to:

Reduce the vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary actions;

Prepare for prompt and efficient rescue, care, and treatment of persons victimized or threatened by disaster;

Provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons and property affected by disasters;

Clarify and strengthen the roles of the Governor, state agencies, and local governments in the mitigation of, preparation for, response to, and recovery from disasters;

Authorize and provide for cooperation and coordination of activities relating to mitigation, preparedness, response, and recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

Provide a comprehensive emergency management system for Texas that is coordinated to make the best possible use of existing organizations and resources within government and industry, and which includes provisions for actions to be taken at all levels of government before, during, and after the onset of an emergency situation;

Assist in the mitigation of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and

Provide the authority and mechanism to respond to an energy emergency; and;

WHEREAS, the Governor is expressly authorized under Section 418.013 of the Act to establish by executive order an Emergency Management Council comprised of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups to advise and assist the Governor in all matters relating to mitigation, preparedness, response, and recovery; and,

WHEREAS, a Division of Emergency Management is established in the Office of the Governor under Section 418.041 of the Act, and the Director of the Division of Emergency Management is to be appointed by and serve at the pleasure of the Governor; and,

WHEREAS, with the aid and assistance of the Emergency Management Council and Division of Emergency Management, the Governor may recommend that cities, counties, and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with those developed at the state level;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

The Emergency Management Council (the "Council") shall be created and maintained. The Council shall be comprised of the heads of the following state agencies, boards, commissions, and organized volunteer groups or any successors to each of these entities:

Adjutant General's Department

American Red Cross

Department of Information Resources

General Land Office *

Governor's Division of Emergency Management *

Office of Rural Community Affairs

Public Utility Commission of Texas

Railroad Commission of Texas *

Salvation Army, The

State Aircraft Pooling Board

State Auditor's Office

State Comptroller of Public Accounts

Texas Animal Health Commission

Texas Attorney General's Office

Texas Building and Procurement Commission

Texas Commission on Fire Protection *

Texas Department of Agriculture *

Texas Department of Criminal Justice

Texas Department of Economic Development

Texas Department of Health*

Texas Department of Housing and Community Affairs

Texas Department of Human Services

Texas Department of Insurance

Texas Department of Mental Health and Mental Retardation

Texas Department of Public Safety *

Texas Department of Transportation *

Texas Education Agency

Texas Engineering Extension Service *

Texas Forest Service

Texas Natural Resource Conservation Commission *

Texas Parks and Wildlife Department *

Texas Rehabilitation Commission

Texas Workforce Commission

(member of the State Emergency Response Commission)

The specific duties and responsibilities of each member of this group shall be as designated in the State Emergency Management Plan and Annexes thereto. Each member of the group may designate a staff member representative to the Council.

The Director of the Texas Department of Public Safety shall be designated to serve as Chair of the Council and as Director of the Division of Emergency Management (the "Director").

The Division of Emergency Management shall be designated as the agency to exercise the powers granted to me under the Act in the administration and supervision of the Act, including, but not limited to, the power to accept from the federal government, or any public or private agency or individual, any offer of services, equipment, supplies, materials, or funds as gifts, grants, or loans for the purposes of emergency services or disaster recovery, and may dispense such gifts, grants, or loans for the purposes for which they are made without further authorization other than as contained herein.

The Director shall establish emergency operation areas to be known as Disaster Districts which shall correspond to the boundaries of the Texas Highway Patrol Districts and Sub-Districts and shall establish in each a Disaster District Committee comprised of representatives of the state agencies, boards, commissions, and organized volunteer groups having membership on the Council. The Highway Patrol Commanding Officer of each Highway Patrol District or Sub-District shall serve as Chair of the Disaster District Committee and report to the Director on matters relating to disasters and emergencies. The Disaster District Committee Chair shall be assisted by the Council representatives assigned to that district, who shall provide guidance, counsel, and administrative support as required.

The Council is authorized to issue such directives as may be necessary to effectuate the purpose of the Act, and is further authorized and empowered to exercise the specific powers enumerated in the Act.

The State Emergency Response Commission shall be a standing element of the Council in order to carry out certain state emergency planning, community right-to-know, and response functions relating to hazardous materials. The Commission shall be comprised of representatives named by the heads of the agencies and commissions marked with an asterisk (*) in the listing of the Council above. The State Coordinator, as appointed by the Director under Section 418.041 of the Act, shall chair the State Emergency Response Commission or designate a chair.

The mayor of each municipal corporation and the county judge of each county in the state shall be designated as the Emergency Management Director for each such political subdivision in accordance with Sections 418.102, 418.103, and 418.105 of the Act, and published rules of the Division of Emergency Management. These mayors and county judges shall serve as the Governor's designated agents in the administration and supervision of the Act, and may exercise the powers, on an appropriate local scale, granted the Governor therein. Each mayor and county judge may designate an Emergency Management Coordinator who shall serve as assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

Each political subdivision of the state, pursuant to Section 418.104, of the Act, is authorized to establish in the county in which they are sited, inter-jurisdictional agencies by intergovernmental agreement, supported as needed by local city ordinance or commissioner's court order, in cooperation and coordination with the Division of Emergency Management of the Governor's Office. In compliance with Section 418.101 of the Act, the presiding officer of each political subdivision shall promptly notify the Division of Emergency Management of the manner in which it is providing or securing an emergency management program and the person designated to head that program.

This executive order supersedes all previous executive orders on emergency management including Executive Order RP-01, and shall remain in effect until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 3rd day of April, 2002.

Rick Perry, Governor

TRD-200202177

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Proclamation

BY THE GOVERNOR OF THE STATE OF TEXAS (41-2897)

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the Texas House of Representatives in the membership of District 56, which consists of Falls, Limestone and part of McLennan County; and

WHEREAS, Article III, Section 13 of the Texas Constitution requires the Governor to issue a writ of election ordering a special election upon such a vacancy; and

WHEREAS, Tex. Elec. Code Ann. §203.004 requires that, absent a finding of an emergency, the special election be held on the first uniform election date occuring on or after the 36th day after the date the election is ordered; and

WHEREAS, May 4, 2002 is the next such available uniform election date occurring after the date the election is ordered; and

WHEREAS, Tex. Elec. Code Ann. §3.003 requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statues of the State of Texas, do hereby order a special election to be held in District 56 on Saturday, the 4th day of May, 2002, for the purpose of electing a State Representative for District 56 to serve out the unexpired term of the Honorable Kip Averitt.

Candidates who wish to have their names placed on the special election ballet must file their applications with the Secretary of State no later than 5:00 p.m. on Wednesday, the 3rd day of April, 2002, in accordance with Tex. Elec. Code Ann. §201.054(a).

Early voting by personal appearance shall begin on Wednesday, April 17, in accordance with Tex. Elec. Code Ann. §85.001(a).

A copy of this order will be mailed immediately to the County Judges in Falls, Limestone and McLennan Counties, and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held to fill the vacancy in District 56 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 22nd day of March, 2002.

Rick Perry, Governor

TRD-200202178

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OFFICE OF THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0527

The Honorable Warren Chisum, Chair, Environmental Regulation Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether the City of Pampa has approval authority over the plan of dissolution of the Pampa Economic Development Corporation, and related question (Request No. 0527-JC)

Briefs requested by May 8, 2002

RQ-0528

The Honorable Clyde Alexander, Chair, Committee on Transportation, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether a towing company may provide certain services for the owner of a parking facility, and related questions (Request No. 0528-JC)

Briefs requested by May 8, 2002

RQ-0529

Ms. Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942

Re: Confidentiality of disability information collected by the Texas Board of Architectural Examiners, and related question (Request No. 0529-JC)

Briefs requested by May 9, 2002

RQ-0530

The Honorable Ron E. Lewis, Chair, Energy Resources Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether a special utility district is required to obtain approval from any local governmental entity to install, extend, construct, or repair water and sewer mains and other apparatuses located within a county right-of-way, and related questions (Request No. 0530-JC)

Briefs requested by May 9, 2002

RQ-0531

The Honorable Warren Chisum, Chair, Environmental Regulation Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910

Re: Whether a member of a school district board of trustees may serve as a member of the board of a groundwater conservation district with a population of less than 50,000 (Request No. 0531-JC)

Briefs requested by May 8, 2002

For further information, please call the Opinion Committee at 512/ 463-2110 or access the website at www.oag.state.tx.us.

TRD-200202205
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: April 10, 2002

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TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Request

AOR-494. The Texas Ethics Commission has been asked whether the text of certain political advertising complies with section 255.006 of the Election Code.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

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

TRD-200202192
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: April 9, 2002

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EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.1, 184.4, 184.6, 184.8, 184.13, 184.15

The Texas State Board of Medical Examiners adopts on an emergency basis, new §§184.1, 184.4, 184.6, 184.8, 184.13, and 184.15 concerning Surgical Assistants. The new sections are adopted on an emergency basis as a result of HB 1183 of the 77th Legislature requiring the board to license and regulate surgical assistants.

The rules are adopted on an emergency basis because House Bill 1183 requires the applicants for surgical assistant licensure to file an application by September 1, 2002. In order to establish requirements for licensure in time to give adequate notice to those required to comply, the rule must be filed on an emergency basis. The Administrative Procedure Act allows for emergency rulemaking under section 2001.034(a)(1) based on "a requirement of state or federal law."

Elsewhere in this issue of the *Texas Register* the Texas State Board of Medical Examiners has withdrawn the previously proposed version of §§184.1, 184.4, 184.6, 184.8, 184.13 and 184.15 which appeared in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1424). The new sections are simultaneously proposed for permanent adoption in the proposed section of this issue of the *Texas Register*.

The new sections are adopted on an emergency basis pursuant to the Administrative Procedure Act which allows for emergency rulemaking under §2001.034(a)(1) based on "a requirement of state or federal law."

§184.1. Purpose.

The purpose of these rules is to establish requirements for the education, training, and professional behavior for persons who identify themselves as licensed surgical assistants without a financial burden to the people of Texas. Furthermore, the purpose of these rules and regulations is to also encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to licensed surgical assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in a surgical setting and who are not rendering services as a surgical assistant or identifying themselves as a licensed surgical assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. In addition, nothing in these rules and regulations shall be construed to require licensure as a surgical assistant for those individuals who are exempted, including registered nurses and physician assistants, under §206.002 of the Act.

§184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a surgical assistant;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good moral character;

(8) not have been convicted of a felony or a crime involving moral turpitude;

(9) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(10) not have engaged in fraud or deceit in applying for a license;

(11) pass an independently evaluated surgical assistant examination approved by the board;

(12) have been awarded at least an associate's degree other than in a surgical assistant training program at a two or four year institution of higher education;

(13) have successfully completed an educational program in surgical assisting or a substantially equivalent educational program;

(A) a surgical assistant program or a substantially equivalent program is limited to the following:

(i) a surgical assistant program approved by the board. After September 1, 2003, applicants who wish the board to recognize their education and training at a surgical assistant program must demonstrate that the program is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);

(ii) a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;

(iii) registered nurse first assistant program; and

(iv) an accredited surgical physician assistant program.

(B) The curriculum of the surgical assisting educational programs must include at a minimum the following courses:

(i) anatomy;

(ii) physiology;

(iii) basic pharmacology;

(iv) aseptic techniques;

(v) operative procedures;

(vi) chemistry;

(vii) microbiology;

(viii) pathophysiology;

(ix) clinical service rotations, that either:

(I) are each at least 80 hours in length, in the following areas:

(-a-) cardiovascular surgery;
(-b-) trauma surgery;
(-c-) general surgery;
(-d-) obstetrics and gynecology;
(-e-) orthopedics; and
(-f-) pediatrics or an elective if the applicant affirms that he or she has no intent to work as a surgical assistant for pediatric surgery; or

(II) meet the CAAHEP's supervised clinical preceptorship guidelines.

(14) demonstrate to the satisfaction of the board the completion of full-time work experience performed in the United States under the direct supervision of a physician licensed in the United States consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of the application.

(15) be currently certified by a national certifying board approved by the board; and

(16) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant who submits an application before September 1, 2002 must provide documentation that the applicant has passed an examination required for certification by one of the following certifying boards:

(1) American Board of Surgical Assistants;

(2) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) National Surgical Assistant Association.

(c) An applicant who submits an application before September 1, 2002 and is unable to meet the educational requirements set out in subsections (a)(12) and (a)(13) of this section must also provide documentation that the applicant:

(1) will complete before the third anniversary of the date the license is issued under this chapter the following academic courses approved by the board:

(A) anatomy;

(B) physiology;

(C) basic pharmacology;

(D) aseptic techniques;

(E) operative procedures;

(F) chemistry; and

(G) microbiology; or

(2) since September 30, 1995, has practiced full-time as a surgical assistant in the United States under the direct supervision of a physician licensed in the United States and has continuously been certified as a surgical assistant by one of the following national certifying boards:

(A) American Board of Surgical Assistants;

(B) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(C) National Surgical Assistant Association.

§184.6. Licensure Documentation.

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations used in Texas or another state for licensure.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted directly from the program on a form provided the board, unless the applicant qualifies for the special eligibility provision regarding education under §184.4(c) of this title (relating to Qualifications for Licensure).

(5) Evaluations. All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §184.4(a)(13) of this chapter (relating to Qualifications for Licensure), whichever is the shorter period. The evaluations

must come from at least three physicians who have each supervised the applicant for more than 100 hours or a majority of the applicant's work experience.

(6) Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(7) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance abuse or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance abuse must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for medical licensure.

§184.8. License Renewal.

(a) Surgical assistants licensed by the board shall register annually and pay a fee. A surgical assistant may, on notification from the board, renew an unexpired licensed by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, residence, the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board shall provide written notice to each practitioner at the practitioner's address of record at least 30 days prior to the expiration date of the license.

(c) Within 30 days of a surgical assistant's change of mailing, residence or office address from the address on file with the board, a surgical assistant shall notify the board in writing of such change.

(d) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

§184.13. Physician Supervision.

(a) Supervision shall be continuous, and shall require that the delegating physician be physically present and immediately available in the operating room to personally respond to any emergency until the patient is released from the operating room and care has been transferred to another physician. Telecommunication is insufficient for supervision purposes.

(b) It is the obligation of each team of physician(s) and surgical assistant(s) to ensure that:

(1) the surgical assistant's scope of practice is identified;

(2) delegation of medical tasks is appropriate to the surgical assistant's level of competence;

(3) the relationship between the members of the team is defined;

(4) that the relationship of, and access to, the supervising physician is defined;

(5) a process for evaluation of the surgical assistant's performance is established; and

(6) the physician and surgical assistant comply with the provisions of Chapter 193 of this title (relating to Standing Delegation Orders) when applicable.

§184.15. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing as provided for in the APA, take disciplinary action against any surgical assistant that:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) falsely represents that the person is a physician;

(4) violates the Act, or any rules relating to the practice of surgical assisting;

(5) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;

(6) habitually uses drugs or alcohol to the extent that, in the opinion of the board, the person cannot safely perform as a surgical assistant;

(7) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(8) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;

(9) has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure any member of the public;

(10) has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;

(11) has committed any act that is in violation of the laws of this state if the act is connected with practice as a surgical assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the board under this section;

(12) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a surgical assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) unlawfully advertises in a false, misleading, or deceptive manner as defined by §101.201 of the Tex. Occ. Code;

(14) alters, with fraudulent intent, any surgical assistant license, certificate, or diploma;

(15) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(16) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(17) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(18) sexually abuses or exploits another person during the licensee's practice as a surgical assistant.

This agency hereby certifies that the emergency adoption 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 April 8, 2002.

TRD-200202162
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective Date: April 8, 2002
Expiration Date: August 6, 2002
For further information, please call: (512) 305-7016

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PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 223. FEES

22 TAC §223.1

The Board of Nurse Examiners adopts on an emergency basis an amendment to §223.1, concerning Fees. The Board originally met July 20, 2001, and approved to increase fees to fund the board's appropriation. The 77th Legislature in Rider 2 of the Fiscal Year 2002 - 2003 Appropriations Act approved budget appropriations for the Board contingent on those appropriations being paid through board fee collections. The fees were adopted on an emergency basis in order to comply with the legislative mandate to cover all appropriations through fees (26 TexReg 6071). The amendment became effective August 6, 2001, and the fees were applied beginning September 1, 2001. On December 4, 2001, the emergency adoption expired without the fees being subsequently proposed and adopted on a permanent basis.

In addition to the necessary fees for revenue, the amendment will increase the renewal fee for registered nurses by an additional $2

and for advanced practice nurses $2 more to cover the Board's participation in the Texas Online Project beginning May 1, 2002. The collection of fees for revenue for fiscal year 2002 will become effective upon adoption of the proposed amendment, but the fees for the Texas Online Project will not take effect until May 1, 2002. Section 2054.252 of the Texas Government Code creates the Texas Online Authority and the Texas Online Project. The legislation encourages the Board and other licensing agencies to participate in the project. Subsection (d) of §2054.2606 authorizes the Texas Online Authority to set the amount of fees that a participating licensing agency may charge its license holders. The increase in fees must be in effect in order to raise the necessary revenue for fiscal year 2002 and to offset the additional administrative costs incurred by the Board from its participation in the Texas Online Project.

The increase in fees must be in effect in order to raise the necessary revenue for fiscal year 2002 - 2003 and to offset the additional administrative costs incurred by the Board from its participation in the Texas Online Project. The Board also will propose the adoption of the amendment on a permanent basis. The emergency arises due to the immediate need of revenue under the Fiscal Year 2002 - 2003 Appropriations Act, the oncoming need for the fees for online administrative costs, and the inability to have more than one pending amendment on a rule at the same time.

The amendment is adopted on an emergency basis under §301.151 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and the conducting of proceedings before it.

§223.1. Fees.

(a) The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions.

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

(5) endorsement--$125 [~~$100~~]

(6) licensure (each biennium)--$45 [~~$42~~]; effective May 1, 2002, $47

(7) - (13) (No change.)

(14) advanced practice nurse--initial credentials--$75 [~~$50~~];

(15) declaratory order of eligibility--$150 [~~$100~~];

(16) eligibility determination--$150 [~~$100~~];

(17) - (18) (No change)

(19) Advanced Practice Nurse [~~advanced practice nurse~~] renewal--$50; effective May 1, 2002, $52

(20) - (22) (No change.)

(b) (No change.)

This agency hereby certifies that the emergency adoption 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 April 4, 2002.

TRD-200202132
Kathy Thomas
Executive Director
Board of Nurse Examiners
Effective Date: April 4, 2002
Expiration Date: August 2, 2002
For further information, please call: (512) 305-6823

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.12

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.12, concerning the Administrative Hearing Guidelines. The purpose of this section is to provide hearing procedures for Department programs and functions that have no federally or statutorily mandated or regulated hearing procedures specific to that program or function.

Edwina P. Carrington, Executive Director, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Carrington also has 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 will be more efficient disposition of complaints. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with the section as proposed. The proposed new rule will not have an impact on any local economy.

Comments may be submitted to Anne O. Paddock , Deputy General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas, 78711-3941 or by e-mail at the following address: apaddock@tdhca.state.tx.us.

The new section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and in accordance with the Texas Government Code §2001.039.

The new section affects no other code, article or statute.

§1.12. Administrative Hearings.

(a) Hearing Procedures. Unless otherwise expressly set forth in the Manufactured Housing Standards Act and implementing regulations, the Texas Department of Housing and Community Affairs (Department) Section 8 Administrative Plan or any other applicable state plan approved by a federal funding source or this section, all formal hearings for a contested case shall be held and conducted pursuant to the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure (SOAH Rules), 1 TAC Chapter 155.

(1) A contested case is defined pursuant to §2001.003(1) of the APA as a proceeding in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(2) A party is defined pursuant to §2001.003(4) of the APA as a person or state agency named or admitted as a party.

(3) A person is defined pursuant to §2001.003(5) of the APA as an individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.

(4) A state agency is defined pursuant to §2001.003(7) as a state officer, board, commission, or department with statewise jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. The term does not include:

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Workers' Compensation Commission; or

(E) an institution of higher education.

(5) An informal review or an informal conference that provides a party an additional opportunity to respond to a formal complaint is not an adjudicative proceeding of a contested case for the purposes of Chapter 2001 of the APA and this section.

(b) Request for Hearing. Pursuant to §2001.051 and §2001.052 of the APA, the Department, on its own motion or on the

request of a party, may request a formal hearing from the State Office of Administrative Hearings. A request for a formal hearing by a party must be submitted within 15 calendar days of receipt of notice of the action giving rise to the request for hearing. The request for a formal hearing shall state the specific grounds upon which the party wishes to challenge the department's action.

(c) Notice of Hearing; Default Judgment. Service of notice of a formal hearing shall be provided pursuant to §2001.051 -and §2001.052 of the APA and §155.27 of the SOAH Rules. Service may be made by sending the notice to the party's last known address as shown by the Department's records by certified mail, with return receipt requested. If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing or fails to appear by telephone in accordance with §155.45 of the SOAH Rules, the hearing may proceed in that party's absence and a default judgment may be entered pursuant to §155.55 of the SOAH Rules.

(d) Proposal for Decision. At the conclusion of the formal hearing, the Administrative Law Judge issues a written Proposal for Decision which includes findings of fact and conclusions of law, separately stated, pursuant to §2001.141 and §2001.062 of the APA.

(e) Exceptions. Pursuant to §2001.0623(d) of the APA, each party has the right to file exceptions to the Proposal for Decision issued by the Administrative Law Judge and present a brief with respect to the exceptions. All exceptions must be filed with the Department within ten working days of the Proposal for Decision, with replies to be filed within ten working days of the filing of exceptions.

(f) Final Order. The Department's Board of Directors shall consider the final Proposal for Decision and decide whether to accept the recommended findings of fact and conclusion of law and the sanction to be imposed. The Department's Board of Directors adopts and incorporates the accepted findings of fact and conclusion of law in the written Final Order.

(g) Motion for Rehearing and Judicial Review. A person who wishes to challenge a final decision must first file a motion for rehearing in accordance with §§2001.145 - 2001.147 of the APA. A person who has exhausted all administrative remedies available within the Department and who is aggrieved by a final decision in a contested case is entitled to judicial review in accordance with §§2001.171 - 2001.178 of the APA.

(h) Agreed Orders. The Department may dispose of a contested case by agreement pursuant to §2001.056 of the APA.

(i) Ex Parte Communications. Pursuant to §2001.061(a) of the APA, unless required for the disposition of an ex parte matter unauthorized by law, an employee or member of the Department assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a party or representative of a party, except on notice and opportunity for each party to participate.

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 April 1, 2002.

TRD-200202296

Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 475-3726

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCREDITATION

SUBCHAPTER AA. ACCOUNTABILITY RATINGS AND ACKNOWLEDGMENTS

19 TAC §97.1002

The Texas Education Agency (TEA) proposes an amendment to §97.1002, concerning school district accountability ratings and acknowledgments. The section adopts by reference the most current version of part 1 of the annual accountability manual, which specifies the indicators, standards, and procedures used by the commissioner of education to determine standard accountability ratings and to determine Gold Performance Acknowledgment on additional indicators for Texas public school districts and campuses, as authorized by Texas Education Code (TEC), §§39.051(c)-(e), 39.0721, 39.073, 39.074(a)-(b), and 39.075. Part 1 of the annual accountability manual also specifies procedures for submitting an appeal and system safeguard analyses used to assess the integrity of the accountability system.

Legal counsel with the TEA has recommended that the procedures for issuing regular accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The intention is to annually update the rule to refer to the most recently published accountability manual.

The proposed amendment updates the section to adopt by reference *Part 1* of the *2002 Accountability Manual*, dated April 2002, for school year 2001-2002. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in 2002 differ to some degree over those applied in 2001. In 2002, the Texas Assessment of Academic Skills (TAAS) standards for reading, writing, and mathematics will be increased for the *Academically Acceptable / Acceptable* rating to 55.0% passing for "all students" and each student group. The standards for *Exemplary* and *Recognized* remain the same. Also, TAAS standards for 8th grade social studies will be implemented. The *Exemplary* and *Recognized* standards are the same for social studies as the standards for reading, writing, and mathematics. However, the standard for *Academically Acceptable / Acceptable* will be 50.0% at the "all students" level; student groups will not be evaluated this year for social studies. The dropout rate standards also changed for

a *Recognized* rating from 3.0% to 2.5% and for an *Academically Acceptable / Acceptable* rating from 5.5% to 5.0%. In addition, the Gold Performance Acknowledgement (GPA) system replaces the Additional Acknowledgments system. All of the previous Additional Acknowledgment indicators are part of the GPA, although the standards for acknowledgment may have changed. In 2002, the GPA system will be awarded to districts and campuses rated *Academically Acceptable* or *Acceptable* or higher on nine measures: Attendance Rate for Grades 1-12; Campus Comparable Improvement in Mathematics and Reading; Algebra I End-of-Course Examination Results; Advanced Academic Course Completion; Advanced Placement / International Baccalaureate Examination Results; College Admissions Test Results; TAAS/TASP Equivalency; and Recommended High School Program Participation. This year, ratings and acknowledgments are scheduled to be released in August 2002.

Criss Cloudt, associate commissioner for accountability reporting and research, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be continued knowledge by the public of the existence of annual manuals specifying rating procedures for the public schools. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

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

The amendment is proposed under the Texas Education Code, §§39.051(c)-(e), 39.0721, 39.073, 39.074(a)-(b), and 39.075, which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(e), 39.0721, 39.073, 39.074(a)-(b), and 39.075.

§97.1002. Adoption by Reference: Standard Procedures.

(a) The standard procedures by which districts and campuses are rated and acknowledged for school year 2001-2002 [~~2000-2001~~] are described in the official Texas Education Agency (TEA) publication, *Part 1* of the *2002* [~~2001~~] *Accountability Manual*, dated April 2002 [~~2001~~], which is adopted by this reference as the agency's official rule. A copy of the *2002* [~~2001~~] *Accountability Manual* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the Texas Education Agency official website.

(b) The commissioner of education shall amend *Part 1* of the *2002* [~~2001~~] *Accountability Manual* and this section adopting it by reference, as needed.

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 April 8, 2002.

TRD-200202167
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 175. FEES, PENALTIES, AND APPLICATIONS

22 TAC §175.1

The Texas State Board of Medical Examiners proposes an amendment to §175.1, concerning fees, penalties and applications. The proposal will increase the fee for a physician annual registration permit from $330 to $334. The board is mandated by the 77th Legislature through TexasOnline Authority to increase its fees to cover the cost for development of an on-line renewal system.

Michele Shackelford, 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 fiscal implications to state or local government as a result of enforcing the rule as proposed. The Fiscal impact to those individuals required to comply is as follows: Increased fee of $4 for physician annual registration permit. The Increased revenue to state government - estimated at $4 x 50,000 physicians = $200,000.

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 compliance with the 77th Legislature regarding the Texas Online Authority. There will be no effect on small businesses. There will be no effect to individuals required to comply with the section as proposed.

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

The amendment is proposed under the authority of the Occupations Code Annotated, §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 following are affected by the proposed amendment: Occupations Code, §§153.051, 153.054, and 156.001.

§175.1. Fees.

The board shall charge the following fees.

(1) Physicians:

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

(E) annual registration permit (includes a $200 surcharge)--$334 [~~$330~~];

(F) - (H) (No change.)

(2) - (6) (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 April 8, 2002.

TRD-200202154
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 305-7016

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CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.1, 184.4, 184.6, 184.8, 184.13, 184.15

The Texas State Board of Medical Examiners proposes new §§184.1, 184.4, 184.6, 184.8, 184.13, and 184.15, concerning Surgical Assistants. The new chapter is proposed as a result of HB 1183 of the 77th Legislature requiring the board to license and regulate surgical assistants.

Elsewhere in this issue of the *Texas Register* the Texas State Board of Medical Examiners has withdrawn the previously proposed version of §§184.1, 184.4, 184.6, 184.8, 184.13, and 184.15 which appeared in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1424). Elsewhere in this issue of the *Texas Register*, the Texas State Board of Medical Examiners also proposes §§184.1, 184.4, 184.6, 184.8, 184.13, and 184.15 on an emergency basis.

Michele Shackelford, 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 fiscal implications to state or local government as a result of enforcing the rules as proposed. The Fiscal impact to those individuals required to comply is as follows: $300 for processing licensure application and $200 for annual renewal. Revenue to state: FY02 estimated at 500 applications x $300 = $150,000; FY03 estimated at 500 renewals x $200 = $100,000 + new applications which we are unable to estimate at this time.

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 licensing and regulation of surgical assistants. There will be no effect on small businesses. There will be no effect to individuals 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 new sections are proposed under the authority of the Occupations Code Annotated, §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 following are affected by the proposed new rules: Title 3, Subtitle C, Tex. Occ. Code Ann. Chapter 206.

§184.1. Purpose.

The purpose of these rules is to establish requirements for the education, training, and professional behavior for persons who identify themselves as licensed surgical assistants without a financial burden to the people of Texas. Furthermore, the purpose of these rules and regulations is to also encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to licensed surgical assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in a surgical setting and who are not rendering services as a surgical assistant or identifying themselves as a licensed surgical assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients. In addition, nothing in these rules and regulations shall be construed to require licensure as a surgical assistant for those individuals who are exempted, including registered nurses and physician assistants, under §206.002 of the Act.

§184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a surgical assistant;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good moral character;

(8) not have been convicted of a felony or a crime involving moral turpitude;

(9) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(10) not have engaged in fraud or deceit in applying for a license;

(11) pass an independently evaluated surgical assistant examination approved by the board;

(12) have been awarded at least an associate's degree other than in a surgical assistant training program at a two or four year institution of higher education;

(13) have successfully completed an educational program in surgical assisting or a substantially equivalent educational program;

(A) a surgical assistant program or a substantially equivalent program is limited to the following:

(i) a surgical assistant program approved by the board. After September 1, 2003, applicants who wish the board to recognize their education and training at a surgical assistant program must demonstrate that the program is accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP);

(ii) a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;

(iii) registered nurse first assistant program; and

(iv) an accredited surgical physician assistant program.

(B) The curriculum of the surgical assisting educational programs must include at a minimum the following courses:

(i) anatomy;

(ii) physiology;

(iii) basic pharmacology;

(iv) aseptic techniques;

(v) operative procedures;

(vi) chemistry;

(vii) microbiology;

(viii) pathophysiology;

(ix) clinical service rotations, that either:

(I) are each at least 80 hours in length, in the following areas:

(-a-) cardiovascular surgery;
(-b-) trauma surgery;
(-c-) general surgery;
(-d-) obstetrics and gynecology;
(-e-) orthopedics; and
(-f-) pediatrics or an elective if the applicant affirms that he or she has no intent to work as a surgical assistant for pediatric surgery; or

(II) meet the CAAHEP's supervised clinical preceptorship guidelines.

(14) demonstrate to the satisfaction of the board the completion of full-time work experience performed in the United States under the direct supervision of a physician licensed in the United States consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of the application.

(15) be currently certified by a national certifying board approved by the board; and

(16) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant who submits an application before September 1, 2002 must provide documentation that the applicant has passed an examination required for certification by one of the following certifying boards:

(1) American Board of Surgical Assistants;

(2) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) National Surgical Assistant Association.

(c) An applicant who submits an application before September 1, 2002 and is unable to meet the educational requirements set out in subsections (a)(12) and (a)(13) of this section must also provide documentation that the applicant:

(1) will complete before the third anniversary of the date the license is issued under this chapter the following academic courses approved by the board:

(A) anatomy;

(B) physiology;

(C) basic pharmacology;

(D) aseptic techniques;

(E) operative procedures;

(F) chemistry; and

(G) microbiology; or

(2) since September 30, 1995, has practiced full-time as a surgical assistant in the United States under the direct supervision of a physician licensed in the United States and has continuously been certified as a surgical assistant by one of the following national certifying boards:

(A) American Board of Surgical Assistants;

(B) Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(C) National Surgical Assistant Association.

§184.6. Licensure Documentation.

(a) Original documents may include, but are not limited to, those listed in subsections (b) and (c) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations used in Texas or another state for licensure.

(4) Certification. All applicants must submit:

(A) a valid and current certificate from a board approved national certifying organization; and

(B) a certificate of successful completion of an educational program whose curriculum includes surgical assisting submitted

directly from the program on a form provided the board, unless the applicant qualifies for the special eligibility provision regarding education under §184.4(c) of this title (relating to Qualifications for Licensure).

(5) Evaluations. All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program, in compliance with §184.4(a)(13) of this chapter (relating to Qualifications for Licensure), whichever is the shorter period. The evaluations must come from at least three physicians who have each supervised the applicant for more than 100 hours or a majority of the applicant's work experience.

(6) Temporary license affidavit. Each applicant must submit a completed form, furnished by the board, titled "Temporary License Affidavit" prior to the issuance of a temporary license.

(7) License verifications. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the board, on a form provided by the board, that the applicant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, suspended, revoked or otherwise subject to disciplinary action. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state.

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance abuse or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance abuse or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance abuse must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for medical licensure.

§184.8. License Renewal.

(a) Surgical assistants licensed by the board shall register annually and pay a fee. A surgical assistant may, on notification from the board, renew an unexpired licensed by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, residence, the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board shall provide written notice to each practitioner at the practitioner's address of record at least 30 days prior to the expiration date of the license.

(c) Within 30 days of a surgical assistant's change of mailing, residence or office address from the address on file with the board, a surgical assistant shall notify the board in writing of such change.

(d) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

§184.13. Physician Supervision.

(a) Supervision shall be continuous, and shall require that the delegating physician be physically present and immediately available in the operating room to personally respond to any emergency until the patient is released from the operating room and care has been transferred to another physician. Telecommunication is insufficient for supervision purposes.

(b) It is the obligation of each team of physician(s) and surgical assistant(s) to ensure that:

(1) the surgical assistant's scope of practice is identified;

(2) delegation of medical tasks is appropriate to the surgical assistant's level of competence;

(3) the relationship between the members of the team is defined;

(4) that the relationship of, and access to, the supervising physician is defined;

(5) a process for evaluation of the surgical assistant's performance is established; and

(6) the physician and surgical assistant comply with the provisions of Chapter 193 of this title (relating to Standing Delegation Orders) when applicable.

§184.15. Grounds for Denial of Licensure and for Disciplinary Action.

The board may refuse to issue a license to any person and may, following notice of hearing as provided for in the APA, take disciplinary action against any surgical assistant that:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) falsely represents that the person is a physician;

(4) violates the Act, or any rules relating to the practice of surgical assisting;

(5) is convicted of a felony, or has imposition of deferred adjudication or pre-trial diversion;

(6) habitually uses drugs or alcohol to the extent that, in the opinion of the board, the person cannot safely perform as a surgical assistant;

(7) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(8) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;

(9) has acted in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure any member of the public;

(10) has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;

(11) has committed any act that is in violation of the laws of this state if the act is connected with practice as a surgical assistant; a complaint, indictment, or conviction of a law violation is not necessary for the enforcement of this provision. Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the board under this section;

(12) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted or who has had other disciplinary action taken by another state regarding practice as a surgical assistant or had disciplinary action taken by the uniformed services of the United States. A certified copy of the record of the state or uniformed services of the United States taking the action is conclusive evidence of it;

(13) unlawfully advertises in a false, misleading, or deceptive manner as defined by §101.201 of the Tex. Occ. Code;

(14) alters, with fraudulent intent, any surgical assistant license, certificate, or diploma;

(15) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(16) is removed or suspended or has disciplinary action taken by his peers in any professional association or society, whether the association or society, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the board, was based on unprofessional conduct or professional incompetence that was likely to harm the public. This action does not constitute state action on the part of the association, society, or hospital medical staff;

(17) has repeated or recurring meritorious health care liability claims that in the opinion of the board evidence professional incompetence likely to harm the public; or

(18) sexually abuses or exploits another person during the licensee's practice as a surgical assistant.

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 April 8, 2002.

TRD-200202163
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 305-7016

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.8

The Texas Funeral Service Commission (Commission) proposes an amendment to §201.8, relating to Procedures for the Petition for Adoption of Rules.

The Commission proposes the amendment to clarify the relationship of persons involved in the proposal and adoption of rules. In subsection (d) the phrase *appoint an ad hoc committee* is deleted

and the phrase *an appropriate group of interested persons* is added. Subsection (e) is deleted and subsection (f) is changed to (e). The phrase *within 60 days after* is deleted.

O.C. Robbins, Executive Director, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Mr. Robbins has also determined that for the first five-year period this section is in effect the public benefit will be that it defines procedures on behalf of the consumer for the petition for adoption of rules.

Comments on the proposal may be submitted in writing for a 30 day period to O.C. Robbins, Executive Director, Texas Funeral Service Commission, P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or submitted electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under §651.152 of the Texas Occupations Code, which authorizes the Commission to issue such rules and regulations as may be necessary to effect the provision of this section.

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

§201.8. Procedures for the Petition for Adoption of Rules.

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

(d) When a petition is received that meets the requirements of subsection (c) of this section, the executive director will forward the petition to the presiding officer who will either assign the task to staff or an appropriate group of interested persons [~~appoint an ad hoc committee~~] to study the petition and make a recommendation to the commission.

[~~(e) The appropriate group will report all petitions out of committee with a recommendation to the commission regarding its adoption.~~]

(e) [~~(f)~~] The commission will consider [~~within 60 days after~~] the submission of a petition and may either deny the petition or instruct the executive director to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act, §5. In the event a petition is denied, the executive director will advise the interested person in writing of the denial and will state the reason for the denial of the commission.

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

Filed with the Office of the Secretary of State on April 4, 2002.

TRD-200202135
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 936-2466

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.1

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.1, concerning Definitions.

The amendment uses the term *funeral merchandise* as a synonym for *funeral goods*. A new paragraph is added as (17) and the numerical sequence of definitions is changed.

O.C. Robbins, Executive Director, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section, beyond what is already required under the existing rule.

Mr. Robbins has also determined that for the first five-year period this section is in effect the public benefit will be an awareness that the Commission considers the term "funeral merchandise" as used in the Occupations Code, §651.001 to be interchangeable with the term *funeral goods* as used by the Federal Trade Commission.

Comments on the proposed section may be submitted in writing for a 30 day period to O.C. Robbins, Executive Director, Texas Funeral Service Commission, P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or submitted electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The Commission interprets this section to authorize the Commission to issue such rules and regulations as may be necessary to effect the provision of Chapter 651.

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

§203.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

(1) - (8) (No change.)

(9) Funeral goods--Goods which are sold or offered for sale directly to the public for use in connection with funeral services. Also referred to as funeral merchandise.

(10) - (16) (No change.)

(17) Pre-need--Prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for funeral services or funeral merchandise as defined by Chapter 154 Texas Finance Code.

(18) [~~(17)~~] Refrigeration of body--Maintenance of an unembalmed dead human body at a temperature of 34-40 degrees Fahrenheit.

(19) [~~(18)~~] Unreasonable Time--the retention of excess funds for a period that exceeds ten days from the time the funds were received by the funeral establishment or its agent.

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 April 4, 2002.

TRD-200202137
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 936-2466

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22 TAC §203.20

The Texas Funeral Service Commission (Commission) proposes new §203.20, concerning Cash Advance Items.

The Texas Funeral Service Commission proposes the new section to conform to Occupations Code, §651.406 and the Federal Trade Commission funeral rule.

O.C. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will no effect on small businesses.

Mr. Robbins has also determined that for the first five-year period this section is in effect the public benefit will be increased consumer awareness concerning cash advance charges for merchandise or service.

Comments on the proposal may be submitted in writing for a 30-day period to O.C. Robbins, Executive Director, Texas Funeral Service Commission, P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, or faxed to (512) 479-5064, or submitted electronically to chet.robbins@tfsc.state.tx.us.

The rule is proposed under §651.152 of the Texas Occupations Code, which authorizes the Commission to issue such rules and regulations as may be necessary to administer Chapter 651.

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

§203.20. Cash Advance Items.

(a) The funeral purchase agreement must state the amount paid or owed to another person by the funeral establishment on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer.

(b) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case.

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 April 4, 2002.

TRD-200202134
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 936-2466

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.30

The Texas General Land Office (GLO) proposes under Title 31, Part 1, Chapter 3 a new §3.30, relating to Historically Underutilized Businesses Program.

In 1999, the 76th Legislature mandated that each state agency adopt the General Services Commission's rules regarding Historically Underutilized Businesses (HUB). These rules apply to each agency's construction projects and purchases of goods and services paid for with state appropriated funds.

Larry Soward, Chief Clerk of the GLO, has determined that for each year of the first five years the new section is in effect, there will no negative fiscal implications to state or local government as a result of enforcing or administering the section.

Larry Soward, Chief Clerk of the GLO, has determined that for each year of the first five years the section as proposed is in effect, the public will benefit by ensuring that all qualified businesses have access to compete for business from the state. By adopting the General Services Commission's rules by reference, contract awards to historically underutilized businesses for the purchase of goods or services or for construction projects will be ensured. There will be no effect on small businesses or local economies as the result of this rule.

Comments may be submitted to Melinda Tracy, Legal Services, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, no later than 30 days from the date of publication.

The new section is proposed under Texas Natural Resources Code, Chapter 31, §31.051 which provides the Commissioner of the General Land Office with the authority to promulgate rules for the conduct of the work of the General Land Office.

Texas Government Code, §2161.003 is affected by this proposed action.

§3.30. Historically Underutilized Businesses Program.

In accordance with Texas Government Code §2161.003, the Texas General Land Office adopts by reference Title 1, Part 5, Chapter 111, Subchapter B relating to Historically Underutilized Business Program of the Texas Administrative 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 April 5, 2002.

TRD-200202152

Larry Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 305-9129

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31 TAC §3.31

The General Land Office (GLO) proposes an amendment to Chapter 3, Subchapter C, §3.31, relating to Fees. The amendment is being proposed simultaneously with a proposed new 31 TAC, Part 1, Chapter 13, Subchapter G, §§13.87 - 13.94 to correspond to an application fee charge for processing vacancy applications proposed in §13.89.

The proposed new §13.89, relating to Applications, explains how to request an application to purchase or lease vacant land and the non-refundable filing fees payable to the GLO for processing an application. The proposed amendment to §3.31(b)(7)(A) reflects this proposed increase from $100 to $150 and adoption of this change is contingent on the adoption of §13.89. The proposed amendment to §3.31 also corrects an error on the paper sizes available to reproduce black and white photocopies, microfilm copies and color photocopies.

Larry Soward, Chief Clerk, has determined that during the first five years the proposed amendment will be in effect, there will be no negative fiscal implications for state or local governments. There will be no effect on small businesses or local economies as a result of the proposed amendment. The cost of filing an application to purchase or lease vacant land to purchase will be paid by the applicant and is a minimal increase that does not cover the full costs of processing the application.

Mr. Soward has also determined that during the first five-year period the rule is in effect, the public will benefit because the state will be more fairly compensated for the cost of processing vacancy applications.

Comments on the proposed amendment may be submitted to Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311, or e-mail to melinda.tracy@glo.state.tx.us. Comments must be received by no later than 30 days from the date of publication of this proposal. A public hearing on the proposed rulemaking will be held upon request in accordance with Texas Government Code, §2001.029.

The amendment is proposed under Texas Natural Resources Code, §§31.051, 51.174 and 52.324 which provides the GLO with the authority to set and collect certain fees and to make and enforce rules consistent with the law.

Texas Government Code, Chapter 552, and Texas Natural Resources Code, Chapters 31, 32, 51, and 52 are affected by this proposed rulemaking.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

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

(7) Vacancies:

(A) Application fee: $150 [~~$100~~].

(B) - (D) (No change.)

(8) (No change.)

(9) Duplication fees--For purposes of this section the term Archival Records is defined as records maintained in the Archives and Records Division of the Texas General Land Office. The Archives and Records Division reserves the right to deny duplication of any document or map considered too fragile or brittle to safely copy. In addition, the Archives and Records Division reserves the right to specify with method(s) or reproduction may be used. Archival records for all original records affecting land titles, including original land grant files, Spanish Collection materials, school land and scrap files:

(A) Black and white photocopies and microfilm copies, per page:

(i) - (ii) (No change.)

(iii) 11 [~~8.5~~] inch by 17 inch: $2.00.

(B) Color photocopies, per page:

(i) - (ii) (No change.)

(iii) 11 [~~8.5~~] inch by 17 inch: $3.00.

(C) - (E) (No change.)

(10) - (16) (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 April 5, 2002.

TRD-200202149
Larry Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 305-9129

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CHAPTER 13. LAND RESOURCES
SUBCHAPTER G. VACANT LAND

31 TAC §§13.87 - 13.94

The General Land Office (GLO) and the School Land Board (SLB) propose a new Subchapter G, relating to Vacant Land, §§13.87 - 13.94 in Title 31, Part 1, Chapter 13 of the Texas Administrative Code. The proposed new subchapter G will contain rules governing the procedures for the purchase or lease of vacant land. These rules are proposed pursuant to new legislation that requires the GLO and the SLB to adopt rules governing the administration of the statute and the terms and conditions for the sale or lease of vacant land in accordance with Texas Natural Resources Code §51.174 and §51.175.

The GLO and the SLB propose new subchapter G, §13.87, relating to General Provisions; §13.88, relating to Terms of Sale or Lease; §13.89, relating to Applications; §13.90, relating to Deposits; §13.91, relating to Notifications and Publication; §13.92; relating to Determination of Good-Faith Claimant Status; §13.93, relating to Exceptions; and §13.94, relating to Investigations. The proposed new sections are pursuant to Texas Senate Bill 1806, 77th Legislature, Regular Session (2001) which amended Texas Natural Resources Code, Chapter 51, Subchapter E.

The Legislature amended the vacancy statute to expedite and simplify the vacancy process for landowners, interested and affected property interest owners, good faith claimants, applicants and the commissioner. The most significant legal change to the GLO's vacancy process is the applicant's right to proceed to district court one year after filing an application. Boundary disputes and clouds on title arising out of vacancy claims can be resolved more economically and expeditiously in the courts earlier in the vacancy process. Under the statute applicable to applications filed prior to September 1, 2001, the process was longer and more complicated. The amended statute is addressed, in part, at minimizing GLO resources dedicated to vacancy determinations. The judicial branch is charged with determining the extent of private property rights. The new statute provides for expedited judicial decisions for private property owners impacted by claims that land is vacant.

These rules govern actions of the GLO, the commissioner and the SLB in processing applications to purchase or lease vacant land and are jointly proposed. Section 13.87, relating to General Provisions, describes the rules' applicability; delegations by the commissioner and the commissioners advice to the SLB. Section 13.88, relating to Terms of Sale or Lease, describes the SLB's role in setting the terms of a sale or lease of vacant land, including mineral reservations and preferential purchase rights of good-faith claimants and applicants.

Applications to purchase or lease vacant land must strictly conform to statutory requirements and proposed §13.89, relating to Applications, explains how to request an application and when an application may be rejected or terminated. Whether or not a deposit is required for processing the application is within the discretion of the commissioner as described in proposed §13.90, relating to Deposits. The applicant is required to notify all necessary parties when the commissioner accepts the application and also to publish notice of acceptance of the application in a newspaper of general circulation. These requirements are detailed in proposed §13.91, relating to Notifications and Publication.

The new legislation simplified the definition of good-faith claimant and proposed §13.92, relating to Determination of Good-Faith Claimant Status, details the criteria to be used in the determination and the information required to prove good-faith claimant status. Proposed §13.93, relating to Exceptions, explains the procedures of and form for exceptions to a filed survey report. Any necessary party may, but is not required to, file exceptions to a surveyor's report. Finally proposed §13.94, relating to Investigations, reiterates that the commissioner is not required to hold any hearing on an application and lists factors that will be considered in deciding whether to conduct a hearing.

These rules apply to all applications filed after September 1, 2001, the date when amended Texas Natural Resources Code §§51.171 - 51.192 became effective. The new statute limits the time for review by the commissioner and explicitly exempts the vacancy determination process from the provisions of the Administrative Procedure Act. The statute allows the commissioner to decide whether he should appoint a surveyor. The previous statute required such an appointment. The statute also changes the legal standard of review in district court. Finally the statute clarifies and simplifies the preferential rights of good-faith claimants and of applicants.

Ben Thomson, Chief Surveyor of the General Land Office, has determined that during the first five-year period the proposed rules will be in effect, there will be no fiscal implications for state or local governments. These rules do not have any fiscal impact or affect on state or local governments; the costs of preparing and filing an application to purchase or lease vacant land are borne by the applicant and the GLO processing of the applications are already accounted for in GLO budgeting.

Mr. Thomson has also determined that during the first five year period the proposed rules will be in effect, there will be a small increase of $50 in the GLO fee charged to applicants. The proposed new fee reflects a minimal increase that does not cover the full costs of processing the applications. The public will benefit from this by having the state more accurately reimbursed for the costs associated with processing the applications. There will be no effect on small businesses or local economies as the result of this rule.

The General Land Office has prepared a takings impact assessment for this proposed rule pursuant to Texas Government Code §2007.043 and the Private Real Property Preservation Act Guidelines, §2.18. The proposed new rules do not burden private property. To receive a copy of the takings impact assessment or comment on the proposed rulemaking, please send a written request or comment to Melinda Tracy, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311, or e-mail to melinda.tracy@glo.state.tx.us. Comments must be received by no later than 30 days from the date of publication of this proposal. A public hearing on the proposed rulemaking will be held upon request in accordance with Texas Government Code, §2001.029.

These rules are proposed under the authority of Texas Natural Resources Code §§51.171 - 51.192.

Texas Natural Resources Code, Sales and Lease of Vacancies, §§51.171 - 51.192, are affected by these proposed rules.

§13.87. General Provisions.

(a) This subchapter applies to applications to purchase or lease vacant land filed on or after September 1, 2001. These rules implement Texas Natural Resources Code §§51.171 - 51.192, enacted Texas Senate Bill 1806, 77th Legislature, Regular Session (2001).

(b) Previous Texas Natural Resources Code §§51.171 - 51.202 and regulations promulgated thereunder 31 TAC, Part 1, Chapter 13, §§13.71 - 13.86 continue to apply to applications pending before the General Land Office and actions arising out of vacancy applications pending in the courts of the State of Texas on or before August 31, 2001.

(c) The commissioner delegates responsibility for implementing the provisions of Texas Natural Resources Code Chapter 51, Subchapter E to the Chief Surveyor of the General Land Office Surveying Division.

(d) The commissioner will advise the School Land Board of the fair market value, based on an appraisal by General Land Office or other appraisers, of the surface and mineral estates of vacant land when the application for purchase or lease is ripe for action by the School Land Board. An application is ripe for purchase or lease when an order, issued by the commissioner or by a court, is final and no longer subject to legal challenge. An application is no longer subject to legal challenge when the time periods for legal appeals, pursuant to Texas Natural Resources Code, Chapter 51, Subchapter E, and any other applicable statutes, have expired.

(e) The School Land Board shall set the price for purchase of surface estates and the terms of any lease. The price may not be less than fair market value, as determined by the appraisal.

§13.88. Terms of Sale or Lease.

(a) Mineral Reservation. The School Land Board shall reserve to the State of Texas for the use and benefit of the permanent school fund all oil, gas, coal, lignite, sulphur, and other mineral substances from which sulphur may be derived or produced, salt, potash, uranium, thorium, geothermal resources, and all other minerals in and under the vacant land and by whatever method recovered, as well as the right to lease such minerals and the right of ingress and egress to explore for and produce the same.

(b) Mineral Leasing. When leasing minerals in or under vacant land, the School Land Board may consider the interests of persons who previously held mineral interests in adjoining or surrounding lands when determining the fair distribution of leasing rights in the mineral estate. The School Land Board is not obligated to lease minerals to satisfy an applicant's right under Texas Natural Resources Code §51.192(b). Where there is no good faith claimant, the School Land Board may enter into agreements with persons holding mineral rights in adjoining or surrounding lands prior to the vacancy determination in lieu of offering the mineral estate for lease to others.

(1) The School Land Board shall consider an applicant's right under Texas Natural Resources Code §51.192(b) when considering terms of a mineral lease.

(2) The School Land Board may lease the minerals in the vacant land under the provisions of Texas Natural Resources Code, Chapter 52, Subchapter B and under Texas Natural Resources Code, Chapter 53.

(c) Sale or lease to a Good Faith Claimant. The School Land Board shall recognize a good-faith claimant's preferential right to purchase the surface and lease the minerals in vacant land by offering the good-faith claimant the first opportunity to purchase and lease at a price set by the School Land Board.

(d) Sale or lease to an Applicant. An applicant's preferential right to purchase the surface or to lease minerals in vacant land is secondary to the preferential right of good-faith claimants. The SLB may sell the surface estate and lease the minerals to the applicant under the same conditions as to a good faith claimant. If neither the good faith claimant nor the applicant exercises the right to purchase or lease, then the file shall be endorsed, "surveyed, unsold school land" and may be sold and leased in the manner prescribed by law for sale and lease.

§13.89. Applications.

(a) A person may request an application to purchase or lease vacant land:

(1) by letter addressed to the Texas General Land Office, Surveying Division, P.O. Box 12873, Austin, Texas 78711-2873; or

(2) electronically at www.glo.state.tx.us.

(b) An application must strictly conform to the requirements of Natural Resources Code §51.176 and must include a non-refundable filing fee of $150 payable to the General Land Office.

(c) The commissioner may reject an application when the General Land Office files contain a previous determination that the land described in the application is not vacant and no appeal to a state or federal court arose from that determination. The commissioner may accept an application where the General Land Office has previously determined that the land is not vacant and no appeal arose from that determination. The Commissioner will accept such an application only if the application provides information not considered in the previous determination.

(d) Termination of an application means that no substantive determination was made on the vacancy application. The General Land Office may terminate an application: where the application is rejected pursuant to Texas Natural Resources Code §51.177; and, where the applicants refuses or fails to make a requested deposit; and, where the applicant refuses or fails to perform any other act required by the General Land Office under Texas Natural Resources Code, Subchapter E, Chapter 51, or these rules.

(e) An applicant shall provide an affidavit stating that a search of the records of the General Land Office, the applicable county clerk's offices, the tax records and other publicly available records of the county or counties wherein the allegedly vacant land is located was made and that the applicant has used due diligence in an effort to identify all interested parties.

§13.90. Deposits.

(a) The commissioner shall decide whether a deposit is required to investigate the application. Any required deposit shall be held and accounted for pursuant to Texas Natural Resources Code §51.181 and shall be used only for General Land Office administrative costs, the expenses of a survey and other investigative and related costs, including the costs of hearings.

(b) The commissioner has sole discretion to determine whether an expenditure is necessary and to set the amount of the initial deposit and any supplemental amounts required to be deposited by the applicant.

§13.91. Notifications and Publications.

(a) Acceptance of Application. The applicant shall notify all necessary parties of the commissioner's acceptance not later than 90 days after the acceptance under Texas Natural Resources Code §51.177(b). The applicant shall provide the commissioner with proof of notification consisting of a copy of each notice, without the enclosures, and proof of mailing by certified mail of same to each necessary party.

(b) Future Notices. The applicant shall provide each necessary party with an opportunity to receive all future notices throughout the vacancy proceeding. The applicant shall provide notice with the initial notice under subsection (a) of this section or separately that clearly advises the necessary parties that future notices will not be provided unless specifically requested. Applicant shall provide such future notices by mail, facsimile or as otherwise reasonably requested by a necessary party. Applicant may not use or assist any other person in using the names, addresses, telephone numbers, e-mail addresses or other information about the necessary parties for personal gain.

(c) Not later than 30 days after notices are mailed pursuant subsection (b) of this section the applicant shall publish notice, in a form prescribed by the General Land Office, in a newspaper of general circulation in the county and general area where the land claimed to be vacant is located. The notice shall be published once a week for three consecutive weeks. The notice shall:

(1) describe the allegedly vacant land as it is described in the application and state whether a survey was filed with the application; if a survey was filed, the notice shall also advise necessary parties of their right to a copy of the survey and to file exceptions thereto pursuant to §13.93 of these rules;

(2) advise the public that the General Land Office has accepted the application;

(3) include applicant's full name and address;

(4) advise necessary parties, not otherwise notified, to contact applicant for copies of the application, survey and other related existing documents; and

(5) advise necessary parties that no further notices will be provided unless a request for same is made to the applicant.

(d) The applicant shall provide the General Land Office with a copies of the newspaper notice, proof of publication for the required period and all additional notices or correspondence received or sent by applicant arising from the newspaper notice.

(e) The applicant shall provide the General Land Office with copies of communications and responses thereto received throughout the time the application is pending at the General Land Office.

(f) The commissioner shall notify each necessary party upon issuance of a final order on an application. The commissioner may require that the applicant provide necessary parties with particular notices even where the parties have not notified the applicant of a request for all notices under subsection (b) of this section.

§13.92. Determination of Good Faith Claimant Status.

(a) The commissioner shall decide whether a person is entitled to status as a good-faith claimant to vacant land by considering any facts he deems relevant to support the claim. The commissioner may require documentation in addition to the application in support of the claim. The commissioner will consider whether the person has complied with the requirements of Texas Natural Resources Code §51.178.

(b) If a good faith claimant does not have documents or evidence in support of the items listed in this subsection, then the application shall so affirmatively state the lack of such evidence or documents. A person alleging good-faith claimant status under Texas Natural Resources Code shall provide:

(1) documentary evidence, including, if appropriate, affidavits, to establish past or present use or occupation of the land claimed to be vacant;

(2) proof of color of title and any muniment of title;

(3) a description of the method of enclosure and relevant information about the definite boundaries recognized in the community, including a physical description of those boundaries and evidence of their recognition;

(4) documentary evidence of possession for a period of at least ten years; and

(5) a statement of facts supporting a good-faith belief that the vacant land was within legal boundaries that would have vested title in the claimant.

(c) When determining whether a person is a good faith claimant, the commissioner may take into account whether, under the facts and circumstances presented, the person should have conducted a title investigation before or after taking possession of the land. The commissioner will also consider whether public records delineated or disclosed the existence of the vacant land prior to the person's use, occupation or possession of the land.

§13.93. Exceptions to Survey Report

(a) A necessary party may file exceptions to a survey report filed with the application or to a survey report issued as the result of a commissioner's investigation under Texas Natural Resources Code §51.184 and §51.185.

(1) Exceptions to a survey filed with the application shall be filed with the General Land Office within 45 days of the last notification published under Texas Natural Resources Code §51.179.

(2) Exceptions to a survey prepared at the request of the commissioner under Texas Natural Resources Code §51.182 shall be filed within 30 days of the date of service of the report under Texas Natural Resources Code §51.184.

(3) Each necessary party who files exceptions shall serve the General Land Office and the applicant. The applicant shall then serve every other necessary party with a copy of the exceptions received under this section.

(b) Exceptions shall clearly identify the corner, course, distance or other relevant factor that is being challenged. The exceptions shall also reference the legal or other expert authorities relied upon to support the challenges to the survey. Each necessary party may file only one set of exceptions and no rebuttals or replies are permitted unless specifically requested by the commissioner.

(c) Exceptions shall be filed on standard 8 1/2 by 11 inch pages and shall be typewritten in font no smaller than 12 points. The exceptions shall be limited to 15 pages and attachments shall not exceed 25 pages, except for maps. Exceptions that exceed the page limits may be summarily rejected except that the commissioner may, upon application and for good cause shown, allow additional pages.

(d) The failure of a party to file exceptions to a survey will not be considered as agreement with or acquiescence in any survey purporting to show the existence of a vacancy. The commissioner will not consider the failure to file exceptions when deciding whether a vacancy exists.

§13.94. Investigation.

(a) The commissioner shall maintain in the General Land Office scrap file the names of all persons consulted, all documents and surveys reviewed and citations to relevant laws reviewed.

(b) The commissioner may consult with any General Land Office employee, including attorneys, the chief surveyor and any other relevant expert when reviewing applications, conducting investigations and deciding whether a vacancy exists.

(c) The commissioner is not required to hold a hearing nor to allow necessary parties to present information in addition to that specified in the Texas Natural Resources Code or in these rules. When determining whether a hearing should be held under Texas Natural Resources Code §51.185 the commissioner may consider:

(1) the existence, extent and relevance of disputed facts;

(2) the status of General Land Office archives files and records relating to the alleged vacancy; and

(3) information in public land records.

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 April 5, 2002.

TRD-200202151
Larry Soward
Chief Clerk
General Land Office
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 305-9129

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.73

The Comptroller of Public Accounts proposes an amendment to §3.73, concerning the qualification for and determination of fair market value deduction for replaced vehicles. This proposed amendment incorporates legislatives changes made by SB1125, 77th Legislative Session, 2001, and by HB3211, 76th Legislative Session, 1999, allowing lessors and renters to claim fair market value deductions for replaced vehicles that are owned by certain affiliated companies. This proposed amendment also makes clarification changes.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or 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 new information regarding tax responsibilities). This rule is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This 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. Texas Administrative Code

The amendment implements Tax Code, §152.002.

§3.73. Qualifying for Fair Market Value Deduction and Determination of Fair Market Value for Replaced Vehicles.

(a) A person is engaged [~~engaging~~] in the business of selling, renting or leasing motor vehicles if [~~when~~] the person regularly and actively sells [~~engages in selling~~] motor vehicles as a primary function of his business and sells at least five different vehicles acquired for the exclusive purpose of resale and not for use within any given 12-month period, or regularly and actively rents [~~engages in renting~~] or leases motor vehicles [~~leasing~~], as defined by the Tax Code, §152.001, as a primary function of his business, and rents or leases at least five different motor vehicles in any given 12-month period.

(b) For purposes of computing motor vehicle sales tax, a person who is engaged [~~engaging~~] in the business of selling, renting, or leasing motor vehicles may deduct the fair market value of a replaced motor vehicle that is titled in Texas from the total consideration that is paid for a replacement motor vehicle.

(c) Determining the fair market value of a [~~the~~] replaced motor vehicle.

(1) If the [~~The fair market value of a~~] replaced motor vehicle is [~~that has been~~] sold before [~~prior to~~] the purchase of a replacement motor vehicle, then [~~shall be~~] the total consideration that is received from the sale of the replaced motor vehicle is the fair market value of the replaced motor vehicle.

(2) If [~~The fair market value of~~] the replaced motor vehicle is not [~~that has not been~~] sold before [~~prior to~~] the purchase of the replacement motor vehicle, then the fair market value of the replaced motor vehicle is the title owner's book value of that [~~the~~] motor vehicle [~~on the title owner's books~~] at the time the motor vehicle is retired from business or personal use, provided that the owner's book value is based on generally accepted accounting principles. If the comptroller [~~Comptroller of Public Accounts~~] determines that the title owner's book value is not based on generally accepted accounting principles, then the fair market value shall be the total purchase price of the vehicle, less depreciation, which is calculated by applying a [~~at the rate of~~] 2.0% rate per month for [~~of~~] the first 36 months following [~~from~~] the date of purchase, and then [~~at a rate of~~] a 1.0% rate per month for the remainder of the depreciable life of the vehicle.

(d) Deducting the fair market value of a replaced motor vehicle that is titled to another person.

(1) A lessor that is described in paragraph (2) of this subsection may deduct the fair market value of a replaced motor vehicle that has been leased for longer than 180 days and that is titled in Texas to another person, if the replaced motor vehicle is offered for sale and if either one of the following requirements is met:

(A) the lessor that wants to claim the fair market value deduction holds at least 80% beneficial ownership interest in the titled owner of the replaced vehicle, or the titled owner of the replaced vehicle holds at least 80% beneficial ownership interest in the lessor; or

(B) the lessor that wants to claim the fair market value deduction acquires all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the titled owner of the replaced vehicle, or the titled owner of the replaced vehicle acquires all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the lessor.

(2) The following lessors may qualify for fair market value deduction under paragraph (1) of this subsection:

(A) A lessor that holds a lessor license that the Motor Vehicle Board of the Texas Department of Transportation has issued under the Texas Motor Vehicle Commission Code, Article 4413(36);

(B) A lessor that is a state or federally chartered financial institution or a regulated subsidiary of a state or federally chartered financial institution;

(C) A lessor that holds a franchised dealer license that the Motor Vehicle Board of the Texas Department of Transportation has issued under the Texas Motor Vehicle Commission Code, Article 4413(36), and that is engaged in the business of leasing motor vehicles that the lessor is licensed to sell; or

(D) Any other lessor that is specifically not required to obtain a lessor license under Texas Motor Vehicle Commission Code, Article 4413(36), §4.01(a).

(3) A person who is in the business of renting motor vehicles for a period not to exceed 180 days under a single agreement and who holds a motor vehicle rental permit that is issued under Tax Code, §152.065, may deduct the fair market value of a replaced motor vehicle that is titled in Texas to another person if the replaced motor vehicle is offered for sale and if either one of the following requirements is met:

(A) the renter that wants to claim the fair market value deduction holds at least 80% beneficial ownership interest in the titled owner of the replaced vehicle, or the titled owner of the replaced vehicle holds at least 80% beneficial ownership interest in the renter; or

(B) the renter that wants to claim the fair market value deduction acquires all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the titled owner of the replaced vehicle, or the titled owner of the replaced vehicle acquires

all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the renter.

(4) A lessor or rental company may not use the fair market value of a replaced motor vehicle to reduce total consideration paid for a replacement motor vehicle if the fair market value of that vehicle has been previously used by either the lessor or rental company or other entity.

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 April 2, 2002.

TRD-200202093
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 475-0387

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SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.199

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

The Comptroller of Public Accounts proposes the repeal of §3.199, concerning unregulated mixtures. This rule is being repealed because the authority for the administration and collection of the motor fuel testing fee was transferred from the comptroller to the Texas Department of Agriculture, effective May 22, 2001. The rule was previously necessary to describe the types of fuel that were excepted from motor fuel testing because the fuel types did not contain sufficient quantities of alcohol to warrant regulation.

James LeBas, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government. Since the Comptroller of Public Accounts no longer has any administrative or collection authority regarding the motor fuel testing fee, the repeal of this rule will conform our rules to the statutes.

Mr. LeBas also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is proposed under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The repeal implements Texas Civil Statutes, Title 132, Art. 8614, §9(b).

§3.199. Unregulated Mixtures.

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 April 2, 2002.

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Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

SUBCHAPTER B. TEXAS IGNITION INTERLOCK DEVICE REGULATION

37 TAC §§19.21 - 19.29

The Texas Department of Public Safety proposes amendments to §§19.21-19.29, concerning Texas Ignition Interlock Device Regulations.

The original IID regulations were written with a very minimal knowledge of how day to day business practices were being conducted in this state by the individual vendors. There are seven vendors doing business in Texas to date, utilizing nine different device models. Compounding the problem is that different counties in the state require different variations of services and/or reports from the vendors.

Because of the problems encountered above, our first attempt at establishing rules by which the IID industry would be regulated were, as we have come to find out, less than adequate to address some concerns that have come to light since we have begun to actively inspect the industry.

We feel the proposed changes address issues unknown to us in the beginning, and we also believe we have clarified and/or made many of our original intentions throughout the document more flexible.

In §19.21 we added the definition of Director. For flexibility we eliminated "scientific director" and replaced it with "department" in this section and throughout the document.

In §19.23(f) we added wording to make the rolling retest requirement more flexible to accommodate different vendor's capabilities.

In §19.24(b)(1) we added wording to make more flexible the operational free restart feature, thus accommodating different vendor's capabilities.

In §19.25(a) and (b) we explicitly outline the calibration confirmation referred to in the original rules. Some vendors did not know

what we were talking about and therefore were not complying with this rule.

In §19.27(c)(1) we expanded the definition of service center. Initial inspections revealed locations (being called service centers) that were no more than a car parked on the side of the road with their computer set upon the hood of the vehicle. We feel this way of doing business needs amendment. In (c)(2) we continue our expansion of the service center definition insofar as how services should be rendered, especially with regard to service representative trainees, which topic was not addressed in the original regulations because we had not thought of it. In (c)(6) we further mandated procedures to be implemented by the service center to check for tampering and/or circumvention. Heretofore, some service centers were not checking for tampering and/or circumvention, and in some instances only the device was being presented (absent the vehicle) for the monitor check.

In §19.27(h) and (i), §19.28(c) and (d) and §19.29(d) and (e) we more succinctly defined all of the possible certification statuses, the procedures to be undertaken to recertify, and we configured their position in the document to be at the end of the respective sections.

The passage of Tex. H.B. 5, Acts 2001, 77th Leg., R.S., ch. 969, §3, amended Chapter 49.09(g) of the Penal Code, and will cause the number of ignition interlock devices (IID's) in use in the state to double over the next few years. In order to address this growth, the department is adding two ignition interlock inspectors to its work force in order to be able to regulate this industry and its growth. The current rule calls for a much higher paid and educated inspector than the department is able to acquire. The main reason the department must revise these regulations then, is to rewrite the requirements in §19.29 for the ignition interlock inspector to meet the department's pending job classification on this subject.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be rule clarification which will enable the department to enforce shortcomings in interlock vendor actions and guide the interlock vendor to more easily regain lost certification in this program. There is no anticipated economic cost to small businesses, large businesses, or micro-businesses. There is no anticipated economic cost to individuals.

Comments on the proposal may be submitted to Richard Baxter, Manager, Breath Alcohol Testing, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0570, (512) 424-5201.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.2476, which requires the department to create and maintain these rules.

Texas Government Code, §411.004(3) and Texas Transportation Code, § 521.2476 are affected by this proposal.

§19.21. Explanation of Terms and Actions.

The following words and terms, when used in this undesignated head, shall have the following meanings, unless indicated otherwise.

(1) Alcohol -- Ethyl alcohol, also called Ethanol.

(2) Alcohol concentration -- The weight amount of alcohol contained in a unit volume of breath or air, measured in grams of Ethanol/210 liters of breath or air and expressed as grams/210 liters. Breath alcohol concentration in these regulations shall be designated as "alcohol concentration."

(3) Alveolar air -- Also called "deep lung air" or "alveolar breath." An air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. "Alveolar" refers to the alveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

(4) Anticircumvention feature(s) -- Any feature or circuitry incorporated into the Ignition Interlock Device (IID) that is designed to prevent human tampering which would cause the device not to operate as intended.

(5) Approval -- Meeting and maintaining the requirements of these regulations and placement on the department's[~~scientific director's~~] list of approved devices. Approval may be denied, cancelled, withdrawn, and/or suspended at any time, for cause by the department [~~scientific director~~].

(6) Appropriate judicial[~~judiciary~~] authority -- a phrase used throughout these regulations that is meant to include personnel or court orders of the Texas judicial[~~judiciary~~] system including but not be limited to: the actual court order requiring or authorizing installation of an IID, the court (or judge) that ordered or authorized that installation, pretrial services authorities (having to do with bail bond requirements in these matters), adult supervision (or adult probation) authorities and/or[~~and or~~] occupational licensing authorities.

(7) Bogus air sample -- Any gas sample other than the unaltered, undiluted, or unfiltered alveolar air sample coming from the individual required to have an ignition interlock device installed in his/her vehicle.

(8) Breath alcohol analysis -- Analysis of a sample of person's expired alveolar breath to determine the concentration of alcohol in the person's breath.

(9) Certification.

(A) Certification refers to meeting and maintaining the requirements set forth in these regulations. Under the provisions of these regulations, certification is granted to:

(i) inspectors,

(ii) service representatives, and

(iii) service centers.

(B) Certification is granted by the department[~~scientific director~~] only when minimum requirements of certification have been met. All aspects of IID business in Texas must be performed under certification in order to be eligible for court purposes.

(C) Certificates are issued to inspectors, service representatives, and service centers. Certificates are not issued for individual IIDs or reference sample devices.

(10) Certified IID inspector. -- Refers to an individual who meets the requirements stated in §19.29 of this title (relating to Ignition Interlock Device Inspector).

(11) Certified service center -- Refers to any IID service center, whether fixed site or mobile, meeting and maintaining the provisions stated in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(12) Certified service representative -- Refers to an individual who has successfully completed the requirements stated in these regulations and has received certification from the department[~~scientific director~~] to install, inspect, download, calibrate, repair, monitor, maintain, service and/or remove a specific ignition interlock device(s). Service representative certification is contingent upon compliance with all provisions stated in §19.28 of this title (relating to Service Representative).

(13) Costs -- The nonrefundable original administrative fees plus any and all costs incurred by the department for testimony and/or approval, or reevaluation, of any device. Any and all incurred costs and expenses shall be the responsibility of the manufacturers and shall be reimbursed to the department within 30 days. Additionally the reasonable cost of providing legislatively mandated inspections of certified service centers shall be reimbursed to the department in the form of inspection fees payable by either the manufacturer or vendor, whichever is appropriate. Failure to pay or reimburse the department for these reasonable costs shall result in the denial or loss of certification of the affected service center(s).

(14) Data storage system -- A computerized recording of all events monitored by the installed IID, which may be reproduced in the form of required reports.

(15) Department -- The unmodified word department in these regulations refers to the Texas Department of Public Safety.

(16) Device -- An ignition interlock device (abbreviated in this title as IID).

(17) Director -The chief executive officer of the department.

(18) Emergency bypass -- a one-time event, authorized by a service representative that permits the IID- equipped vehicle to be started without the requirement of passing the breath test. This event must be recorded in the Data storage system. Also see Illegal Start.

(19) [~~(18)~~] Filtered air samples -- Any mechanism by which there is an attempt to remove alcohol from the human breath sample. Filters would include, but are not limited to, silica gel, drierite, cat litter, cigarette filters, water filters, cotton, etc.

(20) [~~(19)~~] Fixed-site service center -- A certified service center that is at a permanent location, i.e., not mobile.

(21) [~~(20)~~] Free restart -- The condition in which a test is successfully completed and the motor vehicle is started, and then at some point the engine stops for any reason (including stalling). A free restart is the ability to start the engine again, within a reasonable time as approved by the department[~~two minutes~~], without completion of another breath alcohol analysis. This free restart does not apply, however, if the IID was awaiting a rolling retest that was not delivered.

(22) [~~(21)~~] IID -- The common abbreviation for Ignition Interlock Device used throughout these regulations.

(23) [~~(22)~~] Ignition interlock device (abbreviated in this title as IID) -- A device that is a breath alcohol analyzer that is connected to a motor vehicle ignition. In order to start the motor vehicle engine, a driver must deliver [~~blow~~] an alveolar breath sample to[~~into~~] the IID [~~analyzer~~] which measures the alcohol concentration. If the alcohol concentration meets or exceeds the startup set point on the interlock device, the motor vehicle engine will not start.

(24) [~~(23)~~] Illegal start -- An event wherein the IID-equipped vehicle is started without the requisite breath test having been taken and passed and/or is started when the IID is in a lockout condition or is started by enabling an unauthorized emergency bypass. Any and all of these events shall be recorded in the Data storage system as violations.

(25) [~~(24)~~] Inactivation.

(A) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unreliability or incompetence. Inactivation may be initiated by anyone having authority to suspend or revoke, or by the certified entity in case of voluntary surrender of certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the department [~~scientific director~~]. Recertification of an inactivated certificate will require a written request from the applicant to the department [~~scientific director~~] and successful completion of the requirements outlined in §19.27, §19.28 [~~19.28(c)~~], or §19.29, of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate for recertification and/or other requirements determined by the department [~~scientific director~~]. Inactivation will be used in, but not limited to, the following situations:

(i) an inspector or a service representative terminates employment under which certification was acquired and new employment does not require certification, or the new location of the inspector or service representative cannot be ascertained; or

(ii) [~~an inspector or~~]a service representative fails to renew current certification and reverts to an inactive status; or

(iii) a service center that no longer meets all the requirements for certification.

(B) Inactivation will not be considered by the department [~~office of the scientific director~~] as a disciplinary action. It is for administrative program control to safeguard the scientific integrity of the IID program.

(26) [~~(25)~~] Interlock -- The mechanism which prevents a motor vehicle from starting when the alcohol concentration of a person meets or exceeds a preset value.

(27) [~~(26)~~] Lockout condition -- A state wherein the IID will not allow the vehicle to be started until a certified service representative completes a violation reset, downloads the Data storage system and restores the IID to a state that will allow the vehicle to be started. Violation conditions that trigger the lockout condition will enable a unique auditory and/or visual cue that will warn the driver that the vehicle ignition will enter a lockout condition within a period not to exceed 5 days. This event will be uniquely recorded in the data storage system and will simultaneously start a clock that culminates in the actual lockout condition.

(28) [~~(27)~~] Manufacturer -- The actual producer of the device.

(29) [~~(28)~~] Manufacturer's representative -- An individual and/or entity designated by the manufacturer to act on behalf of or represent the manufacturer of a device. May be synonymous with vendor.

(30) [~~(29)~~] Mobile service center -- Any IID facility that has the personnel and equipment capability to be in use separately and simultaneously with it's parent fixed site service center, whether set up in a vehicle or temporarily set up at a site with a permanent foundation.

(31) [~~(30)~~] Negative result -- A test result indicating that the alcohol concentration is less than the startup set point value.

~~[~~(31) ~~Office of the scientific director -- The individual responsible for the implementation, administration, and enforcement of the Texas Ignition Interlock Device Regulations or his staff.]~~

(32) Positive result -- A test result indicating that the alcohol concentration meets or exceeds the startup set point value.

(33) Proficiency test -- A test administered by, and in the presence of, an IID inspector to establish and/or ascertain the competency of a service representative with regard to IID equipment.

(34) Purge -- Any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

(35) Recertification -- Recertification refers to the regaining of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations, application for recertification requires a written request from the applicant to the department [~~scientific director~~]. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful completion of requirements stated in §19.27, §19.28 [~~19.28(c)~~] or §19.29 of this title (relating to Certification and Inspection of Service Centers, Service Representative, and Ignition Interlock Device Inspector) as appropriate, and/or additional requirements as stated by the department [~~scientific director~~].

(36) Reference sample device -- A device which generates a headspace gas above a water/alcohol solution that is maintained at a thermostatically controlled temperature. This headspace gas can be used to simulate the breath alcohol concentration of an individual who has been drinking alcoholic beverages and whose alcohol concentration is reflected in an analysis of a breath sample. The results of this analysis are expressed as grams of alcohol/210 liters of breath.

(37) Retest set point -- A pre-set or pre-determined alcohol concentration setting, which is the same (0.03) as the startup set point [~~or with appropriate judiciary authority, as much as 0.02 higher than the startup set point~~], at which, or above, during a rolling retest, the device will record in the data storage system, the high alcohol result as a violation.

(38) Revocation.

(A) Revocation refers to the immediate cancellation of certification. Revocation is an action taken only by the department [~~scientific director~~]. To regain certification after revocation requires a written request from the applicant to the department [~~the scientific director~~] and successful completion of the requirements for certification and/or recertification and/or any additional requirements determined by the department [~~scientific director~~]. Revocation invalidates any current IID program certification issued to the revoked entity for the period of revocation and until recertification. Unless provided for by specific provision in these regulations, revocation will apply when the holder of the certification no longer meets the criteria for certification. Examples of cases for which revocation will apply include, but are not limited to, the following:

(i) a certified IID service center that no longer meets the requirements of these regulations because of unreliability, incompetence, or violation of these regulations.

(ii) A certified inspector or service representative who is no longer in compliance with the requirements for certification under these regulations including a certified inspector or certified service representative who, subsequent to certification, is convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony.

(iii) any case where, in the opinion of the department, continuance of certification would not uphold the scientific integrity of the IID program.

(B) If after the allowed appeals process, the revocation of a service center is sustained; the revoked entity shall be required to replace the IID service and/or the IID as in § 19.25(e) of this title (relating to Maintenance and Calibration Requirements).

(C) In the event that no appeal from the revoked service center is forthcoming, the revoked entity shall have 30 days to achieve the requirements of §19.25(e) of this title (relating to Maintenance and Calibration Requirements).

(D) Revocation will be for the purpose of enforcing these regulations and maintaining the scientific integrity of the Texas IID program. A revocation may be appealed to the director, Texas Department of Public Safety.

(39) Rolling retest -- After passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5 to 15 minutes. Third and subsequent retests shall be required at intervals not to exceed 45 minutes from the previously requested test for the duration of the travel. See Retest set point.

(40) Rolling retest violation -- An event, recorded in the data storage system when the rolling retest requirement is not met.

(41) Service center -- The physical location where the service representatives perform their IID services. Also see certified service center.

(42) Service representative -- See Certified service representative.

(43) Startup set point -- A pre-set or pre-determined alcohol concentration setting at which, or above, the device will prevent the ignition of a motor vehicle from operating. That value shall be an alcohol concentration of 0.03 g /210 liters of breath.

(44) Suspension -- Suspension refers to the immediate cancellation or curtailment of certification and may be applied to any certified IID entity when, because of unreliability, incompetence, or violation of these regulations that entity is not in compliance with the provisions stated in these regulations or when continuance of such certification in the opinion of the department [~~scientific director~~] would not uphold the scientific integrity of the IID program. A suspension can be initiated by an[~~the scientific director,~~] IID inspector [~~,~~] or designated representative of the department[~~scientific director~~]. Prior to appeal to the director [~~of the Department of Public Safety~~], suspensions may be set aside or sustained only after investigation by the department [~~scientific director~~]. The minimum period of suspension as determined by the department [~~scientific director~~] will be for a period of time not less than 30 days. The IID inspector or a designated representative of the department [~~scientific director~~] may recommend a specific period of suspension to the department [~~scientific director~~].

(A) A suspension cancels any certification issued to a suspended inspector or service representative for a period of suspension until recertification. During a suspension, the suspended entity is barred from providing any service in the IID program.

(B) A suspension curtails any certification issued to a suspended service center for a period of suspension until recertification. During a suspension, the suspended service center may continue

to provide service to those IID customers in existence prior to the suspension, but shall not acquire new IID customers during the period of suspension.

(C) To regain certification after the period of suspension requires a written request from the suspended entity to the department [~~scientific director~~]. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the department [~~scientific director~~] to be a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the ignition interlock program and upholding these regulations. A suspension may be appealed to the director, Texas Department of Public Safety.

(45) Tampering -- An overt or conscious attempt to physically disable or otherwise disconnect the IID from its power source and thereby allow the operator to start the engine without taking and passing the requisite breath test. This attempt, whether successful or not, shall be recorded in the data storage system as a violation.

(46) Vendor -- The person or entity representing the manufacturer(s) of an approved IID and responsible for the day-to-day operations and the continuing certification of an IID service center. Must have manufacturer's approval for use of a particular approved IID either through purchase or lease agreement. May be synonymous with manufacturer's representative.

(47) Violation -- Any of several events including but not limited to such things as high alcohol, whether from a violation set point or from a retest set point, a rolling retest violation, tampering or an illegal start. These events, recorded in the data storage system, must be reported as per appropriate judicial [~~judiciary~~] requirements and which, when accumulated to a total determined by the appropriate judicial [~~judiciary~~] authority, shall enter a lockout condition within a period not to exceed 5 days and require a violation reset.

(48) Violation reset -- An unscheduled service of the IID and download of the data storage system by the service center required because an accumulation of violations has reached a number (predetermined by appropriate judicial [~~judiciary~~] authority) that generates a lockout condition. This information shall be reported to the appropriate judicial [~~judiciary~~] authority within 48 hours after the vendor becomes aware of the violation. Completion of this service will include restoring the IID to a state that will allow the vehicle to be started.

(49) Violation set point -- A pre-set or pre-determined alcohol concentration setting at which, or above, the device will record the high alcohol result in the data storage system as a violation.

(50) Withdrawal of approval -- Cancellation of approval of a device; to wit, not meeting or maintaining these regulations.

§19.22. Procedure for Device Approval.

(a) All ignition interlock devices to be used in the state pursuant to Texas Transportation Code, Chapter 521, must be approved by the department[~~model and/or class by the office of the scientific director, Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director)~~]. These regulations and requirements apply only to IID usage in the Texas judicial system in applications such as (but not limited to) pretrial services (bail bond requirements), adult supervision (probation requirements) and/or occupational licensing requirements. They are not intended to apply to or limit IID use in a voluntary or non- adjudicated scenario such as a parent having an IID placed on a child's motor vehicle.

(b) [~~(1)~~] The department[~~scientific director~~] will establish and maintain a list of approved devices by model and/or class for use in the state.

(c) [~~(2)~~] If application is made for approval of a device by model and/or class not on the approved list, the following procedures and standards shall apply.

(1) [~~(A)~~] A manufacturer or manufacturer's representative requesting approval of a device must submit a production model of the device, along with a written request for approval. It shall be the responsibility of the manufacturer or the manufacturer's representative to incur costs of mailing or shipping of the device to and from the department. It shall also be the responsibility of the manufacturer or the manufacturer's representative to submit a certified check or money order in the amount of $50 payable to the Texas Department of Public Safety (this is an administrative approval processing fee and is nonrefundable). In the event of non-approval, additional requests for approval may be limited by the department. The department shall not get involved in research and development procedures of these devices.

(2) [~~(B)~~] Accompanying each device shall be a notarized letter and/or affidavit from a testing laboratory certifying that the submitted device by model and/or class meets or exceeds all requirements set forth in §19.23 of this title (relating to Technical Requirements) and §19.24(a) and (b) of this title (relating to Miscellaneous Requirements) and/or any other requirements as determined by the department[~~scientific director~~]. This affidavit shall also include:

(A) [~~(i)~~] the name and location of the testing laboratory;

(B) [~~(ii)~~] the address and phone number of the testing laboratory;

(C) [~~(iii)~~] a description of the tests performed;

(D) [~~(iv)~~] copies of the data and results of the testing procedures; and

(E) [~~(v)~~] the names and qualifications of the individuals performing the tests.

(d) [~~(3)~~] Prior to approval of the device, the manufacturer or the manufacturer's representative shall complete and submit an application approval affidavit available from the department [~~scientific director~~]. The notarized application approval affidavit shall be signed by the manufacturer or the manufacturer's representative. This approval affidavit shall state that the device by model and/or class will be calibrated and maintained pursuant to these regulations and as designated by the department [~~scientific director~~].

(1) [~~(A)~~] If a device is submitted for approval by a party other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative and that it is agreed and understood that any action taken by the department [~~scientific director~~] or any cost incurred in accordance with the provisions of these regulations shall ultimately be the responsibility of the manufacturer.

(2) [~~(B)~~] After the device is approved, in order to do business in the Texas IID program, a manufacturer must vend through a Certified IID Service Center as described in §19.27 of this title (relating to Certification and Inspection of Service Centers).

(e) [~~(4)~~] An annual reevaluation of the approved IID, pursuant to Texas Transportation Code, Chapter 521, shall be required in order for continued approval. This reevaluation shall consider those requirements in §§19.23- 19.25 of this title (relating to Technical Requirements, Miscellaneous Requirements, and Maintenance and Calibration Requirements). The cost of this reevaluation shall be the same as for the initial approval process noted in subsection(c) (1) [~~(b)~~] of this section.

(f) [~~(5)~~] Annually provide to the department a written report of each service and feature of all approved IIDs made available by the manufacturer. The department shall make available the form for this report.

(g) [~~(6)~~] The vendor shall notify the department in writing if the certification or approval of a device that is approved for use in Texas is or ever has been suspended, revoked or denied in another state, whether such action occurred before or after approval in Texas. This notification shall be made in a timely manner, not to exceed 30 days, after the vendor has received notice of the suspension, revocation, or denial of certification or approval of the device, whether or not the action is or has been appealed.

(h) [~~(7)~~] Nothing in these regulations shall imply that an IID which was approved under an earlier version of these regulations is no longer approved because of revisions to these regulations, except for legislated requirements such as in subsection (e)[~~(d)~~] of this section or changes in technology as referred to in §19.24 (b)(2) of this title (relating to Miscellaneous Requirements) and §19.26 (b)(2) of this title (relating to Approval, Denial, and Withdrawal of Approval).

§19.23. Technical Requirements.

(a) Accuracy. The startup set point value for the interlock device shall be an alcohol concentration of 0.030 g/210 liters of breath. The accuracy of the device shall be 0.030 g/210 liters plus or minus 0.010 g/210 liters. The accuracy will be determined by analysis of an external standard generated by a reference sample device, or other methodologies that may be approved by the department.

(b) Alveolar breath sample. The device shall have a demonstrable feature designed to assure that the breath sample that is measured is essentially alveolar.

(c) Precision. The device shall correlate with a known alcohol concentration of 0.03 g/210 liters with accuracy set forth in subsection (a) of this section. A correlation of 95% will be considered reliable precision; 95 of 100 times the device must respond to, detect, and prevent the motor vehicle engine from operating when the operator has an alcohol concentration of 0.03 g/210 liters or greater, or any other limits as set by the department[~~scientific director~~].

(1) The proportion of false positive results shall not exceed 5.0%.

(2) The proportion of false negative [~~and uncertain~~] results shall not exceed 5.0%.

(d) Specificity. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to positive results.

(e) Temperature. The device shall meet the requirements of subsections (a) and (c) of this section when used at ambient temperatures of -20 degrees Celsius to 83 degrees Celsius or other limits as set by the department [~~scientific director~~].

(f) Rolling retest. To thwart curbside assistance, after passing the test allowing the engine to start, the IID shall require a second test within a randomly variable interval ranging from 5 to 15 minutes. Third and subsequent retests shall be required at intervals not to exceed 45 minutes from the previously requested test for the duration of the travel. During the rolling retest, the retest set point shall be the same as [~~or with appropriate judiciary order, as much as 0.02 higher than~~] the startup set point. In order to alert the driver that a retest is to be required, a [~~3 minute~~] warning light and/or tone shall come on. The driver will then be afforded sufficient time[~~have 3 minutes~~] to retest. If the engine is intentionally or accidentally shutdown after or during the [~~3 minute~~] warning but before retesting, the free [~~retest clock shall not be reset. Retesting takes priority over free restarts (see §19.21(20)) of this title (relating to Explanation of Terms and Actions). Free~~] restart shall not be operative [~~when the IID is awaiting a rolling retest~~]. The failure to take a retest shall be recorded in the data storage system as a violation.

(g) Vibrational stability. The device shall meet the requirements of subsections (a) and (c) of this section when subjected to simple harmonic motion having an amplitude of 0.38mm (0.015 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2 1/2 minutes, then decreased at a uniform rate to 10 Hz in 2 1/2 minutes. The device shall also meet the requirements to simple harmonic motion having an amplitude of 0.19mm (0.0075 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2 1/2 minutes, then decreased at a uniform rate to 30 Hz in 2 1/2 minutes

§19.24. Miscellaneous Requirements.

(a) Anticircumvention. The device shall be designed so that anticircumvention features will be difficult to bypass.

(1) Anticircumvention provisions shall include, but not be limited to, prevention or preservation of evidence of cheating by attempting to use bogus or filtered breath samples or bypassing the breath sampling requirements of the device electronically.

(2) The device may use special seals or other methods that record attempts to bypass anticircumvention provisions.

(3) The device shall be checked for evidence of tampering at least once every sixty (60) days [~~other month~~] or more frequently if the need arises.

(4) When evidence of tampering is discovered, [~~the appropriate judiciary authority shall be notified in writing and~~] these records shall be made available to the appropriate judicial authority and upon request to the department [~~scientific director~~].

(b) Operational features.

(1) The device shall be designed to permit a free restart of a motor vehicle's ignition within a reasonable time as approved by the department [~~two minutes~~] after the ignition has been shut off, without requiring a further alcohol analysis. [~~The free restart function shall be checked during each routine inspection.~~]

(2) The device shall also automatically purge alcohol before allowing subsequent analyses. In addition to the operational features of these regulations, the department [~~scientific director~~] may impose additional requirements, as needed, depending upon design and functional changes in device technology.

(3) The device shall have a data storage system of sufficient capacity to facilitate the recording and maintaining of all daily driving activities for the period of time elapsed from one maintenance and calibration check (as referred to in §19.25 (a)) of this title (relating to Maintenance and Calibration Requirements) to the next.

(c) Product liability. The manufacturer of the device shall carry liability insurance covering product liability, including coverage in Texas with a minimum policy limit of $1 million.

(d) Service support[~~Product warranty~~]. The manufacturer shall [~~provide a warranty of performance to~~] ensure responsibility for [~~support for~~] service support within a maximum of 48 hours after notification of a reported malfunction. This support shall be in effect during the period the device is required to be installed in a motor vehicle.

(e) Modifications. Once a device by model and/or class has been approved, no modification in design or operational concept may

be made without prior written consent of the department[~~scientific director~~]. This does not include replacement or substitution of repair parts to maintain the device nor software changes that do not modify the operational concept of the device.

(f) Warning label. A label warning against tampering, circumventing, or misuse[~~label containing the following language~~] shall be affixed to each device: [~~"Any individual tampering, circumventing, or misusing this device shall be subject to prosecution and/or civil liability."~~]

(g) Safety. The device shall be designed to comply with generally recognized safety requirements.

(h) Specification and operating instructions. Manufacturers shall provide to the department with each device submitted for approval, a precise set of specifications, which describe the features of the device concerned in the evaluation of its performance. A set of detailed operating instructions shall be supplied with each device.

(i) Product indemnity. The manufacturer shall provide a signed statement that the manufacturer shall indemnify and hold harmless the state of Texas, the department and its officers, employees, and agents from all claims, demands, and actions, as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer or their representative relating to the installation, service, repair, use and/or removal of an IID.

(j) General. Any other requirements as may be determined necessary by the department[~~scientific director~~] to ensure that the device functions properly and reliably.

§19.25. Maintenance and Calibration Requirements.

(a) The device shall be inspected, maintained, and calibrated for accuracy and operational performance at least once every sixty (60) days[~~other month~~] and more frequently, if necessary, as specified by the department or the appropriate judicial[~~judiciary~~] authority [~~or the scientific director~~]. This maintenance and calibration check will be performed by a certified IID service center as described in § 19.27 of this title (relating to Certification and Inspection of Service Centers).

(b) The maintenance and calibration check will consist of, but not be limited to, a check of the device to determine that the device is properly functioning in accordance with the following sections:

(1) accuracy - §19.23(a) of this title (relating to Technical Requirements);

(A) The device shall be calibrated before placing into service. The calibration described herein shall verify the IID accuracy to be within plus or minus 0.010 g/210 liters of the reference sample predicted value.

(B) Upon return to the service center as in subsection (a) of this section [~~for any reason~~], the device shall be subjected to a calibration confirmation test. The test result described herein shall verify the accuracy of the IID to be within plus or minus 0.010 g/210 liters of the reference sample predicted value.

(i) Should the device fail the calibration confirmation test referred to[~~The data storage system entry described~~] in subsection (b)(1)(B) of this section that information shall be made available to the appropriate judicial authority[~~unique to indicate a simulated result, not an actual breath sample~~].

(ii) Should the [~~device fail the~~] calibration confirmation test referred to in subsection (b)(1)(B) of this section not agree within plus or minus 0.010 g/210 liters of the reference sample predicted value, the device shall be recalibrated so as to restore the accuracy described in subsection (b)(1)(A) of this section before the device may be returned to service[~~, that information shall be forwarded, with sufficient explanation to the appropriate judiciary authority~~].

(2) anticircumvention - §19.24(a) of this title (relating to Miscellaneous Requirements); and

(3) operational features - §19.24(b) of this title (relating to Miscellaneous Requirements).

(c) Maintenance[~~Documentation~~] and calibration records [~~of periodic checks~~] shall be maintained by the manufacturer, the manufacturer's representative, and/or the vendor and shall be provided upon request to the department[~~office of the scientific director~~] and/or any appropriate judicial[~~judiciary~~] authority.

(d) If [~~,~~] at any time [~~of routine inspection, or at any other time,~~] the device fails to meet the provisions of this section, the device shall be removed from service or calibrated and/or repaired, and [~~the vendor or manufacturer's representative shall notify, in writing, the appropriate judiciary authority and~~] these records shall be made available to the appropriate judicial authority and upon request to the department[~~scientific director~~].

(e) A manufacturer shall be responsible for providing continuing service by a certified service center during the installation period, without interruption, should a certified service center go out of business or be revoked.

(1) If the out of business or revoked service center is being replaced, the manufacturer shall make all reasonable efforts to obtain participant records and data from a certified service center being replaced and provide them to the new service center. The department shall be notified of this event as soon as possible.

(2) If the out of business or revoked service center is not replaced, the manufacturer shall retain the records and data as required in subsection (e)(1) of this section. The department shall be notified of this event as soon as possible.

(A) The manufacturer shall be responsible for, and shall bear the cost of, removal of the original IID and replacement with another approved IID, regardless of the manufacturer of the device being substituted, if another manufacturer's device is available. The manufacturer shall also determine that each participant with an existing, installed IID is able to obtain the required service within a similar distance, no more than 25 miles further than previously, of the participant's residence or place of business.

(B) The manufacturer shall make every reasonable effort to notify all participants of the change of the certified service center or replacement of the device 30 days before the change or replacement will occur, or as soon as is possible.

(3) If neither subsection (e)(1) nor subsection (e)(2) of this section can be accomplished, the manufacturer shall be responsible for notifying the clients and the appropriate judicial[~~judiciary~~] authority that service will be terminated within 60 days, and then removing the devices at no cost to the clients in question.

§19.26. Approval, Denial, and Withdrawal of Approval.

(a) Upon proof of compliance with these regulations, an[~~and~~] ignition interlock device will be approved by brand and/or model and will be placed on a list of approved devices. Notification of approval shall be made in writing to the manufacturer. It will be the responsibility of the manufacturer to provide proof that each individual device installed in any motor vehicle meets or exceeds the minimum standards of these regulations and is the same model and/or class approved by the

department[~~scientific director~~]. It will further be the responsibility of the manufacturer to provide expert or other required testimony in any civil or criminal proceedings as to the method of manufacture of the device, how said device functions, and the testing protocol by which the device was approved. In the event it should become necessary for the department[~~scientific director~~] to provide testimony in any civil or criminal procedures involving the approval or use of the device, the manufacturer shall reimburse the department for any costs incurred in providing such testimony. Failure to provide this reimbursement shall result in withdrawal of approval for the device.

(b) The approval of a device may be denied or withdrawn by the department[~~scientific director~~] if:

(1) the device, entity, or person fails to meet the requirement for approval under the Texas ignition interlock device regulations; or

(2) changes in IID technology are such that continued approval of the device would, as determined by the department, not be in the best interest of the state of Texas.

(c) The denial or withdrawal of an approval may be appealed to the director, Texas Department of Public Safety.

§19.27. Certification and Inspection of Service Centers.

(a) All IID service centers conducting business in this state, whether fixed site or mobile, must have the approval of and be certified by the department[~~scientific director~~].

(b) To initiate certification for an IID service center, a vendor or the IID manufacturer's representative shall submit an application to the department[~~scientific director~~] for approval. The application, available from the department[~~scientific director~~], shall show the physical location of the service center, the brand and/or model of the ignition interlock device(s) to be merchandised and the reference sample device(s) to be used. The application shall also contain a statement acknowledging permission from the IID manufacturer to vend the IID described by the application[~~, the reference sample device to be used, and a list of qualified service representatives that are or will be certified~~]. Only IIDs listed on the approved list referenced in §19.22(a) of this title (relating to Procedure for Device Approval) may be merchandised. A vendor applying for certification of an IID service center must agree to:

(1) allow access for inspection under subsection (d) of this section,

(2) comply with subsection (g) of this section,

(3) comply with subsection (c) of §19.24 of this title (relating to Miscellaneous Requirements) concerning product liability and liability insurance requirements, and

(4) comply with subsection (d) of §19.24 of this title (relating to Miscellaneous Requirements) concerning service support [~~product warranty and support of service~~] requirements.

(c) All IID testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) A certified IID service center shall be located in a facility which properly and successfully accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing and/or removing a specific IID device(s). The service center must incorporate the use of analysis of a reference sample such as headspace gas from a mixture of water and a known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value as in § 19.25(b)(1)(A) and (B) of this title (relating to Maintenance and Calibration Requirements), or other methodologies that may be approved by the department. Preparatory documentation (such as certificate of analysis) on the reference sample solution(s) shall be available to the department. Only reference sample devices approved by the department may be used in certified IID operations.[~~Services rendered by the IID service center must be performed by a certified service representative~~].

(2) Services rendered by the IID service center must be performed by a properly trained and certified service representative. IID service centers shall maintain sufficient staff to ensure an acceptable level of service. Monitor checks shall be scheduled in a manner such as not to deprive the client of an acceptable level of service. The IID service center must at al times be staffed with at least one certified service representative. Potential service representative candidates may train in the certified IID service center only under the direct supervision of a currently certified service representative. The potential service representative candidate will be given a reasonable time as determined by the department to train before being required to take and pass the IID service representative examination.[~~The service center must incorporate the use of analysis of a reference sample such as headspace gas from a mixture of water and a known weight of alcohol at a known temperature, the results of which must agree with the reference sample predicted value within plus or minus 0.01g/210L, or other methodologies that may be approved by the scientific director. This reference analysis shall be performed in conjunction with all calibration confirmations and/or checks. Preparatory documentation (such as certificate of analysis) on the reference sample solution(s) shall be available to the scientific director. Only reference sample devices approved by the scientific director may be used in certified IID operations.~~]

(3) All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).

(4) The applicant must agree to maintain any specified records designated by the department,[~~scientific director;~~] including but not limited to:

(A) submitting violation(s) if any, of any court order to the appropriate judicial[~~judiciary~~] authority when requested[~~, not later than 48 hours after the vendor discovers the violation~~],

(B) maintaining complete records of each device installation for five years from the date of the removal[~~installation~~],

(C) making IID records available, either by inspection or via copy to any appropriate judicial[~~judiciary~~] authority and upon request to the department[~~scientific director~~].

(5) All anticircumvention features must be activated on any installed IID.

(6) The device must be installed and inspected in accordance with any applicable court order. Furthermore, the service center, through the certified IID representative(s), shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period. In the case wherein the client returns to the service center as in §19.25(a) of this title (relating to Maintenance and Calibration Requirements) absent their vehicle, such fact shall be made available to the appropriate judicial authority.

(d) An[~~The scientific director, an~~] IID inspector [~~,~~] or a designated representative of the department may at any time make an inspection of the certified IID service center to ensure[~~assure~~] compliance with these regulations.

(e) A designated custodian of records, when required, shall be provided by the vendor to testify in court and provide testimony concerning the interpretation of any data storage system records, as required by these courts and to answer questions concerning certification of the IID program.

(f) Upon proof of compliance with subsections (a)-(c) of this section, certification will be issued by the department[~~scientific director~~]. Issuance of a certificate to the service center shall be evidence that the service center meets all necessary criteria for approval and certification. Prior to issuance of the certification, an on-site evaluation may be required by the department to ensure compliance with the provisions of this section.

(g) Certification of the[~~any~~] IID service center[~~testing program~~] is contingent upon the applicant's agreement to conform and abide by any directives, orders, or policies issued or to be issued by the department[~~scientific director~~] regarding any aspect of the IID service center; this shall include, but not be limited to, the following:

(1) program administration;

(2) reports;

(3) records and forms;

(4) inspections;

(5) methods of operations and testing techniques;

(6) personnel training and qualifications;

(7) criminal history considerations for service representatives; and

(8) records custodian.

(h) [~~Each service center currently doing business on the effective date of these regulations, will have ninety days to apply for and meet the requirements of service center certification, the department's capacity to conduct the certification process not withstanding.~~]

[~~(i)~~] Certification of an IID service center may be denied, withdrawn, inactivated, suspended, or revoked by the department[~~scientific director~~] if a vendor, service center, service representative, or IID equipment fails to meet all criteria stated in this section, or if the vendor violates any law of this state that applies to the vendor. An IID service center whose pending application for certification has been denied, or an IID service center whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action in writing to the director, [~~Texas Department of Public Safety,~~] who will decide whether the action of the department[~~scientific director~~] will be affirmed or set aside. The director may allow the pending application for certification of the IID service center, or the director may reinstate certification of the IID service center appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary [~~making the appeal under such conditions deemed necessary and notify the scientific director in writing~~].

(i) Recertification of a service center whose certification has been withdrawn, inactivated, suspended or revoked will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (b) of this section and/or other requirements as determined by the department.

§19.28. Service Representative.

(a) Initial certification.

(1) In order to apply for certification as a service representative of an ignition interlock device service center, an applicant must successfully attain the following:

(A) proof of employment by an ignition interlock device service center that meets the requirements set forth in §19.27 of this title (relating to Certification and Inspection of Service Centers); and

(B) documentation from the aforementioned employer that the applicant is currently trained in all necessary aspects of the specific IIDs involved in the vendors service center.

(C) If a service representative is certified to work with a specific brand and/or model of equipment and is required to be certified on an additional brand and/or model of equipment, the department[~~scientific director~~] may waive portions of subsection (a)(1)(B) of this section and require only that instruction needed to acquaint the applicant with proper operation of the new brand and/or model of equipment.

(2) Prior to initial certification as a service representative of an ignition interlock device service center, an applicant must satisfactorily complete a written examination which shall cover the regulatory aspects of the Texas IID Program.

(A) Failure of the initial written examination will cause the applicant to be ineligible for reexamination for a period of 30 days.

(B) A subsequent failure will be handled the same as an initial failure.

(3) An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of filing of the applicant's application for certification as an IID service representative is not eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(4) The department, with advance notice to IID vendors, may impose additional requirements for service representative certification should the need be warranted.

(5) Upon successful completion of the requirements for initial certification, the department[~~scientific director~~] will issue the individual a service representative's certificate valid [~~for a specific, approved IID(s), and~~] for a period of time designated by the department[~~scientific director~~] unless certification is withdrawn, inactivated, suspended, or revoked.

(b) Renewal of current certification. The service representative is required to renew certification prior to its expiration date. The minimum requirement for renewal of service representative certification will be:

(1) a biennial written acknowledgement from the service representative's employing IID vendor that this service representative is both;

(A) employed by the vendor in the capacity of a service representative, and

(B) currently trained in all necessary aspects of the IIDs involved in the vendor's service center.

(2) a biennial written acknowledgement from the service representative that he or she still meets the requirement of subsection (a)(3) of this section.

(3) Renewal of certification will be denied and current certification will be inactivated when the service representative:

(A) fails to furnish proper documentation required in subsections (b)(1)(A) and (B) of this section, or

(B) fails to meet the requirements of subsection (a)(3) of this section.

(4) Upon successful completion of the requirements for renewal of certification, the department[~~scientific director~~] will issue the individual a service representative's certificate valid [~~for a specific, approved IID(s) and~~] for a period of time designated by the department[~~scientific director~~] or until next renewal unless certification is withdrawn, inactivated, suspended, or revoked.

[~~(5) Each service representative currently doing business on the effective date of these regulations, will have ninety days to apply for and meet the requirements of service representative certification, the department's capacity to conduct the certification process not withstanding.~~]

(c) Certification of the service representative may be denied, withdrawn, inactivated, suspended or revoked by the department if the service representative fails to meet the requirements of these regulations. A person whose pending application for certification has been denied, or a service representative whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action to the director, who will decide whether the action of the department will be affirmed or set aside. The director may allow the pending application for certification as an IID service representative, or the director may reinstate certification of the IID service representative appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.[~~Recertification. Certification that has been inactivated, suspended, or revoked must be regained before IID service representative work can be resumed. It will be the responsibility of the inactivated, suspended, or revoked service representative to notify the scientific director in writing of such intent. This notification shall be submitted in close proximity to the completion of any mandatory waiting period imposed under certification cancellation. An IID service representative whose certification has been suspended or revoked may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the IID service representative making such appeal under such conditions deemed necessary and notify the scientific director in writing.~~]

(d) Recertification of a service representative whose certification has been withdrawn, inactivated, suspended or revoked will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the department[~~shall take place pursuant to all the requirements of subsection (b) of this section~~].

§19.29. Ignition Interlock Device Inspector.

(a) The minimum qualifications for certification as an IID inspector are:

(1) graduation from a standard senior high school or the equivalent plus two (2) or more years responsible work experience. College may be substituted for experience on a year-per-year basis.[~~meeting the formal education and training requirements of Subchapter A, §19.5 of this title (relating to Technical Supervisor Certification), and~~]

(2) the satisfactory completion of [~~an~~] IID inspector training[~~examination~~] that is approved by the department[~~scientific director~~], the content of which shall include, but not be limited to familiarity with:

(A) record keeping appropriate to approved IIDs in use in the state of Texas;

(B) operational principles and theories applicable to the program; and

(C) legal aspects of the IID program.

(3) Knowledge and understanding of the scientific theory and principles as to the operation of the IID and reference sample device.

(4) Persons who are currently engaged in business with or employed by an IID manufacturer or an IID vendor shall not be eligible to become a certified IID inspector.

(5) An applicant who has been convicted of driving while intoxicated, theft, a crime involving moral turpitude, or any offense classified as a felony, within five years prior to the date of filing of the applicant's application for certification as an IID inspector is not eligible for certification. For purposes of this section, a conviction means the applicant was adjudicated guilty by a court of competent jurisdiction.

(6) The department, with advance notice, may impose additional and/or different requirements for IID inspector certification should the need be warranted.

(7) Upon satisfactory proof to the department by the applicant that the minimum qualifications of this subsection have been met, the department will issue a certificate that will be valid unless certification is withdrawn, inactivated, suspended or revoked for cause.

[~~(b) Certification.~~]

[~~(1) Upon satisfactory proof to the scientific director by the applicant that the minimum qualifications set forth in subsection (a) of this section have been met, the scientific director will issue certification that will be valid unless inactivated, suspended, or revoked for cause.~~]

[~~(2) IID inspector certification may be voluntarily inactivated when it is no longer needed or automatically if the IID inspector fails to maintain the requirements set forth in subsection (a)(4) of this section.~~]

[~~(3) IID inspector certification may be suspended or revoked only by the scientific director for malfeasance, falsely or deceitfully obtaining certification, or failure to carry out the responsibilities set forth in these regulations.~~]

[~~(4) An IID inspector whose certification has been suspended or revoked may appeal such action in writing to the director, Texas Department of Public Safety, who will decide whether the action of the scientific director will be affirmed or set aside. The director may reinstate certification of the IID inspector making such appeal under such conditions deemed necessary and notify the scientific director in writing.~~]

[~~(c) Certificate. The issuance of a certificate to the IID inspector shall be evidence that the IID inspector has met the requirements for certification.~~]

(b) [~~(d)~~] Duties. A certified IID inspector will make an onsite inspection of each service center as needed or as directed by the department. Such an inspection will include but not be limited to:

(1) Any and all IID technical requirements as per §19.23 of this title (relating to Technical Requirements).

(2) Any and all IID miscellaneous requirements as per §19.24 of this title (relating to Miscellaneous Requirements).

(3) Any and all IID maintenance and calibration requirements as per §19.25 of this title (relating to Maintenance and Calibration Requirements).

(4) Any and all service center requirements as per §19.27 of this title (relating to Certification and Inspection of Service Centers).

(5) Any and all service representative requirements as per §19.28 of this title (relating to Service Representative).

(c) [~~(e)~~] Costs. Vendors shall reimburse the department for the reasonable cost of conducting each inspection of the vendor's facilities under this section.

[~~(1) The optimal number of inspections per certified service center per year shall be two.~~]

[~~(2) The minimal number of inspections per certified service center per year shall be one.~~]

(1) [~~(3)~~] The department may conduct more inspections for cause, such as complaints from judicial, adult supervision, or clients at additional cost to the service center being inspected.

(2) [~~(4)~~] The calculated cost per inspection will be standardized throughout the IID program unless there are individual vendor circumstances that require additional costs to the department and will consequently be passed through to the affected vendor(s).

(d) Certification of an IID inspector may be denied, withdrawn, inactivated, suspended or revoked by the department if the inspector fails to meet the requirements of these regulations. A person whose pending application for certification has been denied, or an IID inspector whose certification has been withdrawn, inactivated, suspended or revoked may appeal such action to the director, who will decide whether the action will be affirmed or set aside. The director may allow the pending application for certification as an IID inspector, or the director may reinstate certification of the IID inspector appealing the withdrawal, inactivation, suspension or revocation of certification under such conditions deemed necessary.

(e) Recertification of an IID inspector whose certification has been withdrawn, inactivated, suspended or revoked will require a written request from the applicant to the department and successful completion of the original requirements for certification as outlined in subsection (a) of this section and/or other requirements as determined by the department.

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

Filed with the Office of the Secretary of State on April 2, 2002.

TRD-200202077

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: May 19, 2002

For further information, please call: (512) 424-2135

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER A. VEHICLE INSPECTION STATION LICENSING

37 TAC §23.3

The Texas Department of Public Safety proposes an amendment to §23.3, concerning Specific Requirements for Public, Fleet, and Governmental Vehicle Inspection Stations. The section defines and provides the standards for the physical facilities of a department certified vehicle inspection station. The proposed amendment is necessary to accommodate equipment changes in vehicle inspection stations that perform emission testing. Further, the proposed amendment will expand the number of existing facilities that may become vehicle inspection stations.

Under the current requirements, inspection areas must be located entirely within the building of the inspection station and the building must have two permanent walls. This change is required for two reasons. First, installation of the new treadmill emission testing equipment required by changes in the program will, in some cases, require the vehicle to extend from the building, which means the inspection area will not be entirely within the building. Second, several prospective businesses have approached the department with inquiries about the use of former gas-only stations/stores with permanent overhead roofs. Use of these existing structures would provide better ventilation from the increased exhaust from the enhanced vehicle emission testing equipment and meet all department requirements, with the sole exception of the inspection area being entirely within a building.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the section is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Haas also has determined that for each year of the first five-year period the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in the number of inspection stations serving the public. Mr. Haas has determined that during the first five-year period the amendment is in effect, it will have a positive effect on small businesses. Small businesses starting up inspection stations will be able to minimize start-up costs because they will not have to modify readily available standing buildings to conform to current department requirements. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to E. Eugene Summerford, Legal Counsel, Vehicle Inspections and Emissions, Texas Department of Public Safety, P. O. Box 4087, Austin, Texas 78773-0543; or by fax at (512) 424-2774. All comments must be received by 5:00 p.m. on the 21st day after publication and should refer to "Proposed Rule 37 TAC Section 23.3" in the subject line or at the beginning of the text.

The amendment is proposed under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which provides authorization for the department to adopt rules to administer and enforce the compulsory inspection of vehicles; §548.005, which authorizes the department to permit inspections under terms and conditions the department prescribes; §548.401, which only authorizes inspections under rules adopted by the department; and §548.403, which authorizes the department to approve inspection station certification only if the station location complies with department requirements.

Texas Government Code, §411.004(3) and Texas Transportation Code, §§548.002, 548.005, 548.401, and 548.403 are affected by this proposal.

§23.3. Specific Requirements for Public, Fleet, and Governmental Vehicle Inspection Stations.

(a) Space requirements. The inspection area shall include:

(1) an area of 12 feet by 24 feet of minimum space;

(2) an inspection area located entirely within or adjacent to the[~~a~~] building; and

(3) a permissible center drain provided it does not interfere with the proper inspection of the vehicle.

(b) Specific requirements for fleet vehicle inspection stations.

(1) Fleet vehicle inspection stations shall not inspect the personal vehicles of officers, employees, or the general public even though personal vehicles are used part-time[~~part~~] or full-time for business. Personal vehicles will be inspected in public vehicle inspection stations.

(2) Fleet vehicle inspection stations will not be approved when free access to the vehicle inspection station grounds is not granted to representatives of the department.

(3) Firms open to the public will not be issued a fleet vehicle inspection station certificate of appointment unless such firms are currently certified as a public vehicle inspection station and desire a fleet vehicle inspection station certificate of appointment for "new car[~~care~~] make ready."

(4) A fleet vehicle inspection station shall meet all the requirements as prescribed for a public vehicle inspection station.

(c) Specific requirements for public inspection stations. Public inspection stations shall inspect all vehicles presented for the purpose of inspection, if the station is certified to inspect that type vehicle.

(d) Specific requirements for governmental inspection stations.

(1) A governmental vehicle inspection station shall meet the requirements as prescribed for a public vehicle inspection station.

(2) Governmental vehicle inspection stations shall not inspect the personal vehicles of officers, employees, or the general public, even though personal vehicles are used part- time [~~part~~] or full-time for business.

(3) Governmental vehicle inspection stations will not be approved when free access to the vehicle inspection station grounds is not granted to representatives of the department.

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

Filed with the Office of the Secretary of State on April 2, 2002.

TRD-200202076
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 424-2135

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.4

The Texas Board of Criminal Justice proposes an amendment to §151.4, Presentations to the Texas Board of Criminal Justice. The purpose of the amendment is to respond to a petition for a rule change by providing an opportunity for public presentations to the Texas Board of Criminal Justice on topics that are subject to the Board's jurisdiction but are not posted for deliberation.

Brad Livingston, Chief Financial Officer for TDCJ, has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the proposed rule is the increased opportunity for public discourse on issues relevant to the Texas Department of Criminal Justice.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and §492.007, which requires the Board to provide access and public comment on issues within the jurisdiction of the board, as well as Texas Government Code Chapter 551, the Open Meetings Act.

Cross Reference to Statutes: Texas Government Code, Chapter 551, and §492.007.

§151.4. Presentations to the Texas Board of Criminal Justice.

(a) Policy. The Texas Board of Criminal Justice is committed to provide access and opportunity for public comment on issues within the jurisdiction of the board, and invites public testimony on items that are part of the board's posted agenda as provided for in subsection (b) of this section. [~~Because the Open Meetings Act prohibits deliberation on items that are not posted, however, the board does not provide for public presentation on non-posted issues.~~] Persons outside the agency who wish to have items placed on the board agenda are invited to follow the procedure in subsection (d) of this section. On an annual basis, ordinarily in the July meeting of the board, an opportunity shall be provided for public presentations on issues that are not part of the board's posted agenda. Annual public presentations shall be:

(1) subject to the requirements and restrictions of subsections (b), (c), (f) and (g) of this section;

(2) pertinent to issues under the jurisdiction of the board, as determined by the chairman and the General Counsel; and

(3) pertinent to a matter that is not subject to the employee grievance system, the employee disciplinary system, the inmate grievance system, the inmate disciplinary system, or pending litigation.

(b) Registration. [~~Statements concerning items that are part of the board's posted agenda.~~] Persons who desire to make presentations to the board [~~concerning matters on the agenda for a scheduled board meeting or subcommittee meeting~~] shall complete registration cards which shall be made available at the entry to the place where the board's scheduled meeting is to be held. Completed registration cards must be provided to the executive assistant to the chairman at least 10 minutes prior to the posted time for the beginning of the meeting. The

registration cards shall include blanks in which all of the following information must be disclosed:

(1) name of the person making a presentation;

(2) a statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;

(3) a statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;

(4) a reference to the agenda item, if applicable, that [~~which~~] the person wishes to discuss before the board;

(5) an indication as to whether the presenter wishes to speak for or against the proposed agenda item, if applicable;

(6) a statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.

(c) Presentation timing. [~~Discretion of the chairman of the board.~~] The chairman of the Texas Board of Criminal Justice shall have discretion in setting reasonable limits on the time to be allocated for each presentation. If several persons wish to address the board on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression of support for views previously articulated by persons speaking on the same side of an issue. The chairman shall provide an opportunity for presentation by [~~testimony of~~] a person who has submitted a registration card prior to the board's [~~board~~] taking action on the item that the person indicates a wish to discuss, if the presentation applies to an item on the agenda.

(d) Requests that issues be placed on an agenda. Persons outside the agency who wish to have an agenda item posted [~~bring issues before the board~~] shall address their request to the Chairman, Texas Board of Criminal Justice, P.O. Box 13084, Austin, Texas 78711. Such requests should be submitted at least 50 days in advance of the board meeting. The decision whether to calendar a matter for discussion before the full board, a board committee, a board liaison, or with a designated staff member, shall be within the discretion of the chairman.

(e) Disability accommodation. Persons with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the office of the administrative assistant to the chairman in Austin. Requests should be made at least two days before a meeting. The department will make every reasonable effort to accommodate these needs.

(f) Conduct and decorum. The board will receive public input as authorized by this section, subject to the following additional guidelines.

(1) Questioning of those making presentations will be reserved to board members and staff recognized by the chairman.

(2) Presentations shall remain pertinent to the issue being discussed.

(3) A person who is determined by the chairman to be disrupting [~~disrupts~~] a meeting must leave the meeting room if ordered to do so by the chairman.

(4) A person may not assign a portion of his or her time to another speaker.

(g) It is a crime to carry a prohibited weapon, an illegal knife, a club, a handgun, or a licensed concealed handgun at a meeting of the board.

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

Filed with the Office of the Secretary of State on April 4, 2002.

TRD-200202123
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 463-0422

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37 TAC §151.8

The Texas Department of Criminal Justice proposes new §151.8, concerning Advisory Committees related to the Texas Department of Criminal Justice as established by or under state law. The purpose of the section is to set forth the TDCJ Advisory Committees that are governed by Government Code Chapter 2110 (as amended by House Bill 2914, Session Laws Chapter 1158, 77th Legislature, Regular Session) and establish a procedure whereby TDCJ shall annually evaluate each committee's work, usefulness, and costs of existence. The results of these evaluations will be reported biennially to the Legislative Budget Board.

Carl Reynolds, General Counsel for the Department of Criminal Justice, has determined this applies to the following Advisory Committees: the Judicial Advisory Council ("JAC"), established by Government Code §493.003(b), and the Texas State Council on Interstate Adult Offender Supervision ("CIAOS") established by Government Code Chapter 510 (as enacted by House Bill 2494, Session Laws Chapter 543, 77th Legislature, Regular Session), which is exempt from certain provisions of Government Code Chapter 2110.

Brad Livingston, Chief Financial Officer for TDCJ has determined that for the first five years the rule will be in effect, enforcing or administering the rule does not have foreseeable implications related to costs or revenues for state or local government.

Mr. Livingston has also determined that there will be no economic impact on persons required to comply with the rule, and that the public benefit expected as a result of the proposed rule is the orderly management of state agency Advisory Committees in accordance with State law.

Comments should be directed to Carl Reynolds, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Carl.Reynolds@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The new section is proposed under Texas Government Code, §492.013, which grants general rulemaking authority to the Board and Texas Government Code, Chapter 2110, which requires this section, §493.003(b), which establishes the Judicial Advisory Council, and Chapter 510, which establishes the Council on Interstate Adult Offender Supervision.

Cross Reference to Statutes: Texas Government Code, Chapter 2110, §493.003(b), and Chapter 510.

§151.8. Advisory Committees.

(a) General. This section identifies advisory committees related to TDCJ and established by or under state law. TDCJ Financial

Services shall annually evaluate each committee's work, usefulness, and costs of existence, and report that information biennially to the Legislative Budget Board.

(b) Judicial Advisory Council ("JAC"). The JAC exists pursuant to Government Code §493.003(b). The purpose, tasks, and reporting procedure for the JAC are described in §161.21 of this title (relating to Role of the Judicial Advisory Council).

(c) Council on Interstate Adult Offender Supervision ("CIAOS"). Pursuant to Government Code Chapter 510, the CIAOS shall advise the administrator for the Interstate Compact for Adult Offender Supervision and the state's commissioner to the Interstate Commission for Adult Offender Supervision, on the state's participation in commission activities and the administration of the compact. The presiding officer of the CIAOS, or a designee, shall report to the Texas Board of Criminal Justice prior to and after each meeting of the Interstate Commission for Adult Offender Supervision.

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 April 4, 2002.

TRD-200202124
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 463-0422

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PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.7, concerning the reporting the appointment and termination of a licensee. In §217.7, the Commission clarifies that new licensing standards do not apply to current licensees unless their license has expired. The change of the word affidavit for the word statement in subsection (e)(4) of this section is for consistency purposes. The only other proposed change to this subsection is to the effective date in subsection (i) of this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by encouraging the retention of licensees in good standing. There are no anticipated economic costs to large, small, or micro businesses as a result of the proposed section. There will be no costs to persons who are required to comply with the section as proposed.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code, Chapter 1701, §1701.451, Preemployment Inquiry.

§217.7. Reporting the Appointment and Termination of a Licensee.

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

(d) Before appointing a licensee whose [~~who already holds a commission~~] license has expired, an agency shall ensure that the person meets the current minimum standards for licensure.

(e) If the appointment is made after a 180-day break in appointment, the agency must have the following on file and readily accessible to the commission:

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

(4) two completed applicant fingerprint cards or, pending receipt of such cards, an original sworn, notarized affidavit [~~statement~~] by the applicant:

(A) (No change.)

(B) that he or she meets the current academy enrollment standards. Such [~~such~~] affidavit may be maintained by the agency while awaiting the return of completed applicant fingerprint card.

(f) - (h) (No change.)

(i) The effective date of this section is September [~~March~~] 1, 2002.

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 April 4, 2002.

TRD-200202121
Edward T. Laine
Chief, Professional Standards and Administrative Operations
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: June 7, 2002
For further information, please call: (512) 936-7700

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37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.19, concerning reactivation of a license. In §217.19, the Commission clarifies in subsections (b) and (c) of this section that the reactivation standards are contained in subsection (g), not subsections (f) and (g) by deleting references to subsection (f) of this section. The only other proposed change to this section is to the effective date in subsection (h) of this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not

be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by encouraging the retention of licensees in good standing. There are no anticipated economic costs to large, small, or micro businesses as a result of the proposed section. There will be no costs to persons who are required to comply with the section as proposed.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151 which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code, Chapter 1701, §1701.316, Reactivation Of Peace Officer License.

§217.19. Reactivation of a License.

(a) (No change.)

(b) Individuals with basic licensure training over two years old must meet the requirements of §217.19 [~~(f) and~~] (g) before they may be appointed.

(c) Individuals with basic licensure examination results over two years old must meet the requirements of §217.19 [~~(f) and~~] (g) before they may be appointed.

(d) - (g) (No change.)

(h) The effective date of this section is September [~~March~~] 1, 2002.

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 April 8, 2002.

TRD-200202168

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: June 7, 2002

For further information, please call: (512) 936-7700

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes a new rule to Title 37, Texas Administrative Code by adding §221.29, concerning minimum standards for the awarding of a special investigator proficiency certificate. In §221.29(a), the Commission establishes the minimum qualifications to received a special investigator proficiency training certificate by requiring two years full time salaried experience as a peace officer, an intermediate certificate, completion of a specified training course, and never having had a license suspended or revoked. The effective date is subsection (b) of this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section. Since the training is being developed under grant funding, there are only minor costs to the Commission. A cost recovery fee will be set by the Commission to offset the cost for the actual issuance of the certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will a positive benefit to the public by encouraging more training for law enforcement officers in the areas of family violence investigations and sexual assault investigations. Since the program is voluntary, the program requires no local costs for the next five years. The cost of the training is funded by a grant. The Criminal Justice Division of the Governor's Office has funded a project to increase the investigative skills of Texas Peace Officers in cases involving family violence and sexual assault. The awarding of this certificate will serve as a positive incentive to obtain this training. There are no anticipated economic costs to large, small, or micro businesses as a result of the proposed section. There will be no costs to persons who are required to comply with the section as proposed.

Comments may be submitted in writing to Dr. D.C. Jim Dozier, Executive Director, Texas Commission on Law Enforcement, 6330 U.S. Highway 290 East, Suite 200, Austin, Texas 78723.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151 which authorized the Commission to promulgate rules for the administration of this chapter.

The following statute is affected by this proposed rule: Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

§221.29. Special Investigator Certificate.

(a) To qualify for a special investigator certificate, an applicant must meet all proficiency requirements, including:

(1) at least two years full time salaried experience as a peace officer;

(2) an intermediate peace officer certificate; and

(3) successful completion of the current family violence and sexual assault investigator certification course(s) reported by the approved training provider.

(b) The effective date of this section is September 1, 2002.

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 April 4, 2002.

TRD-200202122

Edward T. Laine

Chief, Professional Standards and Administrative Operations

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: June 7, 2002

For further information, please call: (512) 936-7700

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Department of Human Services (DHS) proposes to amend §19.337, concerning fire protection systems, §19.342, concerning miscellaneous details, §19.1111, concerning sanitary conditions, §19.1918, concerning disclosure of ownership, and §19.2106, concerning revocation of a license, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments is to update references; clarify language; update the name of the DHS section to be notified in the event of an ownership change; and add an administrative penalty.

James R. Hine, Commissioner, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Hine 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 clarification of rules, which will facilitate compliance by providers. The administrative penalty will encourage providers to notify DHS about changes in ownership, controlling parties, administrators, and directors of nursing. There will be no adverse economic effect on small or micro businesses, because the administrative penalty is the only change that involves an economic factor. Providers can avoid the administrative penalty by notifying DHS of changes in a timely manner. The technical amendments add a standard reference to handrail specifications and clarify language relating to incidents that may involve mistreatment, neglect, or abuse of a resident. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to Connie Pate at (512) 438- 3529 in DHS's Long-Term Care Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-125, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §19.337, §19.342

The amendments are proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate nursing facilities.

The amendments implement the Health and Safety Code, §§242.001-242.268.

§19.337. Fire Protection Systems.

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

(c) Requirements of emergency electrical systems must be in accordance with §19.341 of this title (relating to Electrical Requirements). Requirements for sprinkler systems must be in accordance with §19.340(4) [~~§19.340(d)~~] of this title (relating to Mechanical Requirements).

(d) - (m) (No change.)

§19.342. Miscellaneous Details.

(a) Safety related details. A high degree of safety for the occupants is needed to minimize accidents [~~which are~~] more apt to occur with the elderly and/or infirm residents in a nursing facility. Consideration must be given to the fact that many [~~will~~] have impaired vision, hearing, spatial perception, and ambulation.

(1) - (7) (No change.)

(8) Handrails must be provided on both sides of corridors used by residents. A clear distance of 1-1/2 inches must be provided between the handrail and the wall. Handrails must be securely mounted to withstand downward forces of 250 pounds. Handrails may be omitted on wall segments less than 18 inches. Handrails must be mounted 33 inches to 36 inches above the floor, and must comply with standards adopted under the Americans with Disabilities Act and the Texas Accessibility Standards.

(9) -(10) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on April 5, 2002.

TRD-200202141
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER L. DIETARY SERVICES

40 TAC §19.1111

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001-242.268.

§19.1111. Sanitary Conditions.

(a) The facility must:

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

(3) dispose of garbage and refuse properly. See also §19.318(j)-(l) [~~§19.1719(j)- (l)~~] of this title (relating to Other Rooms and Areas) for information concerning dietary physical plant.

(b) - (d) (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 April 5, 2002.

TRD-200202142
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER T. ADMINISTRATION

40 TAC §19.1918

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001-242.268.

§19.1918. Disclosure of Ownership.

(a) (No change.)

(b) The facility must provide written notice to Facility Enrollment, [~~the Licensing Section of the state office of~~] Long-Term Care-Regulatory, Texas Department of Human Services (DHS) at the time of change if a change occurs in:

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

(c) (No change.)

(d) Failure to notify Facility Enrollment within 30 days of a change specified in subsection (b) will result in a $500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

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

Filed with the Office of the Secretary of State on April 5, 2002.

TRD-200202143
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 438-3734

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SUBCHAPTER V. ENFORCEMENT
DIVISION 2. LICENSING REMEDIES

40 TAC §19.2106

The amendment is proposed under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §§242.001-242.268.

§19.2106. Revocation of a License.

(a) The Texas Department of Human Services (DHS) may revoke a facility's license when the license holder, or any other person described in §19.201(f) [~~§19.201(e)~~] of this title (relating to Criteria for Licensing), has:

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

(b) - (d) (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 April 5, 2002.

TRD-200202144
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 438-3734

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PART 5. VETERANS LAND BOARD

CHAPTER 175. GENERAL RULES OF THE VETERANS LAND BOARD
SUBCHAPTER A. GENERAL RULES AND CONTRACTING FINANCING

40 TAC §175.2

The Veterans Land Board of the State of Texas (the "Board") proposes amendments to Title 40, Part 5, Chapter 175 of the Texas Administrative Code, §175.2 relating to Loan Eligibility Requirements of the General Rules of the Veteran Land Board (VLB). These amendments propose to reduce the time required for a Veteran to establish his residence in Texas so as to be eligible for the VLB programs from two years to one year. The proposed amendments will also clarify some language.

Sections 161.001(b), and 162.001(b) of the Tex. Nat. Res. Code authorize the Board to change the definition of Veteran by rule. Part of the definition is a requirement, in the case of a Veteran that did not enter the service from Texas, that the Veteran reside in Texas for two years before filing an application. The proposed amendment to §175.2(c)(1) (E)(i) and (ii) would reduce that to one year. This would make the residency requirement uniform for all of the Board's programs, as well as the same as other state sponsored Veterans programs.

The proposed amendment also makes minor non-substantive changes to the rules.

Douglas Oldmixon, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the section as proposed will be in effect, there will be no significant fiscal implication to state or local government as a result of administering this section as amended.

Douglas Oldmixon, Executive Secretary of the Veterans Land Board, has determined that for each year of the first five years that the section as proposed will be in effect, the public will benefit because the proposed amendment will allow the Board to make more loans to Veterans.

Mr. Oldmixon has determined that the proposed amendment will have no significant effect on small businesses during each year of the first five years the section is in effect.

Mr. Oldmixon has also determined that during each year of the first five years the proposed amendment is in effect, the anticipated economic cost to persons who are required to comply with the section will be insignificant. Persons who seek financing from the Board through the Program will pay the same fees to the Board, and costs to third parties, as previously required.

Douglas Oldmixon, Executive Secretary of the Veterans Land Board has determined that during each year of the first five years the proposed amendment is in effect, the anticipated impact on local employment will be insignificant.

Comments may be submitted to Melinda Tracy, Legal Service, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin Texas, by no later than 30 days after publication.

The amendment to this section is proposed under the Natural Resources Code, Title 7, Chapter 161, §§161.001, 161.061, 161.063, 161.222, 161.233, 161.283, 162.001, 162.003, 162.011. These sections authorize the Board to adopt rules that it considers necessary and advisable for the Land Program and the Veterans Housing Assistance Program.

The proposed rule would affect §§161.001, and 162.001 of the Tex. Nat. Res. Code.

§175.2. Loan Eligibility Requirements.

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

(1) Board--The Veterans Land Board of the State of Texas.

(2) Bona fide resident--An individual actually living within the State of Texas with the intention to remain.

(3) Missing/Missing in Action--To have an official designation of "missing status" as provided by Title 37, Chapter 10 of the United States Code relating to Payments to Missing Persons. The term "missing status" means the status of members of a uniformed service who are officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured; beleaguered, or besieged by a hostile force; or detained in a foreign country against their will.

(4) Program--The Veterans Land Program as authorized by Title 7, Chapter 161 of the Texas Natural Resources Code relating to Veterans Land Board.

(5) Surviving spouse--A person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of the other person.

(6) USDVA/VA--The United States Department of Veterans Affairs or any successor thereto.

(7) Veteran--A person who satisfies the requirements of subsection (c)(1) of this section.

(b) The Board shall be the final authority in defining and interpreting all eligibility requirements, and whether an applicant has actually satisfied those requirements. The Board may by resolution prescribe the procedures and forms to be used by applicants to evidence eligibility.

(c) To be eligible to participate in the program, an applicant must satisfy one of the following:

(1) be a person who:

(A) is at least 18 years of age;

(B) is a bona fide resident of Texas at the time of application for a loan. Active duty military personnel who otherwise meet the requirements of this subsection are eligible even though stationed outside of Texas at the time of application;

(C) satisfied one of the following service requirements after September 16, 1940:

(i) has served not less than 90 continuous days of active duty or active duty training time in the Army, Navy, Air Force, Coast Guard, Marine Corps, United States Public Health Service, or the reserve component of one of the listed branches of service, unless discharged earlier because of a service-connected cause;

(ii) has completed all initial active duty training required as a condition of the enlistment or appointment in the Texas National Guard; or

(iii) has at least 20 years of active or reserve military service as computed when determining the applicant's eligibility to receive retired pay under applicable federal law.

(D) is considered not to have been dishonorably discharged under subsection (j) of this section, if the person has been discharged from military service; and

(E) satisfies one of the following:

(i) was a bona fide resident of Texas at the time of enlistment, induction, commissioning, appointment or drafting[~~, or have been a legal resident of Texas at least two years immediately prior to the date of filing his or her application~~]; or

(ii) has [~~resided in Texas continuously for a least two years~~]been a legal resident of Texas for at least one year immediately before the date of application.

(2) is the surviving spouse of a veteran who died as a result of a service-connected cause, as certified by the USDVA, or who is identified as missing in action, if the spouse satisfies the requirements of subparagraphs (A) and (B) of subsection (c)(1) of this section, and the veteran satisfied the requirements of subparagraphs (C), (D) and (E)(i) of subsection (c)(1) of this section.

(3) is the surviving spouse of a veteran who died after filing an application and contract of sale with the Board, but before the transaction was completed, if he or she meets all other qualification requirements of the Board.

(d) A person may only have one loan at a time as a veteran. However, once that loan is paid in full he or she may apply for an additional loan as a veteran. The foregoing notwithstanding, an individual who is currently participating in the program as a veteran may take an assignment of a contract or contracts as a non-veteran and may bid on a tract or tracts at a forfeited land sale as a non-veteran.

(e) The applicant must sign applications and contracts. An attorney in fact may not sign these documents for an applicant, except under limited conditions approved by the Board.

(f) No application shall be approved to purchase land under the program:

(1) which provides for or recognizes a second or subordinate lien as a part of the original purchase price for any tract;

(2) where there is evidence that the benefits derived from the use of the land will not pass to the applicant; or

(3) where there exists any other good and sufficient reason to refuse approval, as determined by the chairman of the Board.

(g) If for any reason a veteran's application is not processed to completion, the down payment will be refunded to the veteran, together with the unused portion of any fees that have been deposited with the board.

(h) Each application will be considered as a wholly separate transaction, independent of any other agreement, transaction or contingency. The board will not consider an application which contains a provision making it contingent upon the success or completion of another agreement or transaction.

(i) Any requirement of this section, or of any section within this chapter, which is not otherwise required by the constitution or statutes of this state, may be waived on a case by case basis by the Veterans Land Board. Any waiver request must be in writing and must describe the circumstances surrounding the request, including all of the reasons why the waiver is requested.

(j) For purposes of this section, a person who has been discharged from the branch of the service in which the person served or from the Texas National Guard is considered not to have been dishonorably discharged if the person:

(1) received an honorable discharge;

(2) received a discharge under honorable conditions; or

(3) received a discharge and provides evidence from the United States Department of Veterans Affairs, its successor, or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.

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 April 8, 2002.

TRD-200202164
Larry Soward
Chief Clerk, General Land Office
Veterans Land Board
Earliest possible date of adoption: May 19, 2002
For further information, please call: (512) 936-4179

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.1, 184.4, 184.6, 184.8, 184.13, 184.15

The Texas State Board of Medical Examiners has withdrawn from consideration proposed new §§184.1, 184.4, 184.6, 184.8, 184.13, and 184.15 which appeared in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1424).

Filed with the Office of the Secretary of State on April 8, 2002.

TRD-200202161
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: April 8, 2002
For further information, please call: (512) 305-7016

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. PURCHASING

31 TAC §3.30

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the General Land Office has been automatically withdrawn. The new section as proposed appeared in the July 27, 2001 issue of the *Texas Register* (26 TexReg 5607).

Filed with the Office of the Secretary of State on April 10, 2002.

TRD-200202209

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURES

1 TAC §§155.1, 155.3, 155.5, 155.7, 155.9, 155.11, 155.13, 155.15, 155.17, 155.19, 155.21, 155.23, 155.25, 155.27, 155.29, 155.31, 155.33, 155.35, 155.37, 155.39, 155.41, 155.43, 155.47, 155.49, 155.51, 155.53, 155.55, 155.57, 155.59

The State Office of Administrative Hearings (SOAH) adopts amendments to §155.1, Purpose and Scope; §155.3, Application and Construction of this Chapter; §155.5, Definitions; §155.7, Jurisdiction; §155.9, Request to Docket Case; §155.11, Seal; §155.13, Venue; §155.15, Powers and Duties of Judges; §155.17, Assignment of Judges to Cases; §155.19, Computation of Time; §155.21, Representation of Parties; §155.23, Filing Documents or Serving Documents on the Judge; §155.25, Service of Documents on Parties; §155.27, Notice of Hearing; §155.29, Pleadings; §155.31, Discovery; §155.33, Orders; §155.35, Certification of Questions to Referring Agency; §155.37, Settlement Conferences; §155.39, Stipulations; §155.41, Procedure at Hearing; §155.43, Making a Record of Contested Case; §155.47, Public Attendance and Comment at Hearing; §155.49, Conduct and Decorum; §155.51, Evidence; §155.53, Consideration of Policy Not Incorporated in Referring Agency's Rules; §155.55, Failure to Attend Hearing and Default; §155.57, Summary Disposition and Dismissal; and §155.59, Proposal for Decision. Sections 155.1, 155.3, 155.5,155.15, 155.19, 155.21, 155.23, 155.25, 155.29, 155.31, 155.43, 155.55, and 155.57 are adopted *with changes* to the proposed text as published in the October 19, 2001, issue of the *Texas Register* (26 TexReg 12719). Sections 155.7, 155.9, 155.11, 155.13, 155.17, 155.27, 155.33, 155.35, 155.37, 155.39, 155.41, 155.47, 155.49, 155.51, 155.53, and 155.59 are adopted *without changes* to the proposed text, and will not be republished.

SUMMARY OF THE BASIS FOR THE ADOPTED RULES

The primary purpose of the adopted amendments is to update, streamline, and improve the uniform procedural rules SOAH promulgated in 1997 pursuant to Texas Government Code §2003.050. The adopted amendments will further enhance SOAH's ability to provide for an efficient, just, fair, and impartial adjudication of the rights of the parties under a consistent set of procedures.

SECTION BY SECTION DISCUSSION

Adopted (*with changes to the proposed text*) §155.1 is amended to change the effective date from 1998 to 2001 of the Public Utility Commission and Texas Natural Resource Conservation Commission procedural rules adopted by reference. A new subsection (c) has been added concerning the procedural rules of the Employees Retirement System of Texas and the Railroad Commission of Texas.

Adopted (*with changes to the proposed text*) §155.3 is amended to change language in subsection (c) to track the language of Texas Government Code §2003.050; to add new subsection (h) to track the language of Texas Rule of Civil Procedure 3 and Texas Government Code §312.003; and to add new subsection (i) to track the language of Texas Government Code §311.011.

Adopted (*with changes to the proposed text*) §155.5 is amended to include temporary judges in the definition of Administrative Law Judge; to extend the definition of Alternative Dispute Resolution (ADR) to the hybrid and adaptive ADR processes employed by SOAH; to eliminate reference in the rules to the term "Office"; to clarify the Mediated Settlement Conference procedure; to define the acronym "SOAH"; and to add the acronym "RRC," which is the Railroad Commission of Texas.

Adopted (*without changes to the proposed text*) §155.7 is amended to add subsection (d) to clarify when the time in which a party is permitted or required to do something begins to run.

Adopted (*without changes to the proposed text*) §155.9 and §155.11 are amended to conform to consistent language.

Adopted (*without changes to the proposed text*) §155.13 is amended to allow the judge to consider all matters relevant to venue, and to place on an equal footing consideration of the costs to, and preferences of, all of the parties.

Adopted (*with changes to the proposed text*) §155.15 is amended to make explicit the judge's authority to pose questions to witnesses. Because Texas Government Code §2003.0421(a)(3) empowers a SOAH judge to sanction "failure to obey an order of the administrative law judge or of the state agency on behalf of which the hearing is being conducted," the proposed change to subsection (b)(11) has been deleted.

Adopted (*without changes to the proposed text*) §155.17 is amended to add new subsections (c) and (d) to track the recusal procedures set out in Texas Rule of Civil Procedure 18a, and to cause subsection (c) to be renumbered to new subsection

(e) and modify its language to more accurately reflect the requirements of Texas Government Code §2001.062(c).

Adopted (*with changes to the proposed text*) §155.19 is amended to clarify that subsection (a) applies with equal force regardless of the source of the deadline or time period; to make subsection (a) consistent with Texas Rule of Civil Procedure 4; and to add new subsection (c) to track Texas Rule of Civil Procedure 5 and eliminate a process that does not require a motion or notice. New subsection (c) as adopted also provides that it does not apply to the ten- day reconsideration periods in §155.55(d) of this title (relating to Failure to Attend Hearing and Default), and §155.57(b) of this title (relating to Summary Disposition and Dismissal).

Adopted (*with changes to the proposed text*) §155.21 is amended to require all party representatives who are not licensed to practice law in Texas and whose authority is challenged, to demonstrate their authority to appear; to add new subsection (c), which is based on Texas Rule of Civil Procedure 8, to provide a default answer to the question of who is due service of pleadings and orders; and to renumber subsection (c) to be new subsection (d).

Adopted (*with changes to the proposed text*) §155.23 is amended to add language stating that pleadings in RRC cases be listed as exceptions in paragraph (1)(A), and to add a new subparagraph (D) to paragraph (1) that instructs parties to a case referred to SOAH by the RRC to file original pleadings with the RRC and copies with SOAH; to add new paragraph (3)(A), which is based on Texas Rule of Civil Procedure 191.4 and intended to cut down on the amount of unnecessary material filed with SOAH; to eliminate the part of paragraph (4) specifying a time for filing documents, to comport with local practice in both the state and federal courts; to eliminate the part of paragraph (4) that limited facsimile filings to a twenty page limit, to comport with local practice in the state courts; and to add new paragraph (5), which is based on Texas Rule of Civil Procedure 13 and intended to prohibit the filing of groundless or improper filings, and to replace the proposed word "attorney" with the adopted words "authorized representative."

Adopted (*with changes to the proposed text*) §155.25 is amended to change the SOAH presumption of receipt of mailed documents from five days to three days, consistent with the rules in state and federal courts in Texas and throughout the country; to change the proposed elimination of subsection (d)(4) to adopting a presumption that documents sent by facsimile after 5:00 p.m. are received the next day; and to eliminate a redundant phrase in subsection (e).

Adopted (*without changes to the proposed text*) §155.27 is amended to conform to consistent language.

Adopted (*with changes to the proposed text*) §155.29 is amended to correct a citation error in subsection (a)(7); to delete the mandatory requirement that "good cause" assertions be supported by affidavits or other proof; to delete the proposed language that made the certificate of conference requirement applicable to all motions; to delete the proposed language in subsections (f) and (g) which merged motions for continuance with motions for extension of time; and to add subsection (i), which explains that motions to set aside a default under §155.55(d) of this title (relating to Failure to Attend Hearing and Default), and motions for summary disposition and to set aside dismissal for failure to prosecute under §155.57 of this title (relating to Summary Disposition), shall be governed by the referenced sections.

Adopted (*with changes to the proposed text*) §155.31 is amended: to add more discovery devices to the SOAH discovery practice; to track Texas Rule of Civil Procedure 198.1 regarding when requests for admissions can be filed, but specify a shorter time frame; to clarify that SOAH judges have authority to resolve disputes over requests for issuance of subpoenas or commissions; to permit use of the new discovery procedures in Texas Rule of Civil Procedure 190 tailored to SOAH practice; to delete reference to repealed Texas Rule of Civil Procedure 166b(6), and to address the timeliness of supplementation, in part by tracking Texas Rule of Civil Procedure 193.5; to require the filing of written discovery objections and track the language in Texas Rule of Civil Procedure 193.2; to change the SOAH procedure for objecting to discovery upon a claim of privilege or exemption to conform to the new procedures in the referenced Texas Rule of Civil Procedure sections; to delete subsection (i) of this title and to renumber the subsections to show the adopted language has been moved from subsection (j) to (i), making objections and responses both be due in 20 days; to add subsection (l) (now adopted at subsection (k), which requires signing the referenced matters and establishes the effect of a signature, as set out in Texas Rule of Civil Procedure 191.3; to track the language in Texas Rule of Civil Procedure 191.2 and to make the certification of conference requirement applicable to all discovery motions; to track the language in Texas Rule of Civil Procedure 192.6, establishing an express time limit for filing a motion for protective order, and to clarify the ramifications of using the wrong procedure; and to change the proposed language in subsection (n)(3), now adopted at (m)(3) (concerning sealing discovery records) to more closely track the language in Texas Rule of Civil Procedure 76a.

Adopted (*without changes to the proposed text*) §§155.33, 155.35, and 155.37 are amended to conform to consistent language.

Adopted (*without changes to the proposed text*) §155.39 is amended to add legal and procedural matters as proper subjects for stipulations; to permit the filing of stipulations at prehearings; and to add new subsection (d), which tracks the language of Texas Rule of Civil Procedure 11.

Adopted (*without changes to the proposed text*) §155.41 is amended to conform to consistent language and to correct misspelled words.

Adopted (*with changes to the proposed text*) §155.43 is amended to specify that a court reporter will be provided by the referring agency for hearings scheduled for longer than one day. However, the proposed language has been changed to adopted language that enables the judge to grant an exemption from the requirement of a court reporter; the proposed language that placed responsibility for transcript costs on the referring agency has been changed to a more even-handed procedure for assessing costs; and, to improve the procedure for broadcasting or televising proceedings, language different from the proposed language has been adopted, requiring among other things, the consent of the parties, which is an element in Texas Rule of Civil Procedure 18(c).

Adopted (*without changes to the proposed text*) §155.47 is amended to conform to consistent language.

Adopted (*without changes to the proposed text*) §155.49 is amended to recognize the fact that the standards of conduct in the Texas Lawyers' Creed are aspirational, not mandatory.

Adopted (*without changes to the proposed text*) §155.51 is amended to conform to consistent language and to clarify that objections to written testimony from a witness may also be reduced to written form and filed prior to hearing.

Adopted (*without changes to the proposed text*) §155.53 is amended to add an additional factor for consideration.

Adopted (*with changes to the proposed text*) §155.55 is amended: to simplify the rule; to eliminate the word "judgment" as inapplicable and substitute the word "proceeding"; to require disclosure of the possibility of default in larger type; to eliminate the requirement of certified or registered mail notice; to eliminate original subsection (e) because it is superfluous; to add new subsection (d), now adopted as subsection (e), which recognizes that on occasion, parties miss hearings for good cause, and gives the judge a short time frame in which to exercise discretion to reopen a hearing under such circumstances; and to adopt a new subsection (d) that should enable each referring agency to use whatever default system is most efficient for it.

Adopted (*with changes to the proposed text*) §155.57 is amended: to add new subsections, based in part on the Texas Rules of Civil Procedure, that provide additional detail for the summary disposition procedure, including the requirements for separate fact statements, to simplify the judge's consideration of these motions; and to clarify and strengthen the procedure for dismissing cases for want of prosecution. Its proposed language has changed to adopted language that will provide additional flexibility as well as to promote procedural efficiency; the proposed time for filing a motion opposing dismissal has been increased to twenty days to ensure adequate response time is provided; and adopted language has been added at the end of subsection (b) to clarify that SOAH's dismissal for want of prosecution does not address the merits of the case.

Adopted (*without changes to the proposed text*) §155.59 is amended to add new subsection (c), which clarifies procedures regarding exceptions and replies, and makes explicit a judge's limited *nunc pro tunc* powers over proposals for decision.

HEARINGS AND COMMENTS

A public hearing was not held. Written comments were submitted by: the Railroad Commission of Texas (RRC); State Securities Board (SSB); Texas Department of Health (TDH); Texas Department of Insurance (TDI); Texas Lottery Commission (TLC); Texas State Board of Medical Examiners (TSBME); Texas State Board of Pharmacy (TSBP); Texas Workers' Compensation Commission (TWCC); and Will Wilson of Wilson & Varner, L.L.P. (W&V).

RESPONSE TO COMMENTS

General

COMMENT: W&V objected to the change from the acronym "ALJ" to the word "judge" throughout the rules because SOAH is not a court, and it believes the change will be confusing to lay persons who participate in hearings. Along with this general comment, W&V specifically asked that the proposed amendment to §155.5 of this title (relating to Definitions) deleting the acronym "ALJ" and substituting the word "judge" be stricken.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. A party certainly may choose to refer to the administrative law judge as "ALJ." However, the proposed change in the rules to the term "judge" is to reflect the standard practice in SOAH hearings and in pleadings filed at SOAH of referring to the administrative law judge as "judge." SOAH also believes that this change in terminology may help *pro se* litigants understand that they will be participating in formal, court-like proceedings.

Section 155.1--Purpose and Scope

COMMENT: RRC requested language stating that SOAH rules do not govern or otherwise apply to any matters that may be referred to SOAH by the RRC, unless authorized by rules promulgated by the RRC. All such matters would be governed, instead, by rules adopted by the RRC. In addition, the RRC suggested §155.3(a) and (c) of this title (relating to Application and Construction of this Chapter) should be modified by adding the words "Subject to the provisions of §155.1" at the beginning of each subsection.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. Any question as to which rules apply is governed by Texas Utilities Code §102.006(a), which states that an RRC hearing must be conducted in accordance with the rules and procedures adopted by the RRC. In addition, SOAH and the RRC have agreed in an interagency contract that SOAH procedural rules will apply in the absence of an RRC rule.

COMMENT: The RRC also requested the addition of the words "Railroad Commission of Texas (RRC)" at line two of subsection (b) of this section, just before the reference to the Public Utility Commission.

RESPONSE: SOAH declines to adopt this language. As noted, RRC rules apply to SOAH hearings by statute. For clarity, however, SOAH has added subsection (c) to this section, which states that, by statute, the rules of the RRC and the Employees Retirement System of Texas (ERS) apply to hearings at SOAH.

Section 155.3--Application and Construction of this Chapter

COMMENT: TSBME objected that subsection (c) of this section requires SOAH to consider only its own procedural rules rather than those of the agency requesting the hearing, and that this diminishes the authority of the referring agency's procedural rules. TSBME suggested stating that an agency's procedural rules may be considered by the judge if they are not in conflict with the APA or these rules.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH believes that the suggested language is unnecessary because it merely reiterates a provision in Texas Government Code §2003.050. In addition, the judge always has the discretion to consider the agency's position as expressed in its rules.

COMMENT: TSBME also asked that SOAH add the words "rules and" to proposed subsection (f) of this section (adopted at subsection (g) of this section), following the word "applicable" and before the word "policy." In TSBME's opinion, this would clarify that agency rules will also be considered in ruling on contested procedural issues.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. As explained in the following response, SOAH applies agency procedural rules that have not been adopted by reference only to procedural matters that are not addressed in SOAH's rules.

COMMENT: TDH, TSBME, and TWCC expressed concern about the applicability of their procedural rules in light of the wording in subsection (c) of this section.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH's rules pertain to events that occur in cases after referral to SOAH, and the referring agencies' rules pertain to events that occur before SOAH has jurisdiction over a case and after SOAH has lost jurisdiction over the case. The referring agencies' procedural rules also govern in areas not covered by the SOAH rules. For example, an agency's rules on the issuance of subpoenas and commissions is not affected because SOAH rules do not address those matters.

COMMENT: TWCC asked various questions about the applicability of some of its rules, which appear in *Texas Administrative Code*(TAC), Title 28 (Insurance), implying that they may be necessary for adjudicating cases it refers to SOAH. TWCC also wondered what procedure governs the issuance of subpoenas. Finally, TWCC noted that its Medical Review Division (MRD) will no longer be reviewing preauthorization and medical necessity cases prior to referral to SOAH, although it may still review pure fee disputes. Instead, the cases will initially be handled by an Independent Review Organization (IRO). Thus, in TWCC's opinion, 28 TAC §148.21 (relating to Evidence) and specifically subsection (j) of that section (relating to Record of commission's Medical Review Division in a review of a medical fee or a medical service), requiring TWCC to send the certified record to SOAH, will no longer apply to IRO- reviewed cases.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. With regard to 28 TAC §148.21 (relating to Evidence), specifically subsection (h) of that section (relating to Burden of proof), SOAH finds that Texas Labor Code §413.031, concerning medical appeals, states the burden is on the party seeking relief, thus obviating the need for a rule on that issue. SOAH notes that §155.31(e) of this title (relating to Discovery) states that requests for issuance of subpoenas or commissions shall be directed to the referring agency. The absence of any reference to subpoenas for witnesses at hearing means the referring agency's subpoena rules apply. Similarly, because the part of 28 TAC §148.21(j) (relating to Record of commission's Medical Review Division in a review of a medical fee or a medical service) on sending the certified record of the papers reviewed prior to the appeal to SOAH is not addressed in SOAH's procedural rules, that portion of 28 TAC §148.21(j) applies to SOAH hearings. However, because the rest of 28 TAC §148.21(j) discusses evidentiary issues, it is not applicable at SOAH because of §155.51 of this title (relating to Evidence). Likewise, §155.31(d) of this title (relating to Discovery) permits the taking of depositions, and proposed subsection (o) of that section (now adopted at subsection (n) of that section), concerns agreements at deposition. Thus, TWCC's deposition rule is not applicable to SOAH hearings.

Section 155.5--Definitions

RESPONSE: SOAH added a subparagraph defining the acronym "RRC" at the request of the Railroad Commission of Texas.

Section 155.13--Venue

COMMENT: RRC suggested adding language to SOAH's designation of a site for hearing that would except to this section if otherwise agreed between SOAH and the referring agency.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. It is our understanding that the RRC is concerned that a SOAH hearing room might not be available for hearing a case that is under a jurisdictional deadline. Agencies can be assured that no case under such a deadline will be delayed for want of a hearing room. If necessary, SOAH can designate an alternate hearing site if a SOAH hearing room is not available.

Section 155.15--Power and Duties of Judges

COMMENT: Three commenters addressed subsection (b)(11) of this section. First, the SSB commented that deleting a provision for the judge to sanction a party for violating an agency order would negatively impair SSB's powers under new legislation permitting the Commissioner to issue Emergency Cease & Desist Orders. Second, TDI found the change confusing and asked whether the word "rule" should be "ruling," or should "agency" be inserted after "applicable" and before "rule."

RESPONSE: SOAH has made changes to the proposed text in response to this comment. Based on the commenters' concerns, and because Texas Government Code §2003.0421(a)(3), empowers a SOAH judge to sanction "failure to obey an order of the administrative law judge or of the state agency on behalf of which the hearing is being conducted," the proposed change to subsection (b)(11) of this section has not been adopted.

COMMENT: Third, the RRC asked to be added to subsection (b)(11) of this section, along with the PUC and TNRCC, as one of the types of cases to which the rule does not apply.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. Unlike the PUC and TNRCC, the RRC has not promulgated rules addressing this issue.

Section 155.17--Assignment of Judges to Cases

COMMENT: TDI commented that subsections (c) and (d) of this section regarding recusal will increase untimely filing of motions and disputes about what was the "earliest practicable time." TDI suggested that the rule should follow more closely Texas Rule of Civil Procedure 18a, by using the two ten-day filing time periods called for in that rule. TDI also expressed concern that a recusal motion could be filed after commencement of the hearing. In addition, TDI contended that subsection (e) of this section should distinguish between the authority of substitute judges assigned because the presiding judge was unable to continue presiding over a hearing, and the authority of substitute judges appointed to issue a proposal for decision (PFD) after conclusion of the hearing. TDI contended the latter type of substitute judge should not have the authority to conduct further proceedings.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. Very few recusal motions are filed at SOAH, and we believe the adopted subsection is clear and necessarily flexible. A substituted judge needs to have full authority over the case, including the ability to reopen the proceeding, if necessary.

Section 155.19--Computation of Time

COMMENT: TDI thought subsection (a) of this section should be more consistent with Texas Rule of Civil Procedure 4. Time begins to run under Texas Rule of Civil Procedure 4 from the end of the next day that is not a Saturday, Sunday, or "legal holiday." Some holidays observed by federal agencies and parts of the private sector, like Columbus Day, are not granted to state agencies like SOAH. TDI believed that this section would be confusing if it

were different from Texas Rules of Civil Procedure 4, and that it was unclear when SOAH would be closed other than on a legal or official state holiday.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. This section as adopted provides greater flexibility than Texas Rule of Civil Procedure 4, and this language as adopted has not caused any known confusion to date. In particular, the adopted language "another day on which SOAH is closed" gives parties flexibility when unexpected situations, such as inclement weather, make it impossible to take necessary actions.

COMMENT: TDI objected to subsection (c) of this section regarding Enlargement of Time, contending it should have at least the type of limitations on its application contained in Texas Rule of Civil Procedure 5, which does not allow enlargement of time relating to new trials, except under the parameters of the rules relating to new trials.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has rewritten subsection (c) of this section so that it does not apply to the two analogous situations in SOAH practice--the reconsideration periods found in §155.55(d) of this title (relating to Failure to Attend Hearing and Default), and §155.57(b) of this title (relating to Summary Disposition and Dismissal).

Section 155.21--Representation of Parties

COMMENT: TWCC sought clarification under subsection (b) of this section as to whether a challenge to the authority of one of its Ombudsmen would be sufficiently met by reference to the Labor Act's representative provisions.

RESPONSE: SOAH agrees that statutory authority should suffice.

COMMENT: SSB pointed out inconsistencies in the manner in which the rules reference party representatives. It noted that this section, §155.29 of this title (relating to Pleadings), and §155.31(l) of this title (relating to Discovery), (now adopted at subsection (k) of that section), use the term "authorized representative," but that §155.23(5) of this title (relating to Filing Documents or Serving Documents on the Judge) and also §155.31(m), (now adopted at subsection (l) of that section), seem to restrict party representation to that of attorneys.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH replaced the word "attorney" with the words "authorized representative" in §155.23(5) and in §155.31(l).

COMMENT: RRC suggested adding the following language after the first sentence of this section: "Staff for the referring agency may appear as representatives of the agency, in the capacity of a party to the proceeding or otherwise, without legal representation."

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH finds that this language is not necessary, since the authorized representative may include agency staff.

Section 155.23--Filing Documents or Serving Documents on the Judge

COMMENT: The RRC requested that pleadings filed in RRC cases be listed as exceptions in paragraph (1)(A) of this section. In addition, the RRC requested the addition of a new subparagraph (D) to paragraph (1) of this section that instructs parties to a case referred to SOAH by the RRC to file original pleadings with the RRC and copies with SOAH.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has rewritten paragraph (1) of this section in accordance with RRC's request.

COMMENT: With regard to paragraph (4) of this section (relating to Facsimile Filings), TWCC inquired about SOAH's reference to "local practice" in the preamble to the proposed rules. Also, while TWCC agreed with eliminating our 20-page limit, it asked that SOAH raise the limit to 30 pages or some other reasonable number because receipt of numerous facsimile documents is expensive, and unlimited facsimile documents could burden parties that do not have a machine dedicated just to receiving pleadings.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. The reference in the preamble was to practice in the Travis County district courts, which have neither time nor page limits for facsimile filings. SOAH declines to make the requested page limit change, because we find use of unlimited facsimile documents is the practice in the Travis County district courts, which handle most APA appeals in the state. In addition, the judge can set page limits on pleadings and briefs pursuant to §155.33 of this title (relating to Orders).

Section 155.25--Service of Documents on Parties

COMMENT: The TLC commented that by eliminating former subsection (d)(4) of this section, the rules are silent as to when SOAH will presume faxed documents are served on a party. TLC asked that we follow Texas Rule of Civil Procedure 21a, which states that a document faxed after 5:00 p.m. is deemed served on the following day. TLC also asked us to adopt the provision in Texas Rule of Civil Procedure 21a that adds three additional days to respond to a document served by facsimile.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has added the requested presumption regarding service of faxed documents. SOAH declines to add the requested three-day provision since it would not appear to serve any useful purpose in SOAH practice.

Section 155.27--Notice of Hearing

COMMENT: The RRC suggested adding language to subsection (a) of this section that states: "Unless applicable law or an agreement between SOAH and the referring agency provides otherwise . . .."

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH believes this language is unnecessary because the RRC procedural rules apply to RRC cases at SOAH. Notice provisions applicable to RRC cases should be included in RRC rules. Also, parties should not be required to review interagency contracts to determine applicable procedures.

Section 155.29--Pleadings

COMMENT: TWCC objected to the new requirement in subsection (c) of this section of a certificate of conference for all motions. The objection was based on several reasons, including the fact that it conflicts with the new telephone rule and, more importantly, there is nothing to be gained by conferencing on motions known to be contentious.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has deleted the proposed amendment.

COMMENT: TDI objected to proposed subsections (f) and (g) of this section, which merge motions for continuance with motions for extension of time. It noted that this combination is not seen in the Texas Rules of Civil Procedure because they are two very different pleadings.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has deleted the proposed amendment.

COMMENT: Referencing subsection (i) of this section, which notes that summary disposition motions and responses shall be governed by §155.57(b) of this title (relating to Summary Disposition and Dismissal), TDI asked that motions to set aside defaults in proposed §155.55(d) of this title (relating to Failure to Attend Hearing and Default) also be addressed.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has added that reference, as well as one to motions to set aside dismissals for failure to prosecute in §155.57(b)(2).

Section 155.31--Discovery

COMMENT: TSBME suggested changing subsection (a) of this section to recognize the referring agency discovery rules. TWCC sought a change in subsection (e) of this section, to make the SOAH judge, instead of the referring agency, responsible for issuing subpoenas.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH finds TSBME's requested change unnecessary. The parties already have the ability to use agency discovery rules until their case is referred to SOAH. SOAH declines to make the subpoena change at this time because the current system involving issuance of subpoenas at referring agencies appears to have worked fairly well. However, SOAH will study the matter further to determine if a different process should be adopted in the future.

COMMENT: SSB objected to subsection (l) of this section, (now adopted at subsection (k) of this section), which makes signatures of a party or an authorized representative on discovery pleadings mandatory and gives signatures the effect specified in Texas Rule of Civil Procedure 191.3(c). SSB suggested that language be added from Texas Rule of Civil Procedure 191.3(d), which provides unsigned discovery pleadings will be stricken.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH believes that while the signing requirement is a useful tool, adding the requested language would tend to make SOAH's discovery procedures needlessly complex.

COMMENT: TLC requested that SOAH add requests for disclosure as a discovery tool and make discovery objections and responses due within 20 days, rather than having objections due in 10 days. TWCC pointed out that proposed subsections (g), (i) and (j) of this section conflict and, like the TLC, TWCC prefers the 20-day objections deadline.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has deleted subsection (i) of this section, and left the language in subsection (g) of this section, and in subsection (j) of this section (now adopted at subsection (i) of this section), as proposed, so that objections and responses will both be due in 20 days.

COMMENT: TDI objected that proposed subsection (n)(3) of this section, (now adopted at subsection (m)(3) of this section), concerning sealing discovery records, tracks somewhat Texas Rule of Civil Procedure 76a, but fails to list the showings required by that rule for sealing. TDI also suggested striking the word "adequately," which is not used in Texas Rule of Civil Procedure 76a.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has revised the subsection accordingly.

Section 155.43--Making a Record of Contested Case

COMMENT: SOAH received a number of comments on subsections (b) and (e) of this section. The RRC suggested adding this exculpatory language to subsection (b): "Except as otherwise provided by agreement between SOAH and the referring agency."

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH declines to add this phrase because interagency agreements, which are usually negotiated annually, are not normally addressed in procedural rules.

COMMENT: TDI and TDH contended that the requirement of subsection (b) of this section stating that referring agencies provide a court reporter for hearings lasting more than one day is contrary to Texas Government Code §2001.059(c), which states that a state agency is not limited to a stenographic record of proceedings. TWCC notes that under its rule, 28 TAC §148.20 (relating to Recording the Hearing), any party who wishes may bring a court reporter to the hearing. TWCC states that its staff attorneys seldom participate in medical necessity hearings, and TWCC predicts a trend toward more sophisticated hearings at SOAH with participation by many more parties represented by attorneys. Thus, it believes hearings lasting more than one day will be more common, and it would unduly burden the agency to arrange for court reporter services in the instances where TWCC staff is not participating.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has adopted modifications to proposed subsection (b) of this section to enable the judge to grant an exemption from the court reporter requirement. SOAH notes that the vast majority of hearings held at SOAH last one day or less. In most instances, therefore, the referring agency will not be limited to a stenographic record of proceedings. In addition, SOAH believes that the purpose of Texas Government Code §2001.059(c) was to give the agency that is conducting the hearing the option of using a non-stenographic record of proceedings when it believes a stenographic record is not needed. In SOAH's experience, it has found hearings lasting longer than one day need a transcript prepared by a court reporter in order to assure the parties and the judge that the record from which a decision or proposal for decision is prepared is accurate, and to facilitate the expeditious preparation of the decision or proposal for decision. As for TWCC's concerns about the medical necessity hearings, SOAH notes that, as of yet, it is still very rare for TWCC hearings to last longer than a day. However, whether or not TWCC's staff is participating in the TWCC hearings, TWCC's docket clerk should know the proposed length of each hearing when the case is referred to SOAH. TWCC should be able to fine-tune any added information it needs from the parties about

a hearing's probable length prior to the referral, making its duty to obtain a court reporter, when necessary, reasonable. If action in the case, such as consolidation, makes it likely that the hearing will exceed one day, TWCC may be asked to provide a court reporter.

COMMENT: Seven agencies commented on the proposed changes to subsection (e) of this section. TDI and TDH argued that placing responsibility for transcript costs on referring agencies is contrary to Texas Government Code §2001.059(b), which specifies that a state agency may pay the cost of a transcript or may assess the cost to one or more parties. TDI also contended the rule conflicts with Texas Government Code §2001.177, which permits an agency to assess an appealing party the costs of preparation of the agency record for the appeal. Furthermore, TDI, TDH, TWCC, TSBP, and TSBME contended it is not equitable that the referring agency, and by inference the taxpayers, should have to pay for a transcript, if only the judge or opposing party orders one. The agencies argued the cost burden should be placed on the one requesting the transcript, pursuant to accepted practice, the common procedure in referring agencies' rules, and the Texas Rules of Civil Procedure. They further stated that until an agency adopts rules to assess costs to opposing parties, there will be no reason for those parties not to request transcripts. TDI referenced the comments SOAH made in its 1997 rulemaking, which said a judge would not routinely request preparation of a transcript when no party does so; indicated that Texas Government Code §2001.059 gave referring agencies power to assess transcript costs; agreed it was reasonable for all parties to share costs when the judge alone requests a transcript; and that, absent an interagency contract addressing the matter, SOAH would defer to the referring agency's decision regarding assessment of costs. In addition, TDI complained that making an agency pay for costs it did not incur and then attempt to collect the money would burden agency budgets. Some agencies, according to TDI, are not authorized to pay such costs. TDI requested that SOAH revive prior subsections (e)(1) and (e)(3) of this section. Thus, when only the judge requests a transcript, the cost would be handled according to the interagency contract between SOAH and the referring agency and, absent an applicable contract term, SOAH would bear the cost, unless the referring agency agreed to pay the cost or assessed the cost as provided for in former subsection (e)(1) of this section. Finally, the RRC requested a special exception to former subsection (e)(1) of this section for RRC cases.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH first notes that Texas Government Code §2001.177 is irrelevant, as it concerns the costs of preparing a transcript on appeal to district court. SOAH reiterates that a judge will not routinely request preparation of a transcript when no party does so. Because the number of interagency contracts between referring agencies and SOAH is decreasing over time, referencing provisions in such contracts would have little impact and would not produce a uniform practice easily accessible to all concerned. In response to the comments, the proposed subsection has been rewritten to identify the common practice that whichever party requests a transcript should pay for it. It also is noted that the referring agency has the ability through its rules or policies to recover transcript costs under Texas Government Code §2001.059(b). The changes to subsection (e) of this section may be viewed as an exercise of SOAH's own authority as a state agency under Texas Government Code §2001.059(b). Finally, SOAH declines to add the special exception the RRC requested. Language related to the use of court reporters in RRC matters is a matter that may be addressed in the RRC's procedural rules.

SOAH appreciates the referring agencies' concerns about transcript costs. However, SOAH does not currently have funds appropriated for transcript preparation but will explore the possibility of future funding through legislative action.

COMMENT: In addition to the foregoing points, several agencies commented on subsection (h) of this section regarding the broadcasting or televising of proceedings. TDH stated that the subsection should also address whether the hearing involves confidential health information; such hearings, in TDH's opinion, should not be broadcast or televised. SSB commented that the subsection also needs to address the chilling effect broadcasting/televising might inflict on an otherwise reluctant or uneasy witness. In SSB's opinion, this could cause such witnesses to refuse to testify, or make their testimony so stilted that it would be worthless. TDI noted that the subsection is not as limited as Texas Rule of Civil Procedure 18c which, among other things, requires consent of the parties, and it asked SOAH to make consent an essential element.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH notes that it holds many open hearings in which confidential information (patient names, for example) is protected through the use of initials and other means. Hearings which are closed to the public by statute, such as TWCC hearings, would not be broadcasted. However, because of the concerns expressed, SOAH has revised the subsection to require the consent of the parties and address SSB's concerns.

Section 155.51--Evidence

COMMENT: TSBME commented on subsection (c) of this section, which addresses prefiled, written testimony. TSBME felt it further expands a judge's power in this area and considers it a process that may be of help to the judge, but is so costly that it is not in the overall interest of the public. Furthermore, TSBME contended such a procedure has an adverse impact on its ability to recruit expert witnesses. In its opinion, the decision of whether to use prefiled testimony should be left to the parties.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH notes that subsection (c) of this section relating to prefiled testimony has been in effect for several years, and that the ability of the judge to order prefiled testimony has been beneficial to the efficiency and accuracy of the hearings process. It is not uncommon in the more complex SOAH hearings for parties to use prefiled, written testimony, and it often results in shorter and more efficient hearings that are less costly to the referring agencies. This practice is sanctioned by the APA and usually welcomed by most SOAH parties.

Section 155.55--Failure to Attend Hearing and Default

COMMENT: TSBME suggested adding a provision automatically allowing the referring agency a continuance when the respondent, who has not answered, unexpectedly shows up at hearing. The concern is that, if the staff goes to the expense of bringing witnesses, exhibits, etc., and the respondent fails to appear, it is a waste of agency time and resources; on the other hand, if the staff assumes the respondent will not appear and does not prepare, the staff will not be ready to proceed if the respondent makes an appearance. TDH felt subsection (a) of this section

is unnecessarily complex. TDH thought that having to wait for a default PFD would cause undue delay and extra costs for the referring agency. TDH wants SOAH to do something which would have the same effect as if the hearing had never been requested, such as the judge issuing an order of default or an order dismissing the case immediately and ending SOAH's involvement without addressing the merits. TDH would then take the case back and prepare an internal default order. TDI states that it is required to finalize 80% of its contested cases within 180 days of issuance of the notice of hearing. TDI is concerned that there will be delay resulting in a failure to meet this efficiency requirement, if SOAH does not allow TDI (after parties fail to show up at hearing) to abate/continue proceedings so TDI can then use its in-house default rule to dispose of the cases by TDI Commissioner orders.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH notes that default practices vary by agency, and its goal is to try to accommodate each agency's needs while assuring all parties due process. In an attempt to accomplish this, SOAH has added new subsection (d) to this section, which should enable each agency to use whatever default system is most efficient for it.

COMMENT: TDI next argued that the section should specify the notice requirements contemplated in it. In addition, TDI suggested subsection (b)(2) of this section should require the agency also to give notice--"If you do not file a response within *xx* days of the hearing, the Agency will cancel the hearing, and the Commissioner (or Board, etc.) will issue an order deeming the allegations in the notice of hearing true."

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH finds that setting out such notice requirements is unnecessary since each referring agency must issue proper notice under APA standards. We also decline to make the change to subsection (b)(2) of this section. Whether to require responses is a matter for each referring agency and, in many SOAH cases (*e.g.*, TWCC and ERS), responses may not be appropriate.

COMMENT: Two agencies objected to SOAH's reference to the "party who does not have the burden of proof." TDH noted the burden can change from time to time during a proceeding, and argued the resulting confusion would add another ground for appeal to the courts. TDI suggested omission of that language because it has no statute, rule or policy specifying which party has the burden of proof at SOAH. TDI proposed that if the missing party was the "subject" of the notice of hearing, SOAH could enter a default proposal for decision, and if the missing party "issued" the notice of hearing, SOAH could dismiss for failure to prosecute.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. In response to TDH's concerns, SOAH notes the issue will be who has the burden of proof at the start of the proceeding. TDI's proposal will not work because SOAH deals with many different types of cases and agencies. For example, in TWCC medical necessity proceedings, the agency issues the notice of hearing but rarely appears as a party; thus, *both* participating parties are subjects of the notice of hearing, but only the one aggrieved by the decision of TWCC's Medical Review Division has the burden of proof.

COMMENT: Finally, comments were received about the ten-day look-back period created in proposed subsection (d) of this section, (now adopted at subsection (e) of this section). TDH argued the look-back period will result in different treatment of hearing participants depending upon the case and the judge. It contended that, if the judge acts quickly in issuing an order or proposal for decision, a party will not have the right to ask for the default to be set aside at SOAH, whereas other parties in other cases will have such a right when the judge does not order a default quickly enough. TDH suggested if a party fails to appear, the judge should just end SOAH's involvement and leave post-default actions up to the discretion of the referring agency. TDI also argued that the provision is like a motion for new trial, which only the agency issuing the final decision can grant.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH notes the subsection is a middle ground by which, for a short period of time, the judge, who has the neutral perspective, can make the decision. After that short period, a party would need to seek action at the referring agency in conformance with APA motion for rehearing practice. At that stage, the agencies could take whatever action they deem appropriate, including remanding a defaulted case to SOAH based on whatever showing they want to then require.

COMMENT: TDI suggested that §155.19(c) of this title (relating to Computation of Time) be amended, to make sure judges do not have any discretion to enlarge the ten-day period.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH has amended §155.19(c) of this title (relating to Computation of Time) as requested.

COMMENT: TDI also objected to subsection (d) of this section, (now adopted at subsection (e) of this section), for due process reasons, arguing SOAH should amend the subsection to require the judge to inform parties about the ten-day "set aside" right in a cover letter.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. For efficiency reasons, SOAH has eliminated the use of most cover letters. However, SOAH judges will include a paragraph describing this right in their orders and proposals for decision issued under the default section.

COMMENT: TDI also objected to SOAH's proposed "good cause" standard. TDI preferred the standard described in *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124 (Tex. 1939), which held the defaulting party must prove: the failure to appear was not intentional or due to indifference but due to a mistake or accident; the party is likely to prevail on the merits; and a new hearing will not be unduly injurious to the other party.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH rejects this suggested standard as unduly restrictive in SOAH's administrative proceedings.

COMMENT: TDH also asked SOAH to incorporate by reference four of its procedural rules located at: 25 TAC §1.21 (relating to Purpose and Scope); §1.23 (relating to General Provisions); §1.25 (relating to Parties to the Hearing); and §1.27 (relating to Depositions) that were written to supplement the rules in this chapter.

RESPONSE: SOAH has made changes, in part, to the proposed text in response to this comment. SOAH declines to incorporate the TDH rules. SOAH believes it is important and efficient that its rules provide uniform procedures to be followed in its hearings. However, in response to comments from TDH and other agencies, SOAH has added a provision to this section, which incorporates by reference certain agency procedural rules related to default proceedings.

Section 155.57--Summary Disposition and Dismissal

COMMENT: Two agencies objected to subsection (b) of this section, (regarding Failure to Prosecute). TWCC said it was unclear whether the party must respond within ten days of notice of the intent to dismiss, or within ten days of the notice that the dismissal has occurred. It recommended the following language instead: "A response to the notice of intent to dismiss for failure to prosecute shall be filed with the judge within ten days of the issuance of the notice of intent to dismiss." TDI noted under Texas Rules of Civil Procedure 165a, which it urged SOAH to copy, a court may dismiss for want of prosecution, but before doing that must provide a party notice of its intent and the date and place of a dismissal hearing. At the dismissal hearing, the court can dismiss. In TDI's view, SOAH would actually dismiss right after the hearing, and only give the dismissed party the opportunity to seek reopening of the record. TDI also argued SOAH would exceed its authority by dismissing any case in which its only authority was to issue a proposal for decision.

RESPONSE: SOAH has made changes to the proposed text in response to this comment. SOAH is aware of the need for a party to have notice before such a dismissal becomes final. SOAH has rewritten the proposed subsection to provide additional flexibility as well as to promote procedural efficiency. In order to avoid a protracted, two-step proceeding, a judge may issue a conditional order of dismissal that notifies the party the case will be finally dismissed, unless it files a timely, meritorious motion to set aside the dismissal. Alternatively, the judge may issue a notice of intent to dismiss that sets a dismissal hearing at which the party may present its opposition to dismissal. SOAH believes that whether the notice and dismissal are done in two separate steps or simultaneously, due process is served so long as the dismissed party has notice and an opportunity to avoid dismissal. The time to file a motion opposing dismissal has been changed to twenty days to ensure adequate response time is provided. SOAH disagrees that it cannot dismiss cases in which its only authority is to issue a proposal for decision. As in court proceedings, SOAH's dismissal for want of prosecution does not address the merits of the case. In order to clarify that point, however, SOAH added that explanation to the end of subsection (b) of this section (relating to Failure to Prosecute).

Section 155.59--Proposal for Decision

COMMENT: SSB commented that subsection (c) of this section establishes a procedure that considerably increases the risk of *ex parte* communication. Because of the significant consequences of that, SSB suggested amending the subsection to require that exceptions and replies be filed exclusively with SOAH.

RESPONSE: SOAH has made no changes to the proposed text in response to this comment. SOAH declines to take that step because Texas Government Code §2001.062 requires exceptions and replies to be filed with the officials who are to render the decision.

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code Annotated, Chapter 2003, §2003.050, which authorizes the State Office of Administrative Hearings to conduct contested case hearings and requires adoption of hearings procedure rules, and Texas Government Code Annotated, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

The adopted amendments affect Texas Government Code Annotated, Chapters 2001 and 2003.

§155.1. Purpose and Scope.

(a) Unless otherwise provided by statute or by the provisions of this chapter, this chapter will govern the processes followed by the State Office of Administrative Hearings (SOAH) in handling all matters referred to SOAH, including contested cases under the Administrative Procedure Act (APA), Tex. Gov't Code, Chapter 2001. Administrative License Suspension cases initiated by the Department of Public Safety are governed by Chapter 159 of this title (relating to Rules of Procedure for Administrative License Suspension Hearings). Arbitration procedures for certain enforcement actions of the Department of Human Services are governed by Chapter 163 of this title (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Human Services).

(b) Subject to further review and possible modification or deletion of this subsection, SOAH adopts by this reference those procedural rules of the Public Utility Commission of Texas (PUC) and Texas Natural Resource Conservation Commission (TNRCC) in effect on July 1, 2001, which address the formal contested case process in matters referred by those agencies, and which are not inconsistent with applicable law. This adoption does not include any PUC or TNRCC rules addressing the use of Alternative Dispute Resolution (ADR) processes at SOAH, which processes will be governed by the Governmental Dispute Resolution Act (GDRA), Tex. Gov't Code, Chapter 2009; SOAH rule provisions pertaining to ADR; and interagency contracts, memoranda of understanding, or other written agreements with referring entities.

(c) Under Tex. Util. Code §102.006(a) and Tex. Gov't Code §815.102, the procedural rules of the Railroad Commission of Texas (RRC) and the Employees Retirement System of Texas (ERS) govern the formal contested case process in matters referred by those agencies to SOAH.

§155.3. Application and Construction of this Chapter.

(a) Administrative hearings in cases conducted by SOAH shall be conducted in accordance with the APA, when applicable, and with this chapter; provided that the administrative law judge may, by order, modify and supplement the requirements of this chapter to promote the fair and efficient handling of the case and to facilitate resolution of issues, if doing so does not prejudice the rights of any person or contravene applicable statutes.

(b) If there is any conflict between an agency's rules or prior decisions and statutory provisions applicable to the case, and the rules or decisions cannot be harmonized with the statute, the statute controls.

(c) The procedural rules of the state agency on behalf of which the hearing is conducted govern procedural matters that relate to the hearing only to the extent that these rules adopt the agency's procedural rules by reference, or as otherwise required by law.

(d) If there is any conflict between these rules and the procedural rules of the TNRCC adopted in §155.1 of this title (relating to Purpose and Scope), TNRCC's rules will control.

(e) If there is any conflict between these rules and the procedural rules of the PUC adopted in §155.1 of this title, the PUC's rules will control.

(f) If there is any conflict between these rules and the procedural rules of the RRC and ERS referenced in §155.1 of this title, the rules of the RRC and ERS will control.

(g) This chapter shall be construed to ensure the just and expeditious determination of every matter referred to SOAH. Not all contested procedural issues will be susceptible to resolution by reference to the APA and other applicable statutes, this chapter, and case law. When they are not, the presiding judge will consider applicable policy of the referring agency documented in the record in accordance with §155.53 of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules), the Texas Rules of Civil Procedure as interpreted and construed by Texas case law, and persuasive authority established in other forums, in order to issue orders and rulings that are just in the circumstances of the case.

(h) Unless otherwise expressly provided, the past, present, or future tense shall each include the other; the masculine, feminine, or neuter genders shall each include the other; and the singular and plural number shall each include the other.

(i) Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

§155.5. Definitions.

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

(1) Administrative law judge or judge--An individual appointed by SOAH's chief administrative law judge under Tex. Gov't Code, Chapter 2003, §2003.041. The term shall also include any temporary administrative law judge appointed by the chief administrative law judge pursuant to Tex. Gov't Code §2003.043.

(2) Alternative Dispute Resolution or ADR--Processes used at SOAH to resolve disputes outside of, or in connection with, formal contested case hearing processes, including, but not limited to, mediation, mediated settlement conferences, mini-trials, early neutral evaluation, and arbitration.

(3) APA--The Administrative Procedure Act (Tex. Gov't Code, Chapter 2001).

(4) Arbitration--A form of ADR, governed by an agreement between the parties or special rules or statutes providing for the process, in which a third-party neutral issues a decision after a streamlined and simplified hearing. Arbitrations can be binding or non-binding, depending on the agreement, statutes, or rules. (*See* Chapter 163 of this title (relating to Arbitration Procedures for Certain Enforcement Actions of the Department of Human Services) for procedural rules specifically governing the arbitration of certain nursing home enforcement cases referred by the Texas Department of Human Services).

(5) Authorized representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated by a party to represent the party.

(6) Business day--A weekday on which state offices are open.

(7) Chief Judge--The chief administrative law judge of SOAH.

(8) Contested case--A proceeding, including, but not restricted to, ratemaking and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing.

(9) Final decision maker--The person or persons authorized by law or delegation to render the final decision in a contested case.

(10) Law--The United States and Texas Constitutions, state and federal statutes, rules and regulations, and relevant case law.

(11) Mediated settlement conference or MSC--A type of mediation during the pendency of a contested case at SOAH which allows the parties to explore settlement possibilities in a confidential setting, with the assistance of one or more third-party neutrals.

(12) Mediation--A confidential, informal dispute resolution process in which an impartial person, the mediator, facilitates communication between or among the parties to promote reconciliation, settlement, or understanding among them.

(13) Party--A person or agency named, or admitted to participate, in a case before SOAH.

(14) Person--Any individual, representative, corporation, or other entity, including any public or non-profit corporation, or any agency or instrumentality of federal, state, or local government.

(15) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(16) PUC--The Public Utility Commission of Texas.

(17) RRC--The Railroad Commission of Texas.

(18) Referring Agency--A state board, commission, department, agency, or other entity that refers a contested case or other dispute to SOAH for process.

(19) SOAH--The State Office of Administrative Hearings.

(20) TNRCC--The Texas Natural Resource Conservation Commission.

§155.15. Powers and Duties of Judges.

(a) The judge shall have the authority and duty to:

(1) conduct a full, fair, and impartial hearing;

(2) take action to avoid unnecessary delay in the disposition of the proceeding; and

(3) maintain order.

(b) The judge shall have the power to regulate prehearing matters, the hearing, and the conduct of the parties and authorized representatives, including the power to:

(1) administer oaths;

(2) take testimony, including the power to question witnesses;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and prehearing matters, including orders imposing sanctions;

(6) admit or deny party status;

(7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(8) rule on motions of parties or the judge's own motion, including granting or denying continuance;

(9) request parties to submit legal memoranda, proposed findings of fact, and conclusions of law;

(10) issue proposals for decision pursuant to APA §2001.062, and where authorized, final decisions;

(11) for contested cases referred by an agency other than the PUC or the TNRCC, and filed at SOAH on or after September 1, 1997, impose appropriate sanctions against a party or its representative for:

(A) filing a motion or pleading that is groundless and brought:

(i) in bad faith;

(ii) for the purpose of harassment; or

(iii) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(B) abuse of the discovery process in seeking, making, or resisting discovery; or

(C) failure to obey an applicable rule or an order of the judge or of the state agency on behalf of which the hearing is being conducted; and

(12) where appropriate and justified by party or representative behavior described in paragraph (11) of this subsection, and after notice and opportunity for hearing, issue an order:

(A) disallowing further discovery of any kind or of a particular kind by the offending party;

(B) charging all or any part of the expenses of discovery against the offending party or its representatives;

(C) holding that designated facts be considered admitted for purposes of the proceeding;

(D) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(E) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(F) striking pleadings or testimony, or both, in whole or in part.

§155.19. Computation of Time.

(a) Unless otherwise required by statute, in computing time periods prescribed by applicable statute, this chapter, or by judge order, the day of the act, event, or default on which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, an official State holiday, or another day on which SOAH is closed, in which case the time period will be deemed to end on the next day that SOAH is open. When these rules specify a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days, unless otherwise provided by applicable law, this chapter, or judge order. However, if the period specified is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted, except for purposes of §155.25(d)(3) of this title (related to Service of Documents on Parties).

(b) Disputes regarding computation of time for periods not specified by this chapter or judge order will be resolved by reference to applicable law and upon consideration of agency policy documented in accordance with §155.53 of this title (relating to Consideration of Policy Not Incorporated in Referring Agency's Rules).

(c) When by these rules or judge order an act is required or allowed to be done at or within a specified time, the judge may, for cause shown, order the period enlarged if application therefor is made before the expiration of the specified period. In addition, where good cause is shown for the failure to act within the specified period, the judge may permit the act to be done after the expiration of the specified period. The judge may not enlarge the period for taking any action under the rules relating to default, §155.55 of this title (relating to Failure to Attend Hearing and Default), and to the failure to prosecute, §155.57(b) of this title (relating to Summary Disposition and Dismissal), except as stated in those rules.

§155.21. Representation of Parties.

(a) An individual may represent himself or herself, or may appear by authorized representative.

(b) A party's authorized representative shall enter an appearance with SOAH. If the party's representative is not licensed to practice law in Texas, and the authority of the representative to appear is challenged, the representative must show authority to appear as the party's representative.

(c) On the occasion of a party's first appearance through counsel, the attorney whose signature first appears on the initial pleading for a party shall be the attorney in charge for that party, unless another attorney is specifically designated. The designation of attorney in charge shall be changed only by written notice to SOAH and all parties. Unless otherwise ordered by the judge, all communications sent by SOAH or other parties regarding the matter shall be sent to the attorney in charge.

(d) A party's attorney of record shall remain the attorney of record in the absence of a formal request to withdraw and an order of the judge approving the request.

§155.23. Filing Documents or Serving Documents on the Judge.
The following requirements govern the filing or service on the judge of documents in contested cases pending before SOAH unless modified by order of the judge.

(1) Place for Filing Original Materials.

(A) Contested Cases Generally. The original of all pleadings and other documents requesting action or relief in a contested case, except contested cases referred to SOAH by the PUC, the RRC, and the TNRCC, shall be filed with SOAH once it acquires jurisdiction under §155.7 of this title (relating to Jurisdiction). Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P. O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the referring agency, and a copy shall be filed with SOAH.

(B) Cases Referred by the PUC.

(i) Except for exhibits offered at a prehearing conference or hearing, the original of all pleadings and documents in a contested case referred to SOAH by the PUC shall be filed with the clerk at the PUC in accordance with the rules of the PUC.

(ii) The time and date of filing these materials shall be determined by the file stamp affixed by the clerk.

(iii) The party filing a document with the clerk at the PUC (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve a copy of the document on the judge by delivery on the same day as the filing.

(iv) The court reporter shall serve the transcript and exhibits in a proceeding on the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the PUC by the judge. If no court reporter is requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the PUC by the judge.

(C) Cases Referred by the TNRCC.

(i) Except for exhibits offered at a prehearing conference or hearing, the original of all pleadings and documents in a contested case referred to SOAH by the TNRCC shall be filed with the chief clerk at the TNRCC in accordance with the rules of the TNRCC.

(ii) The time and date of filing these materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the TNRCC mail room, whichever is earlier.

(iii) The party filing a document with the chief clerk at the TNRCC (except documents provided in the discovery process which are not the subject of motions filed in a discovery dispute) shall serve a copy of the document on the judge by delivery on the same day as the filing.

(iv) The transcript and exhibits in a proceeding shall be served on the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the TNRCC by the judge. If no court reporter is requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the TNRCC by the judge.

(D) Cases Referred by the RRC.

(i) Except for exhibits offered at a prehearing conference or hearing, the original of all pleadings and documents in a contested case referred to SOAH by the RRC shall be filed with the Office of General Counsel, Docket Services, at the RRC in accordance with the rules of the RRC.

(ii) The time and date of filing these materials shall be determined by the file stamp affixed in Docket Services.

(iii) The party filing a document with Docket Services (except documents provided in the discovery process that are not the subject of motions filed in a discovery dispute) shall serve a copy of the document on the judge by delivery on the same day as the filing.

(iv) The court reporter shall serve the transcript and exhibits in a proceeding on the judge at the time the transcript is provided to the requesting party. SOAH shall maintain the transcript and exhibits until they are released to the RRC by the judge. If no court reporter is requested by a party, SOAH shall maintain the recording of the hearing and the exhibits until they are released to the RRC by the judge.

(2) Confidential Materials.

(A) Filings Generally. A party filing materials made confidential by law shall file them in an enclosed, sealed, and labeled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and explain the nature of the sealed materials. The container shall identify the docket number, style of the case, and name of the submitting party, and be marked "CONFIDENTIAL & UNDER SEAL" in bold print at least one inch in size. Each page of the confidential material shall be marked "confidential."

(B) Materials Submitted for *In Camera Review*. A party submitting materials for *in camera review* by the judge shall supply them to the judge in an enclosed, sealed, and labeled container, accompanied by an explanatory cover letter copied to all parties. The cover letter, addressed to the judge, shall identify the docket number, style of the case, explain the nature of the sealed materials, and specify the relief sought. The container, addressed to the judge, shall identify the docket number, style of the case, and name of the submitting party, and be marked "*IN CAMERA REVIEW*" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged." Said materials will not be received for filing by SOAH unless the judge so orders. Unless otherwise ordered by the judge, materials reviewed in camera will be returned to the party that submitted them.

(3) Discovery Requests and Documents Produced in Discovery.

(A) Discovery requests and deposition notices to be served on parties and responses and objections to discovery requests shall not be filed with SOAH or served on the judge, except as provided in subparagraph (C) of this paragraph.

(B) Documents produced in discovery shall be served upon the requesting parties and notice of the service shall be given to all parties, but neither the documents produced nor the notice of service shall be filed with SOAH or served on the judge, except by order of the judge. The party responsible for service of the discovery materials shall retain a true and accurate copy of the original documents and become their custodian.

(C) Motions requesting relief in a discovery dispute shall be accompanied by only those portions of discovery materials relevant to the dispute.

(D) If documents produced in discovery are to be used at hearing or are necessary to a prehearing motion that might result in a final order on any issue, only the portions to be used shall be filed with SOAH or offered into evidence.

(4) Facsimile Filings. Documents may be filed with SOAH, or in PUC, RRC, or TNRCC cases served on the judge, by facsimile transmission according to the following requirements:

(A) The quality of the original hard copy shall be clear and dark enough to transmit legibly.

(B) The first sheet of the transmission shall indicate the number of pages being transmitted, and shall contain a telephone number to call if there are problems with the transmission.

(C) Neither the original nor any additional copies of facsimile filings should be filed with SOAH.

(D) The sender shall maintain the original of the document with the original signature affixed.

(E) The date imprinted by SOAH's facsimile machine on the transaction report that accompanies the document will determine the date of filing or of service on the judge. Documents received on a Saturday, Sunday or other day on which SOAH is closed shall be deemed filed the first business day thereafter.

(5) Effect of Signing Pleadings. The signatures of parties or authorized representatives constitute their certification that they have read the pleading and that, to the best of their knowledge, information, and belief formed after reasonable inquiry, the pleading is neither groundless nor brought in bad faith.

§155.25. Service of Documents on Parties.

(a) Service on all parties. Any person filing a document with SOAH in a case shall, on the same date as the document is filed, provide a copy to each party or the party's authorized representative by hand-delivery; by regular, certified or registered mail; by electronic

mail, upon agreement of the parties; or by facsimile transmission; provided however, when a party files a business record affidavit, pursuant to Texas Rules of Evidence 902(10), or a transcript, the party may give notice of the filing without the necessity of providing a copy to each party. By order, the judge may exempt a party from serving other documents upon all parties.

(b) Certificate of service. The person filing the document shall include a certificate of service that certifies compliance with this section. If a filing does not contain a certificate of service or otherwise show service on all other parties, and on the judge if applicable, SOAH may:

(1) return the filing;

(2) send notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

(3) send a copy of the filing to all parties.

(c) Service of notice of hearing. Unless otherwise required by law, service of notice of hearing shall be made by the referring agency in the manner required by the APA.

(d) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding a party's receipt of documents served by another party:

(1) If a document was hand-delivered to a party in person or by agent, the judge shall presume that the document was received on the date of filing at SOAH.

(2) If a document was served by courier-receipted delivery, the judge shall presume that the document was received no later than the day after filing at SOAH.

(3) If a document was sent by regular mail, certified mail, or registered mail, the judge shall presume that it was received no later than three days after mailing.

(4) If a document was served by facsimile transmission or by electronic mail before 5:00 p.m. on a business day, the judge shall presume that the document was received on that day; otherwise, the judge shall presume that the document was received on the next business day.

(e) Electronically transmitted documents. Documents may be served on parties by electronic mail according to the following requirements.

(1) With the exception of documents produced pursuant to a discovery request, the sender shall also file the original of the document with SOAH.

(2) The sender has the burden of proving date and time of receipt of the document.

§155.29. Pleadings.

(a) Content generally. All requests for relief in a contested case not made on the record at a prehearing conference or hearing shall be typewritten or printed on paper 8 1/2 inches wide and 11 inches long, and timely filed at SOAH. Photocopies are acceptable, provided all copies are clear and legible. All pleadings shall contain or be accompanied by the following:

(1) The name of the party seeking relief;

(2) The docket number assigned to the case by SOAH;

(3) The style of the case;

(4) A concise statement of facts relied upon by the pleader;

(5) A clear statement of the type of relief, action, or order desired by the pleader, and identification of the specific grounds supporting the relief requested;

(6) An indication whether a hearing is needed on the relief sought;

(7) A certificate of service, as required by §155.25(b) of this title (related to Service of Documents on Parties);

(8) Any other matter required by statute or rule;

(9) A certificate of conference, if required; and

(10) The signature of the submitting party or the party's authorized representative.

(b) Purpose and effect of motions. To change a setting or obtain a ruling, order, or any other procedural relief from the judge, a party is required to file a motion. Where the provisions of statute or rule do not automatically establish a needed procedure, the party seeking to amend or supplement the procedure should file a written motion. The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order, or any setting by SOAH or the judge.

(c) General requirements for motions. Except as provided in this section or chapter, for motions seeking to intervene or be granted party status, to amend a party's pleadings, for summary disposition, to file a motion to set aside a default or dismissal for failure to prosecute, or to continue a scheduled conference or hearing, all motions shall:

(1) be filed no later than seven days before the date of the hearing; except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at a hearing; and,

(2) if seeking an extension of an established deadline,

(A) include a proposed date; and

(B) indicate that the movant has contacted all parties and state whether there is opposition to the proposed date, or describe in detail the movant's attempts to contact the other parties.

(d) Responses to motions generally. Except as provided in this subsection or chapter, responses to motions described in subsection (c) of this section shall be in writing, and filed on the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing. However, responses to written motions late-filed (for good cause shown) on the date of the hearing may be presented orally at hearing.

(e) Motions to intervene. Motions for party status shall be filed no later than twenty days prior to the date the case is set for hearing. Responses to such motions shall be filed no later than seven days after the motion is served on or otherwise received by other parties.

(f) Motions for Continuance. Motions for continuance shall:

(1) make specific reference to all other motions for continuance previously filed in the case by the movant, and shall set forth the specific grounds upon which the party seeks the continuance;

(2) be filed no later than five days before the date of the hearing, except, for good cause demonstrated in the motion, the judge may consider a motion filed after that time or presented orally at the hearing;

(3) indicate that the movant has contacted all parties and state whether there is opposition to the motion, or describe in detail the movant's attempts to contact the other parties;

(4) if seeking a continuance to a date certain, include a proposed date or dates (preferably a range of dates) and indicate whether the parties contacted agree on the proposed new date(s); and

(5) be served on the other parties according to applicable filing and service requirements, except that a motion for continuance filed five days or less before the date of the hearing shall be served by hand or facsimile delivery on the same date it is filed with SOAH, or by overnight delivery on the next day, unless the motion demonstrates or the record shows such service is impracticable.

(g) Responses to written motions for continuance. Responses to written motions for continuance shall be in writing, except responses to written motions for continuance filed on the date of the hearing may be presented orally at the hearing. Written responses to motions for continuance shall be filed on the earlier of:

(1) three days after receipt of the motion; or

(2) the date and time of the hearing.

(h) Amendment of Pleadings. A party may amend its pleadings by written filing if the amendment does not unfairly surprise other parties; provided that any pleading which substantially affects the scope of the hearing may not be filed later than seven days before the date the hearing actually commences, except by agreement of all parties and consent of the judge.

(i) Motions to set aside a default under §155.55(e) (relating to Failure to Attend Hearing and Default), for summary disposition and to set aside a dismissal for failure to prosecute, under §155.57 (relating to Summary Disposition and Dismissals), shall be governed by the referenced sections.

§155.31. Discovery.

(a) In contested cases, parties shall have the discovery rights provided in the APA, the referring agency's statute, and these rules. For cases not adjudicated under the APA, discovery shall be allowed as ordered by the judge.

(b) Parties may obtain discovery regarding any matter not privileged or exempted by the Texas Rules of Civil Procedure (Tex. R. Civ. P.), the Texas Rules of Evidence (Tex. R. Evid.), or other rule or law, that is relevant to the subject matter of the proceeding.

(c) Discovery may commence when SOAH acquires jurisdiction under §155.7 of this title (relating to Jurisdiction). No discovery may be sought after the commencement of the contested case hearing on the merits unless permitted by the judge upon a showing of good cause.

(d) Parties may obtain discovery by: requests for disclosure, as described by Tex. R. Civ. P. 194; oral or written depositions; written interrogatories to a party; requests of a party for admission of facts and the genuineness or identity of documents or things; requests and motions for production, examination, and copying of documents and other tangible materials; motions for mental or physical examinations; and requests and motions for entry upon and examination of real property.

(1) Unless the judge directs otherwise, each party may serve no more than two sets of interrogatories to any other party and the number of questions, including subsections, in a set of interrogatories shall be limited so as not to require more than thirty answers.

(2) A party may serve upon any other party, no later than twenty days before the end of the discovery period or the date of hearing if no discovery period has been established, a written request for the admission of the truth of any matters within the scope of subsection (b) of this section that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or are made available for inspection and copying. Service shall be in accordance with §155.25 of this title (relating to Service of Documents on Parties).

(A) Each matter of which an admission is requested shall be separately set forth. The matter is admitted without necessity of an order of the judge unless the party to whom the request is directed timely serves upon the party requesting the admission a written answer or objection addressed to the request, signed by the party or the party's attorney. If objection is made, the reason for the objection shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer and deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless it states that it has made reasonable inquiry and that the information known or easily obtainable by it is insufficient to enable it to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for hearing may not, on that ground alone, object to the request; it may, subject to the provisions of Tex. Gov't Code §2003.0421, deny the matter or set forth reasons why the party cannot admit or deny it.

(B) Any matter admitted under this section is conclusively established as to the party making the admission unless the judge on motion permits withdrawal or amendment of the admission. Subject to the duty to supplement discovery under this section, the judge may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment or in the interest of justice, if the judge finds that the parties relying upon the responses and deemed admissions would not be unduly prejudiced and that the presentation of the merits of the action will be subserved thereby. Any admission made by a party under this section is for the purpose of the pending action only and neither constitutes an admission by the party for any other purpose nor may be used against the party in any other proceeding.

(e) Requests for issuance of subpoenas or commissions shall be directed to the referring agency. Any such requests shall comply with the APA and the applicable agency procedure, if any, regarding issuance of subpoenas or commissions. Disputes over whether a request complies with applicable law shall be resolved by the judge.

(f) Written interrogatories, requests for admission, requests and motions for production, and requests for entry upon and examination of real property shall initially be directed to the party from which discovery is being sought. Copies of discovery requests and answers to those requests shall not be filed with SOAH unless directed by the judge or when in support of a motion to compel, motion for protective order, or motion to quash.

(g) The judge may establish deadlines as necessary for discovery requests and responses. If the judge does not establish a deadline, responses to discovery requests, except for notices of depositions, shall be made within twenty days after receipt. Except where specifically prohibited, the procedures and limitations set forth in these rules pertaining to discovery may be modified by agreement of the parties in accordance with §155.39 of this title (relating to Stipulations); or by the judge on the motion of a party, if the parties are unable to agree; or on the judge's own initiative if the interest of justice requires. If such motion is timely filed by a party, it shall be captioned "Request for Discovery Control Plan" and may include a request for:

(1) the setting of a date for the hearing on the merits;

(2) dates for prehearing conferences;

(3) the establishment of a time period for the completion of all discovery or an appropriate phase of it;

(4) the establishment of limits on the amount or forms of discovery permitted;

(5) a schedule for completion of prehearing procedures; and

(6) any other matter that will promote the efficient and just disposition of the matter.

(h) A responding party is under a continuing duty to reasonably supplement its discovery responses under the circumstances specified in the Tex. R. Civ. P. An amended or supplemental response must be made reasonably promptly after the party discovers the necessity for such a response. It is presumed that an amended or supplemental response made less than fifteen days before the hearing was not made promptly. Where such a presumption arises, or pursuant to order issued by the judge, the supplementing party shall provide an affidavit identifying the date and the manner in which the party learned of the need to supplement its answer and such additional facts necessary to meet a contention that the need to supplement reasonably should have been discovered earlier.

(i) The objections to discovery requests shall be a separate written pleading filed within the time for response. The discovery request to which an objection is being filed shall be stated and the specific grounds for the objection shall be separately stated for each question. If an objection pertains to only part of a question, that part shall be clearly identified. All arguments upon which the objecting party relies shall be presented in full in the objection. A party must comply with as much of the request to which the party has no objection unless it is unreasonable under the circumstances to do so before obtaining a ruling on the objection. An objection that is not made in the time required, that is obscured by numerous unfounded objections, or otherwise fails to comply with the requirements of this paragraph is waived unless the judge excuses the waiver for good cause shown.

(j) An objection founded upon a claim of privilege or exemption shall be governed by the procedures set forth in Tex. R. Civ. P. 193.3 and 193.4.

(k) Every disclosure, discovery request, notice, response, and objection must be signed by the party's authorized representative or the party, if the party is not represented. The signature of the party or the party's authorized representative shall have the effect specified by the Tex. R. of Civ. P. 191.3.

(l) The party seeking discovery shall file a motion to compel within ten days of receipt of the pertinent objection or alleged failure to comply with discovery. Absence of a motion to compel filed by the party seeking discovery will be construed as an indication that the parties have resolved their discovery dispute. The parties and their authorized representatives are expected to cooperate in discovery and to make any agreements reasonably necessary for the efficient disposition of the case. Therefore, all discovery motions shall include a certificate of conference:

(1) averring the parties conferred, negotiated in good faith, and were unable to resolve the dispute prior to submitting the dispute to the judge for resolution; or

(2) averring the movant has made reasonable, but unsuccessful, attempts to contact the opposing parties and succinctly describing the attempts made.

(m) The judge may issue any order in the interest of justice necessary to protect the person or party seeking relief from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Any person or party from whom discovery is sought may file a motion within the time permitted for response to the discovery request for a protective order, specifying the grounds for the protective order. A person should not move for protection when objection or assertion of privilege is appropriate, but a motion does not waive the objection or assertion of privilege. Motions and responses may include affidavits, discovery pleadings, or other pertinent documents. The judge's authority as to such orders extends to, but is not limited by, any of the following.

(1) The judge may order that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified.

(2) The judge may order that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the judge.

(3) SOAH records are presumed to be open. The judge may order them sealed only upon a showing of all of the following:

(A) a specific, serious and substantial interest that clearly outweighs this presumption of openness; and

(B) any probable adverse effect that sealing will have upon the general public health or safety; and

(C) no less restrictive means than sealing the records will adequately and effectively protect the specific interest asserted. Any order under this paragraph shall be made in accordance with the APA, the referring agency's statute, and other applicable rule or law.

(n) An agreement affecting a deposition upon oral examination is enforceable if the agreement is recorded in the deposition transcript. Unless the judge orders otherwise, the parties may, by written agreement:

(1) provide that depositions be taken at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(2) modify the procedures provided by these rules for other methods of discovery.

§155.43. Making a Record of Contested Case.

(a) A record of all contested case proceedings will be made. At the judge's discretion and order, the making of a record of a prehearing conference may be waived, and the actions taken at the conference may instead be reflected in a written order issued after the conference. For any proceeding in a docket set to last no longer than one day, SOAH is responsible for making a tape recording of the hearing or prehearing conference.

(1) A referring agency that prefers to arrange for a stenographic recording of all docketed proceedings on a regular basis may do so by filing a statement of intent to do so. The statement shall be filed with the Director of Hearings and shall remain in effect for all proceedings conducted by SOAH on behalf of the referring agency unless the statement is revoked in writing. The referring agency shall make arrangements for stenographic recording of all proceedings while the statement is effective, unless the judge waives the requirement for a prehearing conference or as provided in subsection (b) of this section.

(2) A referring agency that prefers to make arrangements to videotape all docketed proceedings on a regular basis may file a statement of intent to do so, as specified in paragraph (1) of this subsection.

If a docketed proceeding is set to last longer than a day, a referring agency nevertheless is subject to subsection (b) of this section.

(b) Unless otherwise ordered by the judge, the referring agency shall provide a court reporter for any proceeding in a docket set to last longer than one day. The court reporter shall prepare a stenographic record of the proceeding but shall not prepare a transcript unless a party or the judge so requests.

(c) The tape recording made by SOAH under subsection (a) of this section, the videotape made by the referring agency under subsection (a) of this section if a statement is on file, or the stenographic recording prepared under subsection (b) of this section is the official record of the proceeding for purposes of all actions within SOAH's jurisdiction. The judge may order a different means of making a record if circumstances so require and may designate that record as the official record of the proceeding.

(d) Any party may use a means of making an unofficial record of the proceeding that is in addition to the means specified in the rules or by the judge.

(1) The party shall file and serve a notice of intent to use an additional means at least two days before the proceeding.

(2) The party shall make all arrangements associated with the additional means.

(3) The judge may order that the additional means not be used or that it cease being used if it may cause or is causing disruption to the proceeding.

(4) At the proceeding the judge may order that the additional means sought to be used shall be the method of preparing the official record of the proceeding and dispense with any other means required by this section, unless there is a timely objection at the beginning of the proceeding.

(e) On the written request to the referring agency by a party to a contested case or on request of the judge, a written transcript of all or part of the proceedings shall be prepared by a court reporter from the means used to make the official record of the proceeding. If the proceeding has been taped or video recorded, the referring agency shall inform SOAH of the need to deliver the original recording to a court reporter, selected by the referring agency, for preparation of the transcript.

(1) Costs of a transcript ordered by any party ordinarily shall be paid by that party. If permitted by the referring agency's statute, rules, or policy, the cost of the transcript may be assessed to one or more parties.

(2) When only the judge requests a transcript, the referring agency may bear that cost or assess the cost as provided for in paragraph (1) of this subsection.

(3) Paragraphs (1) and (2) of this subsection do not preclude the parties from agreeing to share the costs associated with the transcript.

(4) The original of any transcript prepared shall be filed with SOAH.

(5) Proposed written corrections of purported errors in a transcript shall be filed with SOAH and served on the parties and the court reporter within a reasonable time after discovery of the error. The judge may establish deadlines for the filing of proposed corrections and responses. The transcript will be corrected only upon order of the judge.

(6) A transcript prepared according to these procedures becomes the official record of the proceedings for purposes of all actions within SOAH's jurisdiction.

(f) The judge shall maintain any exhibits admitted during the proceeding and the official record of the proceeding, other than a stenographic record. However, the judge may allow the court reporter to retain the exhibits and the tape or video recording of the proceeding, if applicable, while a transcript is being prepared. The exhibits and transcript or recording will be sent to the referring agency after issuance of the order or proposal for decisions and consideration of any exceptions to the proposal for decision and replies. The judge may retain the exhibits and transcript or recording to prepare for presentation of the proposal for decision to the referring agency, if a presentation is requested by the referring agency, or SOAH may seek temporary return of the exhibits and transcript or recording to enable the judge to prepare for that presentation if the materials have already been sent to the referring agency.

(g) The referring agency shall contract with and pay for an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with §2001.055 of the APA and shall provide reader services or other communication services for blind and sight impaired parties and subpoenaed witnesses. Any party, including the referring agency, who needs a certified language interpreter for presentation of its case shall be responsible for arranging for the interpreter to be present. The referring agency may pay the cost of the certified language interpreter or may assess the cost on one or more parties in accordance with the referring agency's statute or rules.

(h) If existing technology allows, and upon consent of the parties, a judge may permit broadcasting or televising of proceedings, provided the judge determines that doing so: serves the public interest in accessibility to the proceedings; will not unduly interfere with the efficiency of the proceedings; will not distract, intimidate, or otherwise adversely affect the participants; and will not impair the dignity of the proceedings.

§155.55. Failure to Attend Hearing and Default.

(a) If a party who does not have the burden of proof fails to appear on the day and time set for hearing, the judge may proceed in that party's absence on a default basis and issue a proposal for decision or order, where provided by law, against the defaulting party. In the proposal for decision or order, the factual allegations against that party in the notice of hearing will be deemed admitted.

(b) Any default proceeding under this section requires adequate proof of the following:

(1) proper notice under Tex. Gov't Code, Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was provided to the defaulting party; and

(2) such notice included disclosure, in at least twelve-point, bold-face type, that upon failure of the party to appear at the hearing, the factual allegations in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default.

(c) This subsection applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the referring agency's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. Under that situation, the default procedures described in subsection (b) of this section may be used only when the following circumstances are shown to exist:

(1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and

(2) there is credible evidence that the notice of hearing was sent by first class mail to the defaulting party's last known address as shown on the referring agency's records.

(d) SOAH may enforce the procedural rule of any referring agency that provides, in essence, either:

(1) that the failure of a respondent to timely enter an appearance or answer to the notice of hearing of the contested case shall entitle the agency's staff to a continuance at the time of the contested case hearing for such reasonable period of time as determined by the judge; or

(2) that the failure of respondent to appear at the time of hearing of the contested case shall entitle the agency's staff to move either for dismissal of the case from the SOAH docket, or to request issuance of a default proposal for decision or order by the judge.

(e) No later than ten days after the date of the hearing, if a dismissal, proposal for decision, or an order deciding the case has not been issued, a party may file a motion to set aside a default and reopen the record. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown.

(f) This section does not preclude the referring agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the referring agency's statute or rules. A party may request entry of an order by the judge abating or continuing the proceedings to pursue informal disposition at the referring agency.

§155.57. Summary Disposition and Dismissal.

(a) Summary Disposition. In response to a party's motion or after a judge notifies the parties of an intent to dispose of a case by summary disposition and allows time for responses, the judge may issue a proposal for decision, or where authorized by law a final order, resolving a contested case without evidentiary hearing if the pleadings, affidavits, materials obtained by discovery, admissions, matters officially noticed, stipulations, or evidence of record show there is no genuine issue as to any material fact and that a party is entitled to a decision in its favor as a matter of law.

(1) A motion for summary disposition shall state the specific grounds therefor.

(A) A party may move with or without supporting affidavits for summary disposition upon all or any part of a contested case.

(B) The motion shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with the requirement of a separate fact statement may, in the judge's discretion, constitute sufficient grounds for the denial of the motion.

(2) Any opposition to a motion for summary disposition shall be filed within twenty days of receipt of the motion. The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts that the opposing party contends are disputed. Each material fact claimed by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure by the opposing party to comply with the requirement of a separate fact statement may constitute sufficient grounds, in the judge's discretion, for granting the motion.

(3) Discovery products not on file with SOAH may be relied upon to support or oppose a motion for summary disposition, if copies of the products are filed with the motion or opposition and copies of or a notice containing specific references to the discovery products are served on all parties.

(b) Failure to Prosecute. A contested case may be dismissed for want of prosecution, on failure of a party seeking affirmative relief to appear for any hearing or prehearing conference of which the party had notice, or for the party's failure to prosecute the case in accordance with a requirement of statute, rule, or order of the judge. Dismissal under this rule removes the case from the SOAH docket and does not propose or make any decision on the merits of the case.

(1) Notice of potential dismissal for want of prosecution of a case and an opportunity to contest the dismissal will be provided by the judge to the parties in one of the following ways:

(A) The judge may issue a conditional order of dismissal, which explains the party's failure; informs the party of an opportunity to contest the dismissal; and states the order of dismissal will become final upon the expiration of twenty days from the date it is signed, unless a motion to set aside the dismissal and reopen the record that specifies the bases for the motion is filed with the judge within twenty days of the date the order is signed.

(B) In the alternative, the judge may issue a notice of intent to dismiss the case, which explains the party's failure; notifies the party of the date, time, and place of a dismissal hearing; and requires the party to file a motion to retain within twenty days of the date the notice is signed specifying the party's reasons for opposing dismissal and indicating that the party will appear at the dismissal hearing.

(2) The judge may grant a motion referenced in paragraph (1)(A) or (B) of this subsection for good cause shown.

(c) Other Dismissal Actions. In response to a party's motion or after a judge notifies the parties of an intent to dismiss a case and allows time for responses, the judge may dismiss a case, or a portion of the case, from SOAH's docket for:

(1) lack of jurisdiction over the matter by the referring agency;

(2) lack of statute, rule, or contract authorizing SOAH to conduct the proceeding;

(3) mootness of the case;

(4) failure to state a claim for which relief can be granted; or

(5) unnecessary duplication of proceedings.

(d) If a moving party withdraws its entire claim or parties settle all matters in controversy, a judge may dismiss a matter from SOAH's docket by order with or without prejudice. The judge may order a withdrawn or settled matter severed before dismissal, if other related matters in the docket remain in controversy.

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 April 8, 2002.

TRD-200202169

Paul Elliot
Director of Hearings
State Office of Administrative Hearings
Effective date: April 28, 2002
Proposal publication date: October 19, 2001
For further information, please call: (512) 475-4931

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PART 13. TEXAS INCENTIVE AND PRODUCTIVITY COMMISSION

CHAPTER 273. STATE EMPLOYEE INCENTIVE PROGRAM

1 TAC §§273.1, 273.3, 273.7, 273.9, 273.27

The Texas Incentive and Productivity Commission adopts amendments to Commission rules §§273.1, 273.3, 273.7, 273.9, and 273.27, concerning the administration of the State Employee Incentive Program. The rule amendments are adopted without changes to the proposed text as published in the October 5, 2001, issue of the *Texas Register* (26 TexReg 7663).

Most of the proposed amendments to the rules are being made to reflect the modifications to Chapter 2108 of the Government Code which were enacted during the 2001 legislative session. House Bill 2492 modifies the eligibility requirements of the program and increases the threshold amount of savings to a state agency that must be realized from a suggestion in order for an employee or state employee group to be eligible to receive an award or bonus. The bill also authorizes the Commission to solicit donations. Section 273.9 clarifies the statutory provision on eligibility of high level employees to reflect that employees that have decision-making authority to implement a suggestion made under the program are not eligible to receive awards. This clarification is deemed necessary to interpret the statutory provision in a manner that is consistent with the purpose of the law as a whole to reward employees that make suggestions over and above their job duties and not to reward certain high-level or policy-making employees whose job duties include the development and implementation of solutions to make their respective agencies more efficient and cost effective. The changes to the rules were made for clarification purposes only as result of inquiries by the participating state agencies.

No comments were received in response to the proposed rule amendments.

The amendments are adopted under the Texas Government Code, §2108.004(b) which authorizes the Commission to adopt rules to carry out Chapter 2108 of the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2002.

TRD-200202126

Ed Bloom
Executive Director
Texas Incentive and Productivity Commission
Effective date: April 24, 2002
Proposal publication date: October 5, 2001
For further information, please call: (512) 475-2393

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 392. PROCUREMENTS BY HEALTH AND HUMAN SERVICES COMMISSION

SUBCHAPTER J. HISTORICALLY UNDERUTILIZED BUSINESSES

1 TAC §392.100

The Health and Human Services Commission ("Commission") adopts new Chapter 392, Subchapter J, §392.100, relating to its historically underutilized business ("HUB") program with changes to the proposed text as published in the December 14, 2001, issue of the *Texas Register* (26 TexReg 10193).

No comments were received regarding the adoption of this subchapter.

The purpose of the new chapter, subchapter, and section is to comply with Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which requires state agencies to adopt the Texas Building and Procurement Commission ("TBPC") rules governing their HUB programs for construction projects and purchases of goods and services paid for with state-appropriated funds.

The TBPC rules are found at 1 Texas Administrative Code ("TAC"), Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.16 and §§111.26-111.28.

The rules as proposed identified the General Services Commission, which was succeeded by the Texas Building and Procurement Commission by the 77th Legislature. The adopted rules include a nonsubstantive change to identify the successor agency.

There is no anticipated impact on local economies, because there are no additional burdens imposed by the adopted rules.

The adopted rules are administrative and do not impose any new regulatory requirements. The adopted rules are reasonably taken to fulfill requirements of state law.

These rules are adopted 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 Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003, which directs state agencies to adopt TBPC's rules under §2161.002 as the agency's own rules. Those rules apply to agencies' construction projects and purchase of goods and services paid for with appropriated money.

The new subchapter implements Government Code, Title 10, Subtitle D, Chapter 2161, §2161.003.

§392.100. Historically Underutilized Business Program.

(a) HHSC adopts by reference the Texas Building and Procurement Commission rules found at 1 TAC, Title 1 Administration, Part 5 Texas Building and Procurement Commission, Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11-111.16 and §§111.26-111.28, relating to the Historically Underutilized Business Program, with the additions set forth in subsection (b) below.

(b) For purposes of this §392.100:

(1) "Commission" refers to the Texas Building and Procurement Commission.

(2) "State agency" refers to the Health and Human Services Commission.

(c) The adoption of this rule is required by Government Code, §2161.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2002.

TRD-200202159
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Effective date: April 28, 2002
Proposal publication date: December 14, 2001
For further information, please call: (512) 424-6630

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 239. STUDENT SERVICES CERTIFICATES

SUBCHAPTER C. EDUCATIONAL DIAGNOSTICIAN CERTIFICATE

19 TAC §§239.80 - 239.86

The State Board for Educator Certification adopts new Chapter 239, Subchapter C, §§239.80-239.86, relating to educational diagnostician certification. Sections 239.80-239.82, 239.84-239.86 are adopted without changes to the proposed text as published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1634) and will not be republished. Section 239.83 is adopted with a minor non-substantive change. The text of §239.83 will be republished. In the proposed version of §239.83(g)(2), the designated lettering for subparagraphs (C)-(K) should have been subparagraphs (C)-(L). The text for subparagraph (C) inadvertently appeared under subparagraph (B), thus mis-lettering the remaining subparagraphs. This adoption corrects the error.

REASONED JUSTIFICATION FOR RULES AS ADOPTED:

The following is a summary of the factual basis for the rules as adopted that demonstrates a rational connection between the factual basis for the rules and the rules as adopted:

The rules include the standards recommended by the Advisory Standards Development Committee for Educational Diagnostician. The standards will be used to develop assessments. The standards for educational diagnostician were posted on the SBEC web site for public comment for a period of thirty days. No changes to the standards were suggested. A concern was expressed about whether the standards adequately addressed the knowledge and skills an educational diagnostician should have to differentiate between children who truly have special education needs and those whose learning challenges result solely from deficits in English-language proficiency. Upon further review and discussion, however, it was agreed that the standards adequately addressed this concern.

The new rules contain requirements, standards, and administrative provisions for the educational diagnostician certificate, including the following: (1) admission to an educator preparation program; (2) preparation; (3) educator standards for the standard educational diagnostician certificate; (4) issuance of the standard educational diagnostician certificate; (5) renewal of the standard educational diagnostician certificate; and (6) transition provisions allowing candidates to obtain the superseded certificate until August 31, 2003, or one year after the new certificate becomes available on September 1, 2002.

The requirements listed above are consistent with those in rule for the other new student services certificates (school librarian and school counselor). They differ, however, from the current educational diagnostician requirements in that the rules require two years of classroom teaching experience in a public or accredited private school. The current rules require a candidate to have a valid teaching certificate and three years of classroom teaching experience.

Because no party submissions or proposals were received, an explanation of the Board's reasons for disagreement is not required.

No comments were received regarding adoption of the rules.

The new rules are adopted under the following sections of the Education Code: §21.041(a), which requires SBEC to propose rules for the general administration of Chapter 21, Subchapter B, Education Code; §21.041(b)(2), which requires SBEC to propose rules that specify the classes of educator certificates to be issued; and §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate.

§239.83. Standards for the Educational Diagnostician Certificate.

(a) The knowledge and skills identified in this section must be used by educational diagnostician preparation programs in the development of curricula and coursework and will be used by the State Board for Educator Certification as the basis for developing the assessments required to obtain the Standard Educational Diagnostician Certificate. These standards must also serve as the foundation for the professional growth plan, and continuing professional education activities required by §239.85 of this subchapter (relating to Requirements to Renew the Standard Educational Diagnostician Certificate).

(b) Standard I. The educational diagnostician understands and applies knowledge of the purpose, philosophy, and legal foundations of evaluation and special education.

(1) The beginning educational diagnostician knows and understands:

(A) state and federal regulations relevant to the role of the educational diagnostician;

(B) laws and legal issues related to the assessment and evaluation of individuals with educational needs;

(C) models, theories, and philosophies that provide the basis for special education evaluations;

(D) issues, assurances, and due process rights related to evaluation, eligibility, and placement within a continuum of services; and

(E) rights and responsibilities of parents/guardians, schools, students, and teachers and other professionals in relation to individual learning needs.

(2) The beginning educational diagnostician is able to:

(A) articulate the purpose of evaluation procedures and their relationship to educational programming; and

(B) conduct evaluations and other professional activities consistent with the requirements of laws, rules and regulations, and local district policies and procedures.

(c) Standard II. The educational diagnostician understands and applies knowledge of ethical and professional practices, roles, and responsibilities.

(1) The beginning educational diagnostician knows and understands:

(A) ethical practices regarding procedural safeguards (e.g., confidentiality issues, informed consent) for individuals with disabilities;

(B) ethical practices related to assessment and evaluation;

(C) qualifications necessary to administer and interpret various instruments and procedures; and

(D) organizations and publications relevant to the field of educational diagnosis.

(2) The beginning educational diagnostician is able to:

(A) demonstrate commitment to developing quality educational opportunities appropriate for individuals with disabilities;

(B) demonstrate positive regard for the culture, gender, and personal beliefs of individual students;

(C) promote and maintain a high level of competence and integrity in the practice of the profession;

(D) exercise objective professional judgment in the practice of the profession;

(E) engage in professional activities that benefit individuals with exceptional learning needs, their families, and/or colleagues;

(F) comply with local, state, and federal monitoring and evaluation requirements;

(G) use copyrighted educational materials in an ethical manner; and

(H) participate in the activities of professional organizations in the field of educational diagnosis.

(d) Standard III. The educational diagnostician develops collaborative relationships with families, educators, the school, the community, outside agencies, and related service personnel.

(1) The beginning educational diagnostician knows and understands:

(A) strategies for promoting effective communication and collaboration with others, including parents/guardians and school and community personnel, in a culturally responsive manner;

(B) concerns of parents/guardians of individuals with exceptional learning needs and appropriate strategies to help parents/guardians address these concerns;

(C) strategies for developing educational programs for individuals through collaboration with team members;

(D) roles of individuals with disabilities, parents/caregivers, teachers, and other school and community personnel in planning educational programs for individuals; and

(E) family systems and the role of families in supporting student development and educational progress.

(2) The beginning educational diagnostician is able to:

(A) use collaborative strategies in working with individuals with disabilities, parents/caregivers, and school and community personnel in various learning environments;

(B) communicate and consult effectively with individuals, parents/guardians, teachers, and other school and community personnel;

(C) foster respectful and beneficial relationships between families and education professionals;

(D) encourage and assist individuals with disabilities and their families to become active participants in the educational team;

(E) plan and conduct collaborative conferences with individuals who have exceptional learning needs and their families or primary caregivers;

(F) collaborate with classroom teachers and other school and community personnel in including individuals with exceptional learning needs in various learning environments;

(G) communicate with classroom teachers, administrators, and other school personnel about characteristics and needs of individuals with disabilities;

(H) use appropriate communication skills to report and interpret assessment and evaluation results;

(I) provide assistance to others who collect informal and observational data;

(J) effectively communicate to parents/guardians and professionals the purposes, methods, findings, and implications of assessments; and

(K) keep accurate and detailed records of assessments, evaluations, and related proceedings (e.g., ARD/IEP meetings, parent/guardian communications and notifications).

(e) Standard IV. The educational diagnostician understands and applies knowledge of student assessment and evaluation, program planning, and instructional decision making.

(1) The beginning educational diagnostician knows and understands:

(A) the characteristics, needs, and rights of individual students in relation to assessment and evaluation for placement within a continuum of services;

(B) the relationship between evaluation and placement decisions; and

(C) the role of team members, including the student when appropriate, in planning an individualized program.

(2) The beginning educational diagnostician is able to:

(A) use assessment and evaluation information to plan individualized programs and make instructional decisions that result in appropriate services for individuals with disabilities, including those from culturally and/or linguistically diverse backgrounds;

(B) interpret and use assessment and evaluation data for targeted instruction and ongoing review; and

(C) assist in identifying realistic expectations for educationally relevant behavior (e.g., vocational, functional, academic, social) in various settings.

(f) Standard V. The educational diagnostician knows eligibility criteria and procedures for identifying students with disabilities and determining the presence of an educational need.

(1) The beginning educational diagnostician knows and understands:

(A) characteristics of individuals with disabilities, including those with different levels of severity and with multiple disabilities;

(B) educational implications of various disabilities; and

(C) the variation in ability exhibited by individuals with particular types of disabilities.

(2) The beginning educational diagnostician is able to:

(A) access information on the cognitive, communicative, physical, social, and emotional characteristics of individuals with disabilities;

(B) gather background information regarding the academic, medical, and family history of individuals with disabilities; and

(C) use various types of assessment and evaluation procedures appropriately to identify students with disabilities and to determine the presence of an educational need.

(g) Standard VI. The educational diagnostician selects, administers, and interprets appropriate formal and informal assessments and evaluations.

(1) The beginning educational diagnostician knows and understands:

(A) basic terminology used in assessment and evaluation;

(B) standards for test reliability;

(C) standards for test validity;

(D) procedures used in standardizing assessment instruments;

(E) possible sources of test error;

(F) the meaning and use of basic statistical concepts used in assessment and evaluation (e.g., standard error of measurement, mean, standard deviation);

(G) uses and limitations of each type of assessment instrument;

(H) uses and limitations of various types of assessment data;

(I) procedures for screening, prereferral, referral, and eligibility;

(J) the appropriate application and interpretation of derived scores (e.g., standard scores, percentile ranks, age and grade equivalents, stanines);

(K) the necessity of monitoring the progress of individuals with disabilities;

(L) methods of academic and nonacademic (e.g., vocational, developmental, assistive technology) assessment and evaluation; and

(M) methods of motor skills assessment.

(2) The beginning educational diagnostician is able to:

(A) collaborate with families and other professionals in the assessment and evaluation of individuals with disabilities;

(B) select and use assessment and evaluation materials based on technical quality and individual student needs;

(C) score assessment and evaluation instruments accurately;

(D) create and maintain assessment reports;

(E) select or modify assessment procedures to ensure nonbiased results;

(F) use a variety of observation techniques;

(G) assess and interpret information using formal/informal instruments and procedures in the areas of cognitive/adaptive behavior and academic skills;

(H) determine the need for further assessment in the areas of language skills, physical skills, social/emotional behavior, and assistive technology;

(I) determine a student's needs in various curricular areas, and make intervention, instructional, and transition planning recommendations based on assessment and evaluation results;

(J) make recommendations based on assessment and evaluation results;

(K) prepare assessment reports; and

(L) use performance data and information from teachers, other professionals, individuals with disabilities, and parents/guardians to make or suggest appropriate modifications and/or accommodations within learning environments.

(h) Standard VII. The educational diagnostician understands and applies knowledge of ethnic, linguistic, cultural, and socioeconomic diversity and the significance of student diversity for evaluation, planning, and instruction.

(1) The beginning educational diagnostician knows and understands:

(A) issues related to definition and identification procedures for individuals with disabilities, including individuals from culturally and/or linguistically diverse backgrounds;

(B) characteristics and effects of the cultural and environmental backgrounds of students and their families, including cultural and linguistic diversity, socioeconomic diversity, abuse/neglect, and substance abuse;

(C) issues related to the representation in special education of populations that are culturally and linguistically diverse;

(D) ways in which diversity may affect evaluation; and

(E) strategies that are responsive to the diverse backgrounds and particular disabilities of individuals in relation to evaluation, programming, and placement.

(2) The beginning educational diagnostician is able to:

(A) apply knowledge of cultural and linguistic factors to make appropriate evaluation decisions and instructional recommendations for individuals with disabilities; and

(B) recognize how student diversity and particular disabilities may affect evaluation, programming, and placement, and use procedures that ensure nonbiased results.

(i) Standard VIII. The educational diagnostician knows and demonstrates skills necessary for scheduling, time management, and organization.

(1) The beginning educational diagnostician knows and understands:

(A) time management strategies and systems appropriate for various educational situations and environments;

(B) legal and regulatory timelines, schedules, deadlines, and reporting requirements; and

(C) methods for organizing, maintaining, accessing, and storing records and information.

(2) The beginning educational diagnostician is able to:

(A) select, adapt, or design forms to facilitate planning, scheduling, and time management;

(B) maintain eligibility folders; and

(C) use technology appropriately to organize information and schedules.

(j) Standard IX. The educational diagnostician addresses students' behavioral and social interaction skills through appropriate assessment, evaluation, planning, and instructional strategies.

(1) The beginning educational diagnostician knows and understands:

(A) requirements and procedures for functional behavioral assessment, manifestation determination review, and behavioral intervention plans;

(B) applicable laws, rules and regulations, and procedural safeguards regarding the planning and implementation of behavioral intervention plans for individuals with disabilities;

(C) ethical considerations inherent in behavior interventions;

(D) teacher attitudes and behaviors that influence the behavior of individuals with disabilities;

(E) social skills needed for school, home, community, and work environments;

(F) strategies for crisis prevention, intervention, and management;

(G) strategies for preparing individuals to live productively in a multiclass, multiethnic, multicultural, and multinational world; and

(H) key concepts in behavior intervention (e.g., least intrusive accommodations/ modifications within the learning environment, reasonable expectations for social behavior, social skills curricula, cognitive behavioral strategies).

(2) The beginning educational diagnostician is able to:

(A) conduct functional behavioral assessments;

(B) assist in the development of behavioral intervention plans; and

(C) participate in manifestation determination review.

(k) Standard X. The educational diagnostician knows and understands appropriate curricula and instructional strategies for individuals with disabilities.

(1) The beginning educational diagnostician knows and understands:

(A) instructional strategies, technology tools and applications, and curriculum materials for students with disabilities within the continuum of services;

(B) varied learning styles of individuals with disabilities;

(C) curricula for the development of motor, cognitive, academic, social, language, affective, career, and functional skills for individuals with disabilities;

(D) techniques for modifying instructional methods and materials for individuals with disabilities;

(E) functional skills instruction relevant to transitioning across environments (e.g., preschool to elementary school, school to work);

(F) supports needed for integration into various program placements; and

(G) individualized assessment strategies for instruction (e.g., authentic assessment, contextual assessment, curriculum-based assessment).

(2) The beginning educational diagnostician is able to:

(A) interpret and use assessment and evaluation data for instructional planning; and

(B) use assessment and evaluation, planning, and management procedures that are appropriate in relation to student needs and the instructional environment.

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 April 8, 2002.

TRD-200202155
William Franz
Executive Director
State Board for Educator Certification
Effective date: April 28, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 469-3011

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CHAPTER 242. SUPERINTENDENT CERTIFICATE

19 TAC §242.5, §242.20

The State Board for Educator Certification adopts amendments to §242.5 and §242.20, relating to the superintendent certificate, without changes to the proposed text as published in the March 8, 2002, issue of the *Texas Register* (27 TexReg 1639) and will not be republished.

REASONED JUSTIFICATION FOR RULES AS ADOPTED:

The following is a summary of the factual basis for the rules as adopted that demonstrates a rational connection between the factual basis for the rules and the rules as adopted:

The amendments are designed to eliminate unnecessary barriers to candidates seeking the superintendent certificate and to remove unduly prescriptive language in the rule regarding admission to a superintendent preparation program. The major provisions of the amendments would accomplish the following:

Remove unnecessarily prescriptive language concerning grade point averages and nationally-normed assessments and allow preparation entities the full authority to set admission criteria for candidates seeking the standard superintendent certificate. These amendments will make this chapter consistent with the guidance contained in Chapters 227 and 228 of SBEC's rules generally governing educator preparation programs.

Delete the reference to the conditional principal certificate, which was never implemented.

Allow holders of a principal's certificate from another state to be admitted to a superintendent's preparation program without first obtaining a Texas principal's certificate if the candidate passed an out-of-state principal certification exam that is comparable to the Texas exam for principal certification (the Examination for the Certification of Educators in Texas or "ExCET test").

Because no party submissions or proposals were received, an explanation of the Board's reasons for disagreement is not required.

No comments were received regarding adoption of the rules.

The amendments are adopted under the following sections of the Education Code: §21.041(a), which requires SBEC to propose rules for the general administration of Chapter 21, Subchapter B, Education Code; §21.041(b)(2), which requires SBEC to propose rules that specify the classes of educator certificates to be issued; §21.041(b)(4), which requires SBEC to specify the requirements for the issuance and renewal of an educator certificate; and §21.044, which requires SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate and to specify the minimum academic qualifications required for a certificate.

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 April 8, 2002.

TRD-200202156
William Franz
Executive Director
State Board for Educator Certification
Effective date: April 28, 2002
Proposal publication date: March 8, 2002
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS STATE BOARD OF MEDICAL EXAMINERS

CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.2, 184.3, 184.5, 184.7, 184.9 - 184.12, 184.14, 184.16

The Texas State Board of Medical Examiners adopts new §§184.2, 184.3, 184.5, 184.7, 184.9 - 184.12, 184.14 and 184.16, concerning Surgical Assistants, without changes to the proposed text as published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1424) and will not be republished. Sections 184.1, 184.4, 184.6, 184.8, 184.13, and 184.15 have been withdrawn and reproposed (both on an emergency basis and as a regular proposal) elsewhere in this issue of the *Texas Register*.

The new chapter is proposed and adopted as a result of HB 1183 of the 77th Legislature requiring the board to license and regulate surgical assistants.

Comments were received from the Texas Nurses Association regarding §184.12, regarding scope of practice issues - the board reviewed the comment and felt that it did not enhance the rule to incorporate their suggestion. Comments were received from the Association of Surgical Technologists and the Texas Society of Surgical Assistants regarding §184.2 and §184.5. The organizations believe it was the legislative intent to leave the decision of the meaning of "direct supervision" to the supervising physician. The board disagreed. Both the board and the Surgical Assistants Advisory Committee thoroughly discussed supervision issues and felt that the additional language was necessary to properly define this. In addition, their comment regarding §184.5, relating to procedural rules, was considered. The board disagreed with their comments. The rules reflect the standard required for other professionals licensed by the board.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2002.

TRD-200202160
Donald W. Patrick, MD, JD
Executive Director
Texas State Board of Medical Examiners
Effective date: April 28, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 305-7016

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.20

The Texas Funeral Service Commission (Commission) adopts the repeal of section 203.20 concerning Clarification of Other Itemized Services Provided by Funeral Home Staff as published in the November 9, 2001, issue of the *Texas Register* (26 TexReg 8978) without changes and will not be republished.

The repeal is adopted to remove from the Texas Administrative Code the existing section so that a new section may be adopted under a new title.

The Commission received no comments on the proposed repeal of §203.20.

The repealed section is adopted under Occupations Code,§651.152. and Government Code, §2001.021. The Commission interprets Government Code. §2001.021 as establishing a statutory procedure for rulemaking petitions. The Commission interprets Occupations Code,§651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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 April 4, 2002.

TRD-200202133
O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Effective date: April 24, 2002
Proposal publication date: November 9, 2001
For further information, please call: (512) 479-5064

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PART 20. TEXAS COMMISSION ON PRIVATE SECURITY

CHAPTER 425. LICENSED COMPANIES

22 TAC §425.80

The Texas Commission on Private Security adopts the repeal of §425.80, concerning Written Examination, without changes to the proposed text as published in the January 4, 2002, issue of the *Texas Register* (27 TexReg 32) and will not be republished.

Previously, the proposed repeal of §425.80 was published in the November 9, 2001, issue of the *Texas Register* (26 TexReg 8987). That version was withdrawn in the January 4, 2002, issue of the *Texas Register* (27 TexReg 125). The subject matter in the adopted repeal of §425.80 is the same subject matter in adopted new §426.1. In order to have the subject matter currently in place as an existing rule, §425.80 has been repealed and §426.1 has been adopted as a new rule elsewhere in this issue of the *Texas Register*. New §426.1 will replace current §425.80.

The Commission by way of an Ad-Hoc Committee has under taken a comprehensive review of its commission rules that were in effect prior to December 31, 2001. The Commission staff and the Ad-Hoc Committee have also reviewed suggestions and recommendations from individuals and various trade associations. As a result of this review all of the Commission Rules in effect prior to December 31, 2001, are being repealed, and a new substantive revision of Commission Rules have been compiled.

No comments were received regarding adoption of the rule.

The repeal is adopted under §1702.061, Texas Occupations Code which provides the Texas Commission on Private Security with the authority "to adopt rules and general policies to guide the agency in the administration of this chapter."

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 April 8, 2002.

TRD-200202170
Cliff Grumbles
Executive Director
Texas Commission on Private Security
Effective date: April 28, 2002
Proposal publication date: January 4, 2002
For further information, please call: (512) 936-2088

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CHAPTER 426. GENERAL ADMINISTRATION AND EXAMINATION

22 TAC §426.1

The Texas Commission on Private Security adopts new §426.1, concerning Written Examination, with changes to the proposed text as published in the January 4, 2002, issue of the *Texas Register* (27 TexReg 32). The text of the rule will be republished.

Changes to the rule were made to allow the executive director the discretion to allow for an open book examination with the provision that a time limit be placed on the exam with the determination to be made at the discretion of the executive director.

The new section is adopted to limit commissioned security officers or personal protection officers to carry only a firearm of which they have been formally trained and filed with the Commission.

Previously, the proposed repeal of §425.80 was published in the November 9, 2001, issue of the *Texas Register* (26 TexReg 8987). That version was withdrawn in the January 4, 2002, issue of the *Texas Register*. The subject matter in the adopted repeal of §425.80 is the same subject matter in adopted new §426.1. In order to have the subject matter currently in place as an existing rule, §425.80 has been repealed and §426.1 has been adopted as a new rule elsewhere in this issue of the *Texas Register*. New §426.1 will replace current §425.80.

No comments were received regarding adoption of the new rule.

The new section is adopted under Chapter 1702, Texas Occupations Code, which provides the Texas Commission on Private Security with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

§426.1. Written Examination for Managers.

(a) All Manager or Supervisor applicants shall pass a written examination administered by the Commission.

(b) The passing grade of a written examination shall be 75% of the total points possible.

(c) The written examination shall cover all sections of the Act and Commission Rules.

(d) Before being administered the written examination, the Manager or Supervisor applicant must:

(1) Upon request present a valid identification card which contains a photograph;

(2) Report 30 minutes prior to the examination time; and

(3) Comply with all the written and verbal instructions of the proctor;

(e) During an examination session, a Manager or Supervisor shall not:

(1) Give or receive answers or communicate in any manner with another examinee during the examination;

(2) Communicate any of the content of an examination to another at any time;

(3) Steal, copy, or in any way reproduce any part of the examination;

(4) Engage in any deceptive or fraudulent act either during an examination or to gain admission to it;

(5) Solicit, encourage, direct, assist, or aid another person to violate any provision of this section; or

(6) Disrupt the examination session.

(f) Time Limit for examinations will be at the discretion of the Executive Director.

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 April 8, 2002.

TRD-200202171
Cliff Grumbles
Executive Director
Texas Commission on Private Security
Effective date: April 28, 2002
Proposal publication date: January 4, 2002
For further information, please call: (512) 936-2088

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CHAPTER 428. UNIFORMED MOTORCYCLE ESCORT SERVICE

22 TAC §§428.1 - 428.7

The Texas Commission on Private Security adopts new chapter 428, §§428.1-428.7, concerning Uniformed Motorcycle Escort Service, without changes to the proposed text as published in the January 25, 2002, issue of the *Texas Register* (27 TexReg 561) and will not be republished.

The new chapter is adopted to implement rules regarding uniformed motorcycle escorts. Currently, the escort by a private security company is allowed under the Private Security Act, however the Commissioners felt it necessary to have a set of rules specific to uniformed motorcycle escorts.

No comments were received regarding adoption of the rules.

The new sections are adopted under Chapter 1702, Texas Occupations Code, which provides the Texas Commission on Private Security with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2002.

TRD-200202172
Cliff Grumbles
Executive Director
Texas Commission on Private Security
Effective date: April 28, 2002
Proposal publication date: January 25, 2002
For further information, please call: (512) 936-2088

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TITLE 25. HEALTH SERVICES

PART 8. INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION

CHAPTER 621. EARLY CHILDHOOD INTERVENTION

SUBCHAPTER H. RELATIONSHIP WITH PRIVATE DONORS

25 TAC §§621.155, 621.157, 621.159, 621.161, 621.163

The Interagency Council on Early Childhood Intervention adopts new §§621.155, 621.157, 621.159, 621.161, 621.163, concerning relationship with private donors. Sections 621.155, 621.157, 621.161, and 621.163 are adopted with changes to the proposed text as published in the December 21, 2001, issue of the *Texas Register* (26 TexReg 10483). Section 621.159 is adopted without changes and will not be republished.

The purpose of these sections is to establish the criteria, procedures, and standards of conduct governing the relationship between the Council and its officers and employees, and private donors and private organizations which exist to further the duties and purposes of the Council.

The law requires the rules to govern all aspects of conduct of the agency and its employees in the relationship with the organization, including: administration and investment of funds received by the organization for the benefit of the agency; use of an employee or property of the agency by the donor or organization; service by an officer or employee of the agency as an officer or director of the donor or organization; and monetary enrichment of an officer or employee of the agency by the donor or organization.

The board received comments from the Health and Human Services Commission (HHSC). HHSC had several grammatical suggestions. These suggestions are non-substantive, however, the board has incorporated these changes into the proposed sections and they are being adopted with those changes.

The only other change being made to these proposed sections is to the Subchapter. These sections were inadvertently proposed under Subchapter G, Developmental Rehabilitation Services. The sections should have been placed under new Subchapter H, Relationship with Private Donors. Therefore, they are being adopted under new Subchapter H.

The new sections are adopted under the Texas Government Code, §2255.001 which requires state agencies who are authorized to accept money from private donors to adopt rules governing the relationship between the donor organization and the agency and its employees. The Texas Human Resources Code 73.0051(e) authorizes the Interagency Council on Early Childhood Intervention (Council) to accept gifts, grants and donations from public and private sources for use in Council programs.

§621.155. Purpose.

The purpose of these sections is to establish the criteria, procedures, and standards of conduct governing the relationship between the Interagency Council on Early Childhood Intervention (Council), its officers and employees, and private donors and private organizations that exist to further the duties and purposes of the Council.

§621.157. Definitions.

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

(1) Executive Director--The Executive Director of the Interagency Council on Early Childhood Intervention.

(2) Board--Board of the Interagency Council on Early Childhood Intervention.

(3) Council -- Interagency Council on Early Childhood Intervention.

(4) Donation--A contribution of anything of value (financial or in-kind gifts such as goods or services) given to the Council or to a private organization or foundation that exists to further the duties or functions of the Council.

(5) Employee--A regular full-time or part-time employee of the Council.

(6) Officer -- A member of the Board of the Council.

(7) Private donor-A person who gives a donation to the Council on Early Childhood Intervention or to a private organization that exists to further the duties and purposes of the Council.

(8) Private organization--A private organization that exists to further the purposes and duties of the Council.

§621.161. Relationship Between Private Organizations and the Interagency Council on Early Childhood Intervention.

(a) A private organization that exists to further the duties and purposes of the Council and the Council shall enter into a memorandum of understanding (MOU) that contains specific provisions regarding:

(1) the relationship between the private organization and the Council;

(2) fundraising and solicitation;

(3) the use of all funds and other donations from fundraising or solicitation, minus the legitimate expenses described in the MOU, for the benefit of the Council;

(4) the maintenance by the private organization of receipts and documentation of all funds and other donations received, including furnishing such records to the Council;

(5) the furnishing to the Council of any audit of the private organization by the Internal Revenue Service or a private firm; and

(6) the conditions under which the Council will provide property and/or staff support to the organization to further the duties and purposes of the Council and the organization.

(b) The Council may assist a private organization in fund raising and solicitation when:

(1) the ultimate use of the funds, less administrative expenses, will benefit early childhood intervention programs and is consistent with and will further the goals and mission of the Council; and

(2) such fund raising activity does not violate rules governing standards of conduct between Council employees and private donors described in section 621.163 of this subchapter (relating to Standards of Conduct for Officers or Employees of the Council).

(c) The Council may accept from a private organization financial assistance designed to promote early childhood intervention services and programs in the state of Texas. These funds must enhance state funds and not supplant or replace state appropriations. Before the Council may accept such assistance, the Executive Director must ascertain and document that the acceptance will promote the goals of the Council, and that the acceptance does not violate the personnel or administrative policies of the Council.

(d) With regard to all funds received:

(1) The private organization shall maintain receipts and documentation of all funds and other donations received, and shall furnish such documentation to the Council on request.

(2) The private organization shall maintain all funds in insured accounts at established financial institutions, unless the organization and the Council Executive Director approve other investments.

(3) State funds held by the organization shall be invested according to the state's Public Funds Investment Act.

(4) The organization shall obtain an independent audit on an annual basis and submit the results to the Executive Director of the Council. Records relating to activities supported by public funds will be subject to public scrutiny.

(5) Funds generated by the organization will be spent in accordance with the organization's established priorities. Council employees cannot directly spend organization funds - all organization expenditures will be controlled by the organization and its employees.

(6) Expenditures of funds by the organization shall meet requirements of the source of the funds, if applicable.

(7) The organization may solicit and accept corporate sponsorships and will ensure the sponsorships serve and support the organization and ECI Board mission. The organization shall establish selection criteria and guidelines when seeking corporate sponsorships and ensure sponsorships serve the public interest and are consistent with the Council's mission.

(8) Fundraising for the organization shall be conducted by organization employees and Board members and not by state employees with regulatory authority over the potential donor or those for whom it could pose a conflict of interest with a potential donor.

(9) No funding generated by the organization shall be used to provide a salary supplement or bonus to any state employee.

(10) The organization shall perform an annual evaluation of its achievement of established goals/objectives to determine the effectiveness of the organization.

§621.163. Standards of Conduct for Officers or Employees of the Council.

(a) An officer or employee shall not accept or solicit any gift, favor, or service from a private donor or private organization that might reasonably tend to influence his/her official conduct.

(b) An officer or employee shall not accept employment or engage in any business or professional activity with a private donor or private organization that the officer or employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position.

(c) An officer or employee shall not accept other employment or compensation from a private donor or private organization that would reasonably be expected to impair the officer's or employee's independence of judgment in the performance of his/her official position.

(d) An officer or employee shall not make personal investments in association with a private donor or private organization that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the interest of the Council.

(e) An officer or employee shall not solicit, accept, or agree to accept any benefits for having exercised his/her official powers on behalf of a private donor or private organization or performed his/her official duties in favor of a private donor or private organization.

(f) The Executive Director of the Council or an officer of the Council may be a non-voting member(s) of the board of directors of a private organization that exists to further the duties and purposes of the Council.

(g) An officer or employee shall not authorize a private donor or private organization to use property of the Council, unless the property is used in accordance with a contract or memorandum of understanding between the Council and the private donor or private organization, or the Council is otherwise compensated for the use of the property.

(h) The relationship between a private donor and a private organization and the Council, including fundraising and solicitation activities, is subject to all applicable federal and state laws, rules and regulations, and local ordinances governing each entity and its employees.

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 April 4, 2002.

TRD-200202131
Mary Elder
Executive Director
Interagency Council on Early Childhood Intervention
Effective date: April 24, 2002
Proposal publication date: December 21, 2001
For further information, please call: (512) 424-6750

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §65.609, §65.610

The Texas Parks and Wildlife Commission adopts amendments to §65.609 and §65.610, concerning Scientific Breeder's Permits, with changes to the proposed text as published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1464). The change to §65.609, concerning Purchase of Deer and Purchase Permit, incorporates the provisions of proposed §65.611(i) and (j). The change to §65.610, concerning Transport of Deer and Transport Permit, incorporates the provisions of proposed §65.611(j). The changes are necessary because the commission has deferred final action on proposed §65.601, concerning Definitions, and §65.611, concerning Prohibited Acts, in response to public comment. However, proposed §65.611 as published contains certain provisions the commission wishes to adopt at this time. The provisions being deferred would have imposed survey and monitoring requirements for captive deer held under a scientific breeder's permit. The commission has deferred action on those provisions in order to determine whether voluntary actions undertaken by scientific breeders will be sufficient to satisfy concerns about the early detection of disease in captive herds. The provisions of proposed §65.611(j), as incorporated in both §65.609 and §65.610 have been altered to replace the word 'obtained' with the word 'possessed' in order to explicitly reflect the commission's statutory authority to regulate the possession of white-tailed deer under a scientific breeder's permit.

The emergence of tuberculosis (TB) and chronic wasting disease (CWD) in both captive and free-ranging deer populations in other states is cause for concern due to the potential threat to wild deer and livestock populations in Texas. The Texas Animal Health Commission (TAHC), which is charged with controlling disease threats to domestic livestock, recently prohibited the importation of white-tailed deer, mule deer, black-tailed deer, and elk into the state of Texas from Colorado in response to the presence of free-ranging CWD in Colorado herds. Free-ranging CWD also has been detected in populations in Nebraska and Wyoming, and is known to have occurred in captive herds in Montana, South Dakota, Oklahoma, Kansas, and Nebraska. Further, since the publication of the proposed rules, free-ranging CWD has emerged in Wisconsin.

The biological and epidemiological nature of CWD is not well understood and has not been extensively studied, but it is known to be communicable, incurable, and invariably fatal to certain species of cervids. At the current time, there is no live test for CWD; animals suspected of having CWD must be euthanized in order to obtain brain tissue for definitive diagnosis.

Tuberculosis, though well understood, is difficult to eradicate in free-ranging populations. Currently the state of Michigan is involved in a very expensive, extremely time-consuming effort to control TB in free-ranging deer. Consequently, TAHC requires that animals coming from Michigan to Texas must originate from a certified TB-free facility. Additionally TAHC requires TB testing for any animal that comes into Texas from any state, except for properties that have a TB-free status.

Texas Parks and Wildlife regulates the importation of white-tailed and mule deer under the provisions of Scientific Breeder Permit regulations. Currently, the rules require all deer entering the

state to be accompanied by a veterinarian's statement that the animals are free of evidence of contagious and communicable diseases, and further require all imported animals to have been tested in accordance with any applicable regulations of the Texas Animal Health Commission. The current rules, though helpful, do not adequately address several potential problems. The first of these concerns CWD. Because CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. Therefore, it is possible that infected or exposed deer could be unknowingly imported into Texas, where they could then possibly infect wild deer or domestic stock. The second concern is that TB, once loose in a free-ranging population, could quickly spread, resulting in quarantines, depopulation events, and other expensive and painful containment measures.

Additionally, the provenance of imported deer cannot be reliably established at the present time, as opposed to the extensive documentation required for movement of domestic livestock. For instance, a deer might be born in a captive herd in Kansas, sold as a fawn at auction in Missouri, transported to New York as a yearling, and then sold as a two-year-old in Texas, making it difficult and perhaps impossible to ascertain if the animal has ever been at risk of infection by contact with positive animals. Finally, because deer imported into Texas are frequently liberated for hunting purposes (1,397 in 2001), the risk to the multi-billion dollar hunting and livestock industries represented by even one infected animal among a wild population is considerable.

Texas Parks and Wildlife has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD and TB to native wildlife and livestock, and to determine the appropriate level of response. TAHC possesses regulatory authority with respect to animal disease issues (in fact, if captive deer test positive for either disease, the facility is immediately subject to existing TAHC rules). The department strongly believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the suspension of importation of deer, pending resolution of the epidemiological uncertainty surrounding imported deer, is a wise and responsible course of action.

The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, restricts the purchase of deer to in-state sources only, stipulates that transport privileges under a purchase permit do not apply to deer from out of state sources, and requires a transaction-specific purchase permit be possessed by at least one party to any transaction. The amendment is necessary to suspend the importation of deer until the epidemiological realities of deer diseases in other states are fully understood and deer in this state can be presumed to be safe from infection. The amendment is also necessary to ensure that any deer sold in this state are capable of being tracked from owner to owner. The amendment to §65.610, concerning Transport of Deer and Transport Permit, eliminates current subsection (c) and replaces it with a provision restricting the validity of a transport permit to the transport of deer in-state only. The amendment also makes it an offense for any person to possess a deer obtained from an out-of-state source, except for deer possessed prior to the effective date of the rulemaking. The amendment is necessary to eliminate, for the time being, the potential introduction of diseased animals into the state. The amendment is intended to serve the long-term goal of minimizing the risk of disease transmission to wild populations of deer from deer possessed under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

The amendment to §65.609 will function by restricting the purchase of deer to in-state sources only, by stipulating that transport privileges under a purchase permit do not apply to deer from out of state sources, by requiring a transaction-specific purchase permit to be possessed by at least one party during any sale of deer, and by prohibiting the possession of deer originating from out-of-state sources, except for deer possessed prior to the effective date of the rule. The amendment to §65.610 will function by restricting the validity of a transport permit to the transport of deer in-state only and by making it an offense for any person to possess a deer obtained from an out-of-state source, except for deer possessed prior to the effective date of the rulemaking.

One commenter opposed adoption of the proposed rule on the basis that the suspension of importation was not explicit and would allow persons to disavow possession of deer by liberating them upon discovery by law enforcement personnel. The department disagrees with the comment and responds that the rules as adopted are enforceable with respect to affirmatively establishing a state of possession in any circumstance. No changes were made as a result of the comment.

Three commenters requested that the commission defer action that would impose herd monitoring and survey requirements in lieu of voluntary actions by scientific breeders. The department agrees with the comments and changes have been made accordingly.

Eight commenters supported adoption of the proposed rules.

Texas Wildlife Association and Texas Deer Association commented in favor of adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the Parks and Wildlife Commission to establish regulations governing the possession of white-tailed and mule deer for scientific, management, and propagation purposes.

§65.609. Purchase of Deer and Purchase Permit.

(a) Deer may be purchased or obtained for:

(1) holding for propagation purposes if the purchaser possesses a valid scientific breeder's permit; or

(2) liberation for stocking purposes.

(b) Deer may be purchased or obtained only from the holder of a valid scientific breeder's permit.

(c) An individual may possess or obtain deer only after a purchase permit has been issued by the department. A purchase permit is valid for a period of 30 days after it has been completed (to include the unique number of each deer being transferred), dated, signed, and faxed to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The purchase permit shall also be signed and dated by the buyer or buyer's agent prior to or at the time that the transfer of possession of any deer occurs. A purchase permit does not authorize and is not valid for the transport of deer into this state from any other state or country.

(d) A purchase permit is valid for only one transaction and expires after one instance of use.

(e) A one-time, 30-day extension of effectiveness for a purchase permit may be obtained by notifying the department prior to the original expiration date of the purchase permit.

(f) A person may amend a purchase permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(g) The department may issue a purchase permit for liberation for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(h) Deer lawfully purchased or obtained for stocking purposes may be temporarily held in captivity:

(1) to acclimate the deer to habitat conditions at the release site;

(2) when specifically authorized by the department;

(3) for a period to be specified on the purchase permit, not to exceed six months;

(4) if they are not hunted prior to liberation; and

(5) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility.

(i) No person may sell deer to another person unless either the purchaser or the seller possesses a purchase permit valid for that specific transaction.

(j) Except as provided in this subsection, no person may possess a deer acquired from an out-of-state source. This subsection does not apply to deer lawfully possessed prior to the effective date of this subsection.

§65.610. Transport of Deer and Transport Permit.

(a) The holder of a valid scientific breeder's permit may, without any additional permit, transport legally possessed deer:

(1) to another scientific breeder when a valid purchase permit has been issued for that transaction;

(2) to another scientific breeder on a temporary basis for breeding purposes. The scientific breeder providing the deer shall complete and sign a free, department-supplied invoice prior to transporting any deer, which invoice shall accompany all deer to the receiving facility. The scientific breeder receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held in the receiving facility. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the scientific breeder relinquishing the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title (relating to Annual Reports and Records). In the event that a deer has not been returned to a facility at the time the annual report is due, a scientific breeder shall submit a photocopy of the incomplete original invoice with the annual report. A photocopy of the completed original invoice shall then be submitted as part of the permittee's annual report for the following year.

(3) to another person on a temporary basis for nursing purposes. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a nursery, which invoice shall accompany all deer to the receiving facility. The person receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the person holding the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(4) to an individual who does not possess a scientific breeder's permit if a valid purchase permit for release into the wild for stocking purposes has been issued for that transaction;

(5) to and from an accredited veterinarian for the purpose of obtaining medical attention; and

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a DMP facility, which invoice shall accompany all deer to the receiving facility. The DMP permittee or authorized agent receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the facility of origin, the invoice shall be dated and signed by both the person holding the deer under a DMP permit and the scientific breeder, and the invoice shall accompany the deer to the facility of origin. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(b) The department may issue a transport permit to an individual who does not possess a scientific breeder's permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder.

(c) A transport permit does not authorize and is not valid for the transport of deer into this state from any other state or country.

(d) Except as provided in this subchapter, no person may transport deer during any open season for deer or during the period beginning 10 days immediately prior to an open season for deer unless the person notifies the department by contacting the Law Enforcement Communications Center in Austin no less than 24 hours before actual transport occurs.

(e) During an open season for deer or during the period beginning 10 days immediately prior to an open season for deer, deer may be transported for the purposes of this subchapter without prior notification of the department; however, deer transported under this subsection shall be transported only from one scientific breeder facility to another scientific breeder facility. Deer transported under this subsection shall not be liberated unless the scientific breeder holding the deer notifies the Law Enforcement Communications Center no less than 24 hours prior to liberation.

(f) Transport permits shall be effective for 30 days from the date that the scientific breeder has completed (to include the unique number of each deer being transported), dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The transport permit shall also be signed and dated by the other party to a transaction (or their authorized agent) upon the transfer of possession of any deer.

(g) A transport permit is valid for only one transaction, and expires after one instance of use.

(h) A person may amend a transport permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(i) A one-time, 30-day extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

(j) No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

(k) Except as provided in this subsection, no person may possess a deer acquired from an out-of-state source. This subsection does not apply to deer lawfully possessed prior to the effective date of this subsection.

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 April 5, 2002.

TRD-200202153
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: April 25, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 389-4814

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.180

The Comptroller of Public Accounts adopts an amendment to §3.180, concerning signed statements for purchasing diesel fuel tax free, without changes to the proposed text as published in the February 22, 2002, issue of the *Texas Register* (27 TexReg 1283).

This amendment incorporates legislative changes in House Bill 1241, 77th Legislature, 2001, which amended Tax Code, Chapter 153 to increase the total amount of tax-free diesel fuel that can be purchased using a signed statement in a single delivery and the total amount of tax-free diesel fuel that can be purchased using a signed statement in a calendar month. End users, with a letter of exception issued by this office, may purchase dyed diesel fuel for exclusive use in oil and gas production.

The 77th Legislature, 2001, in Senate Bill 1125, amended the Tax Code, Chapter 153, to change the name of the signed statement Agricultural User Exemption Number to the Agricultural Exemption Number.

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, §153.205

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 April 5, 2002.

TRD-200202145
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: April 25, 2002
Proposal publication date: February 22, 2002
For further information, please call: (512) 475-0387

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34 TAC §3.203

The Comptroller of Public Accounts adopts a new §3.203, concerning diesel fuel tax exemption for water, fuel ethanol, and biodiesel mixtures, without changes to the proposed text as published in the February 22, 2002, issue of the *Texas Register* (27 TexReg 1284).

The new rule incorporates legislative changes from the 77th Legislature, 2001, that amend Tax Code, Chapter 153. Senate Bill 5 amended the Tax Code to provide an exception from the motor fuels tax on the volume of water, fuel ethanol, or biodiesel blended with taxable diesel fuel. Senate Bill 1125 amended the Tax Code to provide an exemption from motor fuels tax on the volume of water that is blended together with taxable diesel fuel. The new rule provides definitions, invoice documentation requirements, storage tank and retail pump labeling requirements, refund procedures, and reporting requirements for interstate commercial carriers licensed under the International Fuel Tax Agreement.

No comments were received regarding adoption of the new rule.

This new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new rule implements Tax Code, §§153.203, 153.222, 153.017.

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 April 5, 2002.

TRD-200202147
Martin Cherry
Deputy General Counsel for Taxation
Comptroller of Public Accounts
Effective date: April 25, 2002
Proposal publication date: February 22, 2002
For further information, please call: (512) 475-0387

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PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 121. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §121.6

The Texas Municipal Retirement System adopts amendments to §121.6, concerning the time for filing of retirement applications. The amendments are adopted without changes to the proposed text published in the January 11, 2002, issue of the *Texas Register* (27 TexReg 361), and therefore the text will not be republished.

The amendments are being adopted to allow applicants for service or disability retirements to waive the requirement of filing their application at least 30 days before the effective date of their retirement.

No comments were received regarding adoption of these amendments.

The amendments to §121.6 are adopted pursuant to Texas Government Code, Chapter 855, §855.102, which provides the Board of Trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for the efficient administration of the system.

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 April 2, 2002.

TRD-200202078
Gary Anderson
Executive Director
Texas Municipal Retirement System
Effective date: April 22, 2002
Proposal publication date: January 11, 2002
For further information, please call: (512) 476-7577

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CHAPTER 123. ACTUARIAL TABLES AND BENEFIT REQUIREMENTS

34 TAC §123.5

The Texas Municipal Retirement System adopts amendments to §123.5, concerning the requirement of spousal consent. The amendments are adopted without changes to the proposed text in the January 11, 2002, issue of the *Texas Register* (27 TexReg 361), and therefore the text will not be republished.

Section 804.051 of the Texas Government Code authorizes the Texas Municipal Retirement System to adopt rules requiring spousal consent in connection with the selection of a retirement annuity or death benefit plan by a member that does not pay benefits to the member's spouse in the form of an annuity. The Texas Municipal Retirement System has previously adopted a rule that requires spousal consent in connection with the election by the member of a retirement annuity. The amendments to this rule will require spousal consent in connection with the designation by the member of a beneficiary of the vested death benefit authorized by §16 of Senate Bill 522, 77th Legislative Session. The rule change will maintain consistency with respect to the application of the spousal consent rule.

No comments were received regarding adoption of these amendments.

The amendments to §123.5 are adopted pursuant to Texas Government Code, Chapter 804, §804.051 which gives the Board of Trustees of the Texas Municipal Retirement System the authority to adopt rules to require spousal consent. In addition the amendments to §123.5 are adopted pursuant to Texas Government Code, Chapter 855, §855.102, which provides the Board of Trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for the efficient administration of the system.

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 April 2, 2002.

TRD-200202079
Gary Anderson
Executive Director
Texas Municipal Retirement System
Effective date: April 22, 2002
Proposal publication date: January 11, 2002
For further information, please call: (512) 476-7577

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CHAPTER 127. MISCELLANEOUS RULES

34 TAC §127.6

The Texas Municipal Retirement System adopts §127.6 regarding acceptance of eligible rollover distributions or trustee-to-trustee transfers from other retirement plans as payment for system service credit. The amendment is adopted without changes to the proposed text as published in the February 8, 2002, issue of the *Texas Register* (27 TexReg 871), and therefore will not be republished.

Section 127.6 specifies the types of plans from which the Texas Municipal Retirement System may accept funds as payment when a member is otherwise eligible to establish service credit in the Texas Municipal Retirement System. The purpose of the new section is to enable the Texas Municipal Retirement System to accept a rollover or transfer of funds from any type

of plan permitted under federal tax law as payment for system service credit a member is otherwise eligible to establish. The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), Public Law 107-16 (June 7, 2001), expanded the ability to rollover or transfer funds from one type of retirement plan to another, effective January 1, 2002.

No comments were received regarding adoption of this new section.

This section is proposed under Government Code, Chapter 855, §855.102, which provides the Board of Trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for the efficient administration of the system. The new section is also adopted pursuant to Government Code, Chapter 855, §855.607 which authorizes the Board of Trustees of the Texas Municipal Retirement System to adopt rules necessary for the plan to be a qualified plan.

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 April 2, 2002.

TRD-200202080
Gary Anderson
Executive Director
Texas Municipal Retirement System
Effective date: April 22, 2002
Proposal publication date: February 8, 2002
For further information, please call: (512) 476-7577

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CHAPTER 129. DOMESTIC RELATIONS ORDERS

34 TAC §129.12

The Texas Municipal Retirement System adopts amendments to §129.12, concerning payments to alternate payees. The amendments are adopted with one non-substantive change due to a grammatical error, to the proposed text published in the January 11, 2002, issue of the *Texas Register* (27 TexReg 362).

This rule is being amended to increase the cash out provision for alternate payees from $5,000 to $10,000 to conform to changes made by §9 of Senate Bill 522, 77th Legislative Session. The rule is adopted with one non-substantive change to the proposed text. Specifically, the word "accumulate" in §129.12(a) is changed to "accumulated".

No comments were received regarding adoption of these amendments.

The amendments to §129.12 are adopted pursuant to Texas Government Code, Chapter 804, §804.004, which provides the Board of Trustees of the Texas Municipal Retirement System with the authority to adopt rules for the payment of lump sum benefits to alternate payees. In addition the amendments to §129.12 are adopted pursuant to Texas Government Code, §855.102, which provides the Board of Trustees of the Texas Municipal Retirement System with the authority to adopt rules necessary or desirable for the efficient administration of the system.

§129.12. Payments to Alternate Payees.

(a) In the event that the participant terminates membership in the system and applies for a refund of the participant's accumulated deposits and interest, the system will make a lump-sum payment to the alternate payee if the domestic relations order so provides and the order has been determined to be a qualified domestic relations order.

(b) In the event that the participant (or the participant's designated beneficiary or estate) begins receiving an annuity after the date that a qualified domestic relations order is received by the system, and the order provides for a division of the annuity in that event, the payment to the alternate payee will be a monthly allowance payable during the lifetime of the alternate payee, which payment is the actuarial equivalent of the portion of the participant's benefit that was awarded to the alternate payee under the domestic relations order. The mortality assumption for alternate payees for determining the payment to the alternate payee shall be the same as the mortality assumption for the beneficiaries as set forth in §123.1(a) of this title (relating to Actuarial Tables) with regard to service retirements and as set forth in §123.1(b) of this title with regard to disability retirements.

(c) Subsection (b) of this section will apply to all domestic relations orders approved in accordance with this chapter after September 9, 1989, and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity.

(d) In the event that the total reserves upon which an annuity (otherwise payable to an alternate payee under a qualified domestic relations order) would be calculated are $10,000 or less, then the system is authorized to make a single lump-sum payment to the alternate payee in the amount of those reserves instead of paying an annuity to the alternate payee. No such payment shall be made by the system until such point in time as the system begins paying an annuity to the participant or the participant's designated beneficiary, surviving spouse, or estate.

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 April 2, 2002.

TRD-200202099
Gary Anderson
Executive Director
Texas Municipal Retirement System
Effective date: April 22, 2002
Proposal publication date: January 11, 2002
For further information, please call: (512) 476-7577

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 3. TRAFFIC LAW ENFORCEMENT

SUBCHAPTER D. TRAFFIC SUPERVISION

37 TAC §3.62

The Texas Department of Public Safety adopts amendments to §3.62, concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the November 30, 2001, issue of the *Texas Register* (26 TexReg 9754). Amendments to the section are necessary in order to implement

changes resulting from the passage of Senate Bill 220, Acts 2001, 77th Texas Legislature, R.S., ch. 1227, §11.

§3.62 is amended to implement the provisions of Senate Bill 220 directing the department to establish procedures, including training, for the certification of certain sheriffs and deputy sheriffs to enforce the provisions of Texas Transportation Code, Chapter 644.

A second amendment is needed in order to provide clarifying language to existing provisions of §3.62 concerning the Safety Audit Program.

The department held a public hearing on Tuesday, February 26, 2002. No persons appeared for the public hearing. No written or oral comments were received by the department.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, and Texas Government Code, §411.018, which authorizes the director of the Texas Department of Public Safety with the authority to adopt rules regulating the safe operation of commercial motor vehicles and the safe transportation of hazardous materials; Texas Transportation Code, §644.101; and Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

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 April 2, 2002.

TRD-200202075
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: April 22, 2002
Proposal publication date: November 30, 2001
For further information, please call: (512) 424-2135

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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER G. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM

37 TAC §23.95

The Texas Department of Public Safety adopts new §23.95, concerning Waiver for Low Volume Emissions Inspection Stations, with changes to the proposed text as published in the January 4, 2002, issue of the *Texas Register* (27 TexReg 116).

The new section is adopted to implement provisions of Tex. H.B. 2134, Acts 2001, 77th Leg., R.S., ch. 1075, §1, directing the Texas Natural Resource Conservation Commission (TNRCC) and the Department of Public Safety to adopt procedures to encourage a stable private market for providing emissions testing to the public. The new section also reflects changes in the emission testing program adopted by the TNRCC in 30 TAC §114.50 relating to Vehicle Emissions Inspection Requirements, published in the November 16, 2001, issue of the *Texas Register* (26 TexReg 9408).

The new section establishes the requirements, limitations and application procedures for certified vehicle inspection stations desiring the waiver to conduct vehicle emission testing using only On-Board Diagnostic equipment.

One comment on the proposal was received from the Texas State Inspection Association (TSIA). The comment as well as the department's response is summarized below.

COMMENT: TSIA expressed opposition, in the "strongest possible terms" to subsection (d) of the proposed rule. TSIA comments that full service (ASM and OBD) inspection stations are purchasing expensive dynamometers under the assumption that an OBD-only station will be limited to 1,200 inspections per year. TSIA states this assumption is based on assurances from TNRCC that the changes to the low volume exception (OBD-only) are "not a part of the plan." TSIA comments that full service inspection stations must have a combination of OBD and ASM inspections in order to afford the expensive ASM/OBD vehicle analyzer. TSIA contends that subsection (d) is the stated intent of the department to unilaterally change the 1,200 inspection annual limit for OBD-only inspection stations. TSIA requests the department withdraw this subsection of the proposed rule.

RESPONSE: The department disagrees that subsection (d) expresses the intent of the department to unilaterally change the 1,200 inspection annual limit for OBD-only inspection stations, after other inspection stations have purchased expensive full service testing equipment. During its proposed rulemaking on this subject, TNRCC addressed the 1,200 numerical limit placed on OBD-only inspection stations with the following statement. "The commission has determined that 1,200 tests conducted by OBD-only testing stations in one year will allow the smaller stations the option to continue to participate in the testing program..By 2007, OBD compliant vehicles will account for 77% of the fleet and these small stations will have an increasingly important role in the I/M program. The commission will undertake reviewing the number of tests allowed by OBD-only testing stations in the future." (26 TexReg 9401) The proposed rule incorporates the 1,200 annual limit set by TNRCC and further delineates it into a monthly 100 limit. The monthly limit prevents OBD-only stations from exhausting their annual allotment of inspections in a short time. It also protects full service stations from transient OBD- only inspection stations. Transient stations without the monthly limits could open stations, conduct the yearly number of authorized tests in a few months, close the station, and open another station as another business entity. Subsection (d) of the proposed rule incorporated TNRCC comment regarding future changes of those numerical limits into the department's rule. Further, subsection (d) simply states the department will review these numerical limits on a regular basis and revise them according to the viability of the program, which is prescribed by H.B. 2134, 77th Legislature, 2001 (Health and Safety Code, §382.205(e), as amended). In response, the commission is making the following change to clarify the intent of the subsection.

CHANGE: Concerning subsection (d), delete the proposed text that reads as follows: "The department will review the low volume waiver annual and monthly test number limitations on a regular basis and revise the number limits according to the viability of the vehicle emissions inspection program." Amend subsection (d) to read as follows: "In order to encourage a stable and viable program for providing emissions testing to the public in all areas of an affected county, the department will review the annual low volume waiver and monthly test number limitations on a regular basis and revise these number limits accordingly." This is to clarify that the primary intent of the department is to encourage a

stable and viable program and changes to the low-volume yearly and monthly limitations will not occur without adequate consultation and public comment.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §§548.302-548.304, and §§548.403 and 548.405.

§23.95. Waiver for Low Volume Emissions Inspection Stations.

(a) General. 37 TAC §23.93(j)(1)(G) of this title (relating to Vehicle Emissions Inspection and Maintenance Program) requires that all public certified emissions inspection stations offer both Acceleration Simulation Mode 2 (ASM2) and On-Board Diagnostic II (ODBII) vehicle emissions tests. This section provides the requirements, application procedures, and the limitations of the low volume waiver provided by 37 TAC §23.93 (relating to Vehicle Emissions Inspection and Maintenance Program). This waiver allows a public certified inspection station to perform limited state required vehicle emission testing on 1996 and newer model year vehicles using department approved OBDII testing equipment. Government and fleet inspection stations do not require this waiver.

(b) Limitations of low volume waiver.

(1) Notwithstanding subsection (a) of this section, under no circumstance shall an inspection station, public, government or fleet, operating with only OBDII test equipment issue an inspection certificate to a "designated vehicle" as defined in 37 TAC §23.93 of this title (relating to Vehicle Inspection Emissions and Maintenance Program) which is model year 1995 and older.

(2) An inspection station operating under a low volume waiver is limited to performing 1200 emission inspections per year. This limitation is achieved through the OBD analyzer software and the vehicle inspection database contractor. Each month, the inspection station is allocated 100 emission tests. After the monthly test allocation of the station has been used, no more inspections will be allowed until the next month. In the event that the station performs less than 100 emission tests, the remaining number will carry over to the next month. The annual waiver limit number will be automatically reset each January with no carry over from the previous year.

(c) Applications for waiver.

(1) New inspection station applications shall follow the procedures in 37 TAC §23.1 of this title (relating to New Applications) with the addition that the application form be annotated with "LOW VOLUME WAIVER - OBD ONLY" at the top of the form. New applicants will include written acknowledgement of limitation of low volume waiver as indicated in paragraph (2)(G) of this subsection.

(2) Owners or operators of currently certified emission inspection stations shall request this waiver by letter or fax to the local department Regional Supervisor. This written correspondence must include the following:

(A) Station name,

(B) Physical address of the station,

(C) Mailing address of the station,

(D) Station number,

(E) Signature of the station owner or operator,

(F) Copy of purchase order or receipt for state approved OBDII only emission testing equipment, and

(G) Signatory's statement acknowledging the limitations of low volume waiver. This statement shall read as follows: "I understand the conditions and limitations of being granted a low volume, OBD only emissions inspection station waiver. I agree to the limitation of 1200 annual emissions tests per year and agree to the 100 monthly emission test limit. I agree this inspection station shall not issue certificates to other than 1996 and newer model year designated vehicles. I understand and agree that violating the terms of this waiver shall result in the suspension and/or revocation of this station's certification."

(3) The local Regional Supervisor will objectively review each application. After review, the Regional Supervisor shall indicate approval or disapproval by endorsement, with a copy provided to the requesting inspection station and the departmental file on the station. If disapproved, the Regional Supervisor must provide reasons for the department's denial of the waiver.

(d) In order to encourage a stable and viable program for providing emissions testing to the public in all areas of an affected county, the department will review the annual low volume waiver and monthly test number limitations on a regular basis and revise these number limits accordingly.

(e) This waiver is not available for inspection stations in El Paso County.

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 April 2, 2002.

TRD-200202074
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: April 22, 2002
Proposal publication date: January 4, 2002
For further information, please call: (512) 424-2135

37 TAC §23.96

The Texas Department of Public Safety adopts new §23.96, concerning the Emissions Analyzer Access/Identification card, without changes to the proposed text as published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1113).

The new section establishes procedures for issuance and use of this card including the department's security policy relating to the card. The new section is necessary since the emissions analyzer access/identification card (access/ID card) is required by software changes in the vehicle emissions analyzers used after May 1, 2002 in all counties, except El Paso, performing vehicle emissions testing. The new specification requires access to the vehicle emissions analyzers at certified inspection stations be controlled using an access/ID card. The access/ID card features a bar-coded access code combined with a unique personal identification number (PIN) for each individual vehicle inspector. The access/ID card will also display a photograph of the inspector.

One comment on the proposal was received from the Texas State Inspection Association (TSIA). The comment as well as the department's response is summarized below.

COMMENT: TSIA comments contained three points. First, TSIA suggested the access/ID cards be issued no later than 24 hours after completion of all inspector certification requirements. Second, it is suggested a backup plan in the event equipment that produces the access/ID card malfunctions. Third, TSIA suggested reporting of lost, stolen, or misplaced access/ID cards be in writing only. Regarding the third item of their comment, TSIA believes an "in writing only" reporting requirement will prevent fraudulent use of the access/ID card by a "dishonest inspector" who later claims to have verbally reported the card. However, it also recommends a voice mail system of reporting losses during weekends or holidays. Additionally, on the subject of lost or missing access/ID cards, TSIA believes that inspectors who properly report a missing access/ID card to the department should not be held responsible for its unauthorized use.

RESPONSE: The department disagrees with TSIA comments. First, the access/ID cards will be issued locally when the inspector completes the last certification requirement. The last requirement is the inspector being present for photographing the identification picture on the card. The card will be issued immediately thereafter. Second, each DPS regional office has multiple units to issue access/ID cards. If one set of equipment malfunctions, a backup is available locally. Third, the rule simply states that the loss of an access/ID card shall be reported to the department representative immediately. If the inspector wants to insure documentation of the report, they may follow up any verbal notification with a written report. The department does not have the fulltime employee (FTE) assets to staff a 24-hour call-in system on weekends and holidays for lost or misplaced access/ID cards. Finally, all access/ID cardholders are responsible for its fraudulent use. The access/ID card can not be used without the unique personal identification number (PIN). Fraudulent use of an access/ID card can only be achieved if the access/ID cardholder violates this rule, which prohibits the inspector from giving, sharing, lending, or divulging their PIN without the explicit consent of appropriate department personnel. The department did not revise the rule in response to this comment.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.302, which authorizes the commission to develop and impose requirements to ensure inspection certificates are not issued to a vehicle subject to the motor vehicle emissions inspection and maintenance program unless the vehicle has passed a motor vehicle emissions inspection; §548.303, which authorizes the commission to administer the Motor Vehicle Emissions Inspection and Maintenance Program; §548.002, which authorizes the Department of Public Safety to adopt rules and enforce the compulsory inspection of vehicles; and §548.401, which allows the issuance of inspection certificates only if certified under rules adopted by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2002.

TRD-200202073

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: April 22, 2002

Proposal publication date: February 15, 2002

For further information, please call: (512) 424-2135

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SUBCHAPTER I. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE ADVISORY COMMITTEE

37 TAC §§23.201 - 23.214

The Texas Department of Public Safety adopts new Subchapter I, §§23.201-23.214, concerning Vehicle Emissions Inspection and Maintenance Advisory Committee, without changes to the proposed text as published in the November 30, 2001, issue of the *Texas Register* (26 TexReg 9762).

The new sections are necessary to establish the Vehicle Emissions Inspection and Maintenance Advisory Committee as provided in Transportation Code, §548.006 as amended by House Bill 2134, Acts 2001, 77th Leg., R.S., ch. 1075.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and the provisions of §7 of House Bill 2134, Acts 2001, 77th Leg., R.S., ch. 1075.

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 April 2, 2002.

TRD-200202072

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: April 22, 2002

Proposal publication date: November 30, 2001

For further information, please call: (512) 424-2135

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 161. COMMUNITY JUSTICE ASSISTANCE DIVISION ADMINISTRATION

37 TAC §161.21

The Texas Board of Criminal Justice adopts an amendment to §161.21, concerning the Role of the Judicial Advisory Council as related to the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) without changes to the proposed text as published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1467).

The purpose of the amendment is non-substantive, adding the term "judiciary's" and the use of the acronym "CSCD."

No comments were received on the proposed amendments.

The amendment is adopted under Texas Government Code, §493.003(b), which establishes the Judicial Advisory Council; and §509.003, which grants the Board of Criminal Justice authority to adopt reasonable rules establishing minimum standards for the operations and programs of community supervision and corrections departments.

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 April 4, 2002.

TRD-200202125
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Effective date: April 24, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 463-0422

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 3. TEXAS WORKS

SUBCHAPTER G. RESOURCES

40 TAC §3.704

The Texas Department of Human Services (DHS) adopts an amendment to §3.704 without changes to the proposed text published in the March 1, 2002, issue of the *Texas Register* (27 TexReg 1469).

Justification for the amendment is to allow an exclusion of $15,000 of the fair market value of one motor vehicle owned by a Temporary Assistance for Needy Families-State Program (TANF-SP) family. The same exclusion will be allowed when determining Food Stamp Program eligibility. DHS also proposes to apply the policy to two-parent families who apply for the Medically Needy Program. Ownership of reliable transportation will be allowed, making it easier for TANF-SP recipients to participate in work. In addition, the deletion of State Welfare Reform Control Group language in §3.704(b)(9) is a result of the Achieving Change for Texans (ACT) waiver expiration on March 31, 2002. The removal of control groups will create consistency by making the same TANF policy applicable to all TANF applicants and recipients after April 1, 2002.

The department received no comments regarding the adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 31, which authorizes DHS to administer financial assistance programs.

The amendment implements the Human Resources Code, §§31.001-31.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2002.

TRD-200202150
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: April 25, 2002
Proposal publication date: March 1, 2002
For further information, please call: (512) 438-3734

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CHAPTER 12. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM

40 TAC §§12.3, 12.4, 12.24 - 12.26

The Texas Department of Human Services (DHS) adopts amendments to §§12.3, 12.4, 12.24, 12.25, and 12.26 without changes to the proposed text published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1120).

Justification for the amendments is to comply with amendments made by the Agricultural Risk Protection Act of 2000, also known as Public Law 106-224, to the Richard B. Russell National School Lunch Act, including a requirement affecting the termination process for institutions participating in the Child and Adult Care Food Program (CACFP) and their day care home providers. According to the Act, a state agency administering the CACFP must now include the following information in its written notice of intent to terminate the participation of a contractor. If the contractor requests an appeal within the specified time, the contractor may continue to participate in the CACFP through the completion of the appeal process and receive reimbursement during this time for eligible meals provided to eligible participants and for eligible administrative costs. If the state agency's action is upheld by the hearings officer, the contractor's agreement will be terminated effective on the date the appeal findings are issued. Agreements of contractors who choose not to request an appeal or fail to do so within the specified time frame will be terminated according to the date provided in the written notice of intent to terminate. If a state agency takes action to terminate the participation of a contractor based on imminent dangers to the health or welfare of participants, that contractor is terminated immediately and will not be reimbursed for any services provided during the appeal process.

The Act also requires contractors who sponsor the program participation of day care home providers to notify seriously deficient providers, in writing, that they have been determined to be seriously deficient and that failure to correct the serious deficiency will result in the termination of the provider's agreement and placement on United States Department of Agriculture's National Disqualified List (NDL). The notice must specify the serious deficiency upon which the action is based, the actions the provider must take to correct the serious deficiency, and the period of time allowed to correct the deficiency. If the sponsor determines the provider has not taken corrective action to fully and

permanently correct the serious deficiency within the specified time, the sponsor must provide written notice of their intent to terminate the provider's agreement "for cause." This notice must inform the provider that they may appeal the decision to terminate their agreement for cause and include the procedures the provider must follow to appeal the sponsor's action. The notice must also inform the provider that they may continue to participate in the CACFP and be reimbursed for eligible meals served until the appeal is completed, and that providers terminated for cause will be placed on the NDL. If a sponsor takes action to terminate the participation of a provider based on imminent dangers to the health or welfare of participants, that provider is terminated immediately and will not be reimbursed for any services provided during the appeal process.

The department received no comments regarding adoption of the amendments.

Under §2007.003(b) of the Texas Government Code, the department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorizes the department to administer public and nutritional assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.030 and §§33.001-33.024.

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 April 4, 2002.

TRD-200202136
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §19.201, §19.211

The Texas Department of Human Services (DHS) adopts an amendment to §19.201 and new §19.211 without changes to the proposed text published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1124).

Justification for the amendment to §19.201 is to clearly inform providers of the information they must disclose to DHS, which is consistent with the criteria DHS may use to deny or renew a license. The applicant must disclose any state or federal criminal convictions for any offense that imposes a penalty of incarceration. The requirement to disclose convictions of moral turpitude has been removed, because there is no clear definition of moral turpitude. Justification for new §19.211 is to incorporate current internal procedures for handling licensure requirements when a nursing facility relocates to a different location.

DHS received no comments regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Health and Safety Code, Chapter 242, which authorizes DHS to license and regulate nursing homes.

The amendment and new section implement the Health and Safety Code, §§242.001- 242.268.

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 April 4, 2002.

TRD-200202127
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS
SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §90.11, §90.22

The Texas Department of Human Services (DHS) adopts an amendment to §90.11 and new §90.22 without changes to the proposed text published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1129).

Justification for the amendment to §90.11 is to clearly inform providers of the information they must disclose to DHS, which is consistent with the criteria DHS may use to deny or renew a license. The applicant must disclose any state or federal criminal convictions for any offense that imposes a penalty of incarceration. The requirement to disclose convictions of moral turpitude has been removed, because there is no clear definition of moral turpitude. Justification for new §90.22 is to incorporate current internal procedures for handling licensure requirements when an intermediate care facility for persons with mental retardation or related conditions relocates to a different location.

DHS received no comments regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Health and Safety Code, Chapter 252, which authorizes DHS to license and regulate intermediate care facilities for the mentally retarded.

The amendment and new section implement the Health and Safety Code, §§252.001- 252.186.

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 April 4, 2002.

TRD-200202128
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES
SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §§92.10, 92.14, 92.17, 92.23

The Texas Department of Human Services (DHS) adopts amendments to §92.10, §92.14, §92.17, and new §92.23 without changes to the proposed text published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1130).

Justification for the amendment to §92.10 is to clearly inform providers of the information they must disclose to DHS, which is consistent with the criteria DHS may use to deny or renew a license. The applicant must disclose any state or federal criminal convictions for any offense that imposes a penalty of incarceration. The requirement to disclose convictions of moral turpitude has been removed, because there is no clear definition of moral turpitude. Justification for the amendments to §92.14 and §92.17 is to correct a reference. Justification for new §92.23 is to incorporate current internal procedures for handling licensure requirements when an assisted living facility relocates to a different location.

DHS received no comments regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Health and Safety Code, Chapter 247, which authorizes DHS to license and regulate assisted living facilities.

The amendments and new section implement the Health and Safety Code, §§247.001- 247.068.

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 April 4, 2002.

TRD-200202129
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS
SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §98.11, §98.23

The Texas Department of Human Services (DHS) adopts amendments to §98.11, and new §98.23 without changes to the proposed text published in the February 15, 2002, issue of the *Texas Register* (27 TexReg 1131).

Justification for the amendment to §98.11 is to clearly inform providers of the information they must disclose to DHS, which is consistent with the criteria DHS may use to deny or renew a license. The applicant must disclose any state or federal criminal convictions for any offense that imposes a penalty of incarceration. The requirement to disclose convictions of moral turpitude has been removed, because there is no clear definition of moral turpitude. Justification for new §98.23 is to incorporate current internal procedures for handling licensure requirements when a facility relocates to a different location.

DHS received no comments regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Human Resources Code, Chapter 103, which authorizes DHS to license and regulate adult day care facilities.

The amendment and new section implement the Human Resource Code, §§103.001- 103.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2002.

TRD-200202130
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: May 1, 2002
Proposal publication date: February 15, 2002
For further information, please call: (512) 438-3734

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2001 and 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0302-09-I) was filed on March 22, 2002.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2001 and 2002 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0302-9-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on May 20, 2002, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200202194

Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 9, 2002

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Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0402-12-I) was filed on April 9, 2002.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2002 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0402-12-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on May 20, 2002 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200202196
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 9, 2002

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Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF NEW AND/OR ADJUSTED 2002 MODEL PRIVATE PASSENGER AUTOMOBILE PHYSICAL DAMAGE RATING SYMBOLS FOR THE TEXAS AUTOMOBILE RULES AND RATING MANUAL

The Commissioner of Insurance, at a public hearing under Docket No. 2516 held at 9:30 a.m., March 26, 2002 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 Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0202-5) was published in the February 22, 2002, issue of the *Texas Register* (27 TexReg 1351).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 2002 model year of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Ref. No. A-0202-5, which are incorporated by reference into Commissioner's Order No. 02-0334.

The Commissioner of Insurance has jurisdiction over this matter pursuant to Insurance Code Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with 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 Manual is amended as described herein, and the amendments are adopted to become effective on the 60th day after publication of the notification of the Commissioner's action in the *Texas Register*.

TRD-200202148
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 5, 2002

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Review

Texas Department of Mental Health and Mental Retardation

Title 25, Part 2

The Texas Department of Mental Health and Mental Retardation (department) will review Texas Administrative Code Title 25, Part 2, Chapter 411, Subchapter D, concerning administrative hearings of the department in contested cases in accordance with the requirements of the Texas Government Code, §2001.039.

The department believes that the reasons for initially adopting the subchapter continue to exist.

Interested persons are invited to submit written comments concerning the review of this subchapter to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to 512/206-4744, within 30 days of publication of this notice.

TRD-200202140
Andrew Hardin
Chairman, TDMHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: April 5, 2002

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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 State Affordable Housing Corporation

Notice of Public Hearing

MULTIFAMILY HOUSING REVENUE BONDS (MAIN STREET APARTMENTS), SERIES 2002

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on May 2, 2002 at 12:00 Noon, at the Fort Worth Public Library, 500 West 3rd Street (Taylor & 3rd Street), Fort Worth, Texas, 76102, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in an aggregate principal amount not to exceed $17,000,000, the proceeds of which will be loaned to Main Street Affordable Housing of Fort Worth, L.L.C., (or a related person or affiliate thereof) (the "Borrower"), a Texas limited liability company whose sole member, Commonwealth Multifamily Housing Corporation, is a Pennsylvania non profit corporation described in Section 501(c)(3) of the Internal Revenue Code of 1986, to finance the acquisition and rehabilitation of a multifamily housing property (the "Property") located in the city of Fort Worth, Tarrant County, Texas. The public hearing, which is the subject of this notice, will concern the Main Street Apartments containing 176 units, located at 714 Main Street, Texas 76102. The Property will be owned by Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Property and the issuance of the Bonds. Questions or requests for additional information may be directed to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda David, ADA Responsible Employee, at 1-888-638-3555, ext. 417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.org.

Prior to the hearing to be held on May 2, 2002, representatives of the Issuer and the Borrower will be present at an informal session open to all interested parties to provide information, answer questions and discuss the benefits of the proposed transaction. This meeting will be held on May 1, 2002 at 6:00 p.m. at 500 West 3rd Street (Taylor & 3rd St.), Fort Worth, TX 76102.

TRD-200202173
Daniel C. Owen
Vice President
Texas State Affordable Housing Corporation
Filed: April 8, 2002

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Texas Building and Procurement Commission

Notice to Bidders - 99-015W-303-John H. Reagan Building Pedestrian Tunnel Waterproofing

SEALED BIDS WILL BE RECEIVED BY THE TEXAS BUILDING AND PROCUREMENT COMMISSION (TBPC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 99-015W-303, John H. Reagan Building Pedestrian Tunnel Waterproofing, 105 W. 15th St. Austin, Texas. Sealed bids and HUB subcontracting plans, if required, will be received until 3:00 p.m. on Thursday, March 28, 2002. If your bid proposal (including add alternates) exceeds $100,000.00, a HUB subcontracting plan is required. At that time, HUB Subcontracting Plans will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

The approximate total cost for contract: 99-015W-303- John H. Reagan Building Pedestrian Tunnel Waterproofing is approximately $35,000.00 - $50,000.00 (base bid).

Bid & HUB Subcontracting Plan Receipt Location: Texas Building and Procurement Commission/FCSM will receive bids at the main reception desk at Room 180, Bid Tabulation or, if mailed or shipped, Room 176, Mail Room, Central Services Building, 1711 San Jacinto, Austin, Texas 78701. If items are to be mailed or shipped, please note on the

envelope(s) what it is enclosed, the bid, the HUB plan, or both. Delivery of the bid and the HUB plan at the date and time specified above is the sole responsibility of the bidder.

Contractor Qualifications: Contractors should submit information to FCSM on TBPC's Contractor's Qualifications Form, which can be obtained from FCSM by calling (512) 463-3417. It should be submitted as soon as possible, but no later than 5:00 p.m. on Thursday, March 21, 2002 (a week prior to bid opening) to document compliance with contractor's qualification requirements for each project. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A favorable review by FCSM of contractor qualification statements is required prior to opening bid proposals.

Good Faith Effort for use of Historically Underutilized Businesses (HUB): TEXAS BUILDING AND PROCUREMENT COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES. IF YOUR BID PROPOSAL (INCLUDING ADD ALTERNATES) EXCEEDS $100,000.00, A HUB SUBCONTRACTING PLAN IS REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE. Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. Texas Building and Procurement Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. FCSM, telephone (512) 463-5872, with TBPC can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at www.gsc.state.tx.us and other web sites, see the Project Manual.

Bid Documents: Plans and specifications are available for prime contractors from Graeber, Simmons & Cowan, Inc., 400 Bowie St., Austin, Texas 78703, (512) 477-9417, Fax: (512) 477-9675, upon delivery of a refundable deposit of $75.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, the architect's office and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, the Builder's Exchange of Texas and the Associated Builder's and Contractors, Hispanic Contractors Association, in Austin, Texas.

Pre-Bid Conference: There will be MANDATORY Pre-Bid Conference on Thursday, at 1:30 p.m. at the Owner's construction trailer located at 105 w. 15th St., Austin, Texas. Immediately following the mandatory pre-bid conference, FCSM will conduct a training session on the HUB Subcontracting Plan. Attendees to the mandatory pre-bid are requested to have the individual(s) attend who will be completing the HUB Subcontracting Plan and the contractor's qualification form.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: AUSTIN AMERICAN STATESMAN for 2 TIMES on 2/26/2002 and 3/5/2002

TRD-200202180
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Filed: April 8, 2002

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Notice to Bidders for Project

NTB 01-013A-501 BUILDING 500/506 ROOF RE-COVER BUILDING 508 CANOPY REPAIRS AND RE-ROOF SOUTH TEXAS HEALTH CARE SYSTEM (STHCS)

SEALED BIDS WILL BE RECEIVED BY THE TEXAS BUILDING AND PROCUREMENT COMMISSION (TBPC), FACILITIES CONSTRUCTION & SPACE MANAGEMENT DIVISION (FCSM) FOR CONSTRUCTION OF PROJECT NO. 01-013A-501, Building 500/506 Roof Re-Cover, Building 508 Canopy Repairs and Re-Roof at South Texas Health Care System, 1301 Rangerville Road, Harlingen, Texas 78551. Sealed bids and HUB Subcontracting Plan will be received until 3:00 p.m. on May 14, 2002. At that time, HUB Subcontracting Plan will be reviewed and, if found to be complete and responsive, the Bid will be opened and read.

Summary of Work: The estimated cost for contract: 01-013A-501 B Building 500/506 Roof Re-Cover, Building 508 Canopy Repairs and Re-Roof is in the range of $180,000.00 to $225,000.00.

The work will be awarded under one lump-cum contract consisting of the following:

Building 500/506 Roof Re-cover: Installation of a roof re-cover system, unit repairs and removal of abandoned mechanical and electrical equipment. Existing roofing systems shall remain in place and new re-cover system installed.

Building 508 Canopy Repairs and Re-roof: Removal of existing roofing, roof deck and deteriorated structural elements and necessary repairs, re-roofing, preparation for painting due to the presence of lead-based paint, painting, and mechanical and electrical systems modifications.

Bid & HUB Subcontracting Plan Receipt Location: Texas Building and Procurement Commission/FCSM will receive bids at the main reception desk at Room 180, Bid Tabulation or, if mailed or shipped, Room 176, Mail Room, Central Services Building, 1711 San Jacinto, Austin, Texas 78701. **If items are to be mailed or shipped, please note on the envelope(s) what it is enclosed, the bid, the HUB plan, or both. Delivery of the bid and the HUB plan at the date and time specified above is the sole responsibility of the bidder.**

Contractor Qualifications: Contractors shall submit information to FCSM on TBPC's Contractor's Qualifications Form, included in these Front End Documents and may be obtained from FCSM by calling (512) 463-3417. It should be submitted as soon as possible, but no later than 5:00 p.m. on May 7, 2002 to document compliance with Contractor's Qualification Requirements for each project. Information is to be used in determining if a Contractor is qualified to receive a contract award for the project. A favorable review by FCSM of Contractor Qualification Statement is required prior to opening bid proposals.

Good Faith Effort for use of Historically Underutilized Businesses (HUB): **TEXAS BUILDING AND PROCUREMENT COMMISSION HAS DETERMINED THAT THE WORK TO BE PERFORMED UNDER THIS CONTRACT INCLUDES SUBCONTRACTING OPPORTUNITIES. THEREFORE, A HUB SUBCONTRACTING PLAN WILL BE REQUIRED. THE COMPLETED HUB SUBCONTRACTING PLAN MUST BE SUBMITTED AS PART OF THE CONTRACTOR'S PROPOSAL, OR THE PROPOSAL WILL BE REJECTED AS NON-RESPONSIVE.** Prime Contractors are required to perform a Good Faith Effort in providing HUB firms with an opportunity to participate in the bid and construction process. Texas Building and Procurement Commission's goal for HUB participation in Building Construction projects is 26.1% of the total contract. The FCSM, telephone (512) 463-5872, with Texas Building and Procurement

Commission can assist in this process by providing lists of approved HUB firms and other sources for identifying HUB firms in the area. A listing of HUB firms is available on the web at www.tbpc.state.tx.us and other web sites, see the Project Manual.

Bid Documents: Plans and specifications are available for prime Contractors from Joshua Engineering Group, Inc., 2161 N.W. Military Hwy., Suite 103, San Antonio, Texas 78213, Phone (210) 340-2322, Fax B (210) 340-1268, upon delivery of a refundable deposit of $25.00 per set (cash or check) to Joshua Engineering Group, Inc. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas 78701, at the office of Joshua Engineering Group, Inc. or the following Plan Rooms:

AGC Associated General Contractors, Rio Grande Valley Chapter, 6918 West Expressway 8, Phone: 956-423-4091, Fax: 956-423-0174

AGC Associated General Contractors, San Antonio Chapter, 10806 Gulfdale, San Antonio, Texas 78216, Phone: 210-349-4921, Fax: 210-349-4017.

ABC Associated Builders and Contractors, Inc., South Texas Chapter, 10408 Gulfdale, Phone: 210-342-1994, Fax: 210-342-5385

ABC Associated Builders and Contractors, Inc., 7433 Leopard, Corpus Christi, Texas 78409,, Phone: 361-289-5311, Fax: 361-289-5324

Construction Market Data, 1003 Heritage Blvd. Suite 103, San Antonio, Texas 78216, Phone:, 210-308-9788, Fax: 210-341-343

Builder's Exchange, 4047 Naco-Perrin, San Antonio, Texas 78217, Phone: 210-564-6900, Fax: 210-564-6921

F.W. Dodge Information Services, 404 E. Ramsey, Suite 108, San Antonio, Texas 78216, Phone: 210-344-0158, Fax: 210-342-1302

South Texas Minority Business Outreach Committee, c/o Mr. John Cisneros, UT-Pan Am, 1201 W. University Drive, Edinburg, Texas 78539, Phone: 956-316-2619

Pre-Bid Conference: There will be a MANDATORY Pre-Bid Conference on April 25, 2002 at 10:00 a.m., at South Texas Health Care System, Building 500. Prime Contractors may obtain Bid Documents at the Pre-Bid Conference upon payment of the refundable deposit of $25.00 to Joshua Engineering Group, Inc. Immediately following the mandatory pre-bid conference, FCSM will conduct a training session on the HUB Subcontracting Plan. Attendees to the mandatory pre-bid are requested to have the individual(s) attend who will be completing the HUB Subcontracting Plan and the Contractor's Qualification form.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TO BE RUN IN: The Valley Morning Star (Harlingen), The Monitor (McAllen)

TIME: April 14, 2002

CC: Joshua Engineering Group, Inc., 2161 N.W. Military Hwy, Suite 103, San Antonio, Texas 78213

TRD-200202199
Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
Filed: April 9, 2002

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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. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of March 29, 2002, through April 4, 2002. The public comment period for these projects will close at 5:00 p.m. on May 10, 2002.

FEDERAL AGENCY ACTIVITIES:

Applicant: U.S. Army Corps of Engineers; Location: Point Comfort Turning Basin, Matagorda Ship Channel, Calhoun County, Texas. Project Description: The applicant proposes that the maintenance dredging of privately constructed sections of the Point Comfort Turning Basin be assumed by the Army Corps of Engineers. A Consistency Determination and Environmental Assessment have been submitted. CCC Project No.: 02-0091-F2.

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. Diane P. Garcia, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200202210
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: April 10, 2002

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Concho Valley Workforce Development Board

Request for Proposal

The Concho Valley Workforce Development Board (CVWDB) is soliciting proposals for the operation of Child Care Services (direct child-care and quality initiatives). CVWDB is requesting one proposer to deliver all services.

The RFP will be released at 11:00 AM on April 15, 2002. Interested parties may request a copy from Joyce Sneed, CVWDB, P. O. Box 2779, San Angelo, TX 76902, phone (915) 655-2005, fax (915) 482-8900.

A proposers' conference will be held on April 23, 2002, at 1:30 PM in Room 114 of the State of Texas Service Center, 622 S. Oakes, San Angelo, TX.

Responses must be received in the CVWDB offices by 4:00 PM on May 16, 2002.

All times given are central daylight savings time.

TRD-200202193
Kelly Reagan
Office Administrator
Concho Valley Workforce Development Board
Filed: April 9, 2002

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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 04/15/02 - 04/21/02 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 04/15/02 - 04/21/02 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-200202183
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 9, 2002

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Texas Department of Criminal Justice

Notice of Award

The Texas Department of Criminal Justice publishes this notice of a contract award to R.E.C Industries, Inc., P.O. Box 4868, Bryan, Texas 77805. Notice to Bidders for the construction of return air supply duct repair for the Michael Unit (696-FD-2-B009) was published in the November 23, 2001, edition of the *Texas Register* (26 TexReg 9645). The contract number is 696-FD-2-3-C0160. This was a full award for the amount of $1,149,000.00.

TRD-200202139
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: April 5, 2002

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Texas Education Agency

Notice of Amendment to Request for Applications for English Literacy and Civics Education

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-02-019 concerning English Literacy and Civics Education in the April 12, 2002, issue of the *Texas Register* (27 TexReg 3243). The TEA is amending the *Texas Register* notice as follows:

(1) The TEA is amending the description to add a paragraph as follows: "A teleconference to provide information to potential applicants for EL-Civics funds will be held via the Texas Educational Telecommunications System (TETN) on Wednesday, May 1, 2002, from 9:45 a.m. until 12:45 p.m. Any individual wishing to participate in the teleconference can attend at the closest education service center (ESC) facility. Information related to the 20 ESCs may be found at http://www.tea.state.tx.us/ESC/. Information on registering for the workshop may be obtained by calling (512) 463-9336. Workshop participants must register for the teleconference no later than 5:00 p.m. on Monday, April 29, 2002."

(2) The TEA is amending the Further Information paragraph of the notice to read, "For clarifying information about the RFA, contact James Douglas, Division of Adult and Community Education, TEA, (512) 463-9336."

TRD-200202207
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: April 10, 2002

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Request for Applications Concerning Prekindergarten and Kindergarten Grant Program, 2002 - 2003 School Year, Cycle 7

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-02-023 from school districts, shared services arrangements of school districts, and/or open-enrollment charter schools to continue or expand programs implemented during the 2001-2002 school year in either Cycle 5 or Cycle 6 of the Prekindergarten and Kindergarten Grant Program. School districts, shared services arrangements of school districts, and/or open-enrollment charter schools that did not receive Cycle 5 or Cycle 6 grants to expand their existing half-day prekindergarten programs to full-day programs may apply for Cycle 7 grants

Description. Cycle 7 of the grant program will be used to provide continuing operating funds for programs that were implemented in the 2001-2002 school year. Funds permitting, Cycle 7 grants may also be used for expansion of those programs that operated in 2001-2002 as well as for the expansion of existing half-day prekindergarten programs to full day programs for those school districts and open-enrollment charter schools that did not have programs during the 2001-2002 school year.

Dates of Project. The Prekindergarten and Kindergarten Grant Program (Cycle 7, Prekindergarten Expansion Grants) will be implemented during the 2002-2003 school year. Cycle 7 expansion grants may be renewed for the 2003-2004 school year, provided all terms and conditions of 2002-2003 funding awards have been met and the 78th Texas Legislature appropriates additional funds for the program.

Project Amount. The 77th Texas Legislature, 2001, appropriated $100 million per year to the Prekindergarten and Kindergarten Grant Program for the 2001-2002 and 2002-2003 school years, representing a total of $200 million in state funds. Cycle 7 grants will be funded based on the additional attendance in the same manner as current Foundation School Program funding.

Selection Criteria. Applications must address each requirement as specified in the RFA to be considered for funding. Priority will be given to school districts and open-enrollment charter schools that received awards under previous Cycle 5 or Cycle 6 funding. If funds remain after funding this priority group, new expansion programs will be funded. Within the group of new expansion program applicants, priority will be given to school districts and open-enrollment charter schools where student performance on the Grade 3 Texas Assessment of Academic Skills (TAAS) tests falls substantially below the state average. Additional priority will be given to school districts and open-enrollment charter schools that serve the highest percentages

of eligible (limited English proficient, educationally disadvantaged, and homeless) children. Educationally disadvantaged children are defined as those children eligible to participate in the national free or reduced-price lunch program.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. Copies of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and telephone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA or the Prekindergarten and Kindergarten Grant Program, contact Clem Gallerson, School Finance and Fiscal Analysis Department, TEA, telephone (512) 463-8994. Questions regarding prekindergarten curriculum and programs should be addressed to Cami Jones, Curriculum and Professional Development, TEA, telephone (512) 463-9501.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. Central Time, Thursday, June 6, 2002, to be considered.

TRD-200202206
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: April 10, 2002

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Texas Department of Insurance

Company Licensing

Application to change the name of AETNA U.S. HEALTHCARE OF NORTH TEXAS INC. to AETNA HEALTH OF NORTH TEXAS INC., a domestic Health Maintenance Organization (HMO). The home office is in Dallas, Texas.

Application to change the name of AETNA U.S. HEALTHCARE INC. to AETNA HEALTH INC., a domestic Health Maintenance Organization (HMO). The home office is in Houston, Texas.

Application to change the name of METHODIST CARE, INC. to UNICARE HEALTH PLANS OF TEXAS, INC., a domestic Health Maintenance Organization (HMO). The home office is in Houston, Texas.

Application to change the name of AETNA INSURANCE COMPANY OF AMERICA to ING INSURANCE COMPANY OF AMERICA, a foreign Life, Accident and/or Health company. The home office is in Tampa, Florida.

Application to change the name of FOUNDATION HEALTH SYSTEMS LIFE & HEALTH INSURANCE COMPANY to HEALTH NET LIFE INSURANCE COMPANY, a foreign Life, Accident and/or Health company. The home office is in Woodland Hills, California.

Application for incorporation to the State of Texas by INSURORS INDEMNITY LLOYDS, a domestic Lloyds/Reciprocal company. The home office is in Waco, Texas.

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-200202208
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 10, 2002

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by National American Insurance Company proposing to use rates for commercial automobile insurance that are outside the upper or lower limits of the flexibility band promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101 §3(g). The Company is requesting the following flex percentages for all classes and territories: +50 for Liability and +30 for Physical Damage under Truckers Coverage form and +21 for Liability and +25 for Physical Damage under all other coverage forms. The overall rate change is +15.2%

Copies of the filing may be obtained by contacting Judy Deaver, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 322-3478.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101 §3(h), is made with the Chief Actuary for P&C, Mr. Phil Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 by May 1, 2002.

TRD-200202165
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 8, 2002

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Notice

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2001 and 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0302-09-I) was filed on March 22, 2002.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2001 and 2002 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0302-9-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on May 20, 2002, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property &

Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200202195
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 9, 2002

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Notice

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 2002 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0404-12-I) was filed on April 9, 2002.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2002 model vehicles.

A copy of the petition, including an exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0402-12-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on May 20, 2002 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200202197
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 9, 2002

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Notice of Application to Decrease the Texas Stamping Office Fee

The Directors of the Surplus Lines Stamping Office of Texas have approved a motion requesting the Commissioner of Insurance to authorize a decrease in the stamping fee rate to 0.15% (0.0015) from its current rate of 0.25% (0.0025), pursuant to the Plan of Operation of the Surplus Lines Stamping Office of Texas under 28 Texas Administrative Code §15.101(e)(3). The proposed effective date for the decrease is July 1, 2002. This request is now before the Commissioner of Insurance and is under consideration.

The Surplus Lines Stamping Office of Texas was created in 1987 and is a non-profit corporation subject to the supervision of the Commissioner of Insurance. The Stamping Office monitors the sale of surplus lines insurance policies and evaluates the eligibility of surplus lines insurers that write surplus lines insurance in Texas. Pursuant to Article 1.14-2, §6A of the Texas Insurance Code, the Stamping Office has petitioned the Commissioner of Insurance for a decrease in the stamping fee charged by the Stamping Office on the gross premium resulting from surplus lines contracts. The petition requests that the fee be decreased by 0.1%, beginning July 1, 2002, from 0.25% to 0.15%.

Any comments must be filed with the Texas Department of Insurance, by May 3, 2002, and addressed to the attention of Betty Patterson, Senior Associate Commissioner of the Financial Program, 333 Guadalupe Street, M/C 305-2A, Austin, Texas 78701, with a copy sent to Jim Atkins, Staff Attorney, at the same address except using MC 110-1A.

TRD-200202202
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 10, 2002

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Notice of Filing

The following petition has been filed with the Texas Department of Insurance, and is under consideration:

The adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association (TAIPA), pursuant to Article 21.81.

One proposal is to amend the TAIPA Plan of Operation, Section 6.B.2. to provide for insurer members to accept requests for additional coverage through the use of facsimiles or electronic mail. The current Section 6.B.2. pertains only to the use of U.S. Mail, postage prepaid, for submission of requests for additional coverage, other than that which is granted by policy conditions. The purpose of this amendment is to establish effective dates for such additional coverage, regardless of whether the member insurer receives the request by U.S. Mail, postage prepaid, facsimile, or electronic mail.

The other proposal is to amend the TAIPA Plan of Operation, Section 16.K.1.c., and to add a new Section 16.K.1.f., both regarding requirements for a company that is to be a Servicing Carrier under the Limited Assignment Distribution Program. Under this program a member company of TAIPA may elect to be excused from assignments by contracting with a Servicing Carrier to accept the appropriate share of risks that would otherwise have been assigned to the Excused Member.

Current Section 16.K.1.c. sets forth an eligibility requirement of at least $15,000,000 Policyholder Surplus for a Servicing Carrier. The proposed amendment additionally requires such an insurer to have a ratio no greater than 3 to 1 Net Premiums Written to Policyholder Surplus, based on the most recent annual or quarterly financial statement.

Current Section 16.K. does not provide for financial monitoring of an approved Servicing Carrier. Proposed Section 16.K.1.f. provides a method for monitoring the financial status of an insurer that has been approved as a Servicing Carrier.

This filing is subject to Department approval without a hearing. Any comments may be filed with Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance,

Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice.

For further information or to request a copy of the proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (reference number A-0302-6).

TRD-200202211
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 10, 2002

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Forté Information Services, Inc., a foreign third party administrator. The home office is Riverside, California.

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-200202166
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 8, 2002

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Texas Lottery Commission

Instant Game 287 "Money Suits Me"

1.0 Name and Style of Game.

A. The name of Instant Game No. 287 is "MONEY SUITS ME". The play style is "add up with legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 287 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 287.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: HEART SYMBOL, SPADE SYMBOL, CLUB SYMBOL, DIAMOND SYMBOL, and JOKER SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 287 - 1.2D

Figure 1: GAME NO. 287 - 1.2D

PLAY SYMBOL	CAPTION
HEART SYMBOL	HEART
SPADE SYMBOL	SPADE
CLUB SYMBOL	CLUB
DIAMOND SYMBOL	DIMND
JOKER SYMBOL	JOKER

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Table 2 of this section. Figure 2:16 TAC GAME NO. 287 - 1.2E

Figure 2: GAME NO. 287 - 1.2E

CODE	PRIZE
$2.00	TWO
$5.00	FIV
$10.00	TEN
$15.00	FTN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $10.00, $15.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, $250, or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $25,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (287), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 287-0000001-000.

L. Pack - A pack of "MONEY SUITS ME" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 000 to 001 are on the top page, tickets 002 to 003 are on the next page, and so forth and tickets 248 to 249 on the last page. Please note the books will be in an A-B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY SUITS ME" Instant Game No. 287 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONEY SUITS ME" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. The player must scratch each card. The player must count up the spade symbols found and match the number found to the prize in the legend. If the player gets a joker symbol under any card the player will win $50.00. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data spot for spot.

B. No more than four (4) duplicate non-winning play symbols on a ticket.

C. The joker symbol will never appear more than once on a ticket.

D. There will always be one spade symbol on non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY SUITS ME" Instant Game prize of $2.00, $5.00, $10.00, $15.00, $25.00, $50.00, $100, $250, or $500 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $250, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MONEY SUITS ME" Instant Game prize of $1,000, $5,000, or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY SUITS ME" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MONEY SUITS ME" Instant Game, the Texas Lottery shall deliver to an adult

member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MONEY SUITS ME" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,814,000 tickets in the Instant Game No. 287. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 287- 4.0

Figure 3: GAME NO. 287 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$2.00	992,376	11.90
$5.00	850,575	13.89
$10.00	378,081	31.25
$15.00	141,757	83.34
$25.00	47,256	250.00
$50.00	5,880	2,009.18
$100	3,470	3,404.61
$250	2,452	4,818.11
$500	785	15,049.68
$1,000	200	59,070.00
$5,000	12	984,500.00
$25,000	5	2,362,800.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 287 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 287, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202118

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 3, 2002

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Instant Game 709 "Pride of Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 709 is "PRIDE OF TEXAS". The play style in Game 1 is "beat score". The play style in Game 2 is "key symbol match with auto win". The play style in Game 3 is "row, column, diagonal". The play style in Game 4 is "key symbol match with doubler". The play style in Game 5 is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 709 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 709.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $1.00, $2.00, $4.00, $5.00, $8.00, $10.00, $25.00, $50.00, $75.00, $100, $500, $5,000, $50,000, GOLD BAR SYMBOL, COIN SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, X SYMBOL, [ ] SYMBOL, SINGLE SYMBOL, DOUBLE SYMBOL, BOOT SYMBOL, HAT SYMBOL, SADDLE SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, and HORSESHOE SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Table 1 of this section Figure 1:16 TAC GAME NO. 709 - 1.2D

Figure 1: GAME NO. 709 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$25.00	TWY FIV
$50.00	FIFTY
$75.00	SVY FIV
$100	ONE HUND
$500	FIV HUND
$5,000	FIV THOU
$50,000	50 THOU
X SYMBOL	
[ ] SYMBOL	
GOLD BAR SYMBOL	GOLD
COIN SYMBOL	COIN
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
BOOT SYMBOL	BOOT
HAT SYMBOL	HAT
SADDLE SYMBOL	SADDLE
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE

Table 2 of this section. Figure 2:16 TAC GAME NO. 709 - 1.2E

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 709 - 1.2E

CODE	PRIZE
$5.00	FIV
$8.00	EGT
$10.00	TEN
$12.00	TWL
$20.00	TWN

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be : 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $8.00, $10.00, $12.00, or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $75.00, $100, or $500.

I. High-Tier Prize - A prize of $5,000, or $50,000.

J. Bar Code - A 22 character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A twenty-two (22) digit number consisting of the three (3) digit game number (709), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 709-0000001-000.

L. Pack - A pack of "PRIDE OF TEXAS" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074, while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PRIDE OF TEXAS" Instant Game No. 709 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "PRIDE OF TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 37 (thirty-seven) play symbols. In the Bluebonnet Bucks section, if the player's YOUR NUMBER is higher than THEIR NUMBER in the same row, the player will win the prize shown for that row. In the Fast $10 section, if the player matches both symbols the player will win $10 automatically. In the Mockingbird Money section, if the player gets three (3) Xs in the same row, column or diagonal, the player will win the prize under the prize area. In the Double Up section, if the player finds the work "DOUBLE" under the coins, the player will double the total winnings on the ticket. In the Cattle Cash section, if the player matches three (3) symbols across within a game, the player will win the prize shown in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 37 (thirty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 37 (thirty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 37 (thirty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 37 (thirty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. In the Bluebonnet Bucks section, there will be no ties in a row.

C. In the Bluebonnet Bucks section, there will be no duplicate Theirs play symbols on non-winning rows on a ticket.

D. In the Bluebonnet Bucks section, there will be no duplicate non-winning prize symbols in the four rows.

E. In the Mockingbird Money section, all games will contain 4 X's and 5 [ ]'s or 5 X's and 4 [ ]'s.

F. In the Mockingbird Money section, there will be no occurrence of 3 like [ ]'s in a row, column or diagonal.

G. In the Mockingbird Money section, a player may only win once.

H. In the Double Up section, all tickets that are not intended to double per the prize structure will contain the SINGLE symbol.

I. In the Cattle Cash section, there will be no duplicate non-winning games in any order.

J. In the Cattle Cash section, there will be many near wins.

2.3 Procedure for Claiming Prizes.

A. To claim a "PRIDE OF TEXAS" Instant Game prize $5.00, $8.00, $10.00, $12.00, $20.00, $25.00, $50.00, $75.00, $100, and $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $75.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "PRIDE OF TEXAS" Instant Game prize of $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PRIDE OF TEXAS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "PRIDE OF TEXAS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "PRIDE OF TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefor. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,056,850 tickets in the Instant Game No. 709. The approximate number and value of prizes in the game are as follows:

Table 3 of this section Figure 3:16 TAC GAME NO. 709- 4.0

Figure 3: GAME NO. 709 - 4.0

Prize Amount	Approximate Number of Prizes*	Approximate Odds are 1 in **
$5.00	366,794	8.33
$8.00	163,014	18.75
$10.00	122,269	25.00
$12.00	81,498	37.51
$20.00	71,354	42.84
$25.00	21,629	141.33
$50.00	20,412	149.76
$75.00	4,455	686.16
$100	2,412	1,267.35
$500	1,479	2,066.84
$5,000	27	113,216.67
$50,000	3	1,018,950.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 709 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 709, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200202119
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 3, 2002

♦ ♦ ♦

Manufactured Housing Division

Notice of Public Hearing

MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 8:30 a.m. on Monday, May 20 at 1400 Congress, State Capitol Extension, Room E1.004, Austin, Texas 78701. The public hearing is to accept comments on the new and amended sections to rule 10 Texas Administrative Code, §80 (West Pamphlet 2002) ("Rules"), concerning manufactured housing. The proposed amendments are published in the April 5, 2002, Texas Register.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 507 Sabine Street, 10th Floor, Austin, Texas 78701, telephone (512) 475-2206, or email at schoate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or comments may be faxed to (512) 475-4250.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Tex. Rev. Civ. Stat. Ann. art. 5221f (Vernon 2002) and 10 Texas Admin. Code (West Pamphlet 2002).

Individuals who require auxiliary aids for this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200202204
Bobbie Hill
Executive Director
Manufactured Housing Division
Filed: April 10, 2002

♦ ♦ ♦

Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding Bastrop County Water Control and Improvement District No. 3, Docket No. 2001-0446-MWD-E on April 1, 2002 assessing $24,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512)239-5025, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TransTexas Gas Corporation, Docket No. 2001-1092- AIR-E on April 1, 2002 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fort Worth Star-Telegram, Docket No. 2001-1114- PST-E on April 1, 2002 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512)239-2576, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2001-1107-AIR- E on April 1, 2002 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Silver Creek Village Water Supply Corporation, Docket No. 2001-0826-PWS-E on April 1, 2002 assessing $1,938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512)339-2929, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Town & Country Food Stores, Inc., Docket No. 2001- 0968-PWS-E on April 1, 2002 assessing $1,688 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shipp, Enforcement Coordinator at (806)796-7092, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Petroleum Transports, Inc., Docket No. 2001- 0829-PST-E on April 1, 2002 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512)239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chester R. Upham, Jr. and Chester R. Upham, III dba Upham Oil & Gas Company, Docket No. 2001-0946-AIR-E on April 1, 2002 assessing $2,250 in administrative penalties with $450 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 Mission Petroleum Carriers, Inc., Docket No. 2001- 1194-PST-E on April 1, 2002 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, Enforcement Coordinator at (512)239-2576, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Point, Docket No. 2001-0499-PWS-E on April 1, 2002 assessing $2,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sid Richardson Gasoline, Ltd, Docket No. 2001- 0033-AIR-E on April 1, 2002 assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phil Clemente dba Northeast Mobile Home Park, Docket No. 2001-0314-PWS-E on April 1, 2002 assessing $8,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Enforcement Coordinator at (817)588-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Silverleaf Resorts, Inc. dba Ascension Resorts, LTD Docket No. 2001-0941-PST-E on April 1, 2002 assessing $1,500 in administrative penalties with $300 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 Gary Viss dba Gary Viss Dairy, Docket No. 2001- 0654-AGR-E on April 1, 2002 assessing $8,000 in administrative penalties with $1,600 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 Nguyen-Pham Corporation and Najem Elahmad dba Pit Road Food Store, Docket No. 2001-0551-PST-E on April 1, 2002 assessing $12,000 in administrative penalties with $2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at (713)767-3624, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Burt Farms, Inc., Docket No. 2001-0600-AGR-E on April 1, 2002 assessing $1,875 in administrative penalties.

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 City of Cisco, Docket No. 2000-1456-PWS-E on April 1, 2002 assessing $10,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leif Johnson Ford, Incorporated, Docket No. 2001- 1236-AIR-E on April 1, 2002 assessing $900 in administrative penalties with $180 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fuel & Enterprises, Inc. dba Tiger Mart #20, Docket No. 2001-0965-PST-E on April 1, 2002 assessing $750 in administrative penalties with $150 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 Basell USA, Inc., Docket No. 2001-0869-PWS-E on April 1, 2002 assessing $938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at (512)239-4471, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RNRS Corporation dba Parkway Mobil Mart 3, Docket No. 2001-0956-PST-E on April 1, 2002 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Bradley Brock, Enforcement Coordinator at (512)239-1165, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eurecat U.S., Incorporated, Docket No. 2001-0747- IHW-E on April 1, 2002 assessing $20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. Du Pont de Nemours and Company, Inc., Docket No. 2001-0925-MLM-E on March 28, 2002 assessing $25,100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Temple-Inland Forest Products Corporation, Docket No. 2001-0743-AIR-E on April 1, 2002 assessing $46,300 in administrative penalties with $9,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Toni Toliver, SEP Coordinator at (512)239-6122, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EEX Power Systems, Docket No. 2001-0936-AIR-E on April 1, 2002 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Easley, Enforcement Coordinator at (915)698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200202212
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 10, 2002

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 21, 2002**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 21, 2002**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1) COMPANY: AGE Refining, Inc.; DOCKET NUMBER: 2001-0860-MLM-E; IDENTIFIER: Air Account Number BG-0103-P, Air Permit Numbers 4438 and 6113, and Petroleum Storage Tank (PST) Number None; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 6113, and THSC, §382.085(b), by failing to limit daily throughput for crude oil and maintain daily and annual throughput records of each product; and 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Allen Car Wash Partners, Ltd. dba Waterfall Carwash No. 1; DOCKET NUMBER: 2001-1033-PST-E; IDENTIFIER: PST Facility Identification Number 0073152; LOCATION: Allen, Collin County, Texas; TYPE OF FACILITY: car wash and service station; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the underground storage tank (UST) registration and self-certification form are fully and completely submitted to the agency; PENALTY: $600; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Aquila Gas Pipeline Corporation; DOCKET NUMBER: 2001-1180-AIR-E; IDENTIFIER: Air Account Number FC-0051-I; LOCATION: La Grange, Fayette County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146 and THSC, §382.085(b), by failing to submit the annual compliance certification; and 30 TAC §122.145(1)(C) and THSC, §382.085(b), by failing to submit a semiannual fugitive emission monitoring report; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Larry King, (512) 339- 2929; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: Atlas Roofing Corporation; DOCKET NUMBER: 2001-1462-AIR-E; IDENTIFIER: Air Account Number MS-0003-S; LOCATION: Daingerfield, Morris County, Texas; TYPE OF FACILITY: asphaltic roofing materials manufacturing; RULE VIOLATED: 30 TAC §101.20(1), 40 Code of Federal Regulations §60.473(a), and THSC, §382.085(b), by failing to continuously monitor and record the temperature of the flue gas at the high velocity air filter; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: B&B Aggregates, Inc.; DOCKET NUMBER: 2001-1276-MWD-E; IDENTIFIER: Enforcement Identification Number 16925; LOCATION: near Splendora, Liberty County, Texas; TYPE OF FACILITY: sand and gravel operation; RULE VIOLATED: the Code, §26.121, by failing to prevent the unauthorized discharge of wastewater from the gravel washing area; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Betty J. Pope and Ivan B. Hansen dba B & I Grocery; DOCKET NUMBER: 2001-1024-PST-E; IDENTIFIER: PST Facility Identification Number 0056099; LOCATION: near Cleveland, San Jacinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a)(2) and (b)(1), by failing to demonstrate the required financial responsibility; and 30 TAC §334.8(c)(4)(B), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted to the agency; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Balch Oil Co., Inc.; DOCKET NUMBER: 2001-0998-PST-E; IDENTIFIER: Enforcement Identification Number 16745; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: gasoline distributing company; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; and 30 TAC §334.21, by failing to pay UST fees; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(8) COMPANY: C & R Distributing, Inc.; DOCKET NUMBER: 2001-1328-MLM-E; IDENTIFIER: Air Account Number EE-0432-K; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: fuel

transport line; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by offering for sale gasoline with a Reid vapor pressure (RVP) greater than 0.7 pounds per square inch absolute (psia); and 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Bethany Carl, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Cahill Country Water Supply Corporation; DOCKET NUMBER: 2001-1492- PWS-E; IDENTIFIER: Public Water Supply (PWS) and Certificate of Convenience and Necessity Number 12458; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: Public Water Supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(F) and (3)(A)(ii), (f)(3), and (g), and §290.122(c), by failing to collect and submit five additional water samples for bacteriological analysis and four repeat water samples for bacteriological analysis, by exceeding the maximum contaminant level for total coliform, and by failing to provide public notice explaining sampling deficiencies; PENALTY: $1,400; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (512) 239- 4471; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Casco Hauling & Excavating Co.; DOCKET NUMBER: 2001-0931-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Permit Number 1403; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: municipal solid waste; RULE VIOLATED: 30 TAC §37.121, by failing to establish financial assurance for closure, post closure, or corrective action; 30 TAC §330.56(n) and §330.130, and MSW Permit Number 1403, by failing to have implemented and approved a landfill gas management plant; 30 TAC §§330.231, 330.234(b), and 330.239(a), and MSW Permit Number 1403, by failing to have and implement an approved ground water sampling and analysis plan; 30 TAC §328.60(a), by failing to obtain a scrap tire store site registration; 30 TAC §330.114 and MSW Permit Number 1403, by failing to maintain the site operating plan to reflect the current access entrance; 30 TAC §330.117(e) and MSW Permit Number 1403, by failing to maintain a standard operating procedure (SOP) that reflects the current operating procedures; and 30 TAC §330.128 and MSW Permit Number 1403, by failing to maintain a SOP that reflects the current operating procedures relating to salvaging activities; PENALTY: $38,280; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Champion Coatings, Inc.; DOCKET NUMBER: 2001-1306-AIR-E; IDENTIFIER: Air Account Number HG-1579-O; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: paint and coatings manufacturing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Chapman, Inc.; DOCKET NUMBER: 2001-1321-PST-E; IDENTIFIER: Enforcement Identification Number 16774; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: petroleum products; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to observe that the owner or operator of regulated USTs had a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Zuhair M. Adi dba College Park Mobil; DOCKET NUMBER: 2001-1009- PST-E; IDENTIFIER: PST Facility Identification Number 0017640; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(3), (5), and (7)(A), and THSC, §382.085(b), by failing to maintain a maintenance log, provide records of the results of testing conducted at the facility, and maintain the Stage II vapor recovery records; 30 TAC §115.244(1) and (3), and THSC, §382.085(b), by failing to conduct daily inspections and conduct a monthly inspection of the components; 30 TAC §115.245(3) and THSC, §382.085(b), by failing to conduct five-year Stage II testing to verify proper operation; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that a facility representative is trained in the operation and maintenance of the Stage II system; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Trina Grieco, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Bones London Ijeoma dba Country Haven Food Mart; DOCKET NUMBER: 2001-1565-PST-E; IDENTIFIER: PST Facility Identification Number 25183; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted to the agency; PENALTY: $600; ENFORCEMENT COORDINATOR: Sarah Slocum, (512) 239- 6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Cummins Southern Plains, Inc.; DOCKET NUMBER: 2001-1105-PST-E; IDENTIFIER: PST Facility Identification Number 00403; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: service center for diesel engines; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.3467(a), by failing to accurately complete and submit the UST registration and self-certification form to the agency and provide the common carrier a copy of a valid, current delivery certificate; and 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233- 4480, (210) 490-3096.

(16) COMPANY: Direct Fuels, L.P.; DOCKET NUMBER: 2001-1365-AIR-E; IDENTIFIER: Air Account Number TA-0274-D; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: gasoline storage and distribution station; RULE VIOLATED: 30 TAC §115.216(1)(A)(i) and THSC, §382.085(b), by failing to continuously monitor and record the operating temperature in the vapor combustion unit (VCU); 30 TAC §116.115(b)(2)(F)(iv) and (c), Permit Number 6862B, and THSC, §382.085(b), by failing to properly record the daily, monthly, and annual throughput, by receiving and storing gasoline with a RVP greater than 13 psia, operate the VCU with two flame scanners, and use the prescribed method (AP-42) to calculate volatile organic compound emissions; 30 TAC §116.116(b)(1) and THSC, §382.085(b), by failing to use tank numbers 102 through 120 as represented in its permit application; and 30 TAC §122.121 and §122.130, and THSC, §382.054 and §382.085(b), by failing to obtain a Title V federal operating permit and continuing to operate; PENALTY: $15,680; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: City of Gainesville; DOCKET NUMBER: 2001-0984-MWD-E; IDENTIFIER: National Pollutant Discharge Elimination System (NPDES) Permit Number TX0022357-001A and Water Quality Permit Number 10726-001; LOCATION: Gainesville,

Cooke County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), NPDES Permit Number TX0022357-001A, Water Quality Permit Number 10726-001, and the Code, §26.121, by failing to comply with permit levels for ammonia nitrogen and carbonaceous biochemical oxygen demand; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Gaither Petroleum Corporation; DOCKET NUMBER: 2001-1188-AIR-E; IDENTIFIER: Air Account Number LH-0162-P; LOCATION: near Houston, Liberty County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §101.10 and THSC, §382.085(b), by failing to submit an emissions inventory questionnaire; PENALTY: $720; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: HEC Petroleum, Inc.; DOCKET NUMBER: 2001-1499-AIR-E; IDENTIFIER: Air Account Number CI-0100-F; LOCATION: near Smith Point, Chambers County, Texas; TYPE OF FACILITY: crude petroleum and natural gas production; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; and 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Carol Harkins, (713) 767- 3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Harris County Municipal Utility District Number 249; DOCKET NUMBER: 2001-1210-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13765-001; LOCATION: Spring, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), (5), and (9)(A), TPDES Permit Number 13765-001, and the Code, §26.121, by failing to prevent the discharge and accumulation of sludge, comply with the permitted effluent limits for ammonia nitrogen, carbonaceous biochemical demand, and total suspended solids, properly operate and maintain the facility, and submit the noncompliance notification; PENALTY: $9,200; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(21) COMPANY: Jones Court, Ltd. dba Jones Court Retail Center; DOCKET NUMBER: 2001- 1367-PWS-E; IDENTIFIER: PWS Number 1011702; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c) and (g)(4), and §290.122(c), and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and provide public notice of the failure to conduct routine monthly bacteriological sampling; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Josh Jumbo Corporation dba Sonic Quick Stop; DOCKET NUMBER: 2001- 1126-PST-E; IDENTIFIER: PST Facility Identification Number 0040823; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to perform annual pressure decay compliance testing; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Kevin Keyser, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(23) COMPANY: Lanar, Inc. dba Three Corners Food Store; DOCKET NUMBER: 2001-1192- PST-E; IDENTIFIER: PST Facility Identification Number 45513; LOCATION: Kennedale, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; PENALTY: $800; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Bobby Cunningham dba Littlefield Butane Co. and 66 Butane & Fertilizer Co.; DOCKET NUMBER: 2001-0902-PST-E; IDENTIFIER: PST Facility Identification Numbers 2137 and 4081; LOCATION: Abernathy, Hale County, Texas; TYPE OF FACILITY: butane and motor fuel bulk/retail sales; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I) and (B), and (c)(5)(A)(i), and the Code, §26.3467(a), by failing to submit a UST registration and self-certification form and make available to a common carrier a valid current delivery certificate; and 30 TAC §334.5(b)(1)(A), by failing to verify, or observe, that a valid, current delivery certificate had been issued by the agency covering the UST systems; PENALTY: $12,800; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(25) COMPANY: Lukes Mobile Home Park, Inc.; DOCKET NUMBER: 2001-1291-PWS-E; IDENTIFIER: PWS Number 1840141; LOCATION: Springtown, Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2) and THSC, §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis; PENALTY: $938; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Mitchell Gas Services, L.P.; DOCKET NUMBER: 2001-1420-AIR-E; IDENTIFIER: Air Account Number CO-0034-B; LOCATION: Talpa, Coleman County, Texas; TYPE OF FACILITY: compressor station; RULE VIOLATED: 30 TAC §106.512(2)(C)(iii) and §116.110(a), and THSC, §382.085(b), by failing to conduct an initial performance test for emissions; PENALTY: $720; ENFORCEMENT COORDINATOR: Carolyn Easley, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(27) COMPANY: New Braunfels Independent School District; DOCKET NUMBER: 2001-1174- EAQ-E; IDENTIFIER: Enforcement Identification Number 12004; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: high school; RULE VIOLATED: 30 TAC §213.4(a), by failing to submit a water pollution abatement plan; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Oasis Pipe Line Company Texas L.P.; DOCKET NUMBER: 2001-1545-AIR- E; IDENTIFIER: Air Account Numbers PE-0113-Q and PE-0109-H; LOCATION: Bakersfield and Coyanosa, Pecos County, Texas; TYPE OF FACILITY: natural gas compression and transmission; stations; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit Title V compliance certifications; and 30 TAC §122.145(2)(A) and (C), and THSC, §382.085(b), by failing to report all instances of deviations and submit the required deviation reports; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570- 1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(29) COMPANY: Petro Stopping Centers, L.P. dba Petro Stopping Center #5; DOCKET NUMBER: 2001-1094-PST-E; IDENTIFIER: PST Facility Identification Number 20003; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control for all USTs, and 30 TAC §334.50(b)(1)(A) and (2), and (d)(1)(B)(ii), and the Code, §26.3475, by failing to reconcile inventory control records, perform annual tightness test for the pressurized piping, and put the automatic tank gauge into test modes; PENALTY: $16,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(30) COMPANY: Prestigious Accessories, Inc.; DOCKET NUMBER: 2001-1074-AIR-E; IDENTIFIER: Air Account Number SK-0168-R; LOCATION: Winona, Smith County, Texas; TYPE OF FACILITY: fiberglass composite fabrication; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; and 30 TAC §122.145(2)(c) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(31) COMPANY: Rebel Enterprises, Inc. dba Rebel Food; DOCKET NUMBER: 2001-1040- PST-E; IDENTIFIER: PST Facility Identification Number 0071393; LOCATION: Evadale, Jasper County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.3467(a), by failing to ensure that the UST registration was fully and accurately completed and submitted to the agency and make available to a common carrier a valid, current delivery certificate; PENALTY: $6,400; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(32) COMPANY: Shezy Enterprise, Inc. dba Fina Truck Stop; DOCKET NUMBER: 2001- 1252-IWD-E; IDENTIFIER: TPDES Permit Number 11721-001; LOCATION: Greenville, Hunt County, Texas; TYPE OF FACILITY: gasoline service station; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11721-001, and the Code, §26.121, by failing to comply with effluent permitted limits; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: Sonora Independent School District; DOCKET NUMBER: 2002-0014-PST-E; IDENTIFIER: PST Facility Identification Number 6651; LOCATION: Sonora, Sutton County, Texas; TYPE OF FACILITY: school bus fleet fueling and maintenance; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I) and (B), and (5)(A)(i), and the Code, §26.346(a), by failing to submit the UST registration and self-certification form and make available a valid, current delivery certificate; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(34) COMPANY: Spur Services, Inc. dba Spur Texaco; DOCKET NUMBER: 2001-1186-PST- E; IDENTIFIER: PST Facility Identification Number 0065593; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline service station; RULE VIOLATED: 30 TAC §334.8(c)(4)(B), and (5)(A)(i), and the Code, §26.346(a), by failing to ensure that the UST self-certification form is fully and accurately completed; and 30 TAC 334.50(b)(1)(A) and the Code, §26.3475, by failing to have release detection for the UST system; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(35) COMPANY: Stubbs Petroleum Co., Inc.; DOCKET NUMBER: 2001-1425-PST-E; IDENTIFIER: Enforcement Identification Number 16721; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: transporter of petroleum products; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator of a regulated UST had a valid, current delivery certificate; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(36) COMPANY: Sun Coast Resources, Inc.; DOCKET NUMBER: 2001-1537-PST-E; IDENTIFIER: Enforcement Identification Number 17169; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $800; ENFORCEMENT COORDINATOR: Carol Harkins, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(37) COMPANY: Kim Pham dba Sunny's Food Express; DOCKET NUMBER: 2001-1022-PST- E; IDENTIFIER: Enforcement Identification Number 0039803; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; and 30 TAC §334.8(c)(4)(B) and (5)(A)(i), and the Code, §26.3467(a), by failing to submit a UST registration and self-certification form and make available a valid, current delivery certificate; PENALTY: $3,200; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: TRT Development Company; DOCKET NUMBER: 2001-1007-PST-E; IDENTIFIER: Enforcement Identification Number 46264; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: hotel; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility; 30 TAC §334.8(c) and the Code, §26.346(a), by failing to self-certify compliance; 30 TAC §334.49(a) and the Code, §26.3475, by failing to have corrosion protection for the piping; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to monitor USTs for releases; and 30 TAC §334.21, by failing to pay outstanding fees; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(39) COMPANY: TXU U.S. Holdings Company Formerly Known as TXU Electric Company; DOCKET NUMBER: 2001-1327-AIR-E; IDENTIFIER: Air Account Number HQ-0012-T; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: steam electric station; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2), and THSC, §382.085(b), by failing to submit the required annual compliance certification and deviation report; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2001-0766- MWD-E; IDENTIFIER: TPDES Permit Number 11214-001; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Agreed Order, Docket Number 1998-1112-MWD-E, by failing to submit an administratively complete permit and certify that either operation to operate was obtained or operation ceased; 30 TAC §305.125(1), §305.128, TPDES Permit Number 11214-001, and the

Code, §26.121, by failing to meet permitted effluent limits and submit properly signed discharge monitoring reports; and 30 TAC §§220.21, 285.21, 290.36, 290.51(a)(3), 303.71, 305.503, 312.9, 325.5(d), and 334.21, by failing to pay fees in a timely manner; PENALTY: $25,200; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(41) COMPANY: City of Tulia; DOCKET NUMBER: 2001-0992-AIR-E; IDENTIFIER: Air Account Number SR-0038-A; LOCATION: Tulia, Swisher County, Texas; TYPE OF FACILITY: emergency electrical power generation plant; RULE VIOLATED: 30 TAC §122.121 and §122.130(a)(2) (now 30 TAC §122.130(a)), and THSC, §382.085(b), by failing to submit a Title V initial application; and 30 TAC §116.110(a) and THSC, §382.085(b), by failing to renew new source review permit number 6801; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(42) COMPANY: United States Automobile Association; DOCKET NUMBER: 2002-0016-PST- E; IDENTIFIER: PST Facility Identification Number 67126; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: computer facilities management service; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi)(I) and (B), and the Code, §26.346(a), by failing to submit the UST registration and self-certification form; PENALTY: $600; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(43) COMPANY: Victoria County Water Control and Improvement District No. 1; DOCKET NUMBER: 2001-0494-MLM-E; IDENTIFIER: TPDES Permit Number 10513-002 and PWS Number 2350001; LOCATION: Bloomington, Victoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 10513-002, and the Code, §26.121, by failing to properly operate and maintain the wastewater treatment facility and collection system, perform record quality control and calibration procedures, and comply with permitted effluent limits; 30 TAC §305.125(9) and TPDES Permit Number 10513-002, by failing to provide written noncompliance notification for effluent violations; TPDES Permit Number 10513-002 and the Code, §26.121, by failing to properly dispose of dried process sludge and perform loading calculations; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements; and 30 TAC §290.44(h)(4), by failing to conduct initial and annual testing of the backflow prevention assembly; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(44) COMPANY: Westex Capital, Ltd.; DOCKET NUMBER: 2001-1161-PST-E; IDENTIFIER: PST Facility Identification Number 12499; LOCATION: Beeville, Bee County, Texas; TYPE OF FACILITY: service gasoline station; RULE VIOLATED: 30 TAC §334.54(b)(2), by failing to assure that, with the exception of the vent lines, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured; 30 TAC §334.49(a) and the Code, §26.3475, by failing to provide corrosion protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475, by failing to monitor USTs for releases; and 30 TAC §334.8(c)(4)(B) and the Code, §26.346(a), by failing to submit a self-certification form; PENALTY: $6,120; ENFORCEMENT COORDINATOR: Audra Baumgartner, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(45) COMPANY: Zapata County; DOCKET NUMBER: 2001-1167-MLM-E; IDENTIFIER: PWS Number 2530002 and CCN Number 12877; LOCATION: Zapata, Zapata County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(A) and THSC, §341.0315(c), by failing to provide a raw water pump; 30 TAC §290.46(e)(2), (f)(2), (j)(2), (m), and (s)(2)(C)(i), and THSC, §341.033(a), by failing to have at least a certified Class "C" surface water operator on duty, make the public water system's operating records accessible, eliminate potential contaminant hazards, provide a maintenance program, and calibrate the manual disinfectant residual analyzer; 30 TAC §290.42(c)(8), (e)(3)(D) and (6), and (h), by failing to obtain a permit for discharging wastewater, properly maintain the water storage tank, provide scales for determining the amount of disinfectant used daily, and provide a fan in the chlorine room; the Code, §26.121, by failing to prevent an unauthorized discharge of wastewater; 30 TAC §290.43(c)(2), by failing to maintain the roof hatch on the clearwell storage tank; and 30 TAC §291.93(6), by failing to maintain the 0.30 million gallon water storage tank tight against leakage; PENALTY: $8,625; ENFORCEMENT COORDINATOR: Sandra Hernandez, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200202182
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 9, 2002

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Notice of Water Quality Applications

The following notices were issued during the period of April 4, 2002 through April 8, 2002.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711- 3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AQUASOURCE UTILITY INC. has applied for a renewal of TPDES Permit No. 10742- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located within the Brentwood Manor Subdivision, approximately 0.4 miles south of U.S. Highway 59 and immediately east of Marcado Creek, 2.0 miles due west of the intersection of U.S. Highway 59 and State Highway Loop 175 in Victoria County, Texas. The treated effluent is discharged to Marcado Creek; thence to Garcitas Creek; thence to Lavaca Bay/Chocolate Bayou in Segment No. 2453 of the Bays and Estuaries. The unclassified receiving water uses are no significant aquatic life uses for Marcado Creek.

BENBROOK, LLC has applied for a renewal of TPDES Permit No. 12723-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 73,000 gallons per day. The facility is located approximately 0.5 mile south of the intersection of U.S. Highway 377 and Farm-to-Market 1187, approximately 16 miles southwest of the City of Forth Worth central business district in Tarrant County, Texas.

BROOKELAND FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. 10998-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 400 feet south of Recreational Road 255 and approximately 5 miles

west of the intersection of Recreational Road 255 and U.S. Highway 96 in Jasper County, Texas. The treated effluent is discharged to an unnamed tributary of Beef Creek; thence to Beef Creek; thence to the Angelina River Below Sam Rayburn Reservoir in Segment No. 0609 of the Neches River Basin.

CROW FAMILY HOLDINGS INDUSTRIAL TEXAS LIMITED PARTNERSHIP AND COLE CREEK BUSINESS PARK ASSOCIATION, INC. has applied for a renewal of TPDES Permit No. 13996-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,800 gallons per day. The facility is located approximately 0.2 mile northwest of the intersection of Fairbanks-North Houston Road and West Little York Road and approximately 0.65 mile northwest of the intersection of U.S. Highway 290 and Fairbanks-North Houston Road in Harris County, Texas.

DEL LAGO ESTATES UTILITY COMPANY has applied for a renewal of TPDES Permit No. 12686-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located east of Walden Road approximately one mile north of State Highway 105 in Montgomery County, Texas.

EAST CENTRAL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13701-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 2,300 feet north of the intersection of Sulphur Springs Road and Stuart Road and approximately 600 feet west of Stuart Road in Bexar County, Texas.

HARDIN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TNRCC Permit No. 13135-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The plant site is located on the Hardin ISD High School campus, approximately 900 feet east of the intersection of Pete Miller Road and Berry Road; approximately 1800 feet northeast of the intersection of State Highway 146 and Farm-to-Market Road 834 in Liberty County, Texas.

LAJITAS UTILITY CO., INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14282-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 90,000 gallons per day. The facility is located approximately 2,000 feet south of Ranch-to-Market Road 170 and 1,800 feet east of the Rio Grande River in Brewster County, Texas.

SANDY CREEK UTILITIES, INC. has applied for a renewal of Permit No. 13337-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day via subsurface soil absorption on 45,000 square feet of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 6.5 miles northwest of the intersection of Farm-to-Market Roads 1431 and 2243 and 2.5 miles west of the intersection of Farm-to-Market Road 2243 and Round Mountain Road in Travis County, Texas.

SILVERLEAF RESORTS, INC. has applied for a renewal of TPDES Permit No. 13417- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.5 mile northwest of the intersection of League Line Road and White Oak Drive on Lake Conroe in Montgomery County, Texas.

SKY RANCHES, INC. has applied to for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14318-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The draft permit authorizes a daily average flow of 49,500 gallons per day. The facility is located on County Road 448 approximately 1 mile south of the intersection of Farm-to-Market Road 1805 and County Road 448 in Smith County, Texas. The treated effluent is discharged to a ditch; thence to an unnamed tributary; thence to Village Creek, thence to Burleson Lake; thence to Village Creek; thence to the Sabine River Below Lake Tawakoni in Segment No. 0506 of the Sabine River Basin.

TALL TIMBERS UTILITY COMPANY, INC. has applied for a major amendment to TPDES Permit No. 13000-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 445,000 gallons per day. The facility is located on County Road 128, approximately 2,800 feet north and 6,500 feet west of the intersection of Highway 69 South and Farm-to-Market Road 2813 and 6.1 miles south-southwest of the City of Tyler in Smith County, Texas.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 21 has applied for a renewal of TNRCC Permit No. 13623-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The plant site is located approximately 1500 feet south of the Sam Houston Toll Road, east of Windfern Road, west of Fairbanks North Houston Road in Harris County, Texas.

WEST HOUSTON AIRPORT CORPORATION applied for a renewal of TPDES Permit No. 12516-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 2,000 gallons per day. The facility is located on Lakeside Airport property at 18000 Groeschke Road in Harris County, Texas.

WOODLAND OAKS UTILITY COMPANY, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14312-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located approximately 5.26 miles west of Interstate Highway 45 and approximately 3,600 feet north of Farm-to-Market Road 2854 in Montgomery County, Texas.

TRD-200202213
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 10, 2002

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Public Notice of Intent to Delete

NOTICE OF DELETION OF THE PERMIAN CHEMICAL COMPANY SITE FROM THE STATE SUPERFUND REGISTRY

The executive director (ED) of the Texas Natural Resource Conservation Commission (TNRCC or commission) is issuing this notice of deletion of the Permian Chemical Company state Superfund site (the site) from its proposed-for-listing status on the state registry, the list of state Superfund sites. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was originally proposed for listing on the state registry in the July 16, 1993, edition of the *Texas Register* (18 TexReg 4709). The

site, including all land, structures, appurtenances, and other improvements, is approximately 30 acres in size, and is located at 325 Pronto Ave., Ector County, Texas, approximately three miles east of downtown Odessa. In addition, the site included any areas where hazardous substance(s) came to be located as a result, either directly or indirectly, of releases of hazardous substance(s) from the site.

Dorchem, Inc. began operations at the site in 1977, operating as a chemical plant, manufacturing hydrochloric acid (HCl) as the primary product and potassium sulfate (K_2SO_4) as a byproduct. Permian Chemical Company acquired the site in 1981 and continued the Dorchem operations. Permian Chemical Company abandoned the site in 1987.

The Remedial Investigation/Feasibility Study (RI/FS) examined the analytes for soil, sediment and groundwater including pH, sodium, potassium, sulfate, chlorides, heavy metals, volatile organic constituents (VOCs) and petroleum hydrocarbons. Due to the deteriorated condition of the overhead process structures, a removal action was initiated at the site in September 1996. A second phase of the RI at the site was conducted in October/November 1999. The purpose of this second phase was to determine if any on-site soils could be contributing to the low levels of VOCs detected in some site monitor wells, and to plug and abandon the on-site water wells.

Following the completion of the RI at the site, a Baseline Risk Evaluation (BRE) Report was prepared. The results of the RI and site-specific exposure scenarios were used to complete the BRE. This evaluation was completed in August 2000. Based on the results of the BRE, the site does not pose unacceptable excess risk to human health or the environment.

The TNRCC determined that hazardous and Class I industrial solid wastes remained at the site, therefore, a second removal action was initiated in November 2000. This removal action included removal of all hazardous and Class I wastes from the site, and transportation to an approved waste disposal facility, for proper disposal.

In May 2001, the TNRCC concluded that no further action was appropriate for the site. However, the site is not appropriate for residential use according to state risk reduction regulations in effect as of September 2, 1999, and has been deed recorded for commercial/industrial use only.

In accordance with 30 TAC §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the site on February 28, 2002, at the Ector County Library, Rotary Room, 321 West Fifth Street, 2nd Floor, Odessa, Texas. No comments regarding the proposed deletion were received at the public meeting. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas, 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Pursuant to 30 TAC §335.344(c), the ED has determined that the site no longer presents an imminent and substantial endangerment to public health and safety or the environment due to the removal actions that have been performed at the site.

In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Ector County, Texas stating that the site has been deleted from the state registry.

All inquiries regarding the deletion of the site should be directed to Ms. Janie Montemayor, Community Relations, telephone numbers (800) 633-9363 or (512) 239-3844.

TRD-200202187

Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: April 9, 2002

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Texas Department of Protective and Regulatory Services

Request for Proposal - Temporary Respite Care for Children

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for the provision of Temporary Respite Care for Children at three to five sites in Texas. The Request for Proposal (RFP) will be released on or about April 18, 2002, and will be posted on the State Internet Site at http://esbd.tbpc.state.tx.us on the date of its release.

Brief Description of Services: Respite for children is a vital part of the continuum of services to families at risk, and is intended to reduce family stress, support family stability, minimize the need for out-of-home involuntary placements of children, and enable families to manage crisis situations. PRS is soliciting three to five contractors to provide respite in both rural and urban areas of the state, with a focus on non-urban areas and on areas of the state where the general population base is 150,000 to 250,000 people.

The services being sought by this RFP encompass the following: a community needs assessment; extensive community collaboration to maximize services offered; comprehensive outreach efforts to promote the service; assessment of strengths and needs of families in crisis; implementation of a comprehensive respite referral program for eligible families; facilitation of linkage of families with other needed services; data collection and submission of reports; and evaluation of the program.

Eligible Offerors: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Businesses and Women's Enterprises, and Small Businesses are encouraged to apply.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due June 3, 2002, at 2:00 p.m. Contracts are anticipated to cover a 14-month period, or from July 1, 2002, through August 31, 2003, with funding for individual contracts anticipated to be $100,000 to $200,000. PRS lacks sufficient funds to award five contracts at the maximum amount. The effective dates of contracts awarded under this RFP will be July 1, 2002, through August 31, 2003.

Limitations: The amount of funding allocated for the contract resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. 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.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS reserves the right to procure by non-competitive means in accordance with the law but without further notice to potential vendors.

Contact Person: Potential offerors may obtain a copy of the RFP on or about April 18, 2002. It is preferred that requests for the RFP be submitted in writing (by mail or fax) to: Jacqueline Gomez, Mail Code E-541; c/o Vicki Logan; Texas Department of Protective and Regulatory Services; P.O. Box 149030; Austin, Texas 78714-9030; Fax: 512-438-2031.

TRD-200202181
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: April 8, 2002

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Public Utility Commission of Texas

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 5, 2002, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of UBS AG, London Branch for Retail Electric Provider (REP) certification, Docket Number 25696.

Applicant's requested service area by geography includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than April 26, 2002. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200202158
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2002

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Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on February 21, 2002, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Graford Exchange for Expanded Local Calling Service, Project Number 25490.

The petitioners in the Graford exchange request ELCS to the exchanges of Graham, Jacksboro, and Weatherford.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120 no later than May 2, 2002. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200202157
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2002

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Public Notice of Amendment to Interconnection Agreement

On April 4, 2002, Southwestern Bell Telephone Company and American Lightwave Communications, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25684. 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 25684. 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 May 3, 2002, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25684.

TRD-200202176
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2002

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.214

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 §26.214.

Docket Title and Number. Valor Telecommunications of Texas, LP Application for Approval of LRIC Study for Valor Total Value Plan Pursuant to P.U.C. Substantive Rule §26.214 on April 15, 2002, Docket Number 25682.

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 25682. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study 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-200202174
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2002

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Public Notice of Interconnection Agreement

On April 4, 2002, Concho Cellular Telephone Company, Inc. doing business as Cellular One and Kerrville Telephone Company, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25683. 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 25683. 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 May 3, 2002, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25683.

TRD-200202175
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2002

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Public Notice of Interconnection Agreement

On April 5, 2002, Protel Communications and Valor Telecommunications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25693. 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 25693. 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 May 3, 2002, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25693.

TRD-200202184
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2002

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Public Notice of Interconnection Agreement

On April 5, 2002, Delta Phones, Inc. and Valor Telecommunications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25694. 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 25694. 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 May 3, 2002, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25694.

TRD-200202185
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2002

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Public Notice of Interconnection Agreement

On April 9, 2002, Hill Country Telephone Cooperative, Inc. and San Antonio MTA LP doing business as Verizon Wireless, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under Section 252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2002) (PURA). The joint application has been designated Docket Number 25712. 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 25712. 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 May 7, 2002, 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 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 25712.

TRD-200202203
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 10, 2002

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Public Notice of Proceeding to Amend Registration Form for Pay Telephone Service Providers and Request for Comments

The Public Utility Commission of Texas (commission) proposes to amend the registration form for Pay Telephone Service (PTS) Providers. Project Number 25680, *Proceeding to Amend Registration Form for Pay Telephone Service Providers*, has been established for this purpose. Before a PTS Provider is eligible to offer service in Texas this registration form must be submitted as required. Each year, all PTS Providers must reregister using this form on or before July 31 to remain eligible to provide pay telephone service in Texas. The commission proposes modifications in the form to clarify information requested, to obtain data needed to better understand and monitor this segment of the telecommunications industry, and to protect the public.

Responses to the proposed, amended form may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 14 days of the date of publication of this notice. All responses should reference Project Number 25680.

Questions concerning this notice should be referred to Betsy Tyson, Telecommunications Division, 512-936-7323 or betsy.tyson@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200202189
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 9, 2002

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Sam Houston State University

Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c (Government Code §2254.029). Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D.C. to represent and assist SHSU in developing two projects, the Criminal Research, Information Management, & Evaluation System (CRIMES), and the Institute for Law Enforcement Technology and Strategy, both deemed important to SHSU. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for SHSU programs and facilities, considerable experience working with Federal Executive Agencies, and a record of substantial success in dealing with Executive Agencies. Interested parties are invited to express their interest and describe their capabilities on or before May 15, 2002. The term of the contract is to be from date of award for a twelve (12) month period with options to renew. Further technical information can be obtained from Dr. Larry T. Hoover at (936) 294-1636. Deadline for receipt of proposals is 4:00 p.m. May 15, 2002. Date and time will be stamped on the proposals by the office of the Police Research Center at SHSU. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

General Instructions. Submit one (1) copy of your proposal in a sealed envelope to: Police Research Center, CJC-Box 2296, Sam Houston State University, Huntsville, Texas, 77341-2296 before 4:00 p.m., May 15, 2002. Proposals may be modified or withdrawn prior to the established due date.

Discussions with Offerers and Award. SHSU reserves the right to conduct discussions with any or all bidders, or to make an award of a contract without such discussions based only on evaluation of the written proposals. SHSU also reserves the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled "Scope of Work." The Project Director shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

Scope of Work. The services to be rendered by the Consultant for SHSU shall consist of: The Consultant will assist SHSU in maintaining a strategic plan for both its Criminal Research, Information & Management Evaluation System (CRIMES) law enforcement information system project and the Institute for Law Enforcement Technology and Strategy. This will include: helping SHSU shape the future development of the programs so they remain consistent with the identified needs of the law enforcement community; identify linkages between the programs and relevant technologies; maintain regular liaison with existing and potential federal funding agencies; and, assist in maintaining a strategic plan to assist in obtaining support to provide for the future development and functioning of the programs. This will include meeting with appropriate persons and advising SHSU on development opportunities and linkages with complementary endeavors across the nation, and delivery of periodic reports providing a synopsis of activities.

Evaluation. Criteria for Evaluation of Proposals: Firms will be evaluated on time and quality of experience in representing and assisting

universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firm's strategies. Contract Amount: SHSU anticipates a fixed fee contract for these services, budgeted at $1,500.00 per month for twelve months ($18,000.00). Proposals outside this parameter will be accepted, but should include justification for deviation.

Termination. This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled response opening.

TRD-200202146
Dr. Gordon Plishker
Associate Vice President for Research and Graduate Studies
Sam Houston State University
Filed: April 5, 2002

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Texas Department of Transportation

Request for Proposals - Aviation

The Airport Sponsor listed below, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Consulting Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive proposals for professional services as described in the project scope for the project following:

Airport Sponsor: County of Goliad, Goliad County Industrial Airpark. TxDOT CSJ No. 0216GOLAD. Project Scope: Prepare Airport Action Plan. Project Manager: Keith Snodgrass. Number of copies to submit: six copies.

The Proposal shall include:

1. Firm name, address, phone number, and name of person to contact regarding the proposal.

2. Proposed project management structure including key personnel and subconsultants (if any).

3. Qualifications and recent, relevant experience (past five years) of the firm, key personnel and subconsultants relative to the performance of recent, relevant similar services for aviation planning projects.

4. Proposed project schedule, including major tasks and target completion dates.

5. Technical approach - a detailed discussion of the tasks or steps to accomplish the project.

6. List of references including the name, address, and phone number of the person most closely associated with the firm's prior performance of similar airport planning projects.

7. Statement regarding an Affirmative Action Program.

8. Proposed Historically Underutilized Business (HUB) or Disadvantaged Business Enterprise (DBE) participation for each project above if appropriate.

Proposal Submission:

Those interested consultants should submit the specified number of copies of brief proposals for this project consisting of the minimum number of pages sufficient to provide the above information for the project. Proposals must be postmarked by US Mail by midnight on May 10, 2002. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on May 13, 2002; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m., May 13, 2002; hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704.

The airport sponsor's duly appointed committee will review all proposals and may select three to five firms for interviews. The final consultant selection by the sponsor's committee will be made following the completion of the review of proposals and/or interviews.

The airport sponsor reserves the right to reject any or all proposals, and to re-open the consultant selection process.

If there are any questions, please contact Linda Howard, Director, Planning and Programming or the designated project manager at the Aviation Division, Texas Department of Transportation, at (512) 416-4500 or 1-800-68-PILOT.

TRD-200202201
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 10, 2002

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Request for Qualifications - Aviation

The following Airport Sponsor listed, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT's Aviation Division will solicit and receive qualifications for professional engineering design services as described in the project scope for each project following:

Airport Sponsor: City of San Marcos, San Marcos Municipal Airport. TxDOT CSJ No. 0214SMRCO. Project Scope: Provide engineering/design services to reconstruct sections of Runway 12-30; rehabilitate Runway 12-30; mark Runway 12-30; rehabilitate and mark Taxiways A, B, C, D, E, & F. Project Manager: John Wepryk.

Interested firms shall utilize the Form 439 titled "Aviation Engineering Services Questionnaire" (August 2000 version). The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm

Download the file from the selection "Engineer Services Questionnaire Packet." The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word, Version 7, document).

Two completed, unfolded copies of Form 439 (August 2000 version), for each project of interest to the engineer must be postmarked by US Mail by midnight May 02, 2002 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on May 3, 2002; overnight address: TxDOT, Aviation Division, 200 E. Riverside

Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m., May 3, 2002 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

EMAIL DELIVERY OPTION Your form 439 may be emailed to TxDOT at email address:

AVNRFQ@dot.state.tx.us

Emails must be received by midnight on May 2, 2002. Received times will be determined by the marked time and date as the E-mail is received into the TxDOT network system. Please allow sufficient time to ensure delivery into the TxDOT system by the deadline. After receipt, you will be electronically notified of receipt by return email. Return notification may be delayed by a day or two, as the forms will be opened and printed at the TxDOT offices. Before emailing the form, please confirm your completion of the form. TxDOT will directly print the transmittal and not change the formatting or information contained on the form following receipt. Signatures will not be required on electronically submitted forms. You may type in the responsible party's name on the signature line.

Each airport sponsor's duly appointed committee will review all professional qualifications and may select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantage Business Enterprise (DBE) participation or Historically Underutilized Business (HUB) participation, design schedule, and other project matters, prior to the final selection process. The final engineer selection by the sponsor's committee will generally be made following the completion of review of Request for Qualification statements/proposals and/or engineer interviews. Each airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or the designated Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200202200
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 10, 2002

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The University of Texas System

Notice of Intent to Procure Consulting Services

This notice is being posted in accordance with Section 2254.029 of the *Texas Government Code.*

The University of Texas System will be seeking competitive sealed proposals to hire a consultant to advise the U. T. System on strategies related to planning for a revised mission, role, and scope and to assist the University in identifying qualified potential candidates for the position of President for The University of Texas Health Center - Tyler that best fits that mission, role, and scope.

The award for the services will be made by a review of competitive sealed proposals that will result in the best value to the University. The U. T. System will base its choice on demonstrated competence, knowledge, qualifications, and on the reasonableness of the proposed fee for the service.

Parties interested in a copy of the Request for Proposal should contact:

Ms. Kitt Krejci

Assistant Director

Office of Business and Administrative Services

The University of Texas System

201 West 7th Street, Suite 424

Austin, Texas 78701

Voice: 512/499-4366

Fax: 512/499-4576

Email: Kittkrejci@utsystem.edu

The proposal submission deadline will be Friday, May 3, 2002, at 3:00 p.m. Central Standard Time.

TRD-200202214
Francie Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: April 10, 2002

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 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 "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 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/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), 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 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

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