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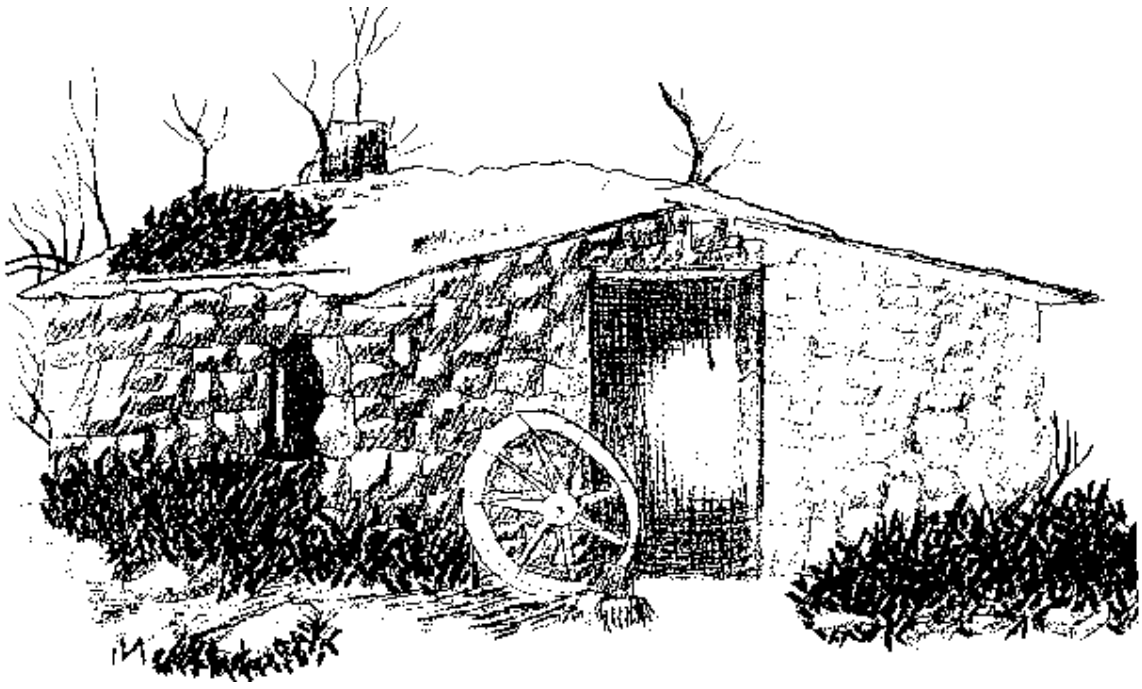

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7th grade
Lindsay ISD

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

Opinions

Opinion No. JC-0328

The Honorable Michael P. Fleming, Harris County Attorney, 1019 Congress, 15th Floor Houston, Texas 77002-1700

Re: Whether penalties and interest on delinquent property taxes are canceled in whole or in part if no notice has been sent as section 33.04(b) of the Tax Code requires (RQ-0255-JC)

S U M M A R Y

A taxpayer who owes property tax that is delinquent more than five years but who has not received proper notice under section 33.04(b) of the Tax Code is not responsible to pay any penalty and interest until "the first day of the first month that begins at least 21 days after the" tax collector delivers proper notice. See Tex. Tax Code Ann. § 33.04(b), (e) (Vernon Supp. 2000); see also id. § 33.04(f) (defining delivery). Any penalty and interest that has accrued between the time the tax became delinquent and the first day of the first month that begins at least twenty-one days after the delivery of proper notice is canceled. This conclusion assumes that the legislature may, without violating article III, section 55 of the Texas Constitution, release and extinguish a property owner's obligation to pay interest that has accrued since August 26, 1991. See Act of May 27, 1991, 72d Leg., R.S., ch. 836, §§ 5.3, 5.6, 1991 Tex. Gen. Laws 2890, 2893, 2894.

Opinion No. JC-0329

The Honorable Chris D. Prentice, Hale County Attorney, Hale County Attorney's Office, 500 Broadway, Suite 80, Plainview, Texas 79072

Re: Whether a county commissioner may use county property to open and close graves in a private cemetery (RQ-0275-JC)

S U M M A R Y

An individual county commissioner may not use county labor and equipment to open and close graves in a private cemetery. A commissioners court, acting on behalf of the county, may use county labor and equipment solely for a public purpose.

Opinion No. JC-0330

The Honorable Scott W. Rosekrans, San Jacinto County Criminal District Attorney, P.O. Box 430, Coldspring, Texas 77331

Re: Whether the wife of the chairman of the San Jacinto County Republican Party is prohibited from serving as a judge on the Early Voting Ballot Board (RQ-0276-JC)

S U M M A R Y

The wife of the chairman of the San Jacinto County Republican Party, the chairman not being an opposed candidate for that office, is not prohibited by section 32.054 of the Election Code from serving as a judge on the Early Voting Ballot Board.

Opinion No. JC-0331

The Honorable J.E. "Buster" Brown, Chair, Committee on Natural Resources, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068

Re: Whether chapter 283 of the Local Government Code requires a municipality to apply a certificated telecommunications provider excavation permit ordinance to entities other than certificated telecommunication providers (RQ-0277-JC)

S U M M A R Y

Chapter 283 of the Local Government Code does not require a municipality to apply a certificated telecommunications provider excavation permit ordinance to entities other than certificated telecommunications providers. Additionally, chapter 283 does not require identical permits or regulations for certificated telecommunication providers and all other entities that excavate in the municipal rights-of-way.

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

TRD-200100408
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: January 22, 2001

♦ ♦ ♦

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 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.803

The Texas Credit Union Commission proposes republication of proposed amendments to §91.803 relating to investment limits and prohibitions. The proposal was first published in the May 5, 2000, issue of the *Texas Register* (25 TexReg 3892) and withdrawn effective November 3, 2000. It was republished in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10861). Notice of that version's withdrawal is published elsewhere in this issue.

The amendments, if adopted, will impose new, more stringent limitations on the maximum investments in any one security and specifically prohibits credit unions from engaging in certain types of investment activities. The amendments provide a specific exception for investments in a single financial institution that serve as an investing credit union's designated depository institution (i.e. at which the operating accounts are located), as well as for loan participations purchased from other credit unions. Lastly, the rule, while listing prohibited investments, gives the commissioner the ability to authorize a pilot investment program which could result in a credit union engaging in otherwise prohibited investments if a need and expertise to do so is demonstrated.

The amendments to the rule are being proposed as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 91 rules was published in the February 4, 2000, issue of the *Texas Register* (25 TexReg 823) for the purpose of accepting public comment. No comments were received. However, the Commission determined from its initial review of Chapter 91 that a need continues to exist for this rule as amended for safety and soundness purposes.

Two comment letters were received on the proposal's second publication for comment by Dallas Teachers Credit Union and EECU. Dr. Charles Idol, a credit union consultant, commented on the rule at the Legislative Advisory Committee's public meeting held on December 12, 2000. His comments were also provided in writing. Based on the nature of those comments, the Commission has determined that substantive modifications to subsection (b) are necessary and should be put out for comment.

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

Ms. Pool has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be increased flexibility for credit unions in dealing with their primary repository institution without compromising the safety and soundness of those investments. Credit union management will also have a comprehensive list of prohibited investments for easier reference. There is no anticipated effect on small businesses as a result of adopting the proposal. There is no economic cost anticipated to entities that are required to comply with the amendment as a result of its future adoption.

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

The amendments are proposed under the provisions of §124.351 of the Texas Finance Code that are interpreted to authorize the Credit Union Commission to adopt rules authorizing other investments permissible for credit unions that are responsive to changes in economic conditions or competitive practices and to the need for safety and soundness of credit union investments.

The specific section affected by this proposed amendments is Texas Finance Code §124.351.

§91.803. Investment Limits and Prohibitions [~~in Other Financial Institutions~~].

(a) Limitations. A credit union may not invest an amount that is greater than 50% of its reserves and undivided earnings with any obligor or related obligors except for investments issued by or fully guaranteed as to principal and interest by the United States or an agency, enterprise, corporation, or instrumentality of the United States, or in any trust or trusts established for investing directly or collectively in such securities, obligations, or instruments, or the purposes of this section, obligor is defined as an issuer, trust, or originator of an investment, including the seller of a loan participation. [~~A credit union may invest in certificates of deposit and passbook type accounts issued by an insured state or national bank or other similar institution, provided that the total investments in any one institution shall not exceed 10% of the capital and surplus of that institution, unless such investments are 100% secured by securities issued or guaranteed by the United States or any agency or instrumentality thereof.~~]

(b) Notwithstanding subsection (a) of this section:

(1) A credit union's board of directors, as a single exception to this section, will be allowed to establish the aggregate credit-risk exposure to a single financial institution approved by the board as the credit union's designated depository based on the credit union's liquidity trends and funding needs as documented by its asset/liability management policy, provided that the credit union has appropriately documented its due diligence to demonstrate that the investments in this designated depository do not pose a safety and soundness concern.

(2) A credit union may invest in loan participations purchased from other credit unions provided the loan complies with the purchasing credit union's loan policy and credit risk standards.

(c) Prohibited Activities.

(1) Definitions.

(A) Adjusted trading--selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

(B) Collateralized mortgage obligation (CMO)--a multi-class bond issue collateralized by mortgages or mortgage-backed securities.

(C) Fair value--the price at which a security can be bought or sold in a current, arms length transaction between willing parties, other than in a forced or liquidation sale.

(D) Real estate mortgage investment conduit (REMIC) --a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(E) Residual interest--the remainder cash flows from a CMO/REMIC, or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

(F) Short sale--the sale of a security not owned by the seller.

(G) Stripped mortgage-backed security (SMBS)--a security that represents either the principal-only or the interest-only portion of the cash flows of an underlying pool of mortgages or mortgage-backed securities. Some mortgage-backed securities represent essentially principal-only cash flows with nominal interest cash flows or essentially interest-only cash flows with nominal principal cash flows. These securities are considered SMBSs for the purposes of this rule.

(H) Zero coupon investment--an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

(2) A credit union may not:

(A) Purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate agreements;

(B) Engage in adjusted trading or short sales;

(C) Purchase stripped mortgage backed securities, residual interests in CMOs/REMICs, mortgage servicing rights, commercial mortgage related securities, or small business related securities;

(D) Purchase a zero coupon investment with a maturity date that is more than 10 years from the settlement date;

(E) Purchase investments whereby the underlying collateral consists of foreign receivables or foreign deposits; or

(F) Purchase securities used as collateral by a safekeeping concern.

(d) Investment pilot program. The commissioner may authorize a credit union to engage in other types of investment activities under an investment pilot program. In approving a credit union's request to participate in a pilot program, the commissioner, in the exercise of discretion, may condition or limit the investment activity to be conducted. A credit union wishing to participate in an investment pilot program shall submit a request that addresses the following items:

(1) Board policies approving the activities and establishing limits on them;

(2) A complete description of the activities, with specific examples of how the credit union will conduct them and how they will benefit the credit union;

(3) A demonstration of how the activities will affect the credit union's financial performance, risk profile, and asset-liability management strategies;

(4) Examples of reports the credit union will generate to monitor the activities;

(5) A projection of the associated costs of the activities, including personnel, computer, audit, etc.;

(6) A description of the internal systems to measure, monitor, and report the activities, and the qualifications of the staff and/or official(s) responsible for implementing and overseeing the activities; and

(7) The internal control procedures that will be implemented, including audit requirements.

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

Filed with the Office of the Secretary of State, on January 19, 2001.

TRD-200100371

Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 837-9236

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.476

The Public Utility Commission of Texas (commission) proposes new §25.476, relating to Labeling of Electricity with Respect to Fuel Mix and Environmental Impact. The proposed new rule supplements §25.475, relating to Information Disclosures to Residential and Small Commercial Customers, and the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §39.101, Customer Safeguards. Project Number 22816 has been assigned to this proceeding.

This rulemaking was initiated on July 21, 2000, in the context of Project Number 22255, *Rulemaking Proceeding for Customer Protection Rules for Electric Restructuring Implementing SB 7 and SB 86*. After conducting several fact-gathering workshops, commission staff prepared a strawman rule for discussion at a workshop that was held on November 14, 2000, at the commission's offices in Austin, Texas. Following the workshop, interested parties submitted informal written comments.

Commission staff has considered all of those informal comments and now proposes new §25.476. When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

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

1. Should the commission require a competitive retailer to disclose the megawatt-hours (MWh) of electricity it sells under each of its various products, as proposed under subsection (g)(7)(A), if those products are marketed with different fuel mix and environmental disclosures? If not, how should the commission verify that a competitive retailer has not sold more electricity under a "green" or "renewable" label than it obtained from its suppliers?

2. The proposed rule allows electricity generated outside of Texas to be included in a competitive retailer's fuel and environmental disclosure if there is a supply contract between the competitive retailer and the owner of the out-of-state generation facility (subsection (g)(2)). However, subsection (f) excludes non-Texas facilities from the proposed certificates program. Does this allow a competitive retailer sufficient means to authenticate its use of out-of-state generation to meet customer demand in Texas?

3. Subsection (d) of the proposed rule sets forth a general principle for marketing electricity products as "green" or "renewable." Should the proposed rule set such standards, and if so, what should they be? If there is to be a fixed benchmark for marketing an electricity product as "green," how much of the fuel mix should be renewable or natural gas? How much should come from renewable fuels before it can be sold to customers as "renewable"?

4. PURA §39.262 requires affiliated power generation companies (PGCs) to auction entitlements to 15% of their generating capacity. Section 25.381, relating to Capacity Auctions, establishes four kinds of capacity auction products, three of which are fueled by natural gas and the other by coal, lignite, and nuclear energy. How should the proposed labeling rule treat the fuel mix and associated emissions of generation that a retail electric provider (REP) acquires under capacity auctions?

David Hurlbut, Economic Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed section is in effect the fiscal implications for state government as a result of enforcing or administering the section will be minimal, as new costs will be offset by transaction fees assessed on optional activities created by this proposed section. Mr. Hurlbut has determined that there will be no fiscal implications for local government as a result of enforcing or administering the section, except in the case of a municipally owned utility that has opted into competition, is operating outside its certificated service area, and chooses to use some of the optional provisions created by this proposed section.

Mr. Hurlbut 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 an orderly, fair, and efficient market for retail electric services that promotes competition and ensures that customers have adequate information to make informed choices. There are no anticipated adverse effects on small businesses or micro-businesses as a result of enforcing this section. There are no anticipated additional economic costs to persons who comply with the minimum requirements of this section as proposed; optional provisions of this section simultaneously introduce potential costs and potential benefits that are left to the market to resolve.

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

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the

proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 22816.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2001) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.101 which grants the commission authority to establish various specific protections for retail customers, including entitling customers to have information concerning the environmental impact of certain production facilities, and information sufficient to make an informed choice of electric service provider; §39.9044 which grants the commission authority to establish rules allowing and encouraging competitive retailers to market electricity generated using natural gas produced in this state as environmentally beneficial; and PURA Chapter 17, Subchapter A, which authorizes the commission to adopt rules to protect retail customers and requires the commission to promote public awareness of changes in the electric utility market.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.101, 39.9044, and Chapter 17, Subchapter A.

§25.476. Labeling of Electricity with Respect to Fuel Mix and Environmental Impact.

(a) Purpose. The purpose of this section is to establish the procedures by which competitive retailers calculate and disclose information on the Electricity Facts label pursuant to §25.475 of this title (relating to Information Disclosures to Residential and Small Commercial Customers).

(b) Application. This section applies to all competitive retailers and affiliated retail electric providers (affiliated REPs) as defined in §25.471(d) of this title (relating to General Provisions of Customer Protection Rules). Additionally, the reporting requirements established in this section apply to all power generation companies (PGCs) as defined in §25.5 of this title (relating to Definitions).

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

(1) Authenticated generation - Generated electricity with quantity, fuel mix, and environmental attributes accounted for by a retired certificate of generation, retired renewable energy credit (REC), or supply contract between a competitive retailer and a PGC.

(2) Certificate of generation - A tradable instrument issued by a PGC designating the megawatt-hours (MWh), fuel and environmental attributes of a specific quantity of production from a specific electricity generating facility.

(3) Default scorecard - The estimated fuel mix and environmental impact of all electricity in Texas that is not authenticated as defined in paragraph (1) of this subsection.

(4) Electricity Facts label - A standardized format, as described in §25.475(e) of this title, for disclosure information and contract terms made available to customers to help them choose a provider and an electricity product.

(5) Electricity product - A product offered by a competitive retailer or affiliated REP to a customer for the provision of retail electric service under specific terms and conditions, and marketed under a specific Electricity Facts label.

(6) Environmental impact - The information that is to be reported on the Electricity Facts label under the heading "emissions and waste per kWh generated," comprising indicators for carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear reactor fuel. For the purposes of this section, environmental impact refers specifically to emissions and waste from generating facilities located in Texas, except as provided in subsection (g)(3) of this section.

(7) Fuel mix - The information that is to be reported on the Electricity Facts label under the heading "sources of power generation." The fuel mix shall be the percentage of total MWh obtained from each of the following fuel categories: coal and lignite, natural gas, nuclear, renewable energy, and other known sources. Renewable energy shall include power defined as renewable by the Public Utility Regulatory Act (PURA) §39.904(d).

(8) New product - An electricity product during the first year it is marketed to customers.

(9) Other generation sources - A competitive retailer's or affiliated REP's supply of generated electricity that is not accounted for by a direct supply contract with a PGC.

(10) PGC scorecard - The aggregated fuel mix and environmental impact of all the PGC's generating facilities located in Texas, adjusted by subtracting any generation for which a REC has been issued or a certificate of generation has been retired.

(11) Renewable energy credit (REC) - A tradable instrument representing the generation attributes of one MWh of electricity from renewable energy sources, as authorized by PURA §39.904 and implemented under §25.173 of this title (relating to the Goal for Renewable Energy).

(12) Renewable energy credit offset (REC offset) - A REC offset represents one MWh of renewable energy that may be used in place of a REC, according to the provisions of §25.173 of this title.

(d) Marketing standards for "green" and "renewable" electricity products.

(1) Any marketing statement made by a competitive retailer or affiliated REP describing an electricity product as "green" must prominently include the product's combined natural gas and renewable fuel mix percentage consistent with its Electricity Facts label. A product may not be marketed as "green" without reference to a fuel mix percentage.

(2) Any marketing statement made by a competitive retailer or affiliated REP describing an electricity product as "renewable" must prominently include the product's renewable fuel mix percentage as shown on its Electricity Facts label and may not include the product's natural gas fuel mix percentage. A product may be marketed as "renewable" without reference to a fuel mix percentage only if the product's authenticated fuel mix is 100% renewable.

(e) Compilation of scorecard data.

(1) The commission will create and maintain a database of PGC scorecards reflecting PGCs' company-wide fuel mix and environmental impact data based on generating facilities located in Texas. These scorecards shall be used by competitive retailers and affiliated REPs in determining the fuel and environmental attributes of electricity sold to retail customers.

(2) PGC scorecards will be published on the commission's internet web site beginning July 1, 2001, and shall state:

(A) MWh obtained from each fuel source (coal and lignite, natural gas, nuclear, renewable energy, and other sources), excluding generation for which a REC has been issued, and the corresponding percentages of total MWh;

(B) tons of carbon dioxide, nitrogen oxides, particulates, sulfur dioxide, and spent nuclear fuel produced, excluding emissions from generation for which a REC has been issued, and the corresponding emission rates in tons per MWh; and

(C) sources from which data were obtained.

(3) Not later than March 1 of each year, the commission will update all PGC scorecards to reflect:

(A) changes in generation facilities' emission rates and fuel use;

(B) new plants in operation and the retirement of plants previously in operation; and

(C) certificates of generation issued for the previous calendar year by the PGC that a competitive retailer or affiliated REP intends to retire to authenticate fuel mix and environmental impact disclosures.

(4) Not later than March 1 of each year, the commission will calculate a default scorecard to account for all electric generation in the state that is not authenticated as defined in subsection (c)(1) of this section.

(A) The default fuel mix shall be the percentage of total MWh of generation not authenticated that has been obtained from each fuel type.

(B) Default emission rates for each environmental criterion shall be calculated by dividing total tons of emissions or waste by total MWh, using data only for generation not authenticated.

(C) The default scorecard shall be published on the commission's internet web site beginning July 1, 2001.

(f) Certificates of generation. At its option, a PGC may issue and sell certificates of generation representing the fuel mix and environmental attributes of a specific generating facility that it operates in Texas. Certificates of generation may be traded by competitive retailers, affiliated REPs, power marketers, or any other party, and may be retired by competitive retailers and affiliated REPs to authenticate the fuel mix and environmental attributes of electricity sold to retail customers.

(1) The commission shall appoint a program administrator who shall:

(A) establish a registry of certificates issued by PGCs;

(B) maintain public information on its website that provides trading program information to interested buyers and sellers of certificates;

(C) create an exchange procedure where persons may purchase and sell certificates anonymously;

(D) perform audits of generators participating in the certificates program to verify the accuracy of production data reported on registered certificates;

(E) inform participating PGCs of the certificates that have been submitted for retirement by competitive retailers and affiliated REPs;

(F) collect user fees sufficient for the program to be self-sustaining; and

(G) submit an annual report to the commission describing the number and characteristics of certificates issued by PGCs, number and characteristics of certificates retired by competitive retailers, and other pertinent information regarding the operation of the certificates program.

(2) A certificate shall be based on electricity generated prior to the certificate issue date. A certificate may cover any length of time within a single calendar year. Certificates for electricity generated during a given calendar year must be issued before February 8 of the following year.

(3) A certificate shall account for all of the facility's electricity output for the period covered by the certificate.

(4) No quantity of generation may be included in more than one certificate.

(5) Certificates shall not represent electricity output associated with a REC or a REC offset.

(6) Certificates may be sold as independent instruments or in conjunction with supply contracts between the issuing PGC and a competitive retailer. If a PGC sells certificates to a retailer in conjunction with a supply contract, and the retailer chooses to resell the certificates to another party while retaining the electricity, the retailer shall use the PGC's company scorecard to describe the attributes of the retained electricity.

(7) Each certificate must include the following information specific to the generation for which it has been issued:

(A) name of the issuing PGC;

(B) unique identification for the generating facility, including meter identification number;

(C) date of issue;

(D) time and date of the beginning of the period covered by the certificate;

(E) time and date of the end of the period covered by the certificate;

(F) MWh metered during the period covered by the certificate;

(G) types of fuel used during the period covered by the certificate;

(H) the amount (in tons) of carbon dioxide, nitrogen oxides, sulfur dioxide, particulates, and spent nuclear fuel produced by the facility as a result of generating the MWh represented by the certificate; and

(I) an affidavit that the information contained in the certificate is true and accurate.

(8) A PGC shall register each of its certificates of generation with the program administrator. Certificates not registered by February 8 following the reporting year shall be invalid.

(9) For the purposes of calculating its fuel and environmental impact disclosures for its Electricity Facts labels, a competitive retailer or affiliated REP may purchase and retire certificates of generation to account for other generation sources as defined in subsection (c)(9) of this section. If all of a competitive retailer's or affiliated REP's other generation sources are represented by certificates, the retailer may retire additional certificates to represent power obtained under a supply contract with any PGC that otherwise would have been represented by the PGC's scorecard. All certificates that a competitive retailer or affiliated REP intends to use to authenticate its disclosures must be included in the supply report required under subsection (g)(1) of this section.

(10) Not later than February 15 of each year, the program administrator shall inform participating PGCs of the certificates that competitive retailers and affiliated REPs intend to retire. Not later than March 1 of each year, each PGC that has issued certificates shall provide the commission with an adjusted PGC scorecard. The adjusted scorecard shall be based on the same data used by the commission in determining the PGC's unadjusted scorecard and shall exclude:

(A) all certificated generation that a competitive retailer or affiliated REP intends to retire; and

(B) generation represented by a REC or a REC offset.

(11) A certificate is not valid if the issuing PGC has failed to register the certificate or has failed to provide the commission with an adjusted scorecard as stipulated in paragraphs (8) and (10) of this subsection.

(g) Calculating fuel mix and environmental impact disclosures.

(1) Not later than February 8 of each year, each competitive retailer and affiliated REP shall report to the commission:

(A) all PGCs and other entities from which the competitive retailer or affiliated REP purchased electricity for delivery to customers during the previous calendar year and the MWh obtained from each supplier, with sources that together supplied less than 5.0% of the competitive retailer's electricity combined and treated as other generation sources;

(B) MWh sold under each electricity product offered by the competitive retailer or affiliated REP during the previous calendar year; and

(C) all certificates of generation that the competitive retailer or affiliated REP intends to retire to authenticate fuel mix and environmental impact disclosures for the previous calendar year.

(2) Not later than April 1 of each year, each competitive retailer and affiliated REP shall calculate its fuel mix and environmental impact for the previous calendar year, concurrent with settlement period established in §25.173(l) of this title. Calculations shall include a disclosure that aggregates all electricity products offered by the competitive retailer, and specific disclosures for each electricity product. Disclosures provided on an Electricity Facts label shall describe a specific electricity product sold to customers during the calendar year preceding the settlement period, except as provided in paragraph (9) of this subsection.

(3) For power purchased from sources outside of Texas, a supply contract between a competitive retailer or affiliated REP and the owner of a generating facility may be used to authenticate fuel mix and environmental impact claims.

(A) The contract must identify a specific generating facility from which the competitive retailer or affiliated REP is to obtain electricity.

(B) The competitive retailer or affiliated REP shall include fuel mix and environmental impact information for the specified generating facility in its report to the commission pursuant to paragraph (1) of this subsection. Data shall come from the same sources used by the commission as reported pursuant to subsection (e)(2)(C) of this section. If the generating facility is not included in any database used by the commission, the retailer and the generating facility owner may provide other comparable public data that have been reported to a federal or state agency for the specified facility.

(4) For the purposes of disclosures on the Electricity Facts label, the retirement of RECs shall be the only method of authenticating generation for which a REC has been issued in accordance with §25.173 of this title. The retirement of a REC shall be equivalent to one megawatt-hour of generation from renewable resources. The use of RECs to authenticate the use of renewable fuels on the Electricity Facts label must be consistent with REC account information maintained by the renewable energy credits trading program administrator. A REC offset may be used to authenticate the renewable attributes of its associated supply contract.

(5) A competitive retailer's or affiliated REP's company fuel mix shall be the MWh-weighted average of the fuel mixes represented by its PGC scorecards, retired certificates of generation, out-of-state supply contracts, retired RECs, and the default scorecard. MWh from generation sources not authenticated in accordance with this section shall be represented by the fuel mix of the default scorecard.

(6) A competitive retailer's or affiliated REP's company environmental impact shall be the MWh-weighted average of the emission rates represented by its PGC scorecards, retired certificates of generation, out-of-state supply contracts, retired RECs, and the default scorecard. Emissions of MWh from generation sources not authenticated in accordance with this section shall be represented by the default scorecard. The weighted average of each category of environmental impact shall then be indexed by dividing it by the corresponding state average emission rate and multiplying the result by 100.

(7) If a competitive retailer or affiliated REP offers multiple electricity products that differ with regard to the fuel mix and environmental impact disclosures presented on the Electricity Facts labels:

(A) the retailer shall apportion its company fuel mix and emission rates consistent with the product-specific MWh sales reported under paragraph (1)(B) of this subsection; and

(B) each label shall reflect the number of RECs that the competitive retailer or affiliated REP has retired to satisfy the requirements of §25.173(h) of this title, relating to the allocation of REC purchase requirement to competitive retailers; additional RECs that are retired voluntarily may be applied to any electricity product offered by the company, except as limited by paragraph (8) of this subsection.

(8) An affiliated REP shall use only one fuel mix and environmental impact disclosure for all price-to-beat products sold to residential and small commercial customers of its affiliated transmission and distribution utility.

(9) A competitive retailer or affiliated REP may anticipate the fuel mix and environmental impact of a new product and adjust the disclosures for its existing products to account for the new product's projected sales.

(A) On the fuel mix disclosure of a new product's Electricity Facts label, the heading "Sources of power generation" shall be replaced with "Projected sources of power generation."

(B) On the environmental impact disclosure of a new product's Electricity Facts label, the heading "Emissions and waste per kWh generated" shall be replaced with "Projected emissions and waste per kWh generated."

(C) The competitive retailer or affiliated REP shall exercise due diligence in its acquisition of purchased power throughout the year so that the fuel mix and environmental impact authenticated at the end of the year is at least as favorable as what the retailer projected.

(D) Nothing in this subsection shall be construed as protecting a competitive retailer or affiliated REP against prosecution under deceptive trade practices statutes.

(E) A projected fuel mix may be used only for new products.

(h) Special provisions for the first year of competition. Each competitive retailer and affiliated REP during the first year of competition, beginning January 1, 2002, and ending December 31, 2002, shall estimate the fuel mix and environmental impact of its electricity products offered as follows:

(1) affiliated REPs shall estimate their fuel mixes and environmental impacts by using the company fuel mixes and emission rates of their affiliated PGCs; and

(2) all other competitive retailers shall project the fuel mix and environmental impacts of products they offer during 2002, and shall exercise due diligence in their acquisition of purchased power throughout the year so that the fuel mix verified at the end of the year is at least as favorable as what was projected.

(i) Compliance and enforcement.

(1) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, is in violation of this section, the commission shall order the REP to take corrective action as necessary, and the REP may be subject to administrative penalties pursuant to PURA §15.023 and §15.024. If the commission finds that an electric cooperative or a municipally owned utility is in violation, it shall inform the cooperative's board of directors and general manager, or the municipal utility's general manager and city council, and may issue an advisory to local news media.

(2) If the commission finds that a REP, other than a municipally owned utility or an electric cooperative, repeatedly violates this section, and if consistent with the public interest, the commission may suspend, restrict, deny, or revoke the registration or certificate, including an amended certificate, of the REP, thereby denying the REP the right to provide service in this state.

(3) The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the office of the attorney general in order to ensure consistent treatment of specific alleged violations.

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 January 17, 2001.

TRD-200100336
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

PART 26. TEXAS BOARD OF LICENSURE FOR PROFESSIONAL MEDICAL PHYSICISTS

CHAPTER 601. MEDICAL PHYSICISTS

The Texas Board of Licensure for Professional Medical Physicists (board) with the approval of the Texas Department of Health proposes amendments to §§601.1- 601.17 and 601.19 - 601.21, the repeal of §601.18, new §601.18 and §601.22 concerning the licensure of medical physicists. Specifically the amendments cover purpose and scope; definitions, the board's operations, fees, exemptions; application procedures; reciprocity; eligibility for examination, licensure issuance and license holder requirements; license renewal; application and renewal processing times; petition for adoption of rules; code of ethics; criminal backgrounds; violations, complaints, and subsequent actions; surrender of license; suspension of license for failure to pay child support; continuing education requirements; and medical physics specialities and scope of practice. The repeal covers formal hearing procedures. The new sections proposed cover formal hearing procedures and provisional license.

The Government Code, §2001.039 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). Title 22 Texas Administrative Code (TAC), Chapter 601 which includes §§601.1-601.21 has been reviewed in its entirety and the board has determined that reasons for adopting the sections continue to exist.

The Notice of Intention to Review the sections as required by Government Code, §001.039 was published in the *Texas Register* on September 17, 1999 (24 TexReg 7774). No comments were received in response to the notice.

The board held rules committee meetings to conduct a preliminary review of its rules. As a result of these meeting, the board is amending its existing rules located at Title 22, TAC, Chapter 601 to satisfy the requirements of Government Code, §2001.039; to implement provisions of House Bill (HB) 2085, 76th Legislature, 1999; delete language that is not longer necessary; add definitions for temporary and provisional license; add fees for provisional licenses; make typographical corrections; amend the rules pursuant to the codification of the Medical Physics Practice Act into the new Texas Occupations Code, Chapter 602; and update and clarify existing language. Additional, existing §601.18 is repealed and new §601.18 adopted to reflect provisions of HB 2085 concerning formal hearing procedures.

L. Jann Melton-Kissel, Director of Budget and Legislative Policy Analysis, Bureau of Licensing and Compliance, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal impact on state government for each year of the first five years the amendments as proposed are in effect. There will be no fiscal implication for local government.

Ms. Melton-Kissel has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will continue to assure the appropriate regulations of medical physicists and to continue to identify competent medical physicists. Small businesses and micro-businesses who require medical physics services would incur a cost for the services provided. The cost to persons required to comply with the section to obtain a provisional license will be between $125 and $250 depending on the number of specialty areas included on their application. There will be no impact on local employment.

Comments on the proposal may be submitted to Jeanette Hilsabeck, Executive Secretary, Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6655. Comments will be

accepted for 30 days following publication of the proposal in the *Texas Register*.

22 TAC §§601.1-601.19, 601.21, 601.22

The amendments and new sections are proposed under Texas Occupations Code, §602.151, which requires the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary to properly perform its duties under the Act.

The amendments and new sections affect the Occupations Code, Title 3. Health Professions, Subtitle K, Chapter 602; Texas Civil Statutes, Article 4512n; and Government Code, §2001.039.

§601.1. Purpose and Scope.

(a) Purpose.

(1) These sections in this chapter are intended to implement the provisions of the Texas Medical Physics Practice Act (Act), Texas Occupations Code, Chapter 602 and portions of Texas Civil Statutes, Article 4512n, concerning the regulation and licensure of medical physicists, in that:

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

(2) (No change.)

(b) Scope. These sections cover definitions of words and terms used in this chapter; establish general policies governing the operation of the Texas Board of Licensure for Professional Medical Physicists (board); establish a schedule of fees, criteria for exemptions, and application procedures for licensure as a medical physicist; establish qualification requirements for licensure [~~without examination and licensure~~] by examination; establish eligibility requirements a person must meet for obtaining a temporary license; establish requirements for license issuance and license holder responsibilities, and license renewal; establish the time periods and procedures the board shall follow in processing applications for or renewal of a license; delineate the board's procedures in handling a petition for adoption of a rule; establish a code of ethics; establish guidelines and criteria on eligibility of persons with criminal backgrounds to obtain a license; establish standards for handling violations, complaints and subsequent actions; sets procedures a licensee must follow for surrender of a license; and establish procedures for [~~a~~] holding formal hearings; establish standards for suspension of license for failure to pay child support; establish continuing education requirements; establish medical physics specialties and scope of practice; and establish standards for issuance of a provisional license.

§601.2. Definitions.

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

(1) Act - The Texas Medical Physics Practice Act (Act), Texas Occupations Code, Chapter 602 and portions of Texas Civil Statutes, Article 4512n, concerning the licensure and regulation of professional medical physicists.

(2) APA - The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(3) [~~(2)~~] Applicant - A person who applies to the Texas Board of Licensure for Professional Medical Physicists (board) for a license [~~or temporary license~~].

[~~(3) APTRA - The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a].~~

(4) Board - The Texas Board of Licensure for Professional Medical Physicists.

(5) Commissioner - The commissioner of health.

(6) Department - The Texas Department of Health.

(7) Diagnostic radiological physics - The branch of medical physics that deals with the diagnostic application of roentgen rays, gamma rays from sealed sources, ultrasonic radiation, or radiofrequency radiation and the use of equipment associated with the production and use of that radiation.

[~~(8) Examination - The licensure test which consists of an open book examination for all specialties on Texas radiation control rules and one of the specialty examinations described in §601.8(d) of this title (relating to Licensure by Examination).~~]

[~~(9) Hearing examiner - An attorney duly designated and appointed by the chair of the board who conducts hearings under this chapter on behalf of the board.~~]

(8) [~~(10)~~] License - A certificate issued by the board authorizing the license holder to engage in the practice of medical physics [~~and~~] including [~~includes~~] the temporary license and provisional license [~~the annual license~~] unless the context clearly indicates otherwise.

(9) [~~(11)~~] Licensed medical physicist - A person who holds a license issued under the Act.

(10) [~~(12)~~] Medical health physics - The branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

(11) [~~(13)~~] Medical nuclear physics - The branch of medical physics that deals with the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes, and the use of equipment associated with the production and use of radionuclides.

(12) [~~(14)~~] Medical physics - The branch of physics that is associated with the practice of medicine; and includes, but is not limited to, the field of radiological physics.

(13) [~~(15)~~] Physician - A person licensed to practice medicine by the Texas State Board of Medical Examiners under Texas Occupations Code, Chapter 152 [~~Texas Civil Statutes, Article 4495b~~], or if out-of-state a person who holds a valid license to practice medicine in that state or territory.

(14) [~~(16)~~] Practice of medical radiological physics- The use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive radiation. The term includes radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation-emitting equipment and radiopharmaceuticals, and consultation with a physician to assure accurate radiation dosage to a specific patient.

(15) [~~(17)~~] Practitioner - A doctor of medicne, osteopathy, podiatry, dentistry, or chiropractic who is licensed in this state and who prescribes radiologic procedures for other persons.

(16) Provisional license - An authorization to practice medical physics for a period not to exceed 180 days for individuals currently licensed or certified in another juridiction.

(17) [~~(18)~~] Quality assurance - An all encompassing term that includes data recording, patient management, outcome analysis and equipment performance monitoring.

(18) [~~(19)~~] Quality control - A subset under quality assurance and concerns monitoring the performance of imaging, treatment and associated radiological equipment.

(19) [~~(20)~~] Radiation - Ionizing and/or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

(20) [~~(21)~~] Radiological physics - The branch of medical physics that includes diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, and medical health physics.

(21) [~~(22)~~] Radiological procedure - A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures. The activities and services which fall within the definitions in the Act of the practice of medical radiological physics, diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics are not radiological procedures. The activities and services which fall within the Texas Regulations for Control of Radiation, 25 TAC §289.227(k), (q), (o)(3)(D), (p)(3) and §289.229(h)(2)(D)(i)-(iii) and (h)(3)(C)(iv) [~~§289.227(h); (q); (r)(3)(D); (v)(3); (x)(4)(A), (B), and (C); and (y)(3), are not radiological procedures~~].

(22) [~~(23)~~] Supervision -To oversee the work of a medical physicist holding a temporary license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement [~~it is expected that~~] the supervisor shall [~~will~~] be responsible [~~accept responsibility~~] for the temporary licensee's work [~~performed~~] during this period. An individual is considered to be supervised if:

(A) the supervisor is routinely and substantially present at the facility during the performance of duties at that facility by the individual being supervised; and

(B) the supervisor assumes the responsibility, and is provided with the authority, to observe and correct the actions of the individual being supervised.

(23) Temporary License - a certificate authorizing an individual to practice medical physics under the supervision of a licensed medical physicist.

(24) Therapeutic radiological physics - The branch of medical physics that deals with the therapeutic application of roentgen rays, gamma rays, electron and other charged particle beams, neutrons, or radiations from radionuclide sources and the use of equipment associated with the production and use of that radiation.

(25) Upper division semester hour credits - Third-year level or above (junior, senior or graduate) course work completed from an accredited college or university.

§601.3. The Board's Operation.

(a) Content [~~Purpose~~]. This section sets out the organization, administration, and other general policies governing the operation of the board [~~Texas Board of Licensure for Professional Medical Physicists (board~~]).

(b) Officers.

(1) Presiding officer.

(A) The governor shall designate a member of the board as the presiding officer.

(B) [~~(A)~~] The presiding officer shall be referred to as the chair.

(C) [~~(B)~~] The chair shall preside [~~officiate~~] at all board meetings at which he or she is in attendance and perform all duties prescribed by this chapter or the Act [~~Texas Medical Physics Practice Act (Act)~~].

(2) Assistant presiding officer.

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

(C) In case the chair is unable to fulfill his or her term, the vice-chair will serve until the governor designates a member of the board as a successor [~~is elected~~].

(c) Elections.

(1) At the first regularly scheduled meeting of each calendar year, the board shall elect by a majority vote of those members present and voting, [~~a chair and~~] a vice-chair.

(2) A vacancy which occurs in the office of [~~offices of chair or~~] vice-chair may be filled by a majority vote of those members present and voting at the next board meeting.

(d) Committees.

(1)-(7) (No change.)

(8) Committee meetings shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551 [~~Texas Civil Statutes, Article 6252-17~~]. Committee meeting agendas shall be prepared by the executive secretary with the concurrence of the committee chair.

(9) (No change.)

(e) Meetings.

(1) (No change.)

(2) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551 [~~Texas Civil Statutes, Article 6252-17~~].

(f)-(g) (No change.)

(h) Agendas.

(1) (No change.)

(2) The official agenda of each meeting shall be filed with the secretary of state in accordance with the Open Meetings Act, Texas Government Code, Chapter 551 [~~Texas Civil Statutes, Article 6252-17~~].

(i)-(l) (No change.)

§601.4. Fees.

[~~The purpose of~~] This [~~this~~] section [~~is to~~] sets [~~set~~] out the fees for licensure as a medical physicist prescribed by the board [~~Texas Board of Licensure for Professional Medical Physicists (board)~~].

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

(3) The fee for a provisional license as a medical physicist is as follows:

(A) application processing and initial temporary license fee:

(i) first specialty on initial application - $125;

(ii) additional specialties on initial application - $50 each; and

(iii) additional specialties on subsequent applications - $75 each; and

(B) provisional license replacement fee - $20.

(4) [~~(3)~~] All fees are nonrefundable and shall be submitted in the form of a check or money order.

(5) [~~(4)~~] An applicant whose check for the application processing and initial licensing fee or renewal fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application or renewal by remitting a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. An application renewal will be considered incomplete until the fee has been received and cleared through the appropriate financial institution. If the license [~~or temporary license~~] has already been issued, it shall be invalid.

(6) [~~(5)~~] A license holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. If the fee is not remitted timely, the license shall not be renewed. If the license renewal has already been issued, it shall be invalid.

(7) [~~(6)~~] The board shall notify the applicant's or licensee's employer that the person has failed to comply with this section.

§601.5. Exemptions.

(a) [~~The purpose of~~] This [~~this~~] section [~~is to~~] sets [~~set~~] out who is exempt from the Texas Medical Physics Practice Act (Act) and who must be licensed under the Act.

(b) (No change.)

(c) The Act and this chapter do not apply to:

(1) (No change.)

(2) a person certified as a medical radiological technologist practicing under the Medical Radiologic Technologist Certification Act, (Texas Occupations Code, Chapter 601 and portions of Texas Civil Statutes, Article 4512m);

(3)-(5) (No change.)

(d) (No change.)

§601.6. Application Procedures.

[~~(a) Purpose. The purpose of this section is to set out the application procedures for licensure of professional medical physicist.~~]

(a) [~~(b)~~] General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of qualifications on forms prescribed by the board [~~Texas Board of Licensure for Professional Medical Physicists (board)~~].

(2) The board shall not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(3) The executive secretary shall send a notice listing the required additional materials to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice may be invalidated.

(b) [~~(c)~~] Required application materials.

(1) Application form. The application form shall include the following:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and this chapter and agrees to abide by them;

(C) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;

(D) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted are nonrefundable;

(F) a statement that the applicant understands that materials submitted become the property of the board and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a license, or the revocation of any license issued;

(H) a statement that if issued a license, the applicant shall keep the board advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated and notarized.

(2) Required documentation. Applicants for a license must submit:

(A) evidence of relevant work experience, including a description of the responsibilities and duties performed;

(B) an official transcript from a college or university granting the applicant's degree or certificate of completion of training course or if a college or university does not issue an official transcript, the board may accept another form of official documentation or sworn evidence of the degree or successful completion of courses;

(C) a statement of the medical physics specialty for which the application is submitted;

(D) three current professional references as follows:

(i) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application;

(ii) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine; [~~and~~]

(iii) if applying for a temporary license, post-secondary academic references may be substituted; and

(E) a fee as prescribed by the board; and

(F) the [~~successfully~~] completion [~~completed~~], of the current open book examination relating to the practice of medical physics in this state [~~portion of the board's examination~~]. The applicant is responsible for verifying that he or she has taken and submitted the most current version of the open book examination.

(c) [~~(d)~~] Consideration of application. This subsection is intended to address the applications procedures required by the Act [~~Texas Medical Physics Practice Act (Act)~~], §§602.204 and 602.209 [~~§14(c)-(f) and §17(a) and (b)~~].

(1) The board or the executive secretary may require an applicant to appear before the board or executive secretary to present further information in support of the application.

(2) At any time before the board issues or renews a license, the applicant may request in writing that the board withdraw its consideration of the application, but the board shall retain the application and accompanying fee. To reapply, the applicant must submit a new application and fee.

(3) If an applicant meets all requirements of the Act and this chapter and has completed the examination, [~~if required~~], the executive secretary shall approve the application and issue a medical physicist [~~the annual~~] license. The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this paragraph with a recommendation that the board ratify the approval at its next meeting.

(4) If an applicant has not completed a specialty examination accepted by the board under this chapter, the executive secretary, with direction from the chair, shall forward a summary of the application and a recommendation for action to the appropriate committee of the board for review and recommendation.

(A) If the committee finds that the applicant meets all requirements of the Act and this chapter, the committee shall approve the applicant to take the required examination for a medical physicist [~~an annual~~] license or to be issued a temporary license if appropriate.

(i) The executive secretary shall issue the medical physicist [~~annual~~] license once the applicant successfully completes the required examination.

(ii) The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this subparagraph with a recommendation that the board ratify the approval at its next meeting.

(B) If the committee finds that the applicant does not meet all requirements of the Act and this chapter, the committee shall instruct the executive secretary to give the applicant written notice of the reason of the proposed disapproval of the application and the areas of deficiency and of the opportunity for a formal hearing. The notice shall be given by the 30th day after the committee makes a decision. Within 30 days after receipt of the written notice, the applicant shall give written notice to the executive secretary if the applicant wants the hearing. If the applicant fails to respond within 30 days after receipt of the notice, the applicant is deemed to have waived the hearing and the board shall finally disapprove the application.

(d) [~~(e)~~] Disapproved applications.

(1) The appropriate committee of the board may [~~shall~~] propose disapproval and the board may [~~shall~~] disapprove the application if the person:

(A) does not meet the qualifications for a license as set forth in the Act and this chapter;

(B) has failed to pass the open book portion of the examination with a passing score of 80%;

(C) has failed to pass an accepted specialty examination described in §601.8(d) of this title [~~(relating to Licensure By Examination)~~];

(D) has deliberately presented false information to the board to verify the applicant's qualifications;

(E) has obtained or renewed a license by means of fraud, misrepresentation, or omission of material facts;

(F) has made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(G) has been convicted of a felony or of a misdemeanor that involved moral turpitude or that directly relates to a person's duties and responsibilities as a licensed medical physicist;

(H) has otherwise violated this Act, a lawful order or rule of the board, or the board's code of ethics; or

(I) lacks the necessary skills, abilities and professional ethics to engage in the practice of medical physics in the specialty area requested.

(2) An applicant whose application has been formally denied under paragraph (1)(F)-(H) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§601.7. Licensing by Endorsement or Reciprocity.

(a) Reciprocity. The board may waive any prerequisite for obtaining a medical physicist [~~issue an annual~~] license to a person who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction that has requirements for the licensing of medical or radiological physicists that are substantially the same as the requirements of the Act [~~Texas Medical Physics Practice Act (Act).~~]

(b) Endorsement. The board may waive any prerequisite for obtaining a license to practice medical physics to a person who holds a license issued by another state, territory or jurisdiction with which this state has a reciprocity agreement. The board may make an arrangement subject to the approval of the governor, with another state to allow for licensing by reciprocity.

§601.8. Eligibility For [~~Licensure By~~] Examination.

(a) Eligibility. To [~~be eligible to~~] take a specialty examination for a medical physicist [~~an annual~~] license for a professional medical physicist, a person must:

(1) (No change.) .

(2) have demonstrated, to the board's [~~Texas Board of Licensure for Professional Medical Physicists (board)~~] satisfaction, the completion of at least two years of full-time work experience;

(3) (No change.)

(4) submit a completed application as required by the Act [~~Texas Medical Physics Practice Act (Act)~~], §602.203 [~~§14~~].

(b) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week. All work experience must have been completed in the five years preceding the date of application (the date of receipt of the application for a medical physicist [~~an annual~~] license or for the upgrade of

a temporary license to a medical physicist [~~an annual~~] license) in the medical physics specialty for which application is made.

(c)-(d) (No change.)

(e) Failure of [~~board~~] examination. If the applicant fails a [~~the~~] board administeredexamination, relating to subsection (d)(1)(A) of this section, [~~in a specialty area, the approval to take the board examination will be voided if the applicant does not take either or both of the next two board examinations and cannot document medical or physical reasons acceptable to the board for failure to take either of the next two board examinations.~~] the [~~The~~] applicant will be required to submit a new application for [~~licensure before the applicant may take another~~] re-examination [~~examination~~].

(f) Failure of more than one board administered examination. An applicant who fails three board examinations in a specialty area may not reapply for an additional examination in the specialty area until the applicant has demonstrated, to the board's satisfaction, the completion of at least one additional year of full-time work experience after the third failed examination.

(1) The work experience must be under the supervision of a licensed medical physicist holding [~~an annual~~] license in the specialty area.

(2) The applicant must hold a temporary license in the specialty area during the work experience if the experience is gained in this state.

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

(C) Any temporary license issued under this subsection shall expire upon notification to the board that the applicant failed to apply for or failed to appear for the examination, upon notification to the applicant of his or her failure of the examination, or upon the issuance of his or her medical physicist [~~annual~~] license if the examination was passed, whichever occurs first.

(D) (No change.)

(3) In order to obtain a medical physicist [~~an annual~~] license the applicant must reapply for licensure under subsection (a) of this section and must take and pass an examination as set out in subsection (d) of this section.

(g) Upgrade. Following successful completion of a medical physics specialty examination as set out in subsection (d) of this section and the relevant work experience, a temporary licensee may upgrade the temporary license to a medical physicist [~~an annual~~] license.

(1) A medical physicist [~~An annual~~] license shall not be issued until the applicant has passed the examination. The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply except that the applicant need not file a transcript unless additional relevant course work has been completed.

(2) (No change.)

(h) Expired temporary license. A person whose temporary license has expired may not upgrade the temporary license to a medical physicist [~~the annual~~] license. Application must be made under the provisions set out in §601.6 of this title [~~(relating to Application Procedures)~~].

§601.9. Temporary License.

(a) To be eligible for a temporary license, a person must meet the educational requirements set out in §601.8 of this title (relating to Eligibility For [~~Licensure by~~] Examination).

(b)-(e) (No change.)

(f) The work experience must be under the supervision of a licensed medical physicist holding a [~~an annual~~] license in the specialty area.

(g) To upgrade a temporary license to a medical physicist [~~an annual~~] license in the same specialty, a licensee must file evidence of relevant work experience meeting the requirements of §601.8 of this title [~~(relating to Licensure by Examination)~~] and the upgrade fee.

(h) (No change.)

§601.10. License Issuance and License Holder Requirements.

(a) The board [~~Texas Board of Licensure for Professional Medical Physicists (board)~~] may issue a license to an eligible applicant if the applicant [~~passes the examination, if required, and~~] meets all other license requirements under the Act [~~Texas Medical Physics Practice Act (Act)~~] and this chapter.

(b)-(d) (No change.)

§601.11. License and Temporary License Renewal.

[~~(a) Purpose. The purpose of this section is to set out the procedures for renewal of licensure for professional medical physicists.~~]

(a) [~~(b)~~] General.

(1) A license is valid for one year from the date it is granted and must be renewed in each specialty area annually.

(A) The [~~An~~] initial medical physicist [~~annual~~] license shall be valid through the licensee's next birth month; however, when the birth month occurs within four months, the license shall be issued for that period plus the next full year in order to establish a staggered renewal system.

(B) The renewal date of a medical physicist [~~an annual~~] license shall be the last day of the licensee's birth month.

(C) The renewal date of a temporary license shall be one year from the date of issuance.

(2) Each licensee is responsible for renewing a license in each specialty and paying the renewal fee before the expiration date and shall not be excused from paying penalty fees.

(3) The [~~Texas Board of Licensure for Professional Medical Physicists~~] board [~~(board)~~] may deny the renewal of a license if the licensee is in violation of or has violated the Act or this chapter.

(4) The board shall deny renewal if required by the Education Code, §57.491 relating to defaults on guaranteed student loans.

(5) The board shall deny the license renewal of a licensee whose license is proposed for revocation, suspension, reprimand or probation in a formal hearing. A formal hearing commences when the notice described in §601.16 of this title (relating to Violations, Complaints, and Subsequent Actions) is mailed by the board.

(A) Licenses which are not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(B) In the case of delay in the license renewal process because of formal license suspension or revocation proceedings, penalty fees shall not apply if timely and sufficient application for renewal was made.

(b) [~~(c)~~] License renewal.

(1) At least 45 days prior to the expiration date of a license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a license renewal form

which the licensee must complete and return to the board with the required fee.

(2) The license renewal form shall require the licensee to provide current addresses, telephone numbers, and information relating to the type of practice.

(3) The completed license renewal form and the renewal fee must be postmarked or delivered on or before the expiration date of the license.

(4) The board is not responsible for lost, misdirected, or undelivered renewal application forms, fees, or renewal licenses.

(5) [~~(4)~~] The board shall issue a renewal license to a licensee who has met all requirements for renewal. The licensee must display the current renewal license.

(6) The board shall issue a renewal license to a licensee who complies with paragraph (3) of this subsection but who fails to complete the continuing education requirements (if required) for relicensure as set out in §601.20 of this title. The renewal license shall expire 180 days after the last day of the licensees birth month. If the deficiency is corrected and proof of completion of the continuing education requirements is sent to the board within the 180 day period, the board shall issue a renewal license which expires on the last day of the licensees next birth month. An licensee who does not correct the deficiency within 180 days shall not be allowed to extend or renew the license.

(7) [~~(5)~~] The license of a person who made a timely and sufficient application for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(c) [~~(d)~~] Late renewal.

(1) If a person's license has been expired for not more than 90 days, the person may renew the license by submitting the license renewal form with the one to 90-day penalty fee and a completed continuing education report form (if required). A license issued under this subsection shall expire on the licensee's next birth month. The person is not eligible for a 180 day license as described in subsection (b)(6) of this section.

(2) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by submitting the license renewal form with the 91-day [~~90-day~~] to two year penalty fee. The person must comply with the continuing education requirements (if required) for renewal as set out in §601.20 of this title before the late renewal is effective. The license will expire on the licensee's next birth month.

(3) If a license has been expired two years or more, the license may not be renewed. In order to regain licensure [~~be relicensed~~], a [~~the~~] person shall comply with the current application requirements of the Act and this chapter [~~in effect at the time of the application~~] and shall submit to the board:

(A) a supplemental experience record as specified by the board;

(B) a description of professional activities undertaken during the [~~expiration~~] period of non-licensure;

(C) a list of current professional references from other medical physicists and physicians; and

(D) a transcript for any degree or college credit earned since the previous license application.

(d) [~~(e)~~] Active military duty. If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's authorized representative may request that the license be renewed. A request for renewal may be made before or after the expiration date.

(1) If the request is made by the licensee's authorized representative, the request must include a copy of the appropriate power of attorney or written evidence of a spousal relationship.

(2) The written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside of the State of Texas.

(3) The written request shall include a current address and telephone number for the licensee or the licensee's authorized representative.

(4) The payment of any renewal penalty fee is waived for a licensee under this subsection.

(5) Except in extraordinary circumstances, a licensee on active duty serving outside the State of Texas shall notify the board that the licensee is on active duty. The board shall note in the licensee's file that the licensee may be eligible for renewal under this subsection.

§601.12. Application and Renewal Processing Times.

[~~(a) Purpose. The purpose of this section is to set out the time periods and procedures the Texas Board of Licensure for Professional Medical Physicists (board) shall follow in processing applications for or renewal of a license.~~]

(a) [~~(b)~~] Application processing. [~~The following time periods shall apply in processing applications for or renewal of a license.~~]

(1) The following periods of time shall apply from the date of receipt of an application for a license or renewal of a license until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) issuance of license or renewal for a license - 30 days; or

(B) letter of application or renewal deficiency - 30 days.

(2) The following periods of time shall apply from the date of receipt of the last item necessary to complete the application for a license or renewal of a license until the date of issuance of written notice approving or denying the application for a license or renewal of a license. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law, and of the opportunity for a formal hearing. The time periods are as follows:

(A) issuance of a license or renewal of a license - 30 days; or

(B) letter of denial of a license or renewal of a license - 30 days.

(b) [~~(c)~~] Reimbursement of fees. [~~The following procedures will govern fee reimbursements when time periods are exceeded.~~]

(1) In the event an application for a license or renewal is not processed within [~~in~~] the time periods stated in subsection (a) [~~(b)~~] of this section, the applicant or licensee has the right to request reimbursement of all fees paid in that particular application process. Application

for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(2) Good cause for exceeding the time period is considered to exist if the number of applications for license and license renewal exceeds by 15% or more the number of applications or renewals processed in the same calendar quarter the preceding year, another public or private entity relied upon by the board in the application or renewal process caused the delay, or any other condition exists giving the board good cause for exceeding the time period.

(c) [~~(d)~~] Appeal. If a request for reimbursement under subsection (b) [~~(c)~~] of this section is denied by the executive secretary, the applicant or licensee may appeal to the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant or licensee shall give written notice to the board at the address of the board that he or she requests full reimbursement of all fees paid because his or her application or renewal was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application or renewal and of any good cause for exceeding the applicable time period. The board shall provide written notice of the decision to the applicant or licensee and the executive secretary. An appeal shall be decided in favor of the applicant or licensee if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant or licensee, full reimbursement of all fees paid in that particular application or renewal process shall be made.

(d) [~~(e)~~] Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included with the time periods stated in subsection (a) [~~(b)~~] of this section. The time period for conducting a contested case hearing runs from the date the board receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to six months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§601.13. Petition for Adoption of Rules.

[~~(a) Purpose. The purpose of this section is to delineate the Texas Board of Licensure for Professional Medical Physicists' (board) procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.~~]

(a) [~~(b)~~] Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The board is not required to consider a petition which does not contain the information described in paragraph (2) of this subsection.

(4) The petition shall be mailed or delivered to the Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756.

(b) [~~(c)~~] Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (c) [~~(d)~~] of this section, the executive secretary shall submit a petition meeting the requirements of subsection (a) [~~(b)~~] of this section to the board.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule-making procedures in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 [~~and the Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5~~]. The board may deny parts of the petition or institute rule-making procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(c) [~~(d)~~] Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsection (b) [~~(c)~~] of this section. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

§601.14. Code of Ethics.

(a) A licensee [~~licensed medical physicist~~] shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage. The provisions of the Health and Safety Code, §161.091 relating to the prohibition of illegal remuneration apply to medical physicists.

(b) A licensee [~~licensed medical physicist~~] shall maintain confidentiality of physician records in accordance with the Medical Practice Act, Texas Occupations Code, Chapter 152 [~~Texas Civil Statutes, Article 4495b~~], and other state statutes or rules where such statutes or rules apply to a [~~the licensed~~] medical physicist licensee.

(c) A licensee [~~licensed medical physicist~~] shall not misrepresent any professional qualifications or associations.

(d) A licensee [~~licensed medical physicist~~] shall not knowingly misrepresent services or attributes of any health care agency, facility, or organization.

(e) A licensee [~~licensed medical physicist~~] shall not make misleading, deceptive, or false claims about the efficacy of any medical physicist's services or allow a client to hold exaggerated ideas about the efficacy of the services.

(f) A licensee [~~licensed medical physicist~~] shall not use illegal drugs of any kind or promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

(g) A licensee [~~licensed medical physicist~~] shall not use alcohol or any drug in any manner which adversely affects his or her practice of medical physics.

(h) A licensee [~~licensed medical physicist~~] shall report alleged violations of the Act [~~TexasMedical Physics Practice Act (Act)~~] or this chapter to the board's [~~Texas Board of Licensure for Professional Medical Physicist's (board)~~] executive secretary.

(i) A licensee [~~licensed medical physicist~~] shall not make any presentation or use any advertisement or announcement of services which contains information which is false, misleading, or deceptive.

(j) A licensee [~~licensed medical physicist~~] shall not claim or advertise a specialty area or practice in an area of specialty unless the [~~licensed~~] medical physicist holds a license in that specialty.

(k) A licensee [~~licensed medical physicist~~] shall not direct, aid, or abet the practice of any other person in violation of the Act.

(l) A licensee [~~licensed medical physicist~~] shall not make any false statements regarding his or her provision of services as a medical physicist.

(m) A licensee [~~licensed medical physicist~~] shall make a reasonable attempt to notify each contractor, employer or client of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board by providing notification:

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

(n) A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(1) (No change.)

(2) A "health care professional" includes a licensed medical physicist, temporary licensed medical physicist, provisional licensed medical physicist, or any other person licensed, certified, or registered by the state in a health-related profession.

§601.15. Criminal Backgrounds [~~Background~~].

(a) (No change.)

(b) Criminal convictions which directly relate to the profession of medical physics shall be considered as follows.

(1) The board [~~Texas Board of Licensure for Professional Medical Physicists (board)~~] may suspend or revoke any existing license, disqualify a person from receiving any license, deny to a person the opportunity to be examined for a license, reprimand a licensee, or place a licensee on probation because of a person's conviction of a felony or misdemeanor if the crime:

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

(2) In considering whether a criminal conviction directly relates to the profession of [~~a licensed~~] medical physics [~~physicist~~], the board shall consider:

(A)-(C) (No change.)

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a medical physicist. In making this determination, the board shall apply the criteria outlined in Texas Occupations Code, Chapter 53 [~~Texas Civil Statutes, Article 6252-13c, §4(c)~~].

(c) The following felonies and misdemeanors directly relate to a license of a medical physicist because these criminal offenses indicate an inability or a tendency to be unable to properly engage in the practice of medical physics:

(1) a conviction under the Texas Medical Physics Practice Act (Act), §602.302 [~~§23~~];

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

(9) an offense under various titles of the Texas Penal Code:

(A)-(C) (No change.)

(D) offenses against public health, safety, and morals (Title 10); and

(E) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); and

(F) insurance claim fraud under the Penal Code, §32.55; and

(10) other misdemeanors and felonies which indicate an inability or a tendency for the person to be unable to properly engage in the practice of medical physics. Other misdemeanors or felonies shall be considered in order to promote the intent of the Act, this chapter, and Texas Occupations Code, Chapter 53 [~~Texas Civil Statutes, Article 6252-13c~~].

(d) The executive secretary shall give written notice to the person that the board intends to deny, suspend, or revoke the license or reprimand or place on probation the licensee after hearing in accordance with the provisions of the Administrative Procedure [~~and Texas Register~~] Act, Texas Government Code, Chapter 2001 [~~Civil Statutes, Article 6252-13a, and the board's formal hearing procedures~~].

(e) (No change.)

§601.16. Violations, Complaints, and Subsequent Actions.

(a) Content [~~Purpose~~]. [~~The purpose of~~] This [~~this~~] section [~~is to~~] establishes [~~establish~~] standards relating to:

(1) offenses which are a Class B misdemeanor under the [~~Texas Medical Physics Practice~~] Act [~~(Act)~~];

(2)-(3) (No Change.)

(4) the board's [~~Texas Board of Licensure for Professional Medical Physicists' (board)~~] investigation of complaints; and

(5) (No change.)

(b)-(e) (No change.)

(f) Reprimand, suspension, revocation, denial, [~~or~~] probation, or administrative penalty.

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

(5) If an administrative penalty is imposed the amount of the penalty may not exceed $500 for each violation, and each day a violation continues or occurs is a separate violation for imposing a penalty.

(g) Prior to the institution of formal proceedings to deny a renewal, [~~or~~] revoke, or suspend a license, or impose an administrative penalty, the executive secretary [~~board office~~] shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant denial, revocation, or suspension and the licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(h) If denial, revocation, or suspension of a license or reprimand or probation of a licensee or an administrative penalty is proposed, the board office shall give written notice by certified mail, return receipt requested; regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within 30 days of receipt of the notice, or the right to a hearing shall be waived and the proposed action shall be taken by the board.

(i) (No change.)

§601.17. Surrender of License.

(a) Surrender by licensee.

(1) A licensee may at any time voluntarily offer to surrender his or her license for any reason. [~~The offer to surrender should be~~

made at least 10 days prior to the next scheduled Texas Board of Licensure for Professional Medical Physicists (board) meeting.]

(2) (No change.)

(b) Acceptance by the board.

(1) (No change.)

(2) Surrender of a license without acceptance thereof by the board shall not deprive the board of jurisdiction over the licensee under the Act [Texas Medical Physics Practice Act (Act)] or this chapter.

(c) (No change.)

(d) Reinstatement. A license which has been surrendered and accepted may not be reinstated or renewed; however, a person may apply a year from the date of surrender for a new license in accordance with the Act and this chapter.

§601.18. Formal Hearings.

(a) General. Foraml hearings will be governed by the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and will be conducted by the State Office of Administrative Hearings.

(b) Notice requirements.

(1) Notice of the hearing shall be given according to the notice requirements of APA.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(3) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(c) Parties to the hearing.

(1) The parties to the hearing shall be the applicant or licensee and the complaints subcommittee chair and/or executive secretray, as appropriate.

(2) A party may appear personally or be represented by counsel or both.

(d) Prehearing conferences.

(1) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending the pleading;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing.

(E) specifying the number of witnesses;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the designation of parties; and

(H) other matters which may be expedite the hearing.

(2) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(3) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(e) Assessing the cost of a court reporter and the record of the hearing.

(1) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.

(2) The board may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.

(3) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may be require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.

(f) Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(g) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rules does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(h) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders maybe issued by the Administrative Law Judge.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(i) Motion for rehearing. A motion for rehearing shall be governed by APA, Texas Government Code, §2001.146, and shall be addressed to the board and filed with the executive secretary.

(j) Appeals. All appeals from final board orders or decisions shall be governed by APA, Texas Government Code, Subchapter G, and communications regarding any appeal shall be to the executive secretary.

§601.19. Suspension of License for Failure to Pay Child Support.

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

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, [as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433)] and may not review, vacate, or reconsider the terms of an order.

(d)-(g) (No change.)

(h) The individual must pay a reinstatement fee set out at §601.4 of this title [~~(relating to Fees)~~] prior to issuance of the license under subsection (g) of this section.

§601.20. Continuing Education Requirements.

(a) Content [~~Purpose~~]. [~~The purpose of~~] This [~~this~~] section [~~is to~~] establishes [~~establish~~] the continuing education requirements which a licensed medical physicist [~~holding an annual license~~] must complete biennially [~~biannually~~] to maintain licensure. These requirements are intended to maintain and improve the quality of professional services in medical physics provided to the public and keep the licensed medical physicist knowledgeable of current research, techniques, and practice, and provide other resources which will improve skill and competence in the practice of medical physics.

(b) General. Continuing education requirements for license renewal shall be fulfilled during a two-year period beginning on the first day following the licensee's birth month and ending with the second license renewal on the last day of each licensee's birth month.

(1) The initial two-year period shall begin on the first day of the licensee's renewal year (first day following licensee's birth month) [~~which occurs on or after September 1, 1997~~].

(2) Each licensee shall be notified of continuing education requirements with the first annual renewal notice [~~sent after September 1, 1997~~].

(c) (No change.)

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience falls into one or more of the following categories only in increments of .5 hours:

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

(3) Participation in medical physics related courses, refresher courses, conferences, and seminars sponsored by state and private universities that have an accredited graduate medical physics program.

(4) Participation in a program of study in medical physics that is accredited by the American Association of Physicists in Medicine Commission on Accreditation of Medical Physicist Education Programs.

(5) Participation in a course of study from an accredited college or university in physics, medical physics, biophysics, radiological physics, medical health physics or nuclear engineering of other course of study acceptable to the board.

(6) Participation in a short course of study relating to basic and/or applied sciences in medicine.

(7) Participation in a course of study that enhances the practice of medical physics.

(e) Reporting of continuing education. Each licensed medical physicist is responsible for and shall complete and file with the board at the time of [~~annual~~] license renewal, a continuing education report form approved by the board listing the title, date, location and number of hours for each activity for which credit is claimed. The licensee shall maintain documentation of continuing education.

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

(3) If the board determines that the licensed medical physicist failed to successfully complete the continuing education requirements or failed to submit the required documentation, disciplinary action may be taken against the licensee in accordance with §601.16(c) of this title [~~(relating to Violations, Complaints, and Subsequent Action)~~].

(4) In the alternative, a licensed medical physicist may request an exemption as set out in subsection (g) [~~(f)~~] of this section.

(f) Failure to complete the required continuing education.

(1) A licensed medical physicist who has failed to complete the requirements for continuing education may be granted a 180 day license as described in §601.11 of this title. The 180 day extension is the maximum that shall be granted and there will be no exceptions, nor may an additional extension period be granted.

(2) The next continuing education reporting period shall commence on the day following the completion of continuing education credits to correct the deficiency and shall end two years from the date the previous continuing education period ended. In other words, the extension period is borrowed from the next reporting period.

(3) A licensed medical physicist who has not corrected the deficiency by the expiration date of the 180 day extension license shall be considered as noncompliant with the renewal requirements and may no longer practice medical physics under the expired license.

(4) The person may renew late under §601.11 of this title after all the continuing education requirements have been met. A person who renews late is not eligible for a 180 day extension.

(g) [~~(f)~~] Exemptions. The board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(1) A licensee shows reasons of health, certified by a licensed physician, that prevent compliance with the continuing education requirement for the entire renewal period. The licensee must complete and forward to the board a sworn affidavit and provide documentation that clearly establishes the period of disability and resulting physical limitations;

(2) A licensee is called to or is on active duty with the armed forces of the United States for the entire renewal period and so long as the licensee does not engage in the practice of medical physics in a setting outside of the active duty responsibilities during the time on active duty. The licensee must file a copy of orders to active military duty with the board; or

(3) A licensee submits proof of attendance as a student in an approved academic program.

§601.21. Medical Physics Specialties and Scope of Practice.

(a) Content [~~Purpose~~]. Recognizing that assessing the degree of radiation safety is a complex task of balancing radiation risk with optimizing the benefit of the procedure to the patient, rules are provided which identify certain specific activities or tests as the practice of medical physics. The purpose of the [~~Medical Physics Practice~~] Act [~~(Act)~~] and the [~~these~~] rules is to ensure the radiation safety of the citizens of Texas by restricting the practice of medical physics to qualified medical physicists. The Act and these rules are fully consistent with, and implement, the recommendations of the National Council of Radiation Protection and Measurement (NCRP) as they pertain to the conduct of certain activities related to medical radiation safety and the efficacy of the use of radiation in medicine as well as the recommendations of the NCRP for the qualifications of individuals who conduct or supervise those activities. They are also consistent with published standards of practice of relevant professional and scientific organizations.

[~~(b) Exemption. These rules shall not prohibit any licensed physician from performing any procedure or activity judged by the Texas Board of Medical Examiners to be the practice of medicine. Similarly, these rules shall not be construed to prohibit any licensed health care provider from conducting procedures or activities on patients under their care determined to be the practice of that particular profession~~

~~by the profession's respective licensing board. This section does not apply to a person who is exempt from the Act or to an individual who, under the supervision of a licensed medical physicist, gathers data for professional use by the licensed medical physicist. These rules shall not be construed as qualifying a licensed medical physicist to install or perform corrective maintenance on medical equipment.]~~

(b) [~~(c)~~] Role of the service engineers. Service engineers, when installing or maintaining medical equipment, conduct tests or activities which are similar or identical to tests or activities identified in these rules. Such activity does not constitute the practice of medical physics provided that:

(1) the service engineer or his employer does not represent that the outcome of the test or activity or the intent of performing the test or activity ensures the radiation safety of the use of the medical equipment for either the user, the patient, or a member of the public; or

(2) the service engineer or his employer does not conclude that the medical equipment is radiologically safe, effective or suitable for use on humans based on the tests or activities performed by the service engineer; or

(3) the service engineer or his employer does not certify that the medical equipment is radiologically safe and consequently compliant with any state or federal regulation for the control of radiation; and

(4) the test or activity performed by the service engineer is required to install or repair the medical equipment.

(c) [~~(d)~~] Scope of practice.

(1) The diagnostic radiological physics specialty services include the following:

(A) providing evidence that imaging equipment continues to meet applicable rules and regulations of radiation safety and performance standards required by accrediting and regulatory agencies;

(B) acceptance testing or monitoring diagnostic imaging equipment;

(C) evaluating policies and procedures pertaining to radiation and its safe and appropriate application in imaging procedures;

(D) providing consultation in development and management of the quality control program;

(E) measurement and characterization of radiation from diagnostic equipment;

(F) specification of instrumentation to be used in the practice of diagnostic radiological physics;

(G) providing consultation on patient or personnel radiation dose (effective dose equivalent, fetal dose calculations, specific organ dose determination, etc.) and the associated risk; and

(H) protective shielding design and evaluation of a diagnostic imaging facility.

(I) conducting performance evaluations of medical radiologic and fluoroscopic imaging systems which include the following physical tests and assessments:

(i) kilovolts peak (kVp) and timer accuracy;

(ii) exposure reproducibility and linearity;

(iii) exposure geometry, e.g. source to image distance (SID) and collimation;

(iv) entrance skin exposure and exposure rate;

(v) beam quality; and

(vi) image quality.

(2) The therapeutic radiological physics specialty services include the following:

(A) development of specifications for radiotherapy treatment and simulation equipment;

(B) development of procedures for testing and evaluating performance levels of radiotherapy treatment and simulation equipment;

(C) acceptance testing of radiotherapy treatment and simulation equipment;

(D) calibration and characterization of radiation beams from therapeutic equipment including radiation quantity, quality, and distribution characteristics, and assessment of the mechanical and geometric optics for proper placement of the beam;

(E) providing documentation that radiotherapy treatment and simulation equipment meet accreditation and regulatory compliance requirements;

(F) calibration and/or verification of the physical and radiological characteristics of brachytherapy sources;

(G) specification of the physics instrumentation used in the measurement and performance testing of therapeutic equipment;

(H) acceptance testing, management, and supervision of computer systems used for treatment planning and calculation of treatment times or monitor units. This includes measurement and input of dosimetry data base and verification of output for external beam radiotherapy and brachytherapy;

(I) implementation and management of dosimetric and beam delivery aspects of external beam source brachytherapy irradiation. External beam delivery aspects include treatment aids, beam modifiers, and geometrical arrangements. Special procedures are included for both external beam (e.g. radiosurgery, total body irradiation, total skin irradiation, intraoperative therapy) and brachytherapy (e.g. high dose rate, pulsed dose rate);

(J) provision of consultation to the physician in assuring accurate delivery of prescribed radiation dosage to a specific human patient, and the associated risk;

(K) development and management of quality control program for a radiation treatment facility which includes applicable facility accreditation requirements, and the review of policies and procedures pertaining to therapeutic radiation and its safe and appropriate use;

(L) development and/or evaluation of a radiation safety program in a therapeutic radiation facility including written procedures for the protection of patients, workers, and the public; and

(M) protective shielding design and radiation safety surveys in a radiotherapy facility.

(3) The medical nuclear physics specialty services include the following:

(A) development of procedures for continuing evaluations of performance levels of radionuclide imaging devices and ancillary equipment;

(B) providing evidence that radionuclide imaging equipment continues to meet applicable rules and regulations of performance and radiation safety required by accrediting and regulatory agencies;

(C) acceptance testing of radionuclide imaging equipment;

(D) development and/or evaluation of a radiation safety program in a nuclear medicine facility;

(E) determination of radiation shielding necessary to protect workers, patients, and the public in a nuclear medicine facility;

(F) development of specifications for radionuclide imaging instrumentation or equipment;

(G) development and monitoring of a quality control program for radionuclide imaging equipment, computers and other patient related radiation detectors such as uptake probes, well counters and dose calibrators;

(H) providing consultation on patient or personnel radiation dose (effective dose equivalent, fetal dose calculations, specific organ dose determination, etc.) and the associated risk;

(I) evaluating policies and procedures pertaining to the safe and appropriate application of radionuclides;

(J) specification of instrumentation used in the practice of medical nuclear physics; and

(K) verification of calculated radiation absorbed doses from unsealed radioactive sources.

(4) The medical health physics specialty services include, but are not limited to, the following:

(A) planning and design of radiation shielding needed to protect workers, patients, and the general public from radiation produced incident to the diagnosis or treatment of humans. This includes calculation of required shielding thickness, selection of shielding material and specification of source-shield geometry;

(B) assessment and evaluation of installed shielding, installed shielding apparatus or portable shielding designed to protect workers, patients, and the general public from radiation produced incident to the diagnosis or treatment of humans. Such evaluation specifically includes determination of whether the shielding is adequate to ensure compliance with state or federal regulatory requirements for limiting the effective dose equivalent and organ dose equivalent of medical radiation workers and members of the public. This includes the selection of appropriate radiation measurement instrumentation to conduct such evaluation as well as the methodology to be employed;

(C) providing consultation, by which determination of the presence and extent of any radiological hazard, in any controlled, restricted, uncontrolled or unrestricted area, resulting from the use of ionizing radiation or radioactivity in the treatment or diagnosis of disease in humans, is made. This includes the design, conduct, and evaluation of results of radiation surveys of health care facilities and the immediate environs intended to determine whether occupancy by medical radiation workers, patients, and members of the public is compliant with state and federal regulations for the control of ionizing radiations. A survey includes the directing of physical measurements of radiation levels and radioactivity, the interpretation of those measurements, and the provision of any conclusions or recommendations intended to limit or prevent exposure of workers, members of the public, and patients.

(D) performing dose and associated risk assessment in which an effective dose equivalent, committed effective dose equivalent, organ dose equivalent, or committed organ dose equivalent is determined by measurement or calculation or both, to any worker, member of the public, fetus or patient who received exposure to ionizing radiation or radioactivity from radiation sources used to treat or diagnose disease in humans. This does not include either the prospective or retrospective determination of absorbed doses to patients undergoing radiation therapy; and

(E) consultation which consists of the evaluation or assessment of the radiation safety aspects of policies or procedures which pertain to the safe and appropriate use of radiation or radioactivity, administrated to human research volunteers or used to treat or diagnose conditions in humans, when such evaluation or assessment provides conclusions or recommendation regarding does equivalent assessment, the overall radiation safety afforded to individuals resulting from activities conducted in compliance with the evaluated policies or procedures, or the compliance of any or all provisions of the policies or procedures with either state or federal regulatory requirements for the control of radiation.

§601.22. Provisional Licenses.

(a) A provisional license may be issued to a person who is currently licensed or certified in another jurisdiction and who:

(1) has been licensed or certified in good standing as a practitioner of medical or radiological physics for at least two years in another jurisdiction, including a foreign county, that has licensing or certification requirements substantially equivalent to the requirements of the Act;

(2) has passed a national or other examination recognized by the board relating to the practice of medical or radiological physics; and

(3) is sponsored by a person licensed as a medical physicist in Texas with whom the provisional license holder will practice under this section.

(b) Upon formal written request, the board may waive the requirement set out in subsection (a)(3) of this section if it is determined that compliance with subsection (a)(3) of this section would cause undue hardship to the applicant.

(c) The board shall issue a provisional license if:

(1) the provisional license holder is eligible to be certified under §601.7 of this title (relating to Licensing by Endoresement or Reciprocity); or

(2) the provisional license holder passes the part of the examination under §601.8 of this title (relating to Eligibility For Examiantion) that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of medical physics in this state and;

(A) the board verified that the provisional license holder meets the academic and experience requirement for a license under §601.8 of this title; and

(B) the provisional license holder satisfies any other licensing requirements under the Act.

(d) The board must complete the processing of a provisional license holder's application for license within 180 days after the provisional license was issued. The board may extend the 180-day deadline to allow for the receipt of pending examination results.

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 January 22, 2001.

TRD-200100398
Paul H. Murphy
Chair
Texas Board of Licensure for Professional Medical Physicists
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 458-7236

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22 TAC §601.18

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

The repeal is proposed under Texas Occupations Code, §602.151, which requires the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary to properly perform its duties under the Act.

The repeal affects the Occupations Code, Title 3. Health Professions, Subtitle K, Chapter 602; Texas Civil Statutes, Article 4512n; and Government Code, §2001.039.

§601.18. Formal Hearing Procedures.

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 January 22, 2001.

TRD-200100399
Paul H. Murphy
Chair
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Earliest possible date of adoption: March 4, 2001
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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 31. NUTRITION SERVICES

The Texas Department of Health (department) proposes the repeal of §§31.1-31.3 and new §§31.1, 31.11, 31.12, 31.21-31.37, concerning the register of mother-friendly businesses; the farmers' market nutrition program; and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Specifically, the sections cover register of mother-friendly businesses; definitions; farmers' market nutrition program agreement with the state agency; definitions; recipient eligibility requirements; recipients of supplemental food benefits; provision of immunizations to WIC applicants and participants; participant certification periods; notification to applicants of ineligibility; notification to participants of certification expiration; notification to participants of termination of certification; applicant and participant rights; participant fraud and abuse; selection of a local agency as a WIC provider; selection of vendors for WIC initial authorization for participation; selection of vendors for reauthorization for participation; calculation and use of vendor competitive pricing data; vendor agreement with the state agency; right of administrative appeal by a local agency or vendor; and selection of WIC program allowable foods.

The United States Department of Agriculture (USDA) provides federal grant funds to the department to administer the WIC Program, provided the department does so in accordance with federal regulations. The department also administers the Farmers' Market Nutrition Program, which is 70% federally funded, according to federal and state enabling legislation.

The proposed repeal of §§31.1-31.3 will delete rules concerning the adoption of the state plans, WIC federal regulations, the WIC Policy and Procedure Manual, the Register of Mother-Friendly Businesses, the Farmers' Market Nutrition Program. The proposed new sections reestablish the Register of Mother-Friendly Businesses and the Farmers' Market Nutrition Program with no substantive changes. The new sections also reestablish without substantive change 37 WIC policies, currently adopted by reference as part of the WIC Policy and Procedure Manual, which address client, local agency, and vendor eligibility and rights of participation in the program. The remaining 183 WIC policies currently adopted by reference will be enforced unchanged through contracts between the department and local agencies and WIC food vendors. Deletion of policies affecting WIC local agencies and contracted WIC food vendors by repeal of §31.1 will eliminate duplicate references to the policies in both department rules and local agencies' contracts. Since the relationship of WIC local agencies and participating food vendors to the department is contractual, the repeal will clarify that local agencies and participating food vendors are subject to sanctions solely as a result of noncompliance with their contracts. Neither federal law nor regulations require the department to adopt WIC policies or procedures by rule after approval by USDA.

The policies which will be deleted by the proposed repeal of §31.1 and which will not be proposed as new sections include the following: Explanation of the Federal Definition of "Health Services," AAP:01.4; Local Agency Financial Management Systems, AC:01.0; Reimbursement of Allowable WIC Expenses, AC:01.1; Plan to Allocate Direct Cost, AC:02.0; Allowable Costs - Personnel Compensation, AC:03.0; Allowable Costs - Personnel Benefits, AC:03.1; Allowable Costs - In-State Travel, AC:03.2; Allowable Costs - Out-of-State Travel, AC:03.3; Allowable Costs - Agency Car, AC:03.5; Property Management, AC:03.6; Allowable Costs - Equipment, AC:03.7; Allowable Costs - Depreciation of Equipment, AC:03.7.1; Allowable Costs - Outreach, AC:03.9; Allowable Costs - Communication & Utilities, AC:03.10; Allowable Costs - Data Processing, AC:03.11; Allowable Costs - Reproduction Expense, AC:03.12; Allowable Costs - Printing Expense, AC:03.12.1; Allowable Costs - Space Rental, AC:03.13; Allowable Costs - Facility Depreciation, AC:03.13.1; Allowable Costs - Use Allowance, AC:03.13.2; Allowable Costs - Supplies, AC:03.14; Allowable Costs - Postage and Shipping, AC:03.15; Allowable Cost - Non-Professional Contract Services, AC:03.16; Allowable Costs - Professional Contract Services, AC:03.16.1; Allowable Costs - Peer Counselors, AC:03.16.2; Allowable Costs - Facility Renovation,

AC:03.17; Allowable Costs - Expendable Medical Supplies, AC:03.18; Allowable Costs - Indirect Costs, AC:03.19; Allowable Costs - Food Purchases, AC:03.20; Allowable Costs - Insurance Expense, AC:03.21; Allowable Costs - Outreach Incentive Items, AC:03.22; Allowable Costs - Laboratory Coats, AC:03.23; Allowable Costs - Employee Uniforms, AC:03.24; Unallowable Costs, AC:04.0; Monthly Reimbursement Maximum, AC:05.0; Monthly Reimbursement Maximum - Start-up Costs, AC:05.1; Cash Advance Payments, AC:05.2; Surplus Funds, AC:06.0; Financial Reporting, AC:07.0; WISE Cost Report, WIC-227 A, AC:07.7; Program Income, AC:08.0; Program Income - Participant Fees, AC:08.1; Close Out Reports, AC:09.0; Expenditure Records, AC:10.0; Nutrition Education Expenditures, AC:10.1; Breast-feeding Promotion Expenditures, AC:10.2; Lost and Stolen Equipment, AC:11.0; Sale or Disposition of Property, AC:12.0; Procurement Procedure, AC:13.0; Audit of Local Agencies, AUD:01.0; Automation Change Management, AUT:01.0; 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Nutrition Education for Advanced Issuance, NE:04.2; Categorical Classes, NE:04.3; Nutrition Education Audiovisuals, NE:05.0; Distributed or Loaned Nutrition Education Materials, NE:05.1; Purchase of Foods for Demonstration in Nutrition Education; NE:06.0; Local Outreach Coordinator; OR:01.0; In-Service Orientation to New Local Agencies, TR:01.0; Orientation and Training of Local

Agency Directors, TR:01.1; Local Training Coordinator, TR:02.0; and Required Local Agency and Clinic Staff Training, TR:03.0.

Gerald D. Cannaday Jr., Chief, Bureau of Nutrition Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Cannaday has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing or administering the sections will be clarification of and increased efficiency in their enforcement. There will be no costs to micro- businesses or small businesses to comply with the sections as proposed. The proposed new sections which affect only local agencies cannot result in costs to micro-businesses or small business because federal regulations require that all local agencies must be nonprofit entities. Since the new sections which affect vendor eligibility and/or participation in the WIC Program are being proposed without substantive changes to those currently adopted by reference in §31.1, the new sections will result in no changes for current or prospective WIC food vendors which are micro-businesses or small businesses. Section 31.2 concerning the Register of Mother-Friendly Businesses and §31.3 concerning the Farmers' Market Nutrition Program are being repealed and proposed as new §§31.1, 31.11, and 31.12 without substantive changes and so will result in no costs to micro-businesses or small businesses. There are no anticipated economic costs to persons who are required to comply with or are affected by the sections as proposed for the same reason. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Valerie Wolfe, Policy Director, Bureau of Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7444. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*. Copies of the policies proposed for deletion are available from the WIC Program's web site at http://www.tdh.state.tx.us/wichd/policy/idx_policy.htm under WIC Policies and Procedures Manual. In addition, a public hearing will be held on February 23, 2001, at 9:00 a.m. in Room M-653, Moreton Building, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

25 TAC §§31.1 - 31.3

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

The repeals are proposed under the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, or the commissioner of health; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; Human Resources Code, Chapter 33; the Child Nutrition Act of 1966, 42 USC §1786, as amended; and 7 CFR Part 246.

The repeals affect the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; and Human Resources Code, Chapter 33.

§31.1. Special Supplemental Food Program for Women, Infants, and Children (WIC).

§31.2. Farmers' Market Nutrition Program.

§31.3. Register of Mother-Friendly Businesses.

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 January 19, 2001.

TRD-200100363
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 458-7236

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SUBCHAPTER A. REGISTER OF MOTHER-FRIENDLY BUSINESSES

25 TAC §31.1

The new section is proposed under the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, or the commissioner of health; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; Human Resources Code, Chapter 33; the Child Nutrition Act of 1966, 42 USC §1786, as amended; and 7 CFR Part 246.

The new section affects the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; and Human Resources Code, Chapter 33.

§31.1. Register of Mother-Friendly Businesses.

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

(1) Mother-friendly business - A business that actively promotes and supports breast-feeding by its employees.

(2) Department - Texas Department of Health

(b) Minimum standards. To be considered mother-friendly, a business must:

(1) adhere to the definition of a mother-friendly business;

(2) provide work schedule flexibility to allow employees time for either expressing breast milk or breast-feeding;

(3) provide employees access to a private area for either expressing breast milk or breast-feeding;

(4) provide access to a sink; and

(5) provide access to a hygienic place to store expressed breast milk.

(c) Application for designation as a mother-friendly business. To apply for designation as a mother-friendly business, a business must:

(1) complete a mother-friendly application. Applications are available from the Bureau of Nutrition Services (BNS), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and should be completed by the contact person for mother-friendly activities. Completed applications should be returned to the department's Bureau of Nutrition Services; and

(2) submit completed applications for review. Completed applications will be reviewed by the staff of the Bureau of Nutrition Services for compliance with the minimum standards set forth in subsection (b) of this section. Businesses that meet the standards will receive a letter signed by the Commissioner of Health and a certificate suitable for framing and display. Businesses that do not meet the standards will be notified by letter and will be offered technical assistance to achieve compliance.

(d) Maintaining designated status. A business designated as mother-friendly must:

(1) be listed as such by the department. The list of mother-friendly businesses will be maintained by the staff of the department's Bureau of Nutrition Services. The department will make the list available for public inspection;

(2) keep the staff of the Bureau of Nutrition Services informed of any changes in the company's mother-friendly policies. If its mother-friendly policies change, a business must submit an amended application; and

(3) comply with minimum standards at all times. If a business does not comply with the program's minimum standards at all times, the department may suspend or revoke the mother-friendly designation. A business may amend its nonconforming policies and may reapply for the mother-friendly designation. Employees and clients should direct complaints about the activities of a business that employs the mother-friendly designation to the department's Bureau of Nutrition Services.

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

Filed with the Office of the Secretary of State, on January 19, 2001.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER B. FARMERS' MARKET NUTRITION PROGRAM

25 TAC §31.11, §31.12

The new sections are proposed under the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, or the commissioner of health; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; Human Resources Code, Chapter 33; the Child Nutrition Act of 1966, 42 USC §1786, as amended; and 7 CFR Part 246.

The new sections affect the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; and Human Resources Code, Chapter 33.

§31.11. Definitions.

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

(1) Coupon - A coupon, voucher or other negotiable financial instrument by which benefits under the Farmers' Market Nutrition Program are transferred to recipients.

(2) Farmer - An individual authorized to sell produce at participating farmers' markets.

(3) Farmers' market association - An association of local farmers who assemble at a defined location for the purpose of selling their produce directly to consumers.

(4) Farmers' market agreement - The formal and legally binding agreement between the Texas Department of Health and a vendor authorized to accept and redeem WIC Farmers' Market Nutrition Program coupons.

(5) Farmers' market nutrition program - Section 17 of the Child Nutrition Act of 1966, as amended, authorizes the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Subsection 17(m) of the Child Nutrition Act, as amended, authorizes the Farmers' Market Nutrition Program.

(6) State agency - The Texas Department of Health in its role as administrator of the WIC Program.

§31.12. Farmers' Market Nutrition Program Agreement with the State Agency.

(a) Once a farmers' market association has been approved to participate in the Farmers' Market Nutrition Program, a written farmers' market agreement shall be prepared and signed by authorized officials of the state agency and the farmers' market association.

(b) The agreement shall be prepared by the state agency and submitted to the farmers' market associations for endorsement.

(c) Upon receipt, an official of the farmers' market association shall enter the association's name, address, telephone number, federal income tax number, and State of Texas Comptroller number, and shall sign the agreement on behalf of the association.

(d) The farmers' market association shall complete and execute an agreement for each member farmer who will be redeeming Farmers' Market Nutrition Program coupons. On the agreement, the association shall assign a unique four digit outlet number to each farmer and shall provide each farmer's mailing address, street address (if different), home and work phone numbers, and social security number. The agreement shall be signed and dated by each farmer and the association official.

(e) The completed association agreement and the farmer agreements shall be returned to the state agency.

(f) The state agency shall assign each farmers' market association a four-digit account number and shall record it upon the agreement between the department and the association.

(g) After the agreement is signed by the state agency official, one copy shall be forwarded to the association and another copy sent to the WIC local agency affected. The original document shall be retained by the state agency.

(h) If farmers join an association after the association's agreement has been executed, the association shall complete and submit a farmer agreement for each new member farmer to the state agency.

(i) If a farmer ceases to be a member of an association, the association shall notify the state agency that the farmer will no longer be

redeeming Farmers' Market Nutrition Program coupons through that association.

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 January 19, 2001.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

25 TAC §§31.21 - 31.37

The new sections are proposed under the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, or the commissioner of health; the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; Human Resources Code, Chapter 33; the Child Nutrition Act of 1966, 42 USC §1786, as amended; and 7 CFR Part 246.

The new sections affect the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II; and Human Resources Code, Chapter 33.

§31.21. Definitions.

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

(1) Adjunctively income eligible - A determination that an applicant meets the income eligibility requirements by virtue of being able to document his or her eligibility for another program.

(2) Applicant - A pregnant, breast-feeding or postpartum woman; infant; or child who is applying to receive WIC Program benefits and includes individuals who are subsequently applying after the expiration of a certification period.

(3) Arms-length transaction - A good faith business transaction between parties, each acting voluntarily in his own self-interest, without necessary advantage to the other in a manner consistent with prevailing business practice.

(4) Breast-feeding - The practice of feeding a mother's breastmilk to an infant on the average of at least once a day.

(5) Breast-feeding woman - A woman up to one year postpartum who is breastfeeding.

(6) Caretaker - An individual age 18 years or older who is related to and has custodial responsibility for a WIC Program participant during the majority of a participant's time awake each day.

(7) Categorical eligibility - Eligibility for WIC Program benefits based on a person's status as a pregnant woman, breast-feeding woman, postpartum woman, infant, or child.

(8) Certification - The implementation of criteria and procedures to assess and document each applicant's eligibility for the WIC Program.

(9) Child - A person who has had his or her first birthday but has not yet had his or her fifth birthday.

(10) Competent professional authority - An individual on the staff of the local agency authorized to determine nutritional risk and prescribe supplemental foods.

(11) Current income - The most recent income data and documentation available to the applicant; usually the income received by the family in the month prior to application.

(12) Disqualification - The act of ending the WIC Program participation of a participant, authorized food vendor, or authorized local agency, whether as a punitive sanction or for administrative reasons.

(13) Dual participation - Simultaneous participation in the WIC Program through one or more WIC clinics, or participation in the WIC Program and in the Commodity Supplemental Food Program at the same time.

(14) Family - A group of related or non-related individuals who are living together as one economic unit, except that residents of a homeless facility or institution shall not be considered members of a single family.

(15) Federal fiscal year - The 12-month period beginning October 1 of any calendar year and ending September 30 of the following calendar year.

(16) Food instrument - A voucher, check, electronic benefits transfer card (EBT), coupon, or other document which is used by a participant to obtain supplemental foods.

(17) Guardian - An individual legally appointed and responsible to look after the affairs of a minor.

(18) Homeless facility - A facility which provides meal service and is a supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

(19) Homeless individual - A woman, infant, or child who lacks a fixed and regular nighttime residence; or whose primary nighttime residence is: a supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; a temporary accommodation in the residence of another individual not exceeding 365 days; or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

(20) Infant - A person under one year of age.

(21) Income - Gross income before deductions or net income after business deductions for farm or self-employed individuals.

(22) Individual with disabilities - A person who has a physical or mental impairment that substantially limits one or more major

life activities; a person who has a history or record of such an impairment; or a person who is perceived by others as having such an impairment. Major life activities include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(23) Instream migrant farmworker - A migrant farmworker who follows a route or travels from state to state seeking agricultural work and is not currently at his or her home base.

(24) Local agency - An entity under contract to the State agency to provide WIC Program nutrition services.

(25) Migrant farmworker - An individual whose principle employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purpose of such employment, a temporary abode.

(26) Newborn infant - An infant less than one month of age.

(27) Nonprofit agency - A private agency which is exempt from income tax under the Internal Revenue Code of 1954, as amended.

(28) Nutrition education - A benefit offered to WIC Program participants which consists of individual or group education sessions and the provision of information and educational materials designed to improve health status, achieve positive change in dietary habits, and emphasize the relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(29) Nutritional risk conditions - Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; other documented nutritionally-related medical conditions; dietary deficiencies that impair or endanger health; conditions that directly affect the nutritional health of a person; or conditions that predispose persons to inadequate nutritional patterns or nutritionally-related medical conditions, including, but not limited to, homelessness and migrancy.

(30) Nutritional risk priorities - A system of priorities based on specific nutritional risk conditions with indices for identifying these conditions.

(31) Nutritional risk priority system - A priority system which ranks participants according to the degree of need for supplemental foods represented by the nutritional risk conditions which the participant has. This system shall be used to prioritize new applicants and participants for eligibility for services when a local agency has reached its maximum participation level.

(32) Parent - An individual's mother or father.

(33) Participant - A pregnant woman, breast-feeding woman, postpartum woman, infant, or child who is receiving supplemental foods or food instruments under the WIC Program, and the breast-fed infant of a participating breast-feeding woman.

(34) Postpartum woman - A woman up to six months after termination of pregnancy.

(35) Poverty income guidelines - The poverty income guidelines prescribed and adjusted annually by the United States Department of Health and Human Services, effective July 1 of each year.

(36) Pregnant woman - A woman determined to have one or more embryos or fetuses in utero.

(37) Regulations - United States Department of Agriculture regulations, 7 CFR Part 246.

(38) Separate economic unit - A group of individuals who indicate that they have a source of income adequate to sustain the unit and usually purchase and prepare food separately from other individuals dwelling in the same household, or a group of individuals who intend to purchase and prepare food separately from other individuals dwelling in the same household after being certified as eligible to receive benefits from the WIC Program.

(39) Shelf price - The price normally charged all customers by a vendor for an item sold by the vendor.

(40) State agency - The Texas Department of Health in its role as administrator of the WIC Program.

(41) Supplemental foods - Those foods containing nutrients determined to be beneficial for pregnant, breast-feeding, or postpartum women, infants, and children as prescribed by the United States Secretary of Agriculture.

(42) United States Department of Agriculture (USDA) - The federal agency which funds the WIC Program.

(43) Vendor account - A vendor approved by the state agency with one or more outlets.

(44) Vendor agreement - The formal and legally binding agreement between the Texas Department of Health and a vendor authorized to accept and redeem WIC Program food instruments.

(45) Vendor band - A comparison group of WIC Program vendors based on monthly WIC sales volume for each account.

(46) Vendor competitive pricing - The process of comparing the cost of a standard WIC Program food package for a woman, infant, or child at an outlet to the cost of an average standard food package for the local agency service area where the vendor is located. Vendor accounts of a similar WIC dollar volume are compared within the same local agency service area.

(47) Vendor outlet - An individual store location or mobile unit.

(48) Vendor profile - A form which includes demographic, financial, and other descriptive information for each vendor outlet.

(49) WIC program - The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by the Child Nutrition Act of 1966, §17, as amended.

§31.22. Recipient Eligibility Requirements.

(a) An individual shall be eligible to receive services when the individual receives local agency approval after meeting all of the following requirements.

(1) Be determined categorically eligible.

(A) If a woman, be pregnant or not more than six months postpartum if not breast-feeding or within one year postpartum if breast-feeding; or

(B) If a child, be under age five.

(2) Physically reside within the State.

(A) The applicant shall provide documentation of residency within the local agency's approved service area.

(i) The following documents shall be accepted as documentation of residency: utility bill; credit card bill; rent receipt; drivers license; rental agreement; business letter from an office other than the local agency; other bills; letter from the person the applicant lives with accompanied by documentation of that person's address; voter registration card; property tax receipt; documentation by a third

party such as the staff of a church, social service agency, legal-aid society, school, or a public health official, nurse, doctor, or elected public official; homeless facility documentation; or documentation of adjunctive income eligibility.

(ii) If none of the documents referenced in this section exists, an applicant may provide a map indicating where the applicant lives.

(iii) A homeless individual may complete a WIC Program affidavit stating he or she is homeless or is the parent, caretaker, or guardian of a homeless applicant.

(B) If residency has been documented for another family member within the 60-day period prior to application, that documentation shall be sufficient for meeting the residency requirement.

(3) meet the income requirements as follows:

(A) Income guidelines shall not exceed 185% of the federal poverty income guidelines.

(B) Applicants shall provide documentation of the amount of income received by each member of the family at each certification and subsequent certification except as provided in this subsection.

(C) Income includes the following:

(i) wages, salary, commissions, or fees;

(ii) net income from farm and non-farm self-employment;

(iii) Social Security benefits;

(iv) dividends or interest on savings or bonds, to include interest on certificates of deposit (CD) and Individual Retirement Accounts (IRA), income from estates or trusts, or net rental income;

(v) public assistance or welfare payments;

(vi) unemployment compensation;

(vii) government civilian employee or military retirement or pensions, or veterans' payments;

(viii) private pensions or annuities;

(ix) alimony or child support payments;

(x) regular contributions from persons not living in the household;

(xi) net royalties;

(xii) lump sum payments which are considered as "new money" received in the last 12 months would include but are not limited to gifts, inheritances, lottery winnings, worker's compensation for lost income, and severance pay;

(xiii) student financial assistance, such as grants and scholarships, except those grants and scholarships excluded as income as listed in this section;

(xiv) capital gains and interest earned on the sale amount. If there was a loss on the sale, the amount of interest earned on the sale amount is counted as income. This applies only to capital gains and losses within the past 12 months. Gains from any sale prior to last 12 months shall be computed according to clause (iv) of this subparagraph; and

(xv) other cash income, which includes, but is not limited to, cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family.

(D) Exclusions from income include, but are not limited to, the following:

(i) any basic allowance for quarters received by military personnel residing off military installations;

(ii) the value of inkind housing and other inkind benefits, including, but not limited to, the employer-paid or union-paid portion of health insurance premiums or other employee fringe benefits, food, or housing received in lieu of wages;

(iii) lump sum payments classified as "reimbursement", such as monies received from insurance companies for loss or damage to real or personal property, such as a home or auto, and payments received from a third party to pay for a specific expense such as medical bills resulting from accident or injury;

(iv) operating expenses for those individuals who are self- employed. For farm income, operating expenses include, but are not limited to, cost of feed, fertilizer, seed, and other farming supplies; cash wages paid to farmhands; depreciation; cash rent; interest on farm mortgages; farm building repairs; and property taxes (but not state and federal income taxes). For nonfarm self-employed persons, operating expenses include, but are not limited to, the cost of goods purchased, rent, heat, utilities, depreciation, wages and salaries paid, and business taxes (but not personal income taxes). Applicants shall complete a WIC Program affidavit or provide written business records;

(v) loans, such as bank loans, which are temporarily available but must be repaid;

(vi) payments or benefits provided under certain federal programs or acts which must be excluded by federal law include, but are not limited to the following: reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; any payment to volunteers under Title I (VISTA and others) and Title II (RSVP, foster grandparents, and others) of the Domestic Volunteer Service Act of 1973, to the extent excluded by that Act; payment to volunteers under the Small Business Act (SCORE and ACE), §8(b)(1)(B); income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes; payments received under the Job Training Partnership Act; income derived from the disposition of funds to the Grand River Band of Ottawa Indians; payments received under the Alaska Native Claims Settlement Act; the value of assistance to children or their families under the National School Lunch Act, as amended; the Child Nutrition Act of 1966; and the Food Stamp Act of 1977; payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation; payments to the Passamaquoddy Tribe and Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980; payments under the Low- Income Home Energy Assistance Act, as amended; student financial assistance received from any program funded in whole or part under Title IV of the Higher Education Act of 1965, including the Pell Grant, Supplemental Educational Opportunity Grant, State Student Incentive Grants, National Direct Student Loan, PLUS, College Work Study, and Byrd Honor Scholarship programs, including any assistance received from these programs used for tuition and fees, the costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study, and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending a higher education institution on

at least a half-time basis, as determined by the institution, but not including room and board and dependent care expenses; payments under the Disaster Relief Act of 1974, as amended by the Disaster Relief and Emergency Assistance Amendments of 1989; payments received under the Carl D. Perkins Vocational Education Act, as amended by the Carl D. Perkins Vocational and Applied Technology Educational Act Amendments of 1990; payments pursuant to the Agent Orange Compensation Exclusion Act; payments received for Wartime Relocation of Civilians under the Civil Liberties Act of 1988; value of any child care payments made under the Social Security Act, §402(g)(1)(E), as amended by the Family Support Act; value of any "at-risk" block grant child care payments made under Public Law 101-508, §5081; value of any child care provided or paid for under the Child Care and Development Block Grant Act, as amended; mandatory salary reduction amount for military service personnel which is used to fund the Veteran's Educational Assistance Act of 1984 (GI Bill), as amended; payments received under the Old Age Assistance Claims Settlement Act, except for per capita shares in excess of $2000; payments received under the Cranston-Gonzales National Affordable Housing Act, unless the income of the family equals or exceeds 80% of the median income of the area; payments received under the Housing and Community Development Act of 1987; unless the income of the family increases at any time to not less than 50% of the median income of the area; payments received under the Sac and Fox Indian claims agreement; payments received under the Judgement Award Authorization Act, as amended; payments for the relocation assistance of members of Navajo and Hopi Tribes; payments to the Turtle Mountain Band of Chippewas (Arizona); payments to the Blackfeet, Grosventre, and Assiniboine tribes (Montana) and the Papage (Arizona); payments to the Assiniboine Tribe of the Fort Belknap Indian community and the Assiniboine Tribe of the Fort Peck Indian Reservation (Montana); payments to the Red Lake Band of Chippewas; payments received under the Saginaw Chippewas Indian Tribe of Michigan Distribution of Judgement Funds Act; and payments to the Chippewas of Mississippi.

(E) Acceptable documentation of income are: check stubs stating current earnings; United States Internal Revenue Service form W-2 if less than 90 days old at the time of application and if reflective of current income; a signed statement from the employer; completion of WIC Program affidavit allowed in specific circumstances such as for homeless or those with no income; completion of WIC Program affidavit for self-employed individuals with no business accounting records or who are paid in cash and whose employer will not provide documentation of income; bankbook, if reflective of current income; current federal tax records; income receipt book or other accounting records if self-employed; foster child placement letter; other documentation which the local agency requests to use and which has been approved by the state agency; and the placement letter from the welfare agency legally responsible for a foster child.

(i) Only one document is required, such as one check stub for each source of income as long as the document is no older than 60 days unless the applicant only receives such documentation annually, such as a Social Security Award letter.

(ii) Instream migrant farmworkers and their families are required to provide documentation of meeting the income requirements only once every 12 months.

(F) Certain applicants shall be deemed adjunctively income eligible as follows.

(i) Applicants who are fully eligible to receive Food Stamps benefits or who are fully eligible or presumptively eligible to receive Temporary Assistance to Needy Families benefits or Medicaid benefits.

(ii) Applicants who are members of families in which one other member is fully eligible or presumptively eligible to receive Temporary Assistance to Needy Families benefits.

(iii) Applicants who are members of families in which a pregnant woman or infant is fully eligible or presumptively eligible to receive Medicaid benefits.

(iv) Applicants shall provide proof of their status as an applicant who is adjunctively income eligible as follows.

(I) The applicant shall provide written documentation from the other benefit program which shows current eligibility in the benefit program at the time of application to the WIC Program.

(II) The applicant may grant permission for the local agency to conduct a phone or computer on-line verification from the benefit program on behalf of the client when the local agency has the capability to do so.

(v) Applicants eligible to receive Food Stamp benefits shall provide documentation that the applicant himself or herself is fully eligible to receive such benefits.

(vi) Applicants applying as adjunctively income eligible based on receipt of Food Stamps by a family member as head of household shall provide documentation that the person named as head of household for Food Stamps purposes is a member of the applicant's family and is fully eligible to receive such benefits.

(vii) Applicants eligible to receive Temporary Assistance to Needy Families or Medicaid shall provide documentation that the applicant himself or herself is fully or presumptively eligible to receive such benefits.

(viii) Applicants applying as adjunctively income eligible based on a family member's eligibility to receive Temporary Assistance to Needy Families or Medicaid shall provide documentation of the family member's receipt of such benefits and that the recipient is a member of the applicant's family.

(ix) Applicants eligible for adjunctive income eligibility shall verbally declare their total gross family income or net income if self-employed.

(G) Income eligibility shall be based on the total income of the family.

(H) When determining an applicant's income eligibility for WIC Program services, the local agency shall determine the size of the applicant's family as follows:

(i) All family members shall be counted except for individuals who qualify as a member of a separate economic unit.

(I) A pregnant woman shall be counted as more than one person according to the number of children she expects to give birth to. If she is expecting one child, she shall be counted as two individuals; if she is expecting twins, she shall be counted as three individuals and so on.

(II) A foster child shall be considered a separate family of one.

(ii) Persons temporarily absent from the family may be counted if the following circumstances exist:

(I) other members still consider the family to be the principal residence of the absent member;

(II) the absence does not exceed six months;

(III) the absence is for a purpose such as school, training, employment, hospitalization, or institutionalization; and

(IV) the absent member continues to exercise customary family responsibilities such as income, planning, or physical care.

(I) Some individuals may qualify as a separate economic unit as an exception if the unit has an adequate source of income and usually purchases and prepares food separately from other persons who live in the same dwelling or the unit intends after certification to purchase and prepare food separately from other persons who live in the same dwelling. The following shall not be certified as a separate economic unit:

(i) minor children who live with their parent or parents;

(ii) a child under age 18 who lives with family members who serve as managing conservators and provide more than half of the child's support, and the family members state that the child is under parental control;

(iii) spouses; or

(iv) two people who live together and represent themselves to the community as husband and wife.

(J) Individuals who have been determined eligible for WIC Program services are not required to report changes in income during certification periods.

(i) The local agency has no responsibility to monitor the continued income eligibility of the participant during the certification period.

(ii) If the local agency becomes aware of changes in income during a certification period, the participant shall be reassessed for income eligibility under the rules for determining income eligibility.

(4) have one or more nutritional risk conditions as defined by the United States Department of Agriculture's national nutritional risk codes and conditions, nutritional risk priorities, and nutritional risk priority system.

(A) At subsequent certification, if there is a possibility of regression in nutritional status without WIC nutrition education and supplemental foods, an applicant may be determined at nutrition risk for regression by the competent professional authority.

(B) Regression shall be used only at a subsequent certification and only when no other risk condition can be determined.

(C) Applicants may be certified for regression for one certification period only.

(5) be physically present at the initial WIC Program certification and the subsequent certification:

(A) Exceptions may be granted in limited circumstances if approved by the competent professional authority as follows.

(i) Newborn infants may be certified without being physically present if all required documentation is available, the local agency has elected to implement this practice, and the infant is physically presented to the local agency by the time the infant is six weeks of age.

(ii) An applicant or parent, caretaker, or guardian of an applicant who is an individual with a disability may be certified without being physically present because he or she is unable to be physically present because of his or her disability.

(I) Disability conditions which meet this standard are a medical condition that necessitates the use of medical equipment that is not easily transportable; a medical condition that requires confinement to bed rest; or a serious illness that may be exacerbated by coming into the local agency.

(II) A verbal declaration by the applicant or parent, caretaker, or guardian of the applicant that the applicant has a disability and cannot be physically present is sufficient to request the exception.

(iii) An infant, other than a newborn infant, or child may be certified without being physically present if being physically present would present an unreasonable barrier and the infant or child has documented ongoing health care from a health care provider other than the WIC local agency.

(iv) An infant, other than a newborn infant, or child may be certified without being physically present if the infant or child was physically present at a WIC Program certification or subsequent certification within the one-year period which ended on the date the infant or child was last certified or subsequently certified and the infant or child is under the care of one or more working parents, caretakers, or guardians who verbally declare that their working status presents a barrier to bringing the infant or child to the WIC local agency.

(B) Exemptions may be granted for one certification period, or for an extended period of time if the competent professional authority approves the extended period of time.

(6) provide documentation of identification:

(A) The following documents shall be accepted as documentation of identification: birth certificate; hospital records, including a "crib" card, hospital wrist band, or discharge papers; baptismal certificate; marriage license; drivers license; WIC Family Identification Card; immunization card; school identification card; employment identification card; military identification card; official identification card with picture; passport or immigration records; letter from Medicaid, Food Stamps, Temporary Assistance to Needy Families, or the Supplemental Security Income Programs; indigent health care identification card; paycheck stub with imprinted name; voter registration card; identification card from another WIC local agency; Social Security card; housing or rental lease; loan papers from a bank or finance company; or property tax receipt.

(B) Each local agency may designate additional documents which shall be accepted as documentation of identification with the approval of the state agency.

(b) Citizenship is not a requirement for eligibility.

(1) As long as the local agency has caseload openings, individuals who qualify for WIC Program services shall be served without regard to citizenship status.

(2) No individual's participation in the WIC Program may be terminated because the individual is suspected as or known to be an undocumented alien.

(3) WIC Program confidentiality requirements apply to all applicants and participants regardless of their citizenship status.

§31.23. Recipients of Supplemental Food Benefits.

(a) Regardless of their age, pregnant, breast-feeding, and postpartum participants may be designated as recipients of supplemental food benefits for themselves and/or their infants and/or children.

(b) Regardless of their age, parents, guardians, caretakers, or foster parents of infant and/or child participants may be designated as

recipients of supplemental food benefits for their infants and/or children.

(c) Caretakers of a participant may be designated as recipients of supplemental food benefits for the participant if the caretakers are at least 18 years of age or older.

(d) A proxy who is 16 years of age or older may be designated in writing by a WIC Program participant, or parent, caretaker, guardian of a participant, or a foster parent to act as the supplemental food benefit recipient. Each time a proxy is designated to act as the recipient, such designation shall be provided in writing to the local agency, and the proxy shall provide identification for himself or herself and present the participant's WIC Program family identification card.

(e) Not more than one month's supplemental food benefits may be issued to a proxy.

(f) Proxies of participants residing in a homeless facility or institution shall not pick up supplemental food benefits for all WIC Program participants in their respective homeless facilities or institutions or transact the food instruments in bulk. The proxy may act on the behalf of only one certified family.

(g) Recipients of supplemental food benefits shall sign the WIC Program Supplemental Information Form prior to receiving such benefits.

(h) Recipients of supplemental food benefits shall provide identification at each issuance of food benefits.

§31.24. Provision of Immunizations to WIC Applicants and Participants.

(a) Immunizations shall be offered to WIC Program applicants and participants and the siblings of WIC applicants and participants by local agencies in conjunction with scheduled WIC Program services and in accordance with the local agency immunization plan.

(b) Applicants may receive immunizations at the time of the eligibility determination for WIC Program services regardless of the outcome of the eligibility determination.

(c) Applicants, participants, and the siblings of applicants and participants shall be provided immunizations free of charge.

(d) Immunizations shall be provided to infants and children only upon completion of informed consent procedures.

§31.25. Participant Certification Periods.

(a) After eligibility has been determined, applicants shall be enrolled and certified to receive WIC Program benefits for a specified length of time. The certification period shall begin on the date the applicant is determined eligible.

(b) A pregnant woman shall be certified to receive one set of food instruments each month for the duration of her pregnancy and is eligible to receive one set of food instruments between delivery of the baby and six weeks postpartum. The certification expiration date shall be set at six weeks after her expected delivery date.

(c) A postpartum woman who is not breast-feeding shall be certified to receive one set of food instruments each month until she is six months postpartum. The certification expiration date shall be set for the day the woman is six months postpartum.

(d) A breast-feeding woman shall be certified to receive one set of food instruments each month for a six-month period. The certification expiration date shall be set for the last day of the sixth month. Any subsequent certification shall expire on the day of the infant's first birthday.

(e) A child one to five years of age shall be certified to receive one set of food instruments each month for a six-month period. The certification expiration date shall be set for the last day of the sixth month. For a child turning age five, the certification expiration date shall be set for the last day of the month the child turns age five.

(f) An infant six months of age or older at the time of initial enrollment shall be certified to receive one set of food instruments each month for a six-month period. The certification expiration date shall be set for the last day of the sixth month.

(g) An infant younger than six months of age at the time of initial enrollment shall be certified to receive one set of food instruments each month until the infant's first birthday. The certification expiration date shall be set for the day of the infant's first birthday.

§31.26. Notification to Applicants of Ineligibility.

(a) An individual found ineligible for the WIC Program shall be notified in writing of the reason or reasons for ineligibility.

(b) When ineligibility is determined at the time of the certification determination visit, the applicant or parent, caretaker, or guardian applying on behalf of an infant or child shall be notified at that time in person.

(c) When ineligibility is determined after the certification determination visit, the applicant, participant, or parent, caretaker, or guardian of a participant shall be notified by mail.

(d) The notification shall inform the applicant or parent, caretaker, or guardian of a participant that he or she has a right to a fair hearing.

§31.27. Notification to Participants of Certification Expiration.

(a) Each participant shall be notified at least 15 days prior to the expiration of each certification period that eligibility is about to expire.

(b) At the time of the notice, participants who are eligible to apply for subsequent certification shall be notified of their categorical eligibility and that they must apply in order for WIC Program benefits to continue.

§31.28. Notification to Participants of Termination of Certification.

(a) Participants whose certification in the WIC Program is terminated for program abuse, funding shortages which require that client caseloads be decreased, or a determination that the participant's income exceeds WIC Program eligibility limits, shall be notified 15 days in advance of the date of disqualification. Such notification shall be in writing and shall include the reason for disqualification and a statement of the participant's right to a fair hearing.

(b) If the disqualification is the result of funding shortages as determined by the state agency, the written disqualification notice shall include the categories and priorities of participants being terminated.

(c) If the participant's income is found to exceed WIC Program eligibility limits due to an assessment of income eligibility during a certification period, the participant shall be issued one month of food instruments at the time it is determined a reassessment is necessary. The participant shall be required to present current documentation of continuing income eligibility at the next visit. If the participant also is determined ineligible at the next visit, the individual shall be terminated for exceeding the income limits.

§31.29. Applicant and Participant Rights.

(a) Standards used for determining eligibility and participation in the WIC Program shall be applied equally to all persons regardless of sex, age, disability, race, color, or national origin.

(b) At the time of denial of participation or disqualification from the WIC Program, each individual shall be informed in writing of the right to a fair hearing and of the method by which a fair hearing may be requested.

(1) Any individual has the right to appeal a state agency or local agency action which results in the individual's denial of participation in or suspension or termination from the WIC Program or the assessment of an administrative claim against the individual for repayment of the cash value of improperly issued benefits.

(2) An individual may make an oral or written request for a fair hearing.

(3) The oral or written request shall be made within 60 days of the date of denial of participation in or suspension or termination from the WIC Program or the assessment of a claim against the individual for repayment of the cash value of improperly issued benefits.

(4) Participants who appeal termination during a certification period and who appeal within 15 days of the date of notification of the termination, shall continue to receive WIC Program benefits until a hearing decision is reached or the certification period ends. An appeal after the 15-day time limit shall not result in continued benefits.

(5) Applicants who are denied participation in the WIC Program at the initial certification determination or a subsequent certification determination may appeal the denial but shall not receive program benefits while the appeal is pending.

(6) The hearing shall be scheduled within three weeks from the date the request is received. The state agency shall provide written notice of the time and place of the hearing and an explanation of the hearing procedure to the appellant at least ten days prior to the hearing.

(7) The convenience of the appellant will be of prime consideration in the selection of the time and place of the hearing.

(8) An impartial hearing official who did not participate in the decision under appeal shall be designated to conduct the hearing.

(9) The appellant may be represented by an attorney or other person and shall have the right to examine, prior to the hearing, the documents and records presented in support of the decision under appeal.

(10) During the hearing, the appellant shall have the opportunity to question or refute any testimony or other evidence and to confront and cross-examine witnesses.

(11) The decision of the hearing official shall be based on oral and documentary evidence presented at the hearing.

(12) The appellant and any designated representative shall be notified in writing of the hearing official's decision within 45 days from the date of the request for the hearing.

(13) If the hearing decision is in favor of the appellant and benefits were discontinued or denied, benefits shall begin immediately.

(14) If the hearing decision regarding suspension or disqualification from the WIC Program is in favor of the state agency, any benefits which were continued pending the outcome of the hearing decision shall be terminated by the local agency as soon as is administratively feasible.

(15) If the hearing decision regarding the assessment of a claim against the appellant is in favor of the state agency, the state agency shall resume its efforts to collect the claim.

(c) The state agency shall process complaints upon receipt from individuals who feel they have been treated unfairly or who have any other type of complaint about local agency actions or WIC Program policies and procedures.

(1) Complaints may be presented either orally or in writing to the state agency.

(2) The state agency shall document, to the extent possible, the name, address, and telephone number of the complainant; the specific location and name of the entity delivering services; the nature of the incident or action that led to the complaint; the names, titles, and business addresses of persons who may have knowledge of the complaint; and the date(s) during which the alleged actions occurred, or if continuing, the duration of such actions.

(3) The identity of every complainant shall be kept confidential except to the extent necessary to carry out the investigation of the complaint.

(4) The state agency shall immediately notify the local agency that a complaint has been filed and shall obtain information about the alleged actions unless the complaint alleges civil rights discrimination.

(5) The state agency shall contact the complainant to relay what action has been taken, if any, or clarify any related policies, rules, or regulations of the WIC Program.

§31.30. Participant Fraud and Abuse.

(a) Participants and parents, guardians, or caretakers of participants identified and documented as having abused the WIC Program shall be sanctioned.

(b) In all cases where it is found by the state agency that a participant or parent, guardian, or caretaker of a participant unlawfully received benefits due to WIC Program abuse, including but not limited to dual participation, the state agency shall refer the matter for criminal prosecution.

(c) If prosecution is declined by the appropriate jurisdiction or the WIC Program abuse does not involve a violation of criminal law, the state agency shall direct the local agency to initiate the following sanctions.

(1) Upon first offense, the participant or the parent or caretaker of a participant shall be counseled regarding his or her responsibilities and warned of the penalties associated with failure to comply with WIC Program rules. Documentation of this counseling shall be maintained by the local agency in the participant's certification record.

(2) For second and subsequent offenses, the participant shall be suspended from the program for a period of time not to exceed three months. The participant or parent or caretaker of the participant shall be informed of the right to appeal.

(3) Suspensions may be waived by the local agency if the competent professional authority determines that suspension of benefits might cause serious health risks. Documentation of the waiver shall be maintained by the local agency in the participant's certification record.

(d) The state agency shall attempt to recover, in cash, the value of the benefits received by a participant or the parent or caretaker of a participant as a result of participant abuse.

(1) The state agency shall determine the amount of the benefits improperly received by a participant through an independent review of local agency records and such other procedures as the state agency considers necessary under the specific circumstances.

(2) In cases involving criminal prosecutions for violations of law, repayment of the cash value of benefits improperly received

shall become a part of any restitution agreement with the prosecutor. In such cases, the participant shall not have the right to a fair hearing by the department.

(3) In cases involving an administrative claim but no criminal prosecution, the state agency shall notify the participant or parent, caretaker, or guardian of a participant in writing that a financial claim has been established and shall request repayment of an amount equal to the value of the benefits improperly received. The written notification shall include the reasons for the claim, the value of the benefits improperly received, and the participant's right to a fair hearing.

(e) Participants or parents, caretakers, or guardians of participants who are identified as having engaged in verbal abuse or physical abuse of WIC Program personnel which results in obstruction of the delivery of WIC Program benefits may be sanctioned.

(1) Verbal abuse is the verbal threat of physical abuse of local agency or state agency staff. Rude, vulgar, or generally abusive language shall not warrant a sanction.

(2) Physical abuse is abuse which results in actual physical harm to a WIC Program employee or damage to WIC Program property.

(3) All incidents of verbal or physical abuse shall be documented by the appropriate WIC Program staff.

(4) For abuse which occurs at the local agency, the WIC Director shall make every effort to counsel the participant or the parent or caretaker of a participant and to correct the problem without sanctions, if possible.

(5) Sanctions shall be applied as follows:

(A) A participant may be suspended for verbal abuse for a maximum of 60 days if the participant is a priority V, VI, or VII. At the end of the suspension period, the participant shall be reinstated until such time as the certification period expires.

(B) A participant shall be immediately suspended for physical abuse for a maximum of 60 days. Any civil or criminal action will be taken at the discretion of the WIC employee or local agency.

(6) When abuse which warrants suspension occurs at a local agency, the local agency shall immediately notify the state agency.

(7) Any participant suspended for verbal or physical abuse shall be notified of his or her right to a fair hearing.

§31.31. Selection of a Local Agency as a WIC Provider.

(a) Selection of a local agency to provide WIC Program services will be based on the local agency priority system as follows:

(1) A public or private nonprofit health agency which can provide ongoing routine pediatric and obstetric care or administrative services shall receive first priority consideration.

(2) A public or private nonprofit health or human service agency which will enter into a written agreement with another agency for either ongoing pediatric and obstetric care or administrative services shall receive second priority consideration.

(3) A public or private nonprofit health agency which will enter into a written agreement with private physicians licensed by the state to provide ongoing pediatric and obstetric care to a specific category of participants (women, infants, or children) shall receive third priority consideration.

(4) A public or private nonprofit human service agency which will enter into a written agreement with private physicians licensed by the state to provide ongoing routine pediatric and obstetric care shall receive fourth priority consideration.

(5) A public or private nonprofit human service agency which will provide ongoing routine pediatric and obstetric care through referral to a health provider shall receive fifth priority consideration.

(6) No WIC Program funds shall be expended to reimburse private physicians for the health services performed.

(b) The state agency shall establish an affirmative action each year plan to rank order each county's relative need for WIC Program services based on the total number of potentially eligible persons in each county.

(1) The following criteria shall be used to rank each county.

(A) Estimates of the proportion of infants below 185% of the federal income guidelines by ethnic group; and

(B) Total live births for each county and ethnic group for the previous five years.

(2) The affirmative action plan shall be used to identify the top one-third of Texas counties (1 through 85) as high priority due to their status as having the most unserved potentially eligible persons.

(3) The most needy one-third of Texas counties shall be designated as targets for the most extensive outreach efforts by the state agency when soliciting for local agencies.

(A) If no local agency has applied to provides services, the state agency shall publish a notice in the media of that area to solicit applications from other potential agencies.

(i) The state agency shall include in the notice a brief explanation of the program, a description of the priority system, and a request that interested local agencies notify the state agency of their interest within 30 days.

(ii) The state agency shall also contact all potential agencies in the area to ensure they are aware of the opportunity to apply for selection as a local agency.

(B) If no local agency which meets the criteria for first priority expresses an interest, the state agency may consider applications from agencies in the lower priorities.

(C) The state agency shall fund new local agencies in conformance with the sequential ranking of the affirmative action plan and the local agency priority system.

(c) All WIC Program initiation and expansion shall be executed utilizing a request for proposal (RFP) in accordance with USDA Food and Nutrition Services Instruction 802-1, the state agency's approved affirmative action plan, and 10 Texas Administrative Code, Chapter199, Electronic Business Daily, under one of the following conditions:

(1) the state agency determines it is in the best interests of the state to initiate an open competitive statewide RFP;

(2) an existing WIC Program local agency is either disqualified as a provider of WIC Program services or does not wish to continue as a local agency;

(3) a state agency Public Health Region wishes to transfer direct WIC Program services to a local agency; or

(4) a prospective agency satisfactorily documents to the state agency that a specific geographical area is underserved and the current WIC local agency providing services in that area is unable to provide services to that geographical area and declines to develop a

collaborative effort to deliver services to meet the documented unmet need.

(d) The state agency shall evaluate proposals to serve as a WIC Program local agency submitted in response to an RFP according to the following criteria:

(1) the ranking of the applying agency in the established priority system;

(2) the need for additional WIC Program services in the geographic area based upon review of the number of current participants by priority and the total number who receive services in comparison to the total number of potential eligible participants in an area, and the local agency applicant's estimate of the number to be served;

(3) the clinic locations proposed in an application relative to the existing WIC Program local agency clinics operated by other WIC Program authorized local agencies;

(4) overall estimated costs of operating the new local agency in comparison to the estimated revenue available to cover local agency costs;

(5) the staffing pattern of the local agency to support WIC Program services proposed by the applying local agency;

(6) planned hours of operation to include extended clinic hours which are defined as weekends and outside of traditional hours of 8:00 a.m. to 5:00 p.m., Monday through Friday;

(7) the availability of other medical services through the applicant agency or by referral; and

(8) specific application criteria in the request for proposal.

(e) The state agency shall advise respondent agencies of the status of their applications to provide WIC Program services in accordance with the schedule of events in the public notice and the RFP. At a minimum, the schedule of events shall provide for written notification of approval or disapproval to the applicant agencies within 30 days of the closing date for acceptance of responses to the RFP.

(f) In the event of an emergency or unexpected interruption of WIC Program services, the agency WIC Director may waive any or all parts of the application process if necessary to ensure uninterrupted delivery of WIC services in a geographic area or areas.

(g) When a local agency submits an incomplete application for participation either unsolicited or at the request of the state agency as a result of an emergency situation, the state agency shall notify the applicant within 15 days of the receipt of the incomplete application of the additional information needed. The state agency shall notify the applicant agency in writing within 30 days of receipt of a complete application of the approval or disapproval of the application.

§31.32. Selection of Vendors for WIC Initial Authorization for Participation.

(a) A representative from the state agency or the nearest local agency shall visit a vendor applying for authorization to redeem WIC food instruments for evaluation.

(1) The state or local agency representative shall complete a vendor evaluation form during the visit to the vendor indicating the type of WIC-authorized foods in stock and their shelf prices.

(2) The state or local agency representative shall recommend approval or disapproval of the vendor's application based on the observations during the store visit.

(3) The owner or manager or a store representative shall have the opportunity to review the information on the vendor evaluation form and shall sign the form to acknowledge accuracy of shelf prices listed at the time of the evaluation. The evaluator shall provide a copy of the form, including the date, local agency number, and the name of the evaluator, to the vendor at the time of the in-store evaluation.

(b) The state agency shall base its decision to authorize a vendor on the following criteria:

(1) The vendor's shelf prices are competitive for the local agency area.

(2) The vendor has sufficient quantities of at least one type of authorized milk, evaporated milk, cheese, cereal, contract infant formula, contract infant cereal, eggs, peanut butter, and dried beans.

(A) At a minimum, the amounts of each food type which constitute sufficient qualities are:

(i) a total of at least 180 ounces of adult cereal, including at least 36 ounces each of oat, corn, wheat, rice, and multi-grain cereals;

(ii) at least six dozen Grade A or AA large, medium, or small size eggs;

(iii) a total of at least 18 containers of juice, including at least two varieties of juice in 46-ounce fluid cans and/or 12-ounce frozen cans;

(iv) a total of at least six pounds of cheese;

(v) a total of at least nine gallons of milk, some of which must be available in one-half gallon containers;

(vi) at least three one-pound bags of dry beans;

(vii) at least three 18-ounce jars of peanut butter;

(viii) at least eight 12-ounce cans of evaporated milk;

(ix) at least 31 cans of milk or soy concentrate infant formula (contract brand) and either eight cans of milk-based powder formula or nine cans of soy powder formula (contract brand); and

(x) at least two 8-ounce boxes or one 16-ounce box of infant cereal.

(B) A pharmacy may provide only the designated contract milk and soy formulas and special formulas.

(C) A vendor may elect not to provide infant formula.

(3) The vendor provides milk in gallon and half-gallon containers and juice in 46-ounce or 12-ounce containers.

(4) The vendor's shelf prices do not exceed the maximum prices on WIC food instruments.

(5) The recommendation by the state or local agency representative who conducted the on-site evaluation.

(6) The vendor has a retail food operations permit or food manufacturer's permit from the applicable city, county, district, or state health authority.

(7) The vendor's store is clean, with fresh merchandise (no expired food items).

(8) The vendor has no apparent conflict of interest with the local agency in the vendor's service area.

(9) The vendor has posted prices for food items.

(10) If applicable, the vendor's history of WIC Program noncompliance.

(c) If the state agency disapproves the application by a vendor for authorization, the reasons for the disapproval shall be provided to the vendor in writing.

(d) Vendors who apply for authorization who have been evaluated twice within a six- month period and denied approval both times shall not be evaluated again until at least six months from the last evaluation.

(e) In the event a vendor purchases or acquires a store location or business which was in the process of being disqualified or which is disqualified from the WIC Program at the time of acquisition, the vendor's application for that store location or business shall not be considered until the disqualification period has been served or lifted or one year has elapsed, whichever is the lesser.

(f) If the state agency has allowed the vendor agreement for a previous owner of a store location to expire for noncompliance, a new owner's application for that store or location or business shall not be considered until at least six months from the expiration date of the previous owner's last vendor agreement.

(g) The state agency may waive the requirement for an on-site evaluation when a grocery chain comprising 20 or more outlets authorized to participate in the WIC Program purchases or merges with another chain with 20 or more authorized outlets if the merger or purchase does not materially change the stores' staff or pricing structure.

(h) Upon request, the state agency may provide an applicant vendor with tentative authorization to redeem WIC food instruments starting the day the store opens.

(1) To obtain tentative authorization, the vendor shall comply with all of the following criteria:

(A) The owner of the applicant store owns one or more stores that have been participating in the WIC Program under the current ownership for at least the six-month period prior to application for authorization.

(B) For the six-month period prior to application for authorization, none of the participating stores has exceeded 108% of the competitive pricing criteria for both the woman/child and infant food packages for their respective local agency vendor bands.

(C) None of the participating stores has been disqualified from program participation for two or more months within the 12-month period prior to application for authorization.

(D) The applicant store notifies the state agency at least two months prior to the official opening date.

(E) The applicant store's manager or assistant manager acknowledges receipt and understanding of the WIC Program vendor manuals provided with the agreement, the allowable foods list, and vendor rules and policies.

(F) The applicant store's manager or assistant manager has scored at least 70% on a written test provided by the state agency and returned to the state agency no later than five days prior to the applicant store's opening date.

(2) If, after evaluation, a store which has received tentative authorization from the state agency does not meet all authorization criteria, the store shall be notified of its tentative agreement expiration date and instructed to discontinue redeeming the WIC Program food instruments. The state agency shall honor properly redeemed food instruments from the opening date until the tentative agreement expiration.

(i) On a temporary basis, the state agency may consider and approve applications from new vendors for the following reasons:

(1) the vendor has been authorized to accept Food Stamps;

(2) the disqualification of an existing authorized vendor in a local agency service area would create inadequate access for WIC Program participants;

(3) a currently-authorized vendor outlet(s) changes ownership; or

(4) authorization of a new vendor would result in a significant cost advantage to the WIC Program.

(j) The state agency may deny an application to participate as a vendor if an owner, partner, principal stockholder, officer, director, manager, or operator of the applicant was an owner, partner, principal stockholder, officer, director, manager, or operator of another vendor which has been disqualified or which has violated WIC Program procedures, policies, rules or regulations.

(k) The state agency may hold an authorized vendor individually responsible for previous violations by an owner, partner, manager, or principal stockholder of the vendor when considering renewal of the vendor's agreement or future applications for vendor agreements.

§31.33. Selection of Vendors for Reauthorization for Participation.

(a) Vendors with a current vendor agreement shall be evaluated for issuance of a subsequent vendor agreement under WIC Program procedures, policies, rules, and regulations and shall be reauthorized unless notified in writing by the state agency at least 15 days before expiration of the vendor agreement.

(b) Prior to reauthorization, the state agency shall assess and review the qualifications of all vendors to assure that each continues to meet the WIC Program's goals. Criteria utilized in assessment and determination of qualifications for reauthorization include, but are not limited to.

(1) Competitive prices for the local agency area. A vendor's prices shall be considered competitive if the combined prices for the items included in the standard woman/child and/or infant food package do not exceed 108% of the local agency food package averages for the vendor's band.

(2) Volume of WIC sales. The vendor's volume of WIC sales exceeds $300 a month. If monthly sales fall below $300 a month for three consecutive months prior to the time of the vendor agreement reauthorization valuation, the vendor agreement many not be renewed.

(3) Previous compliance with WIC Program procedures, policies, rules, and regulations. The vendor has satisfactorily complied with food instrument redemption and submission procedures, policies, rules, and regulations.

(4) Continuing to meet selection criteria . The vendor continues to meet the selection criteria as stated in this section.

(c) Previous noncompliance with WIC Program procedures, policies, rules, and regulations shall be considered by the state agency in determining if the vendor is eligible for a subsequent contract.

(1) Examples of noncompliance violations include, but are not limited to:

(A) Two or more state agency written notifications of problems with competitive pricing criteria within the term of a 12-month vendor agreement;

(B) one or more state agency written notifications of problems with competitive pricing criteria within the term of a six month vendor agreement;

(C) previous voluntary withdrawal as an authorized vendor after having received a warning or disqualification letter from the state agency. Such a warning or disqualification shall be entered into the vendor's record.

(2) The state agency shall also consider a history of noncompliance when evaluating a vendor's application for authorization at new or additional sites.

(d) The state agency shall allow a vendor's agreement to expire and not be renewed if the vendor has a history of noncompliance with provisions in the vendor agreement or the WIC Program procedures, policies, rules, and/or regulations, including compliance with the competitive pricing criteria unless, at the request of an otherwise compliant vendor, the state agency negotiates a civil money penalty in lieu of nonrenewal.

(1) Expiration of the vendor agreement is not subject to appeal.

(2) In the event the vendor's agreement has been allowed to expire due to previous noncompliance, a vendor's request for reauthorization shall not be considered until at least six months from the expiration date of the vendor's last agreement.

(e) Any vendor for which the state agency has identified violations that have resulted in, or would have resulted in, a one-month disqualification from the WIC Program but has not had any state agency written notification of problems with competitive pricing within the current agreement term, shall have a probationary vendor agreement that expires March 31 or September 30 of the current federal fiscal year, whichever results in the shorter contract period.

(f) If the state agency agrees to negotiate a civil money penalty in lieu of nonrenewal of the vendor agreement for noncompetitive pricing for an otherwise compliant vendor, the following shall apply:

(1) The state agency shall not negotiate a civil money penalty in lieu of nonrenewal for competitive pricing for the second of two consecutive agreement periods.

(2) The civil money penalty for noncompetitive pricing shall be calculated as follows:

(A) The vendor's average monthly redemptions for the most recent six- month period prior to the date of the nonrenewal notice shall be determined.

(B) The resulting average monthly redemptions shall be multiplied by 50% (.50).

(C) The final calculated civil money penalty shall not exceed $10,000.

(g) All vendors must have a retail food operation permit or food manufacturers' permit from the applicable city, county, district, or state health authority.

§31.34. Calculation and Use of Vendor Competitive Pricing Data.

(a) The state agency shall use the following calculation to determine whether an applicant vendor's prices are competitive with those of similar vendors in the local agency service area.

(1) The state agency data system calculates by vendor outlet the average unit costs to the state agency for each food type based on the food instruments redeemed by that vendor outlet.

(2) Authorized vendor outlets within a local agency service area are grouped into volume vendor bands. All outlets comprising a vendor account in the local agency's service area are grouped together in the same band.

(3) Utilizing food-type averages for each vendor account within a vendor band, the state agency determines the local agency standard food package costs for an infant and/or a woman/child participant for each vendor band.

(4) A vendor outlet's average standard food package costs are determined based on the store evaluation for an applicant vendor or actual WIC redemption data for authorized vendors.

(5) The state agency compares the vendor outlet's standard food package costs to the local agency's average standard food package costs for that vendor band. An outlet's standard food package costs are considered competitive if they are less than or equal to 108% of the local agency's average standard food package costs for that vendor band.

(b) The state agency shall provide a vendor with written notification of noncompliance with competitive pricing. Any vendor that receives one written notification of noncompliance with competitive pricing during the last six months of the federal fiscal year shall receive a probationary six-month agreement at the beginning of the next fiscal year if all noncompliance issues have been corrected.

§31.35. Vendor Agreement with the State Agency.

(a) Once a vendor has been approved to participate in the WIC Program, a written agreement shall be executed and signed by authorized officials of the state agency and the vendor.

(1) The agreement shall be prepared by the state agency and mailed to the vendor for endorsement.

(2) Upon receipt by the vendor, the vendor shall enter the store's business name, telephone number, federal income tax number, and State of Texas Comptroller number; sign the agreement; and return it to the state agency.

(3) Each vendor agreement shall include at least one vendor profile detailing, at a minimum, the name, location, type of facility, gross sales, gross food sales, and gross non- food sales for each outlet covered by the agreement.

(4) The state agency shall assign a WIC account number to the vendor and enter it on the agreement. Outlet identifiers shall also be assigned where applicable.

(5) A state agency official shall sign the agreement. The state agency shall forward one copy to the vendor and shall retain the original document.

(6) Upon receipt of the copy signed by the state agency official and bearing a WIC account number, the vendor may commence accepting WIC Program food instruments.

(b) Any vendor that has not previously been authorized by the WIC Program shall receive a probationary vendor agreement that expires March 31 or September 30 of the current federal fiscal year, whichever results in the shorter contract period.

(c) A change of ownership of an authorized outlet or account terminates the agreement between the state agency and the vendor. A change of ownership occurs when all, or substantially all, of the property or assets of a vendor are acquired by a purchaser in an arms-length transaction.

(1) In the event a store location/business under previous ownership was disqualified or is in the process of being disqualified

at the time of acquisition, the new owner's application for that store location/business shall not be considered until the disqualification period has been served or lifted or one year has elapsed, whichever period of time is shorter.

(2) If the state agency has notified the previous owner that the vendor's agreement for a store location/business shall be allowed to expire, the new vendor's application for that store location/outlet shall not be considered until at least six months from the expiration date of the previous vendor's last agreement.

(3) If a store/location under previous ownership is not disqualified or is not in the process of being disqualified at the time of acquisition, and/or the previous owner has not been notified that the vendor agreement for that store location/business will be allowed to expire, and the acquiring party is in compliance with the rules, regulations, and vendor qualification criteria of the WIC Program, the acquiring party may, upon request, be authorized as a WIC Program vendor.

(A) The applicant vendor must submit a written affidavit stating that a change of ownership has been effected and duly executed by the seller and purchaser or their duly authorized officers or other agents.

(B) The affidavit shall include, at a minimum, the following information and any other information the state agency deems necessary: name and business address of the seller; name and business address of the purchaser; WIC vendor account number and outlet number, if applicable; name(s) and street address(es) of the outlet location(s); effective date of ownership change; and State of Texas Comptroller tax number of new owner.

(d) WIC food instruments redeemed at an applicant store shall not be paid until the store has been duly authorized, including completion of an on-site evaluation, approval by the local agency, execution of the vendor agreement and vendor profile, and assignment of an account/outlet number by the state agency.

(e) A vendor's unilateral termination of a vendor agreement after receipt of notification by the state agency of a violation shall not deprive the state agency of jurisdiction to impose sanctions for WIC Program violations.

(f) The vendor agreement does not constitute a license, since a vendor does not require the state agency's approval to engage in the retail grocery business in Texas and the vendor would not effectively be deprived of this right in the absence of WIC Program authorization.

(1) The vendor agreement conveys no property interest since federal law does not give rise to a legitimate claim of entitlement for vendors.

(2) The terms of authorization are established in the vendor agreement between the state agency and the vendor, and the contractual relationship ends with the expiration of the vendor agreement.

(3) The state agency as well as officers, agents, and employees of the state agency are not responsible for losses incurred by a vendor as a result of the expiration of the vendor agreement.

§31.36. Right of Administrative Appeal by a Local Agency or Vendor.

(a) A local agency or vendor has the right to appeal when an application for participation is denied and/or any other adverse action affecting participation is taken, except that expiration of the vendor agreement or local agency contract, disqualification of a vendor as a result of disqualification from the Food Stamp Program, and a determination by the state agency concerning whether disqualification of a vendor would result in inadequate participant access are not subject to review.

(b) The state agency shall provide a local agency or vendor with written notification of an adverse action, the cause(s) for the action, the effective date of the action, and the right to appeal the adverse action.

(c) The state agency shall provide a local agency notice of disqualification at least 60 days prior to the effective date.

(d) The state agency shall provide a vendor notice of an adverse action at least 15 days prior to the effective date of the action except when the adverse action results from conviction for trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances in exchange for food instruments, which is effective on receipt of the notice.

(e) A local agency or vendor shall provide the state agency with a written request for a hearing within 15 days of the receipt of the notice of denial or adverse action. The written request shall, at a minimum, describe the action being appealed.

(f) When a participating local agency appeals an adverse action, the adverse action shall be postponed until a hearing decision is reached.

(g) When a vendor appeals an adverse action, the adverse action may be postponed until a hearing decision is reached at the discretion of the state agency.

(h) Appealing an adverse action does not relieve a local agency or a vendor permitted to continue participating in the program while an appeal is pending from the obligation of continued compliance with the terms of the written agreement or contract with the state agency.

(i) The state agency shall provide the local agency or vendor the following:

(1) at least ten days advance notice of the time and place for the hearing;

(2) the opportunity to reschedule the hearing one time;

(3) the opportunity to review all written case records prior to the hearing;

(4) the opportunity to be represented by counsel if desired;

(5) the opportunity to call witnesses;

(6) the opportunity to confront and cross-examine adverse witnesses;

(7) an impartial decision-maker who will prepare a written decision based solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the program; and

(8) written notification of the final decision within 60 days from the date of receipt of the request for a hearing.

(j) The state agency is not responsible for losses incurred by the local agency or vendor as a result of disqualification and/or denial of an application to participate.

(k) If the hearing results in a final decision adverse to the local agency or vendor, the appellant may seek judicial review of the decision to the extent authorized by state law. The state agency or its legal counsel shall not provide legal advice to adverse parties concerning judicial review of final decisions in administrative hearings. Appellants must seek advice from their own attorneys.

§31.37. Selection of WIC Program Allowable Foods.

(a) Criteria for approving products for inclusion in the WIC Program food package are based on federal regulations, packaging, cost, cultural acceptability, and nutritive value.

(b) A product shall meet the federal regulations governing the WIC Program food package in order to be considered for approval through the WIC Program.

(c) The state agency may restrict the number of brands and types of any products in order to contain the cost of the food package and minimize the confusion for WIC participants. The state agency is not obligated to authorize every available food that meets the federal requirements.

(d) The state agency shall review the WIC Program list of allowable foods annually to determine the need for adding or deleting food products.

(1) If the state agency determines that the list of allowable foods should be changed, the state agency shall notify both juice and cereal manufacturers of that intent through a request for information (RFI).

(2) Juice and cereal manufacturers may contact the WIC Program at any time during the year to request that their names and addresses be added to the mailing list for an RFI.

(e) The criteria for each food type are as follows:

(1) Milk.

(A) Any brand of unflavored, fresh, whole, reduced fat (2.0%), low-fat (0.5% or 1.0%) or fat-free (nonfat or skim) cow's milk including cultured buttermilk marketed in Texas containing or fortified with vitamins A and D to meet the federal standards.

(i) Only gallon and half-gallon plastic or paper cartons are allowed.

(ii) "High calcium" fluid milk is not allowed.

(iii) Goat's milk is not allowed.

(iv) Fluid milk with added enzymes, such as lactose-free milk, may qualify in quart, half-gallon, and gallon containers. Brands shall be approved as needed.

(B) Any brand of whole or fat-free (nonfat) evaporated cow's milk marketed in Texas containing or fortified with vitamins A and D to meet the federal standards.

(i) Only 12-ounce cans are allowed.

(ii) Evaporated filled milk is not allowed.

(iii) Sweetened condensed milk is not allowed.

(C) Any brand of nonfat, dry, powdered milk marketed in Texas containing or fortified with vitamins A and D to meet the federal standards. Nonfat, dry, powdered milk may be issued in 9.6-ounce, 25.6-ounce, and 64-ounce boxes.

(2) Cheese.

(A) Any unflavored domestic brand of pasteurized processed American, Monterey Jack, Colby, Colby-Jack, Natural Cheddar, Longhorn, or Mozzarella cheese in block or sliced form.

(i) Package sizes smaller than 10 ounces are not allowed.

(ii) Shredded or individually wrapped slices of cheese are not allowed.

(ii) Cheese foods or cheese spreads are not allowed.

(B) The state agency shall set a maximum price for cheese which cannot be exceeded when food instruments are redeemed.

(3) Cereals.

(A) Cereal brands shall contain a minimum of 28 milligrams of iron per 100 grams of dry cereal, and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(i) Package sizes less than 10 ounces are not acceptable. The state agency may further limit the package size(s) authorized for a brand.

(ii) Culturally acceptable cereals or cereals targeting specific ethnic groups shall be considered.

(iii) If cereals from one manufacturer have similar names and package designs and some do not qualify, the state agency reserves the right to not approve those types that would otherwise qualify to reduce the potential for confusion by vendors and participants.

(iv) The state agency reserves the right to determine the number and brands of cereals, which shall include at least one hot cereal and at least one corn, wheat, oat, rice, and multi-grain cereal.

(B) Except as provided in this subparagraph, authorized brands of cereals shall be the least expensive per ounce within the respective grain groups.

(i) The state agency may authorize a more expensive brand with higher fortification and/or lower sugar content in lieu of a less expensive brand within a particular grain group.

(ii) The state agency may consider consumer acceptability as well as the suitability for children among its selection criteria.

(C) The product shall be available for retail purchase on or before the effective date of the approved food list or it will not be considered by the state agency for authorization.

(D) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(4) Juice.

(A) All single-strength fluid fruit or vegetable juices shall contain a minimum of 30 milligrams of vitamin C per 100 milliliters and all frozen concentrated fruit or vegetable juices shall contain a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(i) Juices shall be 100% juice and shall contain no added sugar, or other natural or artificial sweeteners.

(ii) Only orange, grapefruit, grape, pineapple, apple, orange/grapefruit, orange/pineapple, pineapple/grapefruit, and vegetable juices may be authorized.

(iii) Fluid juice shall be packaged in 46-ounce containers.

(iv) Frozen juice shall be packaged in 11.5-ounce or 12-ounce containers.

(v) Fluid juice for the special homeless food package shall be packaged in a 6-ounce can.

(vi) Fluid juice shall not be packaged in glass, plastic, or cardboard containers.

(vii) Canned and frozen varieties of juice with the same brand name shall be evaluated separately.

(B) The state agency reserves the right to limit the authorized packaging of specific types of juice due to pricing or other considerations.

(C) If juices from one manufacturer have similar names and package designs and some do not qualify, the state agency reserves the right to not approve those types that would otherwise qualify to reduce the confusion by vendors and participants.

(D) The product shall be available for retail purchase on or before the effective date of the approved food list or it will not be considered by the state agency for authorization.

(E) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(5) Eggs.

(A) Only fresh grade A or grade AA large, medium, or small chicken eggs are allowed.

(B) Fertile, brown, or free-range eggs are not allowed.

(C) Eggs shall be packaged only in cartons of a dozen.

(D) Extra large or jumbo eggs are not allowed.

(6) Beans/Peas/Lentils.

(A) All brands of dried beans, peas, or lentils are approved in one-pound packages or bulk.

(B) Mixed or seasoned beans, peas, or lentils are not allowed.

(7) Peanut Butter.

(A) Any brand of peanut butter in an 18-ounce container qualifies if it contains no other ingredients such as jelly, marshmallows, or honey.

(B) Low fat or lite peanut butter is not allowed.

(8) Tuna.

(A) Any domestic brand of chunked light tuna packed in water in a six- ounce can is authorized. Tuna packaged in 3.25-ounce cans shall be authorized only for the homeless food package.

(B) Albacore and solid white tuna is not allowed.

(C) Tuna packaged with other items such as crackers or relish is not allowed.

(D) Tuna packed in oil is not allowed.

(9) Carrots.

(A) All one-pound or two-pound cello bags of fresh, large carrots without tops are allowed.

(B) All 14-ounce to 16-ounce cans of sliced carrots are allowed.

(C) Baby carrots and frozen carrots are not allowed.

(10) Infant formula.

(A) Infant formulas authorized for the WIC Program shall be registered with the United States Food and Drug Administration as complying with the legal definition of infant formula.

(B) Infant formulas shall comply with calorie and iron content prescribed by federal WIC regulations, except as provided by state agency policy.

(C) Infant formulas shall be approved by USDA for use in the WIC Program.

(D) The product form and marketing approach shall be consistent with the promotion of good nutrition and education.

(E) The state agency reserves the right to solicit rebates for infant formulas from manufacturers through a competitive bid process. The formulas selected shall be designated as the primary milk-base and soy-base brands authorized for issuance by the WIC Program.

(11) Infant cereal.

(A) Infant cereals shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal.

(B) Infant cereal with added fruit, sugar, or other ingredients shall not be authorized.

(C) Infant cereal shall be dehydrated flakes in eight-ounce or 16-ounce boxes.

(D) The state agency reserves the right to solicit rebates for infant cereals from manufacturers through a competitive bid process.

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 January 19, 2001.

TRD-200100366
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 458-7236

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CHAPTER 129. OPTICIANS' REGISTRY

25 TAC §§129.1 - 129.4, 129.8, 129.9, 129.11 - 129.13

The Texas Department of Health (department) proposes amendments to §§129.1- 129.4, 129.8-129.9, and 129.11-129.13 concerning the voluntary registration and regulation of dispensing opticians. Specifically, the amendments cover purpose and construction; definitions; opticians' registry advisory committee; fees; renewal of registration; requirements for continuing education; violations, complaints, investigation of complaints, and disciplinary actions; and professional and ethical standards. Amendments to §§129.1-129.2 and 129.12-129.13 are necessary to reflect changes in citations created by House Bill 3155, 76th Legislature, 1999, which compiled relevant laws from Vernon's Texas Civil Statutes into the Texas Occupations Code. Amendments to §§129.4 and 129.8 are necessary to implement provisions of House Bill 2085, 76th Legislature, 1999, which established late renewal fees for registrants who renew after the expiration date, but within 90 days of the expiration date; and those who renew more than 90 days late but within one year of the expiration date.

The department published a Notice of Intention to Review the sections as required by the Government Code, §2001.039 in the *Texas Register* on May 5, 2000 (25 TexReg 4196). No comments were received in response to the notice.

Additional amendments are made to comply with the Government Code, §2001.039, which requires state agencies to review

and consider for readoption every four years its rules adopted under the Government Code, Chapter 2001. Each section was reviewed and the department has determined that the reasons for adopting the sections continue to exist. The sections were edited to improve draftsmanship and make the rules more accessible, understandable, and usable. As a result of this review, the following changes are proposed: the definition of the Opticians' Registry Advisory Committee in §129.2 is amended to reflect the current committee membership; §129.3(d)(1) is amended to clarify that the committee shall advise the board concerning rules relating to registered opticians; §129.8(b)(5) is amended to more fully described the citation to the Education Code, §57.491; §129.9(b) is amended to delete unnecessary language; §129.9(b)(3) is amended to clarify that a total of 10 classroom hours are needed to maintain dual registration; and §129.11(e)(5) is amended to clarify that formal hearings are governed by the Government Code, Chapter 2001 (Administrative Procedure Act).

L. Jann Melton-Kissel, Director of Budget and Legislative Policy Analysis, Bureau of Licensing and Compliance, has determined that there will not be any significant fiscal impact on state government for each year of the first five years the amendments as proposed are in effect. There will be no fiscal implication for local governments.

Ms. Melton-Kissel has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to provide a means by which the public can identify providers of opthalmic dispensing services and products that meet minimum standards of competence. The amendments, as proposed, are not expected to have a measurable impact on small businesses or micro-businesses because the Opticians' Registry Act provides only for the voluntary registration of natural persons. The anticipated cost to persons will be that persons who fail to renew the registration prior to the expiration date will incur additional late fees. Registrants renewing after the expiration date but within 90 days will pay an additional $15. Registrants renewing more than 90 days late but within one year of the expiration date will pay an additional $25. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Stephen Mills, Program Administrator, Opticians' Registry Program, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6661. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 352, which provides the Board of Health (board) with the authority to adopt rules; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

The amendments affect Texas Occupations Code, Chapter 352, Health and Safety Code, Chapter 12; and Government Code §2001.039.

§129.1. Purpose and Construction.

(a) Purpose. This chapter implements the provisions of the Opticians' Registry Act, Texas Occupations Code, Chapter 352 [~~Texas Civil Statutes, Article 4551-1~~], concerning the voluntary registration and regulation of dispensing opticians by providing a means by which the public can identify providers of ophthalmic dispensing services and products that meet minimum standards of competence.

(b) (No change.)

§129.2. Definitions.

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

(1) Act - The Opticians' Registry Act (Act), Texas Occupations Code, Chapter 352 [~~Texas Civil Statutes, Article 4551-1~~].

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

(9) Committee - The eleven [~~nine~~] member Opticians' Registry Advisory Committee.

(10) - (18) (No change.)

§129.3. Opticians' Registry Advisory Committee.

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

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to opticians registered under the Act.

(2) (No change.)

(e) - (p) (No change.)

§129.4. Fees.

(a) Schedule of fees. The fees are as follows:

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

(5) late registration fee - a fee that is one and one-half [~~one half~~] times the registration [~~applicable~~] renewal fee if renewed within 90 days of expiration or a fee that is two times the registration renewal fee if renewed more than 90 days but less than one year after expiration;

(6) - (7) (No change.)

(b) - (c) (No change.)

§129.8. Renewal of Registration.

(a) (No change.)

(b) General.

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

(5) The department shall not renew a registration if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(6) - (7) (No change.)

(c) (No change.)

(d) Late renewal.

(1) (No change.)

(2) A person whose registration has expired for not more than 90 [~~180~~] days may renew the registration by submitting to the department the registration renewal form, the completed continuing education report form, and the late registration fee. A person whose registration has expired more than 90 days but less than one year may renew the registration by submitting to the department the registration renewal form, the completed continuing education report form, and a late registration fee [~~The renewal will be accepted and is effective if it is mailed to the department not more than 180 days after the expiration date of registration and is complete. The postmark date shall be considered as the date of mailing~~].

(3) A person whose registration has been expired for more than one year [~~180 days~~] may not renew. The person may obtain a

new registration by complying with the then current requirements and procedures for obtaining a registration.

(4) (No change.)

(e) (No change.)

§129.9. Requirements for Continuing Education.

(a) (No change.)

(b) Number of hours required. Proof of having earned five classroom hours of continuing education credit in each area for which the registrant is renewing shall be required at the time of renewal for each registration [~~after September 1, 1993~~]. A classroom hour is 50 minutes.

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

(3) If applying for dual registration renewal the applicant must have a total of 10 classroom hours of continuing education. Five [~~five~~] classroom hours must be offered or approved by the American Board of Opticianry and five classroom hours must be offered or approved by the National Contact Lens Examiners.

(c) - (e) (No change.)

§129.11. Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.

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

(e) Disciplinary actions.

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

(5) The formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001 [~~department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health)~~] and §129.12 of this title (relating to Registration of Applicants With Criminal Backgrounds), if applicable.

(6) - (7) (No change.)

(8) Administrative penalties shall be assessed in accordance with the procedures set forth in the Act, Subchapter G (relating to Administrative Penalty) [~~§10A~~].

(f) (No change.)

§129.12. Registration of Applicants With Criminal Backgrounds.

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

(c) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or an unwillingness for the person to be able to perform or to be fit for registration:

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

(6) other misdemeanors and felonies if disciplinary action by the department will promote the intent of the Act, this chapter, and the Texas Occupations Code, Chapter 53 [~~Texas Civil Statutes, Article 6252-13c~~].

§129.13. Professional and Ethical Standards.

(a) - (j) (No change.)

(k) Unless exempt, a registrant shall comply with the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353 [~~Civil Statutes, Article 4552-A~~].

(l) A registrant may not sell, deliver, or dispense contact lenses to a patient or other consumer in this state unless the registrant receives a prescription that conforms to the requirements of the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353 [~~Civil Statutes, Article 4552-A~~]. The registrant must fill the prescription accurately without modification.

(m) (No change.)

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

Filed with the Office of the Secretary of State, on January 19, 2001.

TRD-200100367
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 458-7236

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CHAPTER 130. CODE ENFORCEMENT REGISTRY

The Texas Department of Health (department) proposes the repeal of §130.19, amendment to §130.2 and new §130.3 concerning the Code Enforcement Officers' Advisory Committee. Specifically, the amendments cover definitions and the establishment, structure, and composition of a code enforcement officers advisory committee. The amendments are necessary to separate the Sanitarian/Code Enforcement Officers' Advisory Committee into the Registered Sanitarian Advisory Committee in Chapter 265 of this title and the Code Enforcement Officers' Advisory Committee in this chapter.

L. Jann Melton-Kissel, Director of Budget and Legislative Policy Analysis, Bureau of Licensing and Compliance, has determined that there will not be any fiscal impact on state government for each year of the first five years the rules as proposed are in effect. There will not be any fiscal implication for local governments.

Ms. Melton-Kissel has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to provide broader representation and increased stakeholder input into rules regarding the registration of code enforcement officers. The sections establish an advisory committee to the Board of Health and do not impact the regulated community. Therefore, there will be no effect on small businesses and no effect on microbusinesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Yvonne Feinleib, Program Administrator, Code Enforcement Officers' Registry, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-4517. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

25 TAC §130.2, §130.3

The amendment and new section are proposed under the Texas Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

The amendment and new section affect Texas Civil Statutes, Article 4447bb; Health and Safety Code, Chapter 11 and 12; and Government Code, Chapter 2110.

§130.2. Definitions.

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

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

~~[(7) Committee--The five-member Code Enforcement Advisory Committee.]~~

(7) [~~(8)~~] Department--The Texas Department of Health.

(8) [~~(9)~~] Full-time experience--Employment, self-employment, or independent contracting in the field of code enforcement where the regularly assigned duties included code enforcement and the experience was for not less than 32 hours per week.

(9) [~~(10)~~] Registrant--A person registered under the Act.

(10) [~~11~~] Registration--The procedure by which the department accepts, processes, and approves applications for registration of a person, and as a part thereof, includes the furnishing and replacement or duplication of certificates and identification cards.

§130.3. Code Enforcement Officers' Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the advisory committee shall be the Code Enforcement Officers' Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to the Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding code enforcement officers.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to registered code enforcement officers.

(2) The committee shall advise the department concerning the registration of code enforcement officers.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By September 1, 2003, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of seven members appointed by the board. The composition of the committee shall include:

(1) three registered code enforcement officers;

(2) one structural engineer;

(3) two consumers, one of which must be a certified building official; and

(4) one person involved in the education and training of code enforcement officers.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The chairman of the board shall appoint a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed to complete the unexpired portion of the term of the office of presiding officer.

(4) If the office of assistant presiding officer becomes vacant, it may be filled temporarily by vote of the committee until a successor is appointed by the chairman of the board.

(5) A member shall serve no more than two consecutive terms as presiding officer or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet at least once each year to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the sitting members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members.

(1) The board, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the board, the department or the committee except with approval through the department's legislative process. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, and anticipated activities of the committee for the next year.

(2) The report shall identify the costs related to the committee's existence, including the cost of department staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the preceding 12 months and shall be filed with the board each September. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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 January 18, 2001.

TRD-200100346
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 458-7236

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25 TAC §130.19

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

The repeal is proposed under the Texas Health and Safety Code, §11.016, which allows the Board of Health (board) to establish advisory committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

The repeal affects Texas Civil Statutes, Article 4447bb; Health and Safety Code, Chapter 11 and 12; and Government Code, Chapter 2110.

§130.19. Sanitarian/Code Enforcement Officers' Advisory Committee.

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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CHAPTER 229. FOOD AND DRUG
SUBCHAPTER T. LICENSURE OF TANNING FACILITIES

25 TAC §§229.342, 229.343, 229.345 - 229.349, 229.351 - 229.354, 229.356, 229.357

The Texas Department of Health (department) proposes amendments to §§229.342 - 229.343, 229.345 - 229.349, 229.351 - 229.354, and 229.356 - 229.357, concerning the licensure of tanning facilities. Specifically, the sections cover applicable laws and regulations; definitions; licensing of tanning facilities; licensing fees; revocation, cancellation, suspension, and probation of a license; report of changes; advertising; tanning devices; protective eyewear; operators; records; sanitation; and enforcement and penalties.

Amended §229.342 will allow the federal regulations referenced in the section to be interpreted based on the current effective date of the regulation. Amended §229.343 will add new definitions for "change of ownership" and "date of issuance" in order to provide clarification of licensure requirements. Amended §229.345 will update and clarify licensing procedures in order to improve the timeliness and efficiency of the licensure process. Amended §229.346 will clarify requirements for delinquency fees associated with amending a license and provide for prorating of licensure fees for the purpose of consolidating multiple license anniversary dates. Amended §229.347 will clarify conditions under which denials, suspensions, and revocations of a license will be handled by the department. Amended §229.348 will update and clarify requirements for reporting to the department changes affecting license applications. Amended §229.349 will conform the citation reference to changes made in §229.345. Amended §229.351 will update requirements for tanning devices in order to increase consistency with federal standards for these devices. Amended §229.352 will clarify the requirement for protective eyewear availability. Amended §229.353 will allow an owner to designate an individual with responsibility for signing employee training records and will reorganize existing requirements relating to facility operating procedures. Amended §229.354 will clarify requirements for disclosing warnings to consumers and for recording the date of birth in individual consumer records. Amended §229.356 will update and clarify requirements for sanitizing protective eyewear, documenting sanitizing solution strength, and determining acceptable flooring materials. Finally, amended §229.357 will update references to applicable enforcement provisions under Health and Safety Code, Chapter 431.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001 (Administrative Procedures Act). These sections have been reviewed and the department has determined that the reason for readopting the sections continues to exist; however the rules need revisions as described in this preamble. In addition, the department has reviewed §§229.341, 229.344, 229.350, and 229.355 and proposes to readopt these sections without any changes. However, the department will accept comments from the public on these sections.

The department published a Notice of Intention to Review §§229.341 - 229.357 in the *Texas Register* (25 TexReg 3062) on April 7, 2000. No comments were received by the department on these sections.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed because the licensing requirements are not being substantially changed.

Ms. Culmo has also determined that for each year of the first five years the sections as proposed are in effect, the public benefit will be clarification of minimum standards for licensure of tanning facilities. The only potential adverse economic effect on micro-businesses and/or small businesses and persons who may be required to comply with these sections as proposed is related to the assessment of a $100 delinquency fee for certain license holders described in proposed §§229.345(h) and 229.346(c)(2). The delinquency fee referenced in proposed §229.346(c)(2) will be assessed only to those license holders who fail to notify the department within 30 days of an effective date of a change in location, name, or ownership of an existing tanning facility. There will be no adverse economic effect on micro-businesses and/or small businesses and persons who comply in a timely manner with the license amendment requirements as proposed in §229.345(h). There will be no impact on local employment.

Comments on the proposed amendments may be submitted to Thomas E. Brinck, Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under the Health and Safety Code, §145.011, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 145; and §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect Health and Safety Code, Chapter 145 and Chapter 12.

§229.342. Applicable Laws and Regulations.

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

(c) Tanning devices used in tanning facilities are required to comply with the following applicable laws and regulations which are adopted by reference and[~~referenced in these sections which~~] include, but are not limited to [~~, the following~~]:

(1) 21 Code of Federal Regulations (CFR), Part 801, Labeling [~~(1993)~~];

(2) 21 CFR, Subchapter J, Radiological Health [~~(1993)~~];

(3) 21 CFR, Part 1010, Performance Standards for Electronic Products - General [~~(1993)~~]; and

(4) 21 CFR, §1040.20, Sunlamp Products and Ultraviolet Lamps Intended for Use in Sunlamp Products [~~(1993)~~].

(d) (No change.)

[~~(e) The effective date for all referenced federal regulations refers to the regulations on the date specified and do not include any additions or deletions subsequent to the date specified.~~]

(e) [~~(f)~~] Nothing in these sections shall relieve any person of responsibility for compliance with other pertinent Texas and federal laws and regulations.

(f) [~~(g)~~] Copies of these laws and rules are indexed and filed in the office of the Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for inspection during normal working hours.

§229.343. Definitions.

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

(1) Act - The Tanning Facility Regulation Act (Act), Texas Civil Statutes, Article 8910 (House Bill 2352, 71st Legislature, 1989), codified as Health and Safety Code, Chapter 145.

(2) Adulterated - Has the meaning given in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, §431.111, as interpreted in the rules of the board and judicial decision.

(3) Authorized agent - An employee of the department designated by the commissioner to enforce the Act.

(4) Change of ownership - A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons; or if any other type of association, the removal, addition, or substitution of a person or persons as a principal of such association.

(5) [~~(4)~~] Commissioner - The commissioner of health.

(6) Date of issuance - When applied to licenses issued in accordance with these sections, the initial date of operation of a tanning facility or in the case of an amended license, the effective date of a change in location, name, or ownership of an existing tanning facility.

(7) [~~(5)~~] Department - The Texas Department of Health.

(8) [~~(6)~~] Health authority - A physician designated to administer state and local laws relating to public health.

(9) [~~(7)~~] Misbranded - Has the meaning given in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, §431.112, as interpreted in the rules of the board and judicial decision.

(10) [~~(8)~~] Operate - To own, manage, or control a tanning facility, or to offer tanning services to the public.

(11) [~~(9)~~] Operator - A tanning facility owner, or an agent of a tanning facility owner, or a person who operates a tanning facility.

(12) [~~(10)~~] Person - An individual, partnership, corporation, or association.

(13) [~~(11)~~] Phototherapy device - A piece of equipment that emits ultraviolet radiation and that is used by a health care professional in the treatment of disease.

(14) [~~(12)~~] Radiation - Ultraviolet radiation.

(15) [~~(13)~~] Radiation machine - Any device capable of producing radiation.

(16) [~~(14)~~] Reconditioning - Has the meaning given in the Texas Food, Drug, Device, and Cosmetic Salvage Act, Health and Safety Code, §432.003, as interpreted in the rules of the board in §229.192 of this title (relating to Definitions) and judicial decision.

(17) [~~(15)~~] Tanning device - A device, as defined in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, §431.002, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and that is used for tanning of human skin, including a sunlamp, tanning booth, or tanning bed. A tanning device is also classified as a device, as defined in the Federal Food, Drug and Cosmetic Act and the applicable Code of Federal Regulations. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

(18) [~~(16)~~] Tanning facility - A business that provides persons access to or use of tanning devices.

§229.345. Licensing of Tanning Facilities.

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

(g) A license issued under these sections shall be returned to the department if the tanning facility:

(1) ceases business or otherwise ceases operation on a permanent basis;

(2) relocates;

(3) changes the name of the business under which the tanning facility operates; or

(4) changes ownership.

(h) A license that is amended, including a change in location, name, or ownership of a tanning facility, will require submission of an initial license application and fee as outlined in subsection (j) of this section and §229.346(a) of this title (relating to Licensing Fees).

(i) License application forms may be obtained from the Texas Department of Health, Licensing and Enforcement Division, 1100 W.

49th Street, Austin, Texas, 78756 or from the Bureau of Food and Drug Safety website at http://www.tdh.state.tx.us/bfds/lic/apps.html.

(j) [~~(g)~~] The initial application required in subsections (c) and (k) [~~(h)~~] of this section shall be completed on forms provided by the department and shall contain all the information required by such forms and any accompanying instructions.

(k) [~~(h)~~] Each tanning facility shall provide the following information upon initial application for a license:

(1) name, physical address, mailing [~~mail~~] address, and telephone number of the tanning facility;

(2) if a proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the names of the corporate officers and/or directors, the corporation charter number [~~a copy of the articles of incorporation~~], and the name and address of its registered agent in the state; or if any other type of association, the names of the principals of such association;

(3) the name(s), mailing address(es), telephone number(s), and valid driver's license number(s) of:

(A) the proprietor in the case of a sole proprietorship;

(B) the managing partner in the case of a partnership;

(C) the officers and/or directors in the case of a corporation;

(D) the principals in the case of an association;

(E) [~~(D)~~] the operator in charge of the tanning facility;

(4) hours of operation of each tanning facility; and

[~~(5) manufacturer(s), model number(s), and type(s) of ultraviolet lamp(s) for all tanning devices located at the tanning facility;~~]

[~~(6) name(s) of the tanning device supplier(s), installer(s), and service agent(s);~~]

[~~(7) copies of any posted warnings or notices the tanning facility uses in addition to those required by §229.350 of this title (relating to Warning Signs) which address the safety and proper use of tanning devices;~~]

[~~(8) copies of the informed consent forms and statements which the consumer, parent or legal guardian will sign as required in §229.354 of this title (relating to Records);~~]

[~~(9) procedures which the operator(s) will be required to follow for the correct use of tanning device(s), to include:~~]

[~~(A) instructions to the consumer;~~]

[~~(B) use of protective eyewear;~~]

[~~(C) suitability of prospective consumers for tanning device use;~~]

[~~(D) determination of duration of tanning exposures;~~]

[~~(E) periodic testing of tanning device(s) and timer(s);~~]

[~~(F) handling of complaints of injury or illness from consumers;~~]

[~~(G) records to be maintained on each consumer; and~~]

(5) [~~(10)~~] signature of the owner verifying all information on the initial application form.

(l) The renewal application for licensure as a tanning facility shall be made on a form furnished by the department and can be obtained as referenced in subsection (i) of this section.

(m) [~~(i)~~] Failure to complete the initial or renewal application form may result in the denial of a license.

(n) [~~(j)~~] The department will not issue a license under this section with respect to a facility that:

(1) is operated under a license or permit as a sexually oriented business issued in accordance with [~~Local~~] Government Code, §243.007;

(2) offers, as its primary business, a service or the sale, rental, or exhibition of a device or other item that is intended to provide sexual stimulation or sexual gratification to a customer; or

(3) is owned or operated by a person who has been convicted of an offense under Penal Code, Chapter 21 or 43; or Penal Code,§71.02(a)(3).

§229.346. Licensing Fees.

(a) All tanning facilities in Texas shall pay a [~~an~~] nonrefundable initial license fee of $150.

(b) All tanning facilities shall pay a [~~an~~] nonrefundable annual renewal fee of $150 each year following issuance of the initial license.

(c) A [~~All~~] tanning facility [~~facilities~~] shall pay a $100 delinquency fee if:

(1) the license renewal fee is paid after the expiration date of the current license; or

(2) the initial license fee is paid more than 30 days following the effective date of a change in location, name, or ownership of an existing tanning facility as described in §229.345(h) of this title (relating to Licensing of Tanning Facilities).

(d) The department may, upon receipt of a written request from a license holder, prorate an annual license fee for the purpose of consolidating the anniversary dates of multiple licenses issued in the name of the license holder.

§229.347. Revocation, Cancellation, Suspension, and Probation of a License.

(a) (No change.)

(b) The department shall revoke a license issued with respect to a facility if the license may not be renewed under §229.345(n) [~~§229.345(j)~~] of this title (relating to Licensing of Tanning Facilities).

(c) - (d) (No change.)

(e) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. If the suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in §229.345(l) of this title (relating to Licensing of Tanning Facilities) and §229.346(b) of this title (relating to Licensing Fees), however the department may not renew the license until the department determines that the reason for suspension no longer exists.

(f) If the department revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in §229.345(j) of this title and §229.346(a) of this title at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist. A license holder named in a revocation action is not eligible for licensing under these sections for a period of one year from the date of the revocation.

[~~(e) A license issued under these sections shall be returned to the department if the tanning facility:~~]

[~~(1) ceases business or otherwise ceases operation on a permanent basis;~~]

[(2) relocates;]

[(3) changes the name of the business under which the tanning facility operates; or]

[(4) changes ownership. For a corporation, an ownership change is deemed to have occurred, resulting in the necessity to return the license to the department, when 5.0% or more of the share of stock of a corporation is transferred from one person to another.]

§229.348. Report of Changes.

The license holder shall notify the Texas Department of Health (department) in writing within ten days of any change, including a change in location, name, or ownership of a tanning facility, which would render the information contained in the initial license application, reported pursuant to §229.345 of this title (relating to Licensing of Tanning Facilities), no longer accurate. Failure to inform the department within ten days of a change in the information required in the initial license application may result in enforcement action as described in §229.357 of this title (relating to Enforcement and Penalties) [a suspension or revocation of the license. This requirement shall not apply for changes involving replacement of designated original equipment lamp types with lamps which have been certified with the United States Food and Drug Administration (FDA) as "equivalent" lamps under the FDA regulations and policies applicable at the time of replacement of the lamps. The facility operator shall maintain lamp manufacturer's labeling at the facility, demonstrating the equivalence of any replacement lamps].

§229.349. Advertising.

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

(c) A business described in §229.345(n) [§229.345(j)] of this title shall not use the word "tan" or "tanning" in a sign or any other form of advertising.

§229.351. Tanning Devices.

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

[(g) There shall be physical barriers to protect consumers from injury induced by touching or breaking the lamps.]

(g) [(h)] The tanning devices shall be maintained in good repair.

(h) [(i)] Defective or burned-out lamps or filters shall be replaced with a type intended for use in that device as specified on the device label, or with lamps or filters that are "equivalent" under the United States Food and Drug Administration (FDA) regulations and policies applicable at the time of lamp manufacture. The facility operator shall maintain lamp manufacturer's user instruction labeling at the facility, demonstrating the equivalence of any replacement lamps, if applicable.

(i) [(j)] A tanning device used by a tanning facility must comply with all applicable state and local electrical code requirements.

(j) [(k)] When a tanning device is being used by an individual, no other person shall be allowed to remain in the tanning device area.

[(l) In addition, stand-up booths shall:]

[(1) have physical barriers or other means such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the consumer's skin;]

[(2) be constructed to withstand the stress of use and the impact of a falling person;]

[(3) have rigid doors which open outward; and]

[(4) have handrails and non-slip floors.]

§229.352. Protective Eyewear.

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

(c) Protective eyewear shall be located in the immediate proximity of each tanning device, readily visible to a person about to use the device, and shall be provided without charge to each user of a tanning device.

(d) Protective eyewear shall meet the requirements of 21 Code of Federal Regulations, Part 801 and Part 1040, §1040.20(c)(4).

§229.353. Operators.

(a) (No change.)

(b) Each operator must be sufficiently trained and knowledgeable in the correct operation of the tanning devices used at the facility to adequately inform and assist each customer in the proper use of the tanning devices. A record of all training received by each operator shall be kept at the tanning facility where the operator is employed. The record shall be signed by the operator and the owner or owner's designee. The operator must be able to demonstrate such knowledge concerning the:

(1) - (7) (No change.)

(c) - (d) (No change.)

(e) Written procedures shall be established and maintained at the tanning facility which describe the requirements operator(s) will follow for the correct use of tanning device(s), to include:

(1) instructions to the consumer;

(2) use of protective eyewear;

(3) suitability of prospective consumers for tanning device use;

(4) determination of duration of tanning exposures;

(5) periodic testing of tanning device(s) and timer(s);

(6) handling of complaints of injury or illness from consumers; and

(7) records to be maintained on each consumer.

§229.354. Records.

(a) Customer [Liability] notice.

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

(b) Signed warning statement.

(1) Each time a customer who is 18 years of age or older uses a tanning facility device for the first time and each time a person executes or renews a contract to use a tanning facility device, the person shall sign and date a written statement acknowledging that the person has read and understood the required warnings in §229.350 of this title (relating to Warning Signs) and subsection (a) of this section before using the device and agrees to use protective eyewear.

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

(c) Individual consumer records. An individual record shall be kept by the facility operator of each consumer's date of birth, total number of tanning visits, exposure lengths in minutes, times and dates of the exposures, any injuries or illnesses resulting from the use of a tanning device, and any written informed consent statement required to be signed in this section. Any record of consumer exposure to ultraviolet light from a tanning device shall reflect the identity of the tanning device responsible for the exposure. The operator must ensure that no individual is allowed to use a tanning device more than once every 24 hours.

(d) - (g) (No change.)

§229.356. Sanitation.

(a) (No change.)

(b) The operator shall clean and properly sanitize any reusable protective eyewear [~~Protective eyewear shall be sanitized~~] before each use with a sanitizer registered with the United States Environmental Protection Agency (USEPA). Exposure to the ultraviolet radiation produced by the tanning equipment itself is not considered a sanitizing agent.

(c) (No change.)

(d) A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million shall be used to measure the strength of the sanitizing solution at least once per day of tanning facility operation or more frequently as needed to ensure sufficient strength of the sanitizing solution. All measurements of the sanitizing solution shall be recorded in a log that includes the date of the measurement, the strength of the sanitizing solution measured in accordance with manufacturer's directions, and the initials of the operator responsible for measuring the strength of the sanitizing solution.

(e) - (f) (No change.)

(g) Floors in rooms containing tanning devices are to be constructed of nonabsorbent, easily cleanable materials. Tanning [~~New tanning~~] facilities shall not include carpeting in rooms containing tanning devices. [~~Existing facilities with carpeting in rooms containing tanning devices shall remove the carpeting from such rooms whenever the facilities are extensively remodeled.~~]

(h) - (i) (No change.)

§229.357. Enforcement and Penalties.

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

(f) Adulterated or misbranded tanning device. If the Texas Department of Health (department) identifies an adulterated or misbranded tanning device, the department may enforce the applicable provisions of Subchapter C of the Texas Food, Drug, and Cosmetic Act (Health and Safety Code, Chapter 431) including, but not limited to: detention, emergency order, recall, condemnation, destruction, injunction, civil penalties, criminal penalties [~~enforcement~~], and/or administrative penalties.[~~,~~] Administrative and civil penalties will be assessed using the Severity Levels contained [~~set out~~] in §229.261 of this title (relating to Assessment of Administrative or Civil Penalties).

(g) (No change.)

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

Filed with the Office of the Secretary of State, on January 18, 2001.

TRD-200100344
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 458-7236

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CHAPTER 265. GENERAL SANITATION
SUBCHAPTER J. ADVISORY COMMITTEE

25 TAC §265.131

The Texas Department of Health (department) proposes an amendment to §265.131 concerning the Registered Sanitarian Advisory Committee. Specifically, the amendment covers the establishment, structure, and composition of a registered sanitarian advisory committee. The amendment is necessary to separate the Sanitarian/Code Enforcement Officers' Advisory Committee into the Registered Sanitarian Advisory Committee in this chapter and the Code Enforcement Officers' Advisory Committee in Chapter 130 of this title.

L. Jann Melton-Kissel, Director of Budget and Legislative Policy Analysis, Bureau of Licensing and Compliance, has determined that there will not be any fiscal impact on state government for each year of the first five years the amendment as proposed is in effect. There will not be any fiscal implication for local governments.

Ms. Melton-Kissel has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section will be to provide broader representation and increased stakeholder input into rules regarding the registration of professional sanitarians. The section establishes an advisory committee to the Board of Health and do not impact the regulated community. Therefore, there will be no effect on small businesses and no effect on microbusinesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Yvonne Feinleib, Program Administrator, Registered Sanitarian Program, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-4517. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under the Texas Health and Safety Code, §11.016, which allows the Board of Health (board) with the authority to establish advisory committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

The amendment affects Texas Civil Statutes, Article 4477-3, and Health and Safety Code, Chapter 11 and 12.

§265.131. Registered Sanitarian [~~Sanitarian/Code Enforcement Officers'~~] Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Registered Sanitarian [~~Sanitarian/Code Enforcement Officers'~~] Advisory Committee (committee).

(2) (No change.)

(b) (No change.)

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of rules regarding registered professional sanitarians [~~and code enforcement officers~~].

(d) Tasks.

(1) The committee shall assist the board concerning rules relating to registered professional sanitarians [~~and code enforcement officers~~].

(2) The committee shall advise the department in establishing regulations regarding the registration of professional sanitarians [~~and promoting the registration of qualified individuals as professional sanitarians and shall advise the department on the adoption and enforcement of regulations regarding the registration of code enforcement officers~~].

(3) (No change.)

(e) (No change.)

(f) Composition. The committee shall be composed of seven [~~nine~~] members appointed by the board. The composition of the committee shall include:

(1) three registered sanitarians [~~consumer representatives~~];

(2) one professional engineer; [~~three code enforcement officers; and~~]

(3) two consumers, one of which must be a member of an industry or occupation which is regulated by the Texas Department of Health; and [~~three registered sanitarians.~~]

(4) one person involved in education in the field of public, consumer, or environmental health sciences.

(g) (No change.)

(h) Officers. The chairman of the board shall appoint a presiding officer and an assistant presiding officer to begin serving on September 1 of each odd-numbered year.

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

[~~(7) The presiding officer and assistant presiding officer serving on August 1, 1999, will continue to serve until the chairman of the board appoints their successors.~~]

(i) Meetings. The committee shall meet at least once each year [~~only as necessary~~] to conduct committee business.

(1)-(7) (No change.)

(j)-(p) (No change.)

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

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

The Texas Water Development Board (the board) proposes new §§353.31-353.33, 353.41, and 353.71 comprising new subchapters B, C, and E to 31 TAC Chapter 353, concerning Introductory Provisions. The new sections are proposed to comply with the requirements of state law. New §§353.31-353.33 are proposed to comply with Texas Government Code, §656.048 regarding employee training and education. New §353.41 is proposed to comply with Texas Government Code, §2161.003 regarding the historically underutilized businesses program. New §353.71 is proposed to comply with Texas Government Code, §2171.1045 regarding assignment of fleet vehicles.

Texas Government Code, §656.048 requires the board to adopt rules relating to the board's ability to pay for training and education of board members and employees and the obligations of those board members and employees who receive education and training. Proposed §353.31 states that the board's executive administrator will develop internal policies and procedures for board members and employees to use to obtain training and education in conformance with Chapter 656 of the Texas Government Code. The duty to develop policies and procedures is delegated to the executive administrator to provide the flexibility that is needed for such processes.

Proposed §353.32 states that the board may spend state funds to obtain training and education for its members and employees when the training and education is related to the current or prospective duties of the member or employee and when funds are available. This is to limit the use of state funds only to purposes consistent with the board's responsibilities.

Proposed §353.33 states that the board may pay the salary, tuition, and other fees, travel and living expenses, training stipend, material expenses, and other necessary expenses of an instructor, student, or other participant in a training or education program. This acknowledges that eligible training and education furthers the board's purposes and responsibilities and, therefore, related expenses are eligible for payment or reimbursement.

Texas Government Code, §2161.003 requires the board to adopt the administrative rules of the General Services Commission regarding the historically underutilized businesses program. Proposed §353.41 states that the board adopts the current administrative rules adopted by the General Services Commission regarding the historically underutilized businesses program, which are currently found in Title 1, Part 5, Chapter 111, Subchapter B.

Texas Government Code, §2171.1045 requires the board to adopt administrative rules, consistent with the management plan adopted under Texas Government Code, §2171.104, relating to the assignment and use of the board's vehicles. The rules must require that each board vehicle, with the exception of a vehicle assigned to a field employee, be assigned to the agency motor pool and be available for checkout. The board may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the board makes a written documented finding that the assignment is critical to the needs and mission of the agency. Proposed §353.71 states that all board vehicles are assigned to the motor pool unless the executive administrator makes a written finding that assigning a vehicle to a particular employee is critical to the needs and mission of the board.

Ms. Pamela Gulley, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the proposed

sections. The board has had the ability to pay for job-related training and education for several years and already has established policies and procedures in place, so no additional costs will be incurred as a result of adding §§353.31-353.33. The board has also been complying with the historically underutilized businesses since its inception. Formally adopting the rules of the General Services Commission in §353.41 will not change our practices nor add additional cost. Lastly, the board has been utilizing a vehicle fleet pool and has not assigned vehicles to any single employee. Therefore, the requirements of §353.71 will not incur additional costs to the state.

Ms. Gulley has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be a deeper understanding of how the board utilizes state funds and property. Ms. Gulley has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed new sections will be accepted for 30 days following publication and may be submitted to Ron Pigott, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, 512/936-2414.

SUBCHAPTER B. EMPLOYEE TRAINING AND EDUCATION

31 TAC §§353.31 - 353.33

The new sections are proposed under Texas Government Code, Chapter 656, Job Notices and Training, §656.048, which requires the board to adopt rules relating to the board's ability to pay for training and education of board members and employees and the obligations of those board members and employees who receive education and training, Texas Government Code, Chapter 2161, Historically Underutilized Businesses, §2161.003, which requires the board to adopt the General Service Commission's rules regarding the historically underutilized businesses program as the board's own rules, Texas Government Code, Chapter 2171, Travel and Vehicle Fleet Services, §2171.1045, which requires the board to adopt rules relating to the assignment and use of the agency's vehicles, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

The new sections affect Texas Government Code, Chapter 656.

§353.31. Purpose of Employee Training and Education.

The executive administrator will develop policies and procedures to obtain training and/or education for its administrators and employees in conformance with these rules and Chapter 656 of the Texas Government Code.

§353.32. Eligibility for Training and Education.

The agency may spend state funds, when available, to obtain training and/or education for its members and full- or part-time employees when such training is related to the current or prospective duties of the member or employee.

§353.33. Eligible Expenses.

The agency may spend state funds as appropriate to pay the salary, tuition, and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

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

Filed with the Office of the Secretary of State, on January 17, 2001.

TRD-200100298
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: March 21, 2001
For further information, please call: (512) 463-7981

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SUBCHAPTER C. HISTORICALLY UNDERUTILIZED BUSINESSES PROGRAM

31 TAC §353.41

The new section is proposed under Texas Government Code, Chapter 2161, Historically Underutilized Businesses, §2161.003, which requires the board to adopt the General Service Commission's rules regarding the historically underutilized businesses program as the board's own rules, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

The new section affects Texas Government Code, Chapter 2161.

§353.41. Adoption of General Services Commission's Rules.

The board adopts the current administrative rules adopted by the General Services Commission regarding the Historically Underutilized Business Program. The General Service Commission's rules can be found at Title I, Part 5, Chapter 111, Subchapter B.

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

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Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-7981

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SUBCHAPTER E. VEHICLE FLEET SERVICES

31 TAC §353.71

The new section is proposed under Texas Government Code, Chapter 2171, Travel and Vehicle Fleet Services, §2171.1045, which requires the board to adopt rules relating to the assignment and use of the agency's vehicles, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

The new section affects Texas Government Code, Chapter 2171.

§353.71. Vehicle Fleet Pool.

(a) Each board vehicle will be assigned to the board's motor pool and be available for checkout.

(b) Vehicles that are used by field staff stationed in locations other than Austin, Texas will be assigned to the motor pool for that field office.

(c) The executive administrator may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the executive administrator makes a written documented finding that the assignment is critical to the needs and mission of the agency.

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

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Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-7981

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CHAPTER 380. ALTERNATIVE DISPUTE RESOLUTION

The Texas Water Development Board (the board) proposes new §§380.1, 380.2, 380.3, 380.4, 380.5, 380.6, 380.21, 380.22, 380.23, 380.24, 380.25, 380.26, 380.27, 380.28, 380.29, 380.41, 380.42, 380.43, 380.44, 380.45, 380.46, 380.47, 380.48, 380.49, 380.50, 380.61, 380.62, 380.63 comprising new 31 TAC Chapter 380, Alternative Dispute Resolution, relating to procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against the board pursuant to House Bill 826 §9, 76th. Leg., R.S., Chapter 68 (1999) (codified at Texas Government Code, Chapter 2260). Historically, the State of Texas has been immune from suit on a contract on the basis of sovereign immunity. Contractors seeking to assert and recover damages on a breach of contract claim had to obtain legislative consent to sue and a legislative appropriation to satisfy any resulting judgment. With the enactment of Chapter 2260, the legislature has established a new and exclusive administrative process by which a contractor who enters into a written contract with a unit of state government for goods, services, or certain projects may pursue a breach of contract claim for damages. Chapter 2260 requires a contractor who asserts a breach of contract claim and the board to attempt to resolve the contractor's claim and any counterclaim through negotiation, and authorizes, but does not require, the parties to mediate their dispute. If the contractor's claim is not resolved in its entirety within the statutory time frame, the contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH"). Chapter 2260 authorizes the SOAH administrative law judge to render a non-appealable decision ordering the unit of state government to pay damages up to $250,000. If the contractor's claim exceeds $250,000, Chapter 2260 requires the administrative law judge to issue a written report of his or her findings to the legislature, recommending that the legislature either appropriate money to pay all or part of a valid claim or deny such appropriation and withhold consent to sue.

Texas Government Code, §2260.052(c) requires that the board adopt rules to establish negotiation and mediation provisions. The proposed rules provide a process sufficiently flexible to permit the parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of such variables as the size or organization of the parties, or the subject matter, dollar amount, or method and time of performance.

Proposed Chapter 380 is organized into Subchapters A, B, C, and D. Subchapter A, General Provisions, includes §§380.1, 380.2, 380.3, 380.4, 380.5, and 380.6. Section 380.1 states that Chapter 380 governs the negotiation, mediation, and assisted negotiation process of resolving claims for breach of contract asserted by a contractor against the board. Section 380.2 states that Chapter 380 does not apply to claims for personal injury or wrongful death, claims for which there is a specific remedy under law, or claims based on contracts between the board and governmental entities, subcontractors, or any contract entirely funded with federal funds. Section 380.3 defines terms as they relate to this chapter. Section 380.4 provides that the procedures in Chapter 380 are prerequisites to filing suit under Texas Civil Practice & Remedies Code, Chapter 107 and Texas Government Code, Chapter 2260. Section 380.5 advises that the state has not waived sovereign immunity to suit or to liability. Section 380.6 describes the method the parties will use for computing time under the chapter.

Subchapter B, Negotiation of Contract Disputes, includes §§380.21, 380.22, 380.23, 380.24, 380.25, 380.26, 380.27, 380.28, and 380.29. Section 380.21 sets out the requirements and procedures of the notice of claim of breach of contract that the contractor must assert. Section 380.22 sets out the requirements and procedures of the counterclaim that the board must assert. Section 380.23 states that the parties must negotiate to settle the dispute within the timelines established by Texas Government Code, Chapter 2260. Section 380.24 provides a timetable based on the requirements of Texas Government Code, Chapter 2260 as it relates the negotiations between the contractor and the board. Section 380.25 describes how the parties may conduct the negotiation. Section 380.26 addresses the parties' settlement approval procedures. Section 380.27 announces the requirements of any resulting settlement agreement. Section 380.28 states how the costs of negotiations shall be handled by the parties. In the event the breach of contract claim is not resolved in its entirety, §380.29 specifies the process by which a contractor may seek resolution of the dispute by SOAH.

Subchapter C, Mediation of Contract Disputes, includes §§380.41, 380.42, 380.43, 380.44, 380.45, 380.46, 380.47, 380.48, 380.49, and 380.50. Section 380.41 sets the timetable for mediation in accordance with Texas Government Code, Chapter 2260. Section 380.42 sets the parameters for mediation by a neutral third party of breach of contract claims and counterclaims. Section 380.43 discusses how the parties may agree to mediate and select the mediator. Section 380.44 discusses the qualifications, immunities, and duties of a mediator. Section 380.45 pertains to the confidentiality of a mediation and any resulting final settlement agreement. Section 380.46 states how the costs of mediation shall be handled by the parties. Section 380.47 addresses the parties settlement approval procedures. Section 380.48 details the handling of any resulting settlement

agreement. Section 380.49 states the requirements for a final settlement and ensures the parties' rights if a partial settlement is reached. Section 380.50 provides that, if mediation does not resolve the dispute, the contractor may request that the claim be referred to SOAH in accordance with §380.24 and §380.29 of this chapter.

Subchapter D, Assisted Negotiation Processes, includes §§380.61, 380.62, and 380.63. Section 380.61 states that the parties may agree, either contractually or when a dispute arises, to uses assisted negotiation processes to resolve disputes. Section 380.62 requires parties to agree in writing to the type of assisted negotiation process used and suggests a couple commonly used processes. Section 380.63 requires any assisted negotiation process used to follow the rules for mediation in Subchapter C of this chapter.

Ms. Pamela Gulley, Director of Fiscal Services, has determined that for each year of the first five years that the proposed rules are in effect there will be no fiscal impact to state or local government as a result of enforcing or administering the rules.

Ms. Gulley has also determined that for each year of the first five years that the proposed rules are in effect, the benefit to the public will be the more timely and efficient resolution of contract disputes between contractors and the board. The legislature, by enacting Chapter 2260, has determined that such process, with the potential to recover monetary damages for proven contractual breaches, is of public benefit. The proposed rules will have no adverse economic effect on small or large businesses and/or persons that contract with the state. In the past, sovereign immunity prevented breach of contract claims against the state and the only process available to the public for resolution of such a claim was to seek and obtain legislative consent to sue. Chapter 2260 and these proposed rules will provide a process by which claims for breach of contract and counterclaims can be asserted and resolved.

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

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

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Ron Pigott, (512) 936-2414, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or e-mailed to Ron.Pigott@twdb.state.tx.us.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §§380.1-380.6

The new sections are proposed under Texas Government Code, Chapter 2260, Resolution of Certain Contract Claims against the State, §2260.052, which authorizes the board to adopt rules deemed necessary or advisable to effectuate Chapter 2260, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

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

§380.1. Scope of Rules.

This chapter governs the negotiation, mediation, and assisted negotiation process for resolving breach of contract claims asserted by contractors against the Texas Water Development Board pursuant to Texas Government Code, Chapter 2260.

§380.2. Applicability.

This chapter does not apply to:

(1) claims for personal injury or wrongful death arising from a breach of contract;

(2) an action of the board for which the contractor is entitled to a specific remedy pursuant to state or federal constitution or statute; and

(3) contracts that are:

(A) between the board and:

(i) the federal government or its agencies, another state, or another nation;

(ii) a unit of state government; or

(iii) a local governmental body, or a political subdivision of another state;

(B) between a subcontractor and a contractor;

(C) within the exclusive jurisdiction of:

(i) a state or local regulatory body; or

(ii) a federal court or regulatory body; or

(D) solely and entirely funded by federal grant monies other than for a project defined in §380.3(12) of this title (relating to Definitions).

§380.3. Definitions.

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

(1) Board - Texas Water Development Board.

(2) Executive administrator - The executive administrator of the Texas Water Development Board.

(3) Claim - An assertion by a contractor that the board has breached a contract.

(4) Contract - A written agreement between the board and a contractor by the terms of which the contractor agrees either to:

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

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

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

(A) the contractor's subcontractors, officers, employees, agents, or other persons furnishing goods or services to the contractor;

(B) an employee of the board; or

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

(6) Counterclaim - An assertion by the board that:

(A) a contractor has breached a contract; or

(B) justifies the actions taken by the board that are the subject of a contractor's claim.

(7) Damages - The total amount of money recoverable on a claim for breach of contract after deducting any amount owed the board for work not performed under the contract or not in substantial compliance with the contract's terms. Damages do not include:

(A) consequential or similar damages;

(B) exemplary damages;

(C) damages based on an unjust enrichment theory;

(D) attorney's fees; or

(E) home office overhead.

(8) Day - A calendar day.

(9) Event - An act or omission, or a series of acts or omissions, giving rise to a claim or counterclaim.

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

(11) Parties - The board and the contractor who entered into the contract that is alleged to have been breached.

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

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

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

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

(14) Unit of state government - The state or an agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of this state, including a university system or institution of higher education. The term does not include a county, municipality, court of a county or municipality, special purpose district, or other political subdivision of this state.

§380.4. Prerequisites to Suit.

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

§380.5. Sovereign Immunity.

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

§380.6. Computation of Time.

When computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

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

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SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES

31 TAC §§380.21-380.29

The new sections are proposed under Texas Government Code, Chapter 2260, Resolution of Certain Contract Claims against the State, §2260.052, which authorizes the board to adopt rules deemed necessary or advisable to effectuate Chapter 2260, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

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

§380.21. Submitting a Notice of Claim for Breach of Contract.

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

(b) The notice of claim shall:

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

(2) be delivered to the board employee designated in the contract to receive the notice and the board's general counsel or, if no employee is designated in the contract to receive notice, the notice shall be delivered to the board's executive administrator and the board's general counsel. The written notice of claim must be delivered by:

(A) certified mail, return receipt requested;

(B) hand-delivery; or

(C) other verifiable delivery service; and

(3) state in detail:

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

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

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

(c) In addition to the mandatory contents of the notice of claim required by subsection (b) of this section, the contractor may submit supporting documentation or other tangible evidence to facilitate the board's evaluation of the contractor's claim.

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

§380.22. Agency Counterclaim.

(a) If the board asserts a counterclaim under Texas Government Code, Chapter 2260, it shall file written notice of the counterclaim as provided by this section.

(b) The notice of counterclaim shall:

(1) be in writing;

(2) be delivered to the contractor or representative of the contractor who signed the notice of claim for breach of contract. The counterclaim shall be delivered by:

(A) certified mail, return receipt requested;

(B) hand-delivery; or

(C) other verifiable delivery service; and

(3) state in detail:

(A) the nature of the counterclaim;

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

(C) the legal theory supporting the counterclaim.

(c) In addition to the mandatory contents of the notice of counterclaim required by subsection (b) of this section, the board may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the board's counterclaim.

(d) The notice of counterclaim shall be delivered to the contractor no later than 90 days after the board's receipt of the contractor's written notice of claim for breach of contract.

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

§380.23. Duty to Negotiate.

The parties shall negotiate the claim(s) and counterclaim(s) in accordance with the timetable set forth in §380.24 of this chapter (relating to Timetable). No party is obligated to settle with the other party as a result of the negotiation.

§380.24. Timetable.

(a) Upon receiving a contractor's notice of claim for breach of contract, the executive administrator or designated representative shall review the claim(s) and the board's counterclaim(s), if any, and initiate negotiations with the contractor to attempt to come to a resolution.

(b) Except as provided by subsection (c) of this section, the parties shall begin negotiations no later than the 60th day following the later of:

(1) the date of termination of the contract;

(2) the completion date in the original contract; or

(3) the date the board received the contractor's notice of claim.

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

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

(2) delivering a second written notice to the contractor when the board is ready to begin negotiations.

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

(e) Except as provided by subsection (f) of this section, if a claim is not entirely resolved through negotiations, mediation, or any other assisted negotiation process utilized by the parties by the 270th day after the date that the notice of claim was received by the board, the contractor may file a written request for a contested hearing pursuant to §380.29 of this chapter (relating to Request for Contested Case Hearing).

(f) The parties may agree in writing to extend the time for negotiations, mediation, or any other assisted negotiation process on or before the 270th day after the board received the contractor's written notice of claim for breach of contract. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall state the final date of the extension period. The parties may enter into a series of written extension agreements that comply with the requirements of this section. If the claim is not entirely resolved at the end of the agreed upon extension period, the contractor may file a written request for a contested hearing pursuant to §380.29 of this chapter.

(g) The parties may agree to mediate the dispute or use any other assisted negotiation process at any time before the 270th day after the board received the contractor's written notice of claim or before the expiration of any extension agreed to by the parties pursuant to subsection (f) of this section. The mediation or other assisted negotiation process shall be governed by Subchapters C and D of this chapter.

(h) Nothing in this section is intended to prevent the parties from agreeing to commence negotiation, mediation, or any other assisted negotiation process earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming such processes after the contractor has requested a contested case hearing.

§380.25. Conduct of Negotiation.

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. Negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation:

(1) in person;

(2) by telephone;

(3) by correspondence;

(4) by video conference; or

(5) by any other method that permits the parties to:

(A) identify their respective positions;

(B) discuss their respective differences;

(C) confer with their respective advisers;

(D) exchange offers of settlement; and

(E) settle, if possible.

(b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation shall be conducted in accordance with Subchapter C of this chapter. The parties may choose an assisted negotiation process other than mediation, including, without limitation, processes such as those described in Subchapter D of this chapter.

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

(d) Information obtained by the board is subject to the provisions of the Government Code, Chapter 552, Public Information Act. If, pursuant to the section, the contractor submits material to the board that involves the contractor's privacy or property interests, the material shall be marked confidential by the contractor before submittal. All information submitted to the board shall be handled pursuant to the requirements of the Public Information Act and any other relevant state or federal law.

§380.26. Settlement Approval Procedures.

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

§380.27. Settlement Agreement.

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

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

(c) A partial settlement does not waive the parties' rights under Texas Government Code, Chapter 2260, as to the parts of the claims or counterclaims that are not resolved.

§380.28. Costs of Negotiation.

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

§380.29. Request for Contested Case Hearing.

(a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation, or other assisted negotiation process, in accordance with this chapter, by the 270th day after the board received the contractor's written notice of claim, or by the expiration of any extension agreed to by the parties pursuant to §380.24(f) of this chapter (relating to Timetable), the contractor may file a written request with the board for a contested case hearing, which will be held before the State Office of Administrative Hearings (SOAH).

(b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the board's executive administrator and the board's general counsel by the 300th day after the board received the contractor's written notice of claim unless the parties have agreed to extend the negotiation period, in which case the written request for a contested hearing shall be delivered by the 30th day following the end of the agreed to extension period.

(c) The board shall forward the contractor's request for contested case hearing to SOAH within 30 days of receiving the request.

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

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

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SUBCHAPTER C. MEDIATION OF CONTRACT DISPUTES

31 TAC §§380.41-380.50

The new sections are proposed under Texas Government Code, Chapter 2260, Resolution of Certain Contract Claims against the State, §2260.052, which authorizes the board to adopt rules deemed necessary or advisable to effectuate Chapter 2260, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

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

§380.41. Mediation Timetable.

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

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

§380.42. Conduct of Mediation.

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

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

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

§380.43. Agreement to Mediate.

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

(b) Any agreement to mediate should include consideration of the following factors.

(1) The source of the mediator. Potential sources of mediators include:

(A) governmental officers or employees who are qualified as mediators under Texas Civil Practice and Remedies Code, §154.052;

(B) private mediators;

(C) SOAH;

(D) the Center for Public Policy Dispute Resolution at The University of Texas School of Law;

(E) an alternative dispute resolution system created under Texas Civil Practice and Remedies Code, Chapter 152; or

(F) another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties shall contact the mediator source to be sure that it is willing and able to serve in that capacity. In selecting a mediator, the parties shall use the qualifications set forth in subsection §380.44 of this chapter (relating to Qualifications and Immunity of Mediator).

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

(3) The location of the mediation.

(4) Allocation of costs of the mediation.

(5) The identification of representatives who will attend the mediation on behalf of the parties. If possible, each party shall supply the other with the names and/or positions of the representatives they will send to mediation at least 10 days before the first scheduled mediation session.

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

§380.44. Qualifications and Immunity of the Mediator.

(a) The mediator shall:

(1) possess the qualifications required under Texas Civil Practice and Remedies Code, §154.052;

(2) be subject to the standards and duties prescribed by Texas Civil Practice and Remedies Code, §154.053; and

(3) have the qualified immunity prescribed by Texas Civil Practice and Remedies Code, §154.055, if applicable.

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

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

§380.45. Confidentiality of Mediation and Final Settlement Agreement.

(a) Mediation conducted under this chapter is confidential in accordance with Texas Government Code, §2009.054.

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

§380.46. Costs of Mediation.

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

§380.47. Settlement Approval Procedures.

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

§380.48. Initial Settlement Agreement.

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

§380.49. Final Settlement Agreement.

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

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

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

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

If mediation does not resolve all issues raised by the claim, the contractor may request a contested case hearing pursuant to the time periods in §380.24 of this chapter (relating to Timetable) and the procedures in §380.29 of this chapter (relating to Request for Contested Case Hearing). Nothing in these rules prohibits the parties from mediating the dispute after the case has been referred for contested case hearing, subject to the rules of SOAH.

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

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SUBCHAPTER D. ASSISTED NEGOTIATION PROCESSES

31 TAC §§380.61-380.63

The new sections are proposed under Texas Government Code, Chapter 2260, Resolution of Certain Contract Claims against the State, §2260.052, which authorizes the board to adopt rules deemed necessary or advisable to effectuate Chapter 2260, and Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas.

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

§380.61. Assisted Negotiation Processes.

The parties may agree, either contractually or when a dispute arises, to use assisted negotiation (alternative dispute resolution) processes, in addition to negotiation and mediation, to resolve their dispute.

§380.62. Use of Assisted Negotiation Processes.

If the parties agree to use an assisted negotiation process, they shall agree in writing to a detailed description of the process to be used prior to engaging in the process. Any of the following methods, a combination of these methods, or any other assisted negotiation process agreed to by the parties, may be used in seeking resolution of claims and counterclaims:

(1) Mediation;

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

(3) Neutral fact-finding by an expert;

(4) Mini-trial; or

(5) Any other alternative dispute resolution process agreed to by the parties.

§380.63. Conduct of Assisted Negotiation.

If the parties agree in writing to use an assisted negotiation process, they shall follow the rules in subchapter C of this chapter (relating to Mediation of Contract Disputes) regarding time periods, conduct, agreement to the process used, the qualifications of the third party, confidentiality, costs, and settlement agreements.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.284

The Comptroller of Public Accounts proposes an amendment to §3.284, concerning drugs, medicines, medical equipment, and devices. This section is being amended to reflect changes made by Senate Bill 441 and House Bill 652, 76th Legislature, 1999. Effective April 1, 2000, the exemption for medical supplies is broadened to include blood glucose monitoring strips and over-the-counter drugs and medicines. Under House Bill 652, effective July 1, 1999, specially designed eating utensils are exempt when purchased for persons who are elderly or who have medical conditions and cannot feed themselves independently with conventional eating utensils. These items are exempt with or without prescriptions. This section is also amended to add wound care dressings and certain skin closure supplies to the definition of drugs and medicines and to add intravenous systems to the list of prosthetic devices. The term "diagnostic" replaces the term "identification" in the definition of drugs or medicines without changing the meaning.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with additional information regarding their tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.313.

§3.284. Drugs, Medicines, Medical Equipment, and Devices.

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

(1) Appliance or device - An instrument, apparatus, implement, machine, contrivance, implant, chemical, or other similar or related product that does not achieve its primary intended purposes through chemical action within or on the body, and that is not dependent upon being metabolized for the achievement of its primary intended purposes.

(2) [~~(1)~~] Brace - Any appliance or device that is used on or attached to the human body, and that gives [~~giving~~] rigidity or support for the purpose of correcting a physical ailment or defect.

(3) [~~(2)~~] Corrective lenses - Any appliance or device that is worn to correct or aid defective eyesight, such as eyeglasses, [~~Eyeglasses,~~] contact lenses, or other visual aids that [~~are dispensed or prescribed by~~] an ophthalmologist or optometrist dispenses or prescribes.

(4) [~~(3)~~] Dental device - An artificial replacement of one or more teeth or a dental appliance worn on the teeth to correct irregularities of growth or position. For the purposes of this section, the term dental device does not include toothbrushes, toothpaste, dental floss, mouth mirrors, or other devices used to prevent cavities or plaque build-up or removal.

(5) Dietary supplement - A product that:

(A) contains one or more vitamins, minerals, herbs, amino acids, or substances to increase caloric intake;

(B) is not represented as a food or the sole item of a meal or the diet; and

(C) is labeled or is required to be labeled "dietary supplement" or "supplement."

(6) Drug or medicine[~~(4) Drugs and medicines~~] - A product that: [~~Those commonly recognized substances possessing identification, curative, or remedial properties which are applied to or consumed by humans or animals either internally or externally for the alleviation of pain or for the diagnosis, cure, or prevention of sickness, disease, or suffering. The terms "drugs and medicines" do not include hardware of any kind, equipment, appliances, devices, or chemicals used to test body fluids and tissues.~~]

(A) is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, illness, injury, or pain;

(B) is applied to the human body, or that humans ingest or inhale;

(C) is not an appliance or device; and

(D) is not food.

(7) Food - Material, usually of plant or animal origin, that contains or consists of essential nutrients and is intended for human ingestion:

(A) for taste or aroma; or

(B) to satisfy the appetite, hunger, or thirst.

(8) [~~(5)~~] Hearing aid - Any appliance or device worn to correct or aid defective hearing. The term also includes an audio loop used by a person who is deaf.

(9) [~~(6)~~] Hypodermic needle - A hollow needle adapted for use with hypodermic syringes.

(10) [~~(7)~~] Hypodermic syringe - A small syringe with a hollow needle adapted for use in removing or injecting material beneath the skin.

(11) [~~(8)~~] Ileostomy, colostomy, and ileal bladder appliance - [~~Any~~]An appliance or device that is surgically implanted or [~~surgically~~] formed to assist the human body in the elimination of natural waste.

(12) [~~(9)~~] Orthopedic appliance - Any appliance or device designed specifically for use in the correction or prevention of human deformities, defects, or chronic diseases of the skeleton, joints, or spine.

(13) [~~(10)~~] Prosthetic device - An item that[~~Any item:~~]

[~~(A)~~] [~~that~~] is artificial and replaces a missing part of the body,[~~; or~~]

[~~(B)~~] [~~that~~] performs the function of a vital organ or appendage of the human body,[~~;~~] or

[~~(C)~~] [~~that~~] is permanently implanted in the body. Examples of prosthetic devices are heart- lung pumps, nasal gastric and gastrointestinal devices, ureteral stents, urethral stents, artificial kidney machines, intravenous systems, and related components and supplies.

(14) [~~(11)~~] Therapeutic appliance or device - An appliance or device that is [~~Any item~~] designed to alleviate pain or [~~designed~~] for use during the treatment or cure of human sickness, disease, suffering, or deformity.

(15) Wound care dressing - An item that absorbs wound drainage, protects healing tissue, maintains a moist or dry wound environment (as appropriate), or prevents bacterial contamination.

(b) Drugs and medicines.

(1) Insulin that is [~~exempt whether or not~~] sold with or without a [~~by~~] prescription is exempt.

(2) Sales tax is not due on the sale of drugs or[~~and~~] medicines that are prescribed[~~sold~~] or dispensed for[~~to~~] humans or [~~for~~] animals on the oral or written prescription of licensed practitioners of the healing arts. Sales tax is due on the sale of all other nonprescription drugs and medicines, except as provided in subsections (b)(1) and (b)(3) of this section, and the retailer must collect tax from the purchaser on such sales.

(3) Sales tax is not due on the sale of non-prescription drugs or medicines. A product is presumed to be a drug or medicine for sales tax purposes if it is labeled or required to be labeled with a "Drug Facts" panel pursuant to the regulations of the federal Food and Drug Administration.

(4) Sales tax is not due on the sale of wound care dressings.

(c) Dietary supplements. Sales tax is not due on the sale of dietary supplements. A product is presumed to be a dietary supplement for sales tax purposes if it is labeled or required to be labeled with a "Supplement Facts" panel pursuant to the regulations of the federal Food and Drug Administration.

(d) [~~(c)~~] Medical equipment.

(1) Sales tax is not due on the sale, lease, or rental of medical equipment meeting the definition of a brace, corrective lens, hearing aid, orthopedic appliance, prosthetic device, or dental device. Sales tax is not due on replacement parts designed specifically for such devices and appliances. With the exception of corrective lenses, a prescription is not required.

(2) Sales tax is not due on the sale of ileostomy, colostomy, or[~~and~~] ileal bladder appliances, related supplies or replacement parts that are designed specifically for such appliances.

(3) Sales tax is not due on the sale of hypodermic syringes and hypodermic needles used for medical purposes.

(4) Sales tax is not due on the sale of blood glucose monitoring strips.

(5) [~~(4)~~] Sales tax is not due on the sale, lease, or rental of hospital beds or their replacement parts. A hospital bed is the type of bed used in a hospital for rest, recuperation, and treatment. A hospital bed does not include an operating table, delivery table, examination table, stretcher, or gurney. A prescription is not required.

(6) [~~(5)~~] Sales or use tax is not due on the sale, lease, or rental of the following items when used by the deaf. An exemption certificate is not required for the purchase, rental, or lease of these items:

(A) hearing aids;

(B) specialized printing or signaling equipment that the deaf use[signalling equipment used by the deaf] for the purpose of enabling communication by [the deaf to communicate through the use of an] ordinary telephone, including all materials, paper, and printing ribbons that are used in that equipment;

(C) an appliance or device, such as a light signal , that is used[and device] to adapt items such as telecommunication devices for the deaf (TDD), telephones, doorbells, and smoke alarms; and

(D) adaptive devices or adaptive software for computers that deaf persons use[used by persons who are deaf].

(7) [(6)] Sales or use tax is not due on the sale, lease, or rental of the following items when used by the legally blind. An exemption certificate is not required for the purchase, rental, or lease of these items:

(A) a braille wristwatch, braillewriter[braille writer], braille paper; and

(B) braille electronic equipment that connects to computer equipment, along with [and] the necessary adaptive devices and [adaptive] computer software.[; and]

[(C) harness for guide dogs.]

(8) [(7)] Sales or use tax is not due on the sale, lease, or rental of the following items when used by the legally blind, if an exemption certificate is provided to the seller:

(A) a slate and stylus;

(B) print enlarger;

(C) light probe;

(D) magnifier;

(E) white cane;

(F) talking clock; [and]

(G) hardware and software that are necessary to adapt a computer for a legally blind person to use; and[large print terminal and talking terminal.]

(H) harness for guide dog.

(9) [(8)] Sales tax is not due on the sale, lease, or rental of therapeutic appliances, devices, and related supplies specifically designed for those products when sold, leased, or rented to individuals under a prescription of a licensed practitioner of the healing arts.

(A) A hot tub, spa, or similar appliance qualifies as a therapeutic appliance when prescribed for the purchaser by a licensed practitioner of the healing arts. The patient must provide the seller of the hot tub, spa, or similar appliance with a prescription, an exemption certificate, and a signed statement on letterhead from the licensed practitioner. The signed statement should specify the medical requirements for the hot tub, spa, or similar appliance. Unless a hospital, nursing home, or other institution qualifies for exemption under the Tax Code, §151.310(a)(1) or (2), the institution must pay sales tax on equipment and supply items used to provide medical services unless the item qualifies for exemption under paragraphs (1)-(3) of this subsection.

(B) Sales tax is not due on the sale of eating utensils, such as spoons, forks, or knives, that are designed to facilitate independent eating and purchased for use by a person who cannot eat independently with conventional utensils because of injury, disease, physical or mental disability, or advanced age.

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 January 12, 2001.

TRD-200100255
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 463-3699

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34 TAC §3.298

The Comptroller of Public Accounts proposes an amendment to §3.298, concerning amusement services. The amendment is the result of a change to Tax Code, §151.3101, by House Bill 3211, 76th Legislature, 1999, effective October 1, 1999. The amendment allows public colleges and universities and other public institutions of higher education to provide tax- free amusement services without the limitations placed on other state agencies. Public institutions of higher education are able to provide tax-free amusement services as nonprofit private institutions of higher education. Subsection (g)(6) is also being amended to clarify that the exemption is not lost when members reimburse an exempt organization or pay the admission charges directly if an exemption certificate is issued by the organization. Subsection (g)(8) is added to clarify that the simple renting or leasing of facilities by an exempted organization to an organization that is not exempted does not create an exemption for the amusement service provided by the non-exempt organization. Various subsections are amended to correct errors in grammar and sentence structure, and to make the section easier to read and understand. Various subsections are amended to correct errors in grammar and sentence structure and to make the section easier to read and understand.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with information regarding their tax responsibilities. This rule is adopted under 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.

The amendment implements Tax Code, §151.3101.

§3.298. Amusement Services.

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

(1) Amusement services - Entertainment, recreation, sport, pastime, diversion, or enjoyment that is a pleasurable occupation of the senses. Amusement services and places that offer [~~offering~~] amusement services include, but are not limited to, the following:

(A) live or recorded performances, whether by individual ticket or by season tickets:

(i) ballet performances;

(ii) circuses;

(iii) ice skating shows;

(iv) motion pictures;

(v) musical concerts;

(vi) opera performances;

(vii) outdoor theatres; and

(viii) theatres (movies and plays);

(B) exhibitions or displays:

(i) animal shows (contests, exhibitions);

(ii) antique shows;

(iii) aquatic shows;

(iv) arts and crafts, and art shows (fairs);

(v) auto shows;

(vi) museums (that display [~~displaying~~] art objects, wax figures, antique autos, etc.); and

(vii) zoos;

(C) spectator sports:

(i) drag strip[~~dragstrip~~] operation;

(ii) horse shows (horse riding exhibitions);

(iii) motorcycle races;

(iv) automobile races (full size and miniature cars);

(v) rodeo;

(vi) sporting events such as football, baseball, basketball, hockey, and soccer games; and

(vii) wrestling, boxing, or arm wrestling;

(D) participatory sports or games:

(i) athletic clubs;

(ii) bowling games;

(iii) court fees - tennis, racketball, handball, etc.;

(iv) domino games (including by the hour);

(v) go-cart raceways;

(vi) golf courses;

(vii) golf driving ranges;

(viii) health clubs (spas), (admissions and memberships);

(ix) miniature golf courses;

(x) chartered boat or party boat excursions (see paragraph (2) of this subsection for excursions of more than one day duration, and for excursions on which fishing guide services are provided);

(xi) pool (billiards) games (by the game or by the hour);

(xii) skate board tracks;

(xiii) skating rinks (roller skating and ice skating);

(xiv) swimming pools;

(xv) water slides; and

(xvi) physical fitness centers;

(E) fairs or carnivals:

(i) amusement parks;

(ii) carnivals;

(iii) fairs;

(iv) games of skill, at a circus, carnival, etc.;

(v) shooting galleries (ranges); and

(vi) side shows;

(F) other:

(i) except as provided by subsection (e)(4) of this section, cover charges (for admission to night clubs, dance halls, discos, etc., that provide[~~providing~~] dancing, music, or other entertainment);

(ii) hot tub concessions;

(iii) parties (New Year's Eve) that [~~sponsored by~~] radio stations, hotels, etc., sponsor. Ticket price includes meal, set-ups, entertainment, party favors;

(iv) rides for pleasure (in hot-air balloons, helicopters, trains, ships, boats, etc.);

(v) tour trains and buses, whose primary purpose is to show tourist sights along a route, as opposed to regular transportation;

(vi) tours of tourist attractions, including[~~such as~~] ships, buildings, [~~and~~] monuments, and natural wonders such as caves and caverns; and

(vii) palm reading, fortune telling, and astrological chart preparation;

(G) country clubs and other private clubs and organizations that provide entertainment, recreation, sports, dining, or social facilities to members.

(2) Nonamusement services - Activities that [~~which~~] are primarily instructional in nature, or nontaxable personal services. Places, services, and clubs that [~~not covered by~~] the tax on amusement services does not cover include, but are not limited to:

(A) hobby clubs (stamp collecting clubs, toastmaster clubs, camera clubs, amateur radio clubs);

(B) instructions for any sport or musical discipline;

(C) camps for children (day camps or boarding camps);

(D) video cassette clubs;

(E) political fundraisers;

(F) campground admissions;

(G) cruises that [~~which~~] last longer than 24 hours and extend offshore beyond [~~outside~~] Texas territorial limits;

(H) fishing and hunting leases and guide services; and

(I) membership in sororities and fraternities.

(3) Occasional sale - The sale of not more than 10 admissions for amusement services during a 12-month period by a person who does not hold himself out as engaging, or does not habitually engage, in the sale [~~selling~~] of amusement services.

(4) Provider of an amusement service - The person who has legal rights of ownership over, or the legal right to provide, present, or offer, an amusement, entertainment, or recreation that is rendered on a regular basis at a fixed location, and for which admissions are sold, such as the owner of the wax figure display at a wax museum. The provider of an amusement service is also the person who has legal rights of ownership to an amusement, entertainment, or recreation that will not be rendered on a regular basis at a fixed location, and for which amusement service admissions will be sold, such as the provider of a singer's one-night live performance[~~by a singer~~]. A provider of an amusement service may be, but is not always, the owner of the facility (land and/or building) at which the amusement service is offered or performed. A provider of an amusement service may gain the right of providing an amusement service by virtue of a contract or agreement (lease, rental, concession right) with the performer(s) of the entertainment, or with a facility owner when the use of that facility constitutes the amusement service. Terms used within the amusements industry to refer to a provider include manager, promoter, concessionaire, tenant, or association (or club) president.

(5) Sales price of an amusement service - The fee charged for admission to an amusement, including a convenience fee, handling charge, service charge, or other amount that is over and above the amount that would be charged for an amusement admission at the ticket counter of the facility at which the amusement service will be rendered. Sales price also includes[~~Also included are~~] dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Receipts subject to tax under the Texas Alcoholic Beverage Code, §202.02, are not included in the sales price of an amusement service.

(6) Sales price of membership to country clubs, including clubs described by the Internal Revenue Code of 1986, §501(c)(7) - The sales price includes dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Whether [~~or not~~] the club has its own facilities is irrelevant to the determination of sales price.[~~not relevant.~~] Receipts subject to tax under [~~the~~] Texas Alcoholic Beverage Code, §202.02, are not included in the sales price of an amusement service.

(7) Seller of admissions to amusement services - A person who sells more than 10[~~ten~~] admissions to amusement services during a 12-month period, and includes those persons who hold themselves out as engaging, or who habitually engage, in the sale[~~selling~~] of admissions to amusement services.

(8) Sale of an amusement service admission - The transfer of title to, or possession of, a ticket or other admission document for [~~a~~] consideration, or the collection of an admission, membership, or enrollment fee, whether by individual performance, subscription series, or membership privilege, or through the use of a coin-operated or credit-card- operated machine. The consideration paid may secure the admission privilege for an individual or a group of individuals. The contract or agreement whereby the right is secured for a provider to offer an amusement, recreation, or entertainment as an amusement service is not the sale of an admission to an amusement service and is not subject to sales tax, such as the payment[~~paying~~] of a fee to a singer for a performance that [~~will be provided by~~] the payer of the fee will provide as an amusement service through the sales of tickets.

(b) Charges to private club members and guests. The membership dues, initiation fees, and other assessments and fees charged for a special privilege, status, or membership classification in a private club or organization, including organizations described by the Internal Revenue Code of 1986, §501(c)(7), if the organizations provide amusements, are taxable. Taxable fees for special privileges in the organization include, but are not limited to, liquor pool dues, boat slip rental fees, golf cart storage fees, locker rental fees, locker room use fees, and fees for access to the restaurant and bar. Separate charges for amusement services by persons who operate[~~operating~~] clubs or other facilities over and above amounts that are received for membership or initiation fees, such as green fees or fees for admissions to swimming pools, racketball courts, or tennis courts, are also taxable. Initiation fees that [~~which~~] are refundable, as evidenced by a written agreement, are not taxable.

(c) Entry fees. Entry fees will not be taxable as amusements if:

(1) the fee substantially exceeds what would normally be paid for use of [~~using~~] the facility, and a person is paying to compete in a contest, and part of the fee offsets[~~goes toward~~] the cost of conducting the contest and for prizes; or

(2) an individual would not normally use the facility[~~,~~] or pay a fee, except for the purpose of participation[~~participating~~] in a contest.

(d) Travel agencies.

(1) Tickets to amusements that travel agencies sell[~~sold by travel agencies~~] as part of a travel package are taxable only if:

(A) the price of the ticket is separately stated from the price for the remainder of the package; or

(B) though not separately stated, the surrounding additional costs are inconsequential.

(2) If the travel agency is not required to collect sales tax, then [~~is not required to be collected by the travel agency,~~] sales tax must be paid at the time the travel agency purchases the tickets[~~originally~~].

(e) Imposition of tax.

(1) Sales tax is due on the sale of an admission to an amusement service if the event or location of the service is within the State of Texas. Sales tax is also due on admissions to gambling ships that operate outside Texas waters, if the ships[~~they~~] depart from and return to Texas ports. Sales tax is not due on the sale of an admission to an amusement service if the event or location of the service is outside Texas.

(2) Use tax is due on an out-of-state sale of an admission to an amusement event that will take place in Texas.

(3) When [~~there is~~] a sale of an amusement service occurs that[~~which~~] does not involve the transfer of a ticket or other physical evidence of admission, possession of or title to the admission is [~~to be~~] regarded as occurring[~~taking place~~] at the seller's place of business. An example is[~~would be~~] when admission is secured by a reservation that [~~made by~~] the seller makes for the purchaser.

(4) Sales or use tax is not due on cover charges that [~~which~~] are taxable under [~~the Texas~~] Alcoholic Beverage Code, §202.02.

(f) Taxable item sold or transferred with amusement service.

(1) Sellers of service may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property is transferred to the client. For example, a taxpayer purchases padlocks to transfer to customers when lockers are rented. The padlock is transferred to customers, and the customers use the padlock when renting the locker. The taxpayer[~~Taxpayer~~] may purchase the padlock tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the padlock and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service, and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property that [~~which~~] will be resold. If the entire service is not incorporated into the tangible personal property, the presumption is that [~~it will be presumed~~] the service is subject to tax, and the service will only be exempt to the extent that the buyer can establish the portion of the service that was actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(4) Any item, such as machinery or equipment, purchased for use [~~to be used~~] in the provision[~~providing~~] of an amusement service is not an item that is transferred with an amusement service, and is subject to sales tax.

(5) A reseller of a ticket or admission document to an amusement service may deduct from "taxable sales reported," [~~taxable sales reported~~] the "adjusted value" of the ticket or admission document purchased for resale from a non-permitted purchaser of the ticket or admission document. The "adjusted value" is the face value of the ticket or admission document, less the included sales tax. A reseller is allowed the deduction from taxable sales when filing a sales tax report, if all of the following criteria are met:

(A) the purchaser paid the sales tax, [~~was paid by the purchaser~~] and the purchaser does not hold a Texas Sales and Use Tax Permit;

(B) the language on the ticket or admission document purchased for resale states that all taxes have been included in the price of the ticket or admission document;

(C) the ticket or admission document for which a deduction is claimed was not purchased tax- free by use of a resale or exemption certificate; and

(D) the ticket or admission document is actually resold.

(g) Exemptions.

(1) Sales tax is not due on the sale of an amusement service if the service is provided exclusively:

(A) by a nonprofit organization, corporation, or association, other than organizations described by the Internal Revenue Code of 1986, §501(c)(7), if the proceeds do not go to the benefit of an individual, except as a part of the services of a purely public charity. Initiation and membership fees and other assorted fees charged by such a nonprofit organization, corporation, or association are not taxable. Examples [~~would~~] include[~~:~~] organizations, corporations, or associations recognized as nonprofit organizations under the Internal Revenue Code, §501(c)[~~,~~] Kiwanis clubs, labor unions, and ex-students organizations. Organizations described by the Internal Revenue Code of 1986, §501(c)(7), that provide amusements, do not qualify for this exemption, even though such groups are formed [~~organized~~] as nonprofit organizations;

(B) by a nonprofit corporation organized under the laws of this state for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions;

(C) by an educational[~~,~~] (including institutions of higher education as defined under Education Code, §61.003(8)), religious, law enforcement, or charitable association or organization, as long as no part of the proceeds goes to the benefit of a private individual;

(D) by the United States, the State of Texas, a municipality, county, school district, special district, or other political subdivision of the State of Texas, other than a public institution of higher education as defined under Education Code, §61.003(8). An amusement service is not "exclusively provided" by a governmental entity if the entity contracts with an entity that is not listed in the Tax Code, §151.3101(a)(1), for the provision of the amusement;

(E) in a place that is included in the National Register of Historic Places; or

(F) in a place that is designated as a Recorded Texas Historic Landmark by the Texas Historical Commission.

(2) Sales tax is not due on the sale of an amusement service by a ticket service, ticket agent, ticket outlet, or any other seller of amusement services, when the provider of the amusement service is exempt as set forth in paragraph (1) of this subsection.

(3) Except as provided by subsection (h) of this section, a nonprofit group may hire a for-profit organization to provide the expertise to produce an event without loss of the exemption provided by paragraph (1)(A) of this subsection. The nonprofit organization must hold itself out as the provider of the amusement, and may not be a joint venturer with the for-profit entity.

(4) Amusement services provided through coin-operated machines that [~~are operated by~~] the consumer operates are exempt from sales tax. The coin used to operate the machine may be a token as well as a United States coin. Examples are coin-operated:

(A) pinball machines;

(B) video games and motion pictures;

(C) pool tables;

(D) televisions;

(E) shuffleboard;

(F) jukeboxes; and

(G) batting cages.

(5) Sales tax is not due on the occasional sale of an amusement service.

(6) Sales tax is not due on the purchase of an amusement service by an exempt entity for its own amusement or for the amusement of its members. See §3.322 of this title (relating to Exempt Organizations). The seller must secure a valid exemption certificate. An amusement service is purchased for the amusement of its members irrespective of whether:

(A) the organization pays the admission for the members;

(B) the members reimburse the exempt organization; or

(C) the members directly pay the service provider under an agreement by the provider to accept payments from individual members, the aggregate total of which equals the contractual obligation of the organization.

(7) Sales tax is not due on the purchase of the admission to an activity that[~~which~~] may be classified as an amusement, entertainment, or recreation, if purchased under a written prescription of a licensed practitioner of the healing arts for the primary purpose of health maintenance or improvement. The written prescription must specify the type of the treatment needed. If a membership privilege is purchased pursuant to a written prescription, a new prescription must be obtained each time the membership is renewed.

(8) Except as provided under subsection (g)(1)(E) or (F) of this section, tax is due on an amusement service provided by an organization that is not exempted under subsection (g) or (h) of this section, when the facilities used to provide the amusement service are leased or rented from an organization that is exempted under subsection (g) or (h) of this section.

(h) Governmental entities.

(1) Entities recognized as governmental entities are subject to the provisions of this subsection even though the entities may also be classified under the Tax Code, §151.3101(a)(3), (4), or (5).

(2) Unless an event is solely for educational purposes, an amusement service provided by this state, an institution that this state owns or operates,[~~owned or operated by the state,~~] an agency of this state, a city, county, school district, special district, or other political subdivision of this state, or any agency of the United States, is taxable if the public entity [~~that~~] contracts with a person, a for-profit organization, or any other organization that is not listed in [~~the~~] Tax Code, §151.3101(a)(1), to provide the expertise to produce or provide a musical concert or other amusement event. [~~loses the exemption provided in subsection (g) of this section.~~] These public entities[~~organizations~~] must collect sales tax on admissions to amusement events that are provided by or in conjunction with a person, a for-profit organization, or other organization that is[~~organizations~~] not listed in [~~the~~] Tax Code, §151.3101(a)(1). This provision does not apply to a public institution of higher education as defined under Education Code, §61.003(8). Public institutions of higher education are included in the term "educational organizations" and are subject to the provisions of subsection (g)(1)(C) of this section.

(3) An amusement is not solely for educational purposes unless either[~~:~~] 100% of the proceeds from the admissions go to the educational organization,[~~;~~] or students at the educational institution actually perform the amusement.

(i) Collection of the tax.

(1) Persons who sell admissions to an amusement service for resale may accept a resale certificate from the purchaser of the amusement in lieu of tax. The resale certificate will cover all convenience fees, handling charges, service charges, etc., that promoters, ticket services, and others add [~~added~~] to the sales price of the admission[~~by promoters, ticket services, and others~~].

(2) Each seller of amusement services who sells[~~selling~~] to the final consumer must collect and remit the tax to the comptroller, based on the total receipts from all taxable sales. A seller is[~~will be~~] responsible for remitting the correct amount of tax based on the total sales price of admissions, including any charges that others have added[~~by others~~].

(3) The comptroller may regard any seller of an admission to an amusement service as the agent of the person from whom he obtains the tickets or other admission document, if the comptroller determines that the tax will be collected more efficiently. The seller of an admission to amusement service is [~~will be~~] regarded as the agent if:

(A) the person who provides[~~providing~~] the tickets or other admission documents obtains written authorization from the comptroller to assume responsibility for the tax collection of the [~~his~~] agent;

(B) the person who provides[~~providing~~] the tickets includes in the sales price of the admission any convenience fee, handling charge, etc., that the agent has added to the price[~~added on by his agent~~]; and

(C) the provider of the tickets gives to the seller/agent a written statement that the provider holds a tax permit issued by the comptroller and is assuming responsibility for tax collection and reporting for the [~~his~~] agent.

(j) Records. Every seller of admissions to amusement services is responsible for keeping accurate records of all sales and purchases. See §3.281 of this title (relating to Records Required; Information Required). Every seller of admissions to amusement services must hold a sales tax permit and must file reports as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). A reseller of a ticket or admission document to an amusement service who deducts[~~that is deducting~~] the "adjusted value" of the ticket or admission document purchased for resale from a non-permitted purchaser, as provided in subsection (f)(5) of this section, must have records that verify [~~verifying~~] the deduction, including[~~that include~~]:

(1) the name and address of the non-permitted purchaser;

(2) the face value of any ticket or admission document that [~~purchased by~~] a non- permitted purchaser has purchased;

(3) proof (such as a copy of the ticket or admission document) showing that sales tax is included in the price of the ticket or admission document;

(4) the sales of tickets or admission documents; and

(5) the remaining inventory of unsold tickets or admission documents.

(k) Local tax. City, county, transit authority, and special purpose district tax should be allocated to the city, county, transit authority, and/or special purpose district where the amusement event occurred.

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 January 12, 2001.

TRD-200100256
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 463-3699

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34 TAC §3.300

The Comptroller of Public Accounts proposes an amendment to §3.300, concerning manufacturing; custom manufacturing; fabricating; processing. The amendment reflects changes made to Tax Code, §151.318, by the 75th Legislature, 1997 and 76th Legislature, 1999. House Bill 1855, 75th Legislature, 1997, effective October 1, 1997, limits, with certain exceptions, the exemption for tangible personal property used in the manufacturing process to property that makes or causes a chemical or physical change in the product being manufactured or in an intermediate or preliminary product that becomes a part of the product manufactured for sale. These new limitations do not apply to semiconductor fabrication cleanrooms, pollution control equipment, and a stipulated list of equipment used to power, supply, support or control qualifying manufacturing equipment or pollution control equipment (such as actuators, steam production equipment, cooling towers, transformers, pumps, compressors, computerized control units, etc.). Senate Bill 1, 75th Legislature, effective July 1, 1997, exempts water conservation equipment used by manufacturers. Senate Bill 862, 75th Legislature, effective October 1, 1997, clarified that computer software manufacturing begins with the design and writing of the program and includes testing or demonstration. House Bill 3211, 76th Legislature, 1999, effective October 1, 1999, provided clarifications to the language passed in the 75th Legislature.

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with additional information regarding their tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Senate Bills 1 and 862, and House Bill 1855, 75th Legislature, 1997, and House Bill 3211, 76th Legislature, 1999.

§3.300. Manufacturing; Custom Manufacturing; Fabricating; Processing.

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

(1) Accessory - A machine fixture that [~~which~~] causes the machinery to operate in a specialized way.

(2) Custom manufacturing - Producing tangible personal property to the special order of the customer, e.g., tailor-made clothing, custom-made draperies or slip-covers, or furniture made-to- order. Custom manufacturers are manufacturers for the purpose of this section.

(3) Display item - A manufactured item that is identical in size and function to other items held for sale which it represents and that is ultimately sold at retail. For example, manufacturer's apparel lines, furniture showroom pieces, light fixture displays.

(4) Equipment - Any apparatus, work clothing, device, or simple machines used directly in production.

(5) Fabrication - To make, build, create, produce, or assemble components of tangible personal property, or to make tangible personal property work in a new or different manner.

(6) Hand tool - An instrument [~~of manual operation,~~] that is[~~, an instrument~~] to be used, managed, and powered by the hand[~~,~~] (e.g., paint brush, trowel, hammer, screwdriver, files). Equipment that is [~~which is being~~] controlled or operated by the hand, but is moved or powered by electricity, gas, steam, or other fuel[~~etc.~~], is not a hand tool[~~,~~] (e.g., electric drill, chain saw, jack hammer).

(7) Machinery - All power-operated machines.

(8) Manufacturer - A person who is engaged in manufacturing. The definition [~~and~~] includes processors, fabricators, subman-ufacturers, and custom manufacturers.

(9) Manufacturing - Each[~~Every~~] operation beginning[~~commencing~~] with the first stage in the[~~of~~] production of tangible personal property and ending with the completion of tangible personal property. The first production stage means the first act of production, and it shall not include those acts in preparation for production. For example, a lumber company that cuts[~~cutting~~] trees or a manufacturer that gathers, arranges, or sorts[~~gathering, arranging, or sorting~~] raw materials or inventory is preparing for production. The first production stage for the manufacturing of software is the design and writing of the code or program, and manufacturing includes the testing or demonstration of the software. Manufacturing includes the repair[~~repairing~~] or rebuilding of tangible personal property that the manufacturer owns [~~owned by the manufacturer~~] for the purpose of being sold, but does not include the repair or rebuilding of property that belongs [~~belonging~~] to another. [~~When production is completed, maintaining the life of tangible personal property or preventing its deterioration is not a part of the manufacturing process.~~]

(A) Completion of production means the tangible personal property[~~article~~] has all the physical properties, including packaging, if any, that[~~which~~] it has when transferred by the manufacturer to another. For example, a manufacturer of raw rubber has completed production [~~of a manufactured article~~] when the raw rubber is ready to be transferred to a manufacturer of rubber goods.

(B) Processing and fabrication are two activities that [~~which~~] are performed during manufacturing. For example, the person who takes raw steel and makes pipe is engaged in fabrication. The workers who coat or thread the pipe are engaged in processing.

(10) Processing - The physical application of the materials and labor necessary to modify or to change the characteristics of tangible personal property. The repair of tangible personal property, belonging to another, by restoring it to its original condition is not considered processing of that property. The mere packing, unpacking, or shelving of a product to be sold will not be considered to be processing of that property. Processing does not include remodeling.

(11) Remodeling - To make tangible personal property belonging to another over again, in a similar but different way, or to change the style, shape, or form, without causing a loss of its identity, or without causing the property to work in a new or different manner.

(12) Replacement part - Any repair part attached to the machinery, equipment, or accessory.

(13) Sample - A scale model or representative piece of a manufactured product held for sale. For example, cloth swatches and wallpaper books.

(14) Semiconductor fabrication cleanrooms and equipment - All tangible personal property, without regard to whether the property is affixed to or incorporated into realty, that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product, without regard to whether the property is actually contained in the cleanroom environment.

[~~(A)~~] The term includes integrated systems, fixtures, and piping;[~~,~~] moveable cleanroom partitions and cleanroom lighting;[~~,~~] all property necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity, or other environmental conditions or manufacturing tolerances;[~~, and~~] production equipment and machinery; all tangible personal property that moves the product or other materials that are necessary and essential to the process, including piping that is used to move gas, liquids, deionized water, and hazardous waste material; silicon wafer moving, handling, and tracking systems; and electrical supply and control equipment, such as switches, wiring, and monitoring equipment that is incorporated into the realty.

[~~(B) Semiconductor fabrication cleanroom equipment is not "intraplant transportation equipment" nor is it used incidentally in a manufacturing, processing, or fabrication operation.~~]

[~~(C)~~] The term does not include the building or any permanent, nonremovable structural component part of the building, such as vibration-isolation platforms and vibration columns[~~, that houses the cleanroom environment~~].

(15) Submanufacturer - A person who performs one or more of the manufacturing operations described in paragraph (9) of this subsection upon a product, or upon an intermediate or preliminary product, for a manufacturer.[~~Useful life - The time it takes for an item used in the manufacturing process to be entirely consumed or without value beginning the date the item was purchased new.~~]

(b) Manufacturer's responsibilities.

(1) Collection of tax. Persons who are engaged in the business of fabricating, manufacturing, processing, or custom manufacturing must collect sales tax on the total sales price of the manufactured item or accept a resale or[~~take an~~] exemption certificate in lieu of the tax. The sales price includes[~~, but is not limited to,~~] the cost of materials, labor or service costs, and all expenses that are connected with production. Persons who fabricate, custom manufacture, or process [~~fabricating, custom manufacturing, or processing~~] tangible personal property that the customer furnishes,[~~which is furnished~~] either directly or indirectly, [~~by the customer~~] must collect tax on such fabricating, custom manufacturing, or processing charge. Manufacturers shall pay or accrue sales or use tax on all items used in the manufacturing process that [~~which~~] do not qualify for exemption from tax. A manufacturer who purchases tangible personal property tax free by means of an exemption certificate or resale certificate and subsequently uses the item for a nonexempt purpose must remit the tax to the comptroller based on the purchase price of the item or the fair market rental value of the equipment for the period of time during which the equipment is used for purposes other than manufacturing. Reference should be made to §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), and §3.346 of this title (relating to Use Tax).

(2) Installed items. Generally, the charge for labor to install an item sold is taxable when the item sold is taxable. Persons who manufacture and install items that [~~which~~] become improvements to residential realty or are incorporated into new real property structures are contractors and are subject to the provisions of §3.291 of this title (relating to Contractors). Example: cabinetmakers [~~or drapery makers~~] who also affix the [~~draperies or~~] cabinets as a part of a new-construction contract. [~~See also §3.347 of this title (relating to Improvements to Realty).~~] Persons who manufacture and install items that become improvements to existing nonresidential realty are subject to the provisions of §3.357 of this title (relating to Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property). Persons who manufacture and install items as a part of a [~~repair~~] contract to repair tangible personal property are subject to the provisions of §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). Example: fabricating a propeller shaft for a customer as a part of an outboard motor repair. Persons who manufacture and install items that [~~which~~] do not become improvements to realty or that [~~which~~] are not part of a repair must collect sales tax on the total charge. Example: a retailer who makes and installs draperies for a home owner.

(3) Molds, dies, patterns. The manufacturer's purchase [~~by the manufacturer~~] of molds, dies, patterns, jigs, tooling, photo engraving, and other manufacturing aids, and their raw materials or component parts, may qualify for exemption under subsection (d) of this section. [~~will be presumed to have been purchased for use as machinery, equipment, or accessories necessary or essential to the manufacturing process and are therefore presumed to be taxable at the time of purchase. Only if such aids have a useful life when new of six months or less is their purchase exempt.~~]

(A) Written agreement - sale. A separate charge by the manufacturer for the aid will be considered a sale of the aid to the customer only if [~~there is~~] a written agreement exists between parties that clearly makes [~~clearly making~~] the customer the owner of the aid. As owner of the aid, the customer will owe tax on the amount that the manufacturer charged, [~~charged by the manufacturer~~] unless [~~the aid has a useful life when new of six months or less and the product produced is resold by~~] the customer is also manufacturing a product for sale.

(B) No written agreement - no sale. When [~~there is~~] no written agreement exists between the manufacturer and the customer, and the manufacturer separates the charge for the aid from the charge for the items produced by means of the aid, a sale will not be considered to have occurred. The combined charges constitute the sales [~~selling~~] price of the manufactured item. (Charge for aid plus charge for items produced equals sales [~~selling~~] price of items.) The total charge shall be taxable or nontaxable depending on the taxability of the items produced. [~~Only if the aids have a useful life when new of six months or less is their purchase by the manufacturer exempt.~~]

(4) Samples. Since the sole use of such samples is to demonstrate not the sample but the other items that the sample [~~which it~~] represents, the purchase of the raw materials that are used to make the sample is subject to [~~the~~] sales or use tax, regardless of the fact that the sample itself may be ultimately sold.

(c) Nonexempt manufacturing items. Certain items are specifically subject to tax:

(1) taxable itemsthat are not otherwise exempted by this section; [~~used by a manufacturer, processor, or fabricator in any activities other than the actual manufacturing, processing, fabricating operation, or repair of tangible personal property held for sale by the manufacturer such as machinery, equipment, and supplies used in selling or distributing, research and development, or in transportation activities;~~]

(2) machinery, equipment, replacement parts, and accessories that are rented or leased for a term of less than one year;

(3) items that [which] are merely useful or incidental to the operation, such as office machines, office supplies, [intraplant] transportation equipment, maintenance supplies, cleaning supplies, lubricants, and other items that [which] are [used to maintain equipment that is] incidental to the manufacturing process and are not otherwise exempted by this section; [are taxable; and]

(4) hand tools;[.]

(5) intraplant transportation equipment, unless exempted in subsections (d)(17) and (18) of this section, including equipment that is used to move a product or raw material in connection with the manufacturing process, and specifically including all piping, conveyor systems, and related pumps (unless otherwise exempted), meters, valves, or rollers. Intraplant transportation equipment is taxable even if manufacturing or processing activities (such as cooling, mixing, or pollution containment) occur during the transportation of product or component parts of the product;

(6) machinery and equipment or supplies that are not otherwise exempted in this section, but that are used to maintain or store tangible personal property (for example, refrigeration equipment that a restaurant uses);

(7) tangible personal property that is used in the transmission or distribution of electricity, including transformers, cable, switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are not otherwise exempted under this section, and lines, conduit, towers, and poles.

(d) The following items are exempted from the taxes imposed by Tax Code, Chapter 151, if purchased, leased, or rented by a manufacturer for storage, use, or consumption: [Exempt manufacturing items.]

(1) tangible personal property that will become an ingredient or component part of tangible personal property that is manufactured, processed, or fabricated for ultimate sale; [Gas and electricity. Gas and electricity when used directly in manufacturing are exempt. See §3.295 of this title (relating to Natural Gas and Electricity).]

(2) tangible personal property that is directly used or consumed in or during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary or essential to the manufacturing, processing, or fabrication operation and directly makes or causes a chemical or physical change to:[Component parts. Tangible personal property purchased for use as an ingredient of or component part of a product manufactured for ultimate sale at retail is exempt.]

(A) the product that is being manufactured, processed, or fabricated for ultimate sale; or

(B) any intermediate or preliminary product that will become an ingredient or component part of the product that is being manufactured, processed, or fabricated for ultimate sale.

(3) services that are performed directly on the product that is being manufactured prior to the product's distribution for sale, and for the purpose of making the product more marketable;[Necessary and essential materials.]

[(A) Materials that are necessary or essential to the operation of machinery or equipment used in the actual manufacturing process are exempt. All materials which are directly used or consumed in any phase of the actual manufacturing, processing, or fabricating operation are exempt if they are necessary or essential to the operation. For example, lubricants consumed in the operation of machinery or equipment used in the actual manufacturing process, explosives used to blast granite or other material from the earth for further processing and sale, ice used during processing or manufacturing that is necessary and essential to the process, any material which is used or consumed in a process to remove impurities, to achieve quality control, to cause a physical or chemical change in a product, or otherwise make the product more marketable are exempt. Materials used to test the quality of the product after the manufacturing process is complete are not exempt.]

[(B) Materials, other than machinery or equipment, used in manufacturing to satisfy or comply with requirements of law or regulations for public health or pollution control purposes are exempt.]

[(C) Labor charges for repair, maintenance, remodeling, or restoration services to pollution control equipment or machinery required by law or regulation and other tangible personal property that is exempt under this section are exempt].

[(D) Gases used on the premises of a manufacturing plant to prevent contamination of raw material or product, or to prevent a fire, explosion, or other hazardous or environmentally damaging situation at any stage in the manufacturing process or in loading or storage of the product or raw material on premises are exempt.]

(4) actuators, steam production equipment and its fuel, in-process flow through tanks, cooling towers, generators, heat exchangers, transformers and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, and telemetry units that are related to the transformers, electronic control room equipment, computerized control units, pumps, compressors, hydraulic units, and related accessories that are used to power, supply, support, or control equipment that qualifies for exemption under paragraph (2) or (6) of this subsection or to generate electricity, chilled water, or steam for ultimate sale; [Services. Services performed directly on the product being manufactured when these services are performed prior to its distribution for sale and are for the purpose of making the product more marketable.]

(5) transformers located at an electric generating facility that increase the voltage of electricity generated for ultimate sale, the electrical cable that carries the electricity from the electric generating equipment to the step-up transformers, and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, telemetry units, and related accessories that are associated with the step- up transformers; and transformers that decrease the voltage of electricity generated for ultimate sale and the switches, breakers, capacitor banks, regulators, relays, reclosers, fuses, interruptors, reactors, arrestors, resistors, insulators, instrument transformers, telemetry units, and related accessories that are associated with the step-down transformers; [Wrapping, packing, and packaging supplies. Wrapping, packing, and packaging supplies used to further the sale of a product are exempt. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, and Export Packers).]

(6) tangible personal property that is used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to a pollution control process; [Display item. Both the purchase of such an item and the raw materials used to make such an item are exempt from the sales and use tax, so long as the item is used only to demonstrate itself and the same or similar items prior to its sale to an ultimate consumer. The item may not be used for any purpose other than demonstration or display. Any other use by the manufacturer is taxable as a divergent use.]

(7) lubricants, chemicals, chemical compounds, gases, or liquids that are used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if their use or consumption is necessary and essential to prevent the decline, failure, lapse, or deterioration of equipment that is exempted by this section; [~~Useful life of six months or less.~~]

[~~(A) Machinery, equipment, accessories, and replacement parts which are entirely consumed or without value within six months from the date the items were purchased new are exempt.~~]

[~~(B) Work clothing such as safety goggles, gloves, and similar work clothing having a useful life when new of six months or less which are necessary and essential to the manufacturing process when purchased by the manufacturer and not resold to the employee are exempt. Work clothing is exempt only if the manufacturing operation would not be possible without its use.~~]

(8) gases that are used on the premises of a manufacturing plant to prevent contamination of raw material or product, or to prevent a fire, explosion, or other hazardous or environmentally damaging situation at any stage in the manufacturing process or in loading or storage of the product or raw material on premises;

(9) tangible personal property that is used or consumed during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to a quality control process. For example, equipment that is used to test the product after the item is produced, but prior to wrapping and packaging. Equipment that is used to test raw materials prior to processing does not qualify for this exemption;

(10) safety apparel or work clothing that is used during the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the manufacturing process would not be possible without the use of the apparel or clothing and the apparel or clothing is not resold to the employee. Examples are safety goggles, gloves, ear plugs, or hairnets that the law requires employees to wear during processing, or static wrist guards that manufacturing personnel wear in a manufacturing process that must be free of static electricity. A regulation that requires employees to wear clean clothing is not sufficient to qualify uniforms for exemption;

(11) tangible personal property that is used or consumed in the actual manufacturing, processing, or fabrication of tangible personal property for ultimate sale, if the use or consumption of the property is necessary and essential to comply with federal, state, or local laws or rules that establish requirements for public health purposes. For example, disinfectants that are used in a meat packing operation to sanitize work areas are exempt. Tangible personal property that is required to be on site, but used only in emergency situations, is not considered consumed in the actual manufacturing process (for example, fire extinguishers, eye baths, and safety signs are not exempt under this provision);

(12) tangible personal property that is specifically installed to:

(A) reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, or repair operation;

(B) reuse and recycle wastewater streams that are generated within the manufacturing, processing, fabrication, or repair operation; or

(C) treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, or repair operation.

(13) gas and electricity when used directly in manufacturing. See §3.295 of this title (relating to Natural Gas and Electricity).

(14) labor charges for repair, maintenance, remodeling, or restoration services to pollution control equipment or machinery that a law or regulation requires, and other tangible personal property that is exempt under this section.

(15) wrapping, packing, and packaging supplies that are used to further the sale of a product. See §3.314 of this title (relating to Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, and Export Packers).

(16) display items and the raw materials that are used to make display items, so long as the item is used only to demonstrate itself and the same or similar items prior to its sale to an ultimate consumer. The item may not be used for any purpose other than demonstration or display. Any other use by the manufacturer is taxable as a divergent use.

(17) piping or conveyor systems that are a component part of a single item of manufacturing equipment or pollution control equipment that is eligible for the exemption. For example, a printing press contains rollers and pipes to transport or feed paper or ink during the manufacturing process. The purchase of the press would continue to qualify for exemption, and rollers, pipe, or other press repair parts would remain as qualifying accessories or repair parts, even when purchased separately. An integrated group of manufacturing and processing machines and ancillary equipment that operate together to create or produce the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is not a single item of manufacturing equipment.

(18) piping through which the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is recycled or circulated in a loop between the single item of manufacturing equipment and the ancillary equipment that supports only that single item of manufacturing equipment, if the single item of manufacturing equipment and the ancillary equipment operate together to perform a specific step in the manufacturing process; and piping through which the product, or an intermediate or preliminary product that will become an ingredient or component part of the product, is recycled back to another single item of manufacturing equipment and its ancillary equipment in the same manufacturing process.

(e) Rented or leased taxable items. The exemptions provided in this section do not apply to any taxable item rented or leased before October 1, 1995, under an operating lease to a person engaged in manufacturing. Taxable items used in a manner exempted under this section and leased on or after October 1, 1995, for a term of[~~exceeding~~] one year or more qualify for exemption.

(f) Semiconductor fabrication cleanrooms and equipment. Semiconductor fabrication cleanrooms and equipment as defined in subsection (a)(14) of this section and associated materials and other items that are necessary and essential to maintain the cleanroom environment are exempt. Semiconductor fabrication cleanrooms and equipment are not intraplant transportation equipment or used incidentally in a manufacturing process or fabrication operation as those terms are used in subsections (c)(3) and (c)(5) of this section. [~~Useful life of more than six months.~~]

[~~(1) State tax paid on qualifying machinery, equipment, replacement parts, and accessories with a useful life exceeding six months qualified for a partial refund by the comptroller if the items were purchased by a manufacturer and the tax was paid after December 31, 1989. A reduction in the amount of tax due applies at the time of purchase to items purchased on or after October 1, 1993. Purchases on~~

or after January 1, 1995, are exempt. The date that title or possession transfers from the retailer to the manufacturer is the purchase date. Items purchased out of state will be considered purchased on the date they are brought into this state.]

[(2) Manufacturing machinery, equipment, replacement parts, and accessories purchased by a manufacturer qualify for a refund, a reduction in the amount of tax paid, or for exemption:]

[(A) if it will be used in the actual manufacturing, processing, fabrication, or repair of tangible personal property to be sold, and the use of the item is necessary and essential to the manufacturing, processing, fabrication, or repair operation or a pollution control process resulting from the operation; and]

[(B) is not purchased under a lump-sum contract to improve real property or under a lump-sum real property repair or remodeling contract.]

[(3) Qualifying items purchased in 1990 and from January 1, 1991, through September 30, 1991, and on which tax is paid qualify for a refund of 25% of the state tax paid. The refund may be claimed only during the calendar year after the tax is paid.]

[(4) Manufacturing machinery and equipment purchased from October 1, 1991, through September 30, 1993, do not qualify for sales tax refunds or tax reductions.]

[(A) Fifty percent of the sales price of qualifying items purchased from October 1, 1993, through December 31, 1993, is exempted from the state sales and use tax.]

[(B) Seventy-five percent of the sales price of qualifying items purchased during 1994 is exempted from the state sales and use tax.]

[(C) Qualifying items purchased on or after January 1, 1995, are exempt.]

[(5) Except for equipment listed in subparagraphs (A)-(C) of this paragraph, semiconductor fabrication cleanroom equipment qualifies for exemption as provided under paragraph (4) of this subsection. Equipment listed in subparagraphs (A)-(C) of this paragraph, is exempt if purchased on or after October 1, 1995:]

[(A) tangible personal property that moves the product or other materials necessary and essential to the process including piping used to move gas, liquids, deionized water and hazardous waste material; silicon wafer moving, handling and tracking systems;]

[(B) electrical supply and control equipment such as switches, wiring and monitoring equipment incorporated into the realty; and]

[(C) partition panels that are not incorporated into realty.]

(g) Overhaul, retrofit, or repair of jet turbine engines. A person who is engaged in the overhaul, retrofit, or repair of jet turbine aircraft engines and their component parts may claim an exemption from tax on the purchase of machinery, equipment, or replacement parts or accessories with a useful life in excess of six months, or supplies, including aluminum oxide, nitric acid, and sodium cyanide, used in electrochemical plating or a similar process, that are used or consumed in the overhauling, retrofitting, or repairing of jet turbine aircraft engines or their component parts. [Method of obtaining the refund.]

[(1) A refund under subsection (f) of this section must be claimed only during the calendar year following the year in which the tax was paid. Claims for refund must be on the form provided by the comptroller for that purpose. No other form may be used and credit may not be taken on a return.]

[(2) The claimant will be required to list invoice numbers, voucher numbers, or other code numbers referring to source documents, item description, date of purchase, invoice date, date tax was paid, or the report period tax was paid directly to the comptroller, or any other information requested by the comptroller. All records and documentation supporting the claim must be retained by the claimant for inspection by the comptroller.]

[(3) Amounts claimed and obtained on nonqualifying items may be recovered by the comptroller together with applicable penalty and interest from the date of the refund.]

(h) Persons engaged in printing tangible personal property. A person who is engaged in printing or imprinting tangible personal property for sale or production of a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public daily, weekly, or at some other short interval, free of charge, may purchase tax free, in addition to other items that are exempted under this section, the following items that are necessary and essential to and used in connection with the printing process: pre-press machinery, equipment, and supplies, including computers, cameras, film, film developing chemicals, veloxes, plate-making machinery, plate metal, litho negatives, color separation negatives, proofs of color negatives, production art work, and typesetting or composition proofs. [Method of paying a reduced amount of tax.]

[(1) The purchaser shall provide the retailer an exemption certificate for the appropriate percentage of the sales tax for qualifying items purchased on or after October 1, 1993.]

[(A) A retailer who receives an exemption certificate for purchases in 1993 for 50% of the sales tax shall collect state sales tax on 50% of the sales price.]

[(B) A retailer who receives an exemption certificate for purchases in 1994 for 75% of the sales price shall collect state sales tax on 25% of the sales price.]

[(2) A purchaser who remits use tax on qualifying items purchased on or after October 1, 1993, shall deduct from the amount reported as the purchase price the appropriate percentage allowed as a reduction in the state tax.]

(i) Separated and lump-sum contracts to improve realty. A contractor who incorporates into realty any equipment or materials that qualify for exemption under subsection (d) of this section may accept an exemption certificate in lieu of tax from the manufacturer for the separately stated exempt materials sold under a separated contract. Taxable materials, such as foundation materials and items that are noted under subsection (c) of this section must be separately stated from qualifying equipment, or a single charge for qualifying and nonqualifying materials will be presumed taxable. When nonresidential repair, remodeling, or restoration of realty is performed, qualifying equipment must be separately stated from both nonqualifying materials and taxable labor, or the exemption on the qualifying equipment is lost. A lump-sum charge to repair, remodel, or restore nonresidential realty is taxable. See §3.357 of this title (relating to Labor Relating to Nonresidential Real Property Repair, Remodeling, Restoration, Maintenance, New Construction, and Residential Property). A lump-sum charge to perform new construction as covered in §3.291 of this title (relating to Contractors) is not taxable. The contractor is the consumer of all the goods that the contractor uses in the performance of a lump sum new construction contract, and neither the contractor nor the manufacturer

may claim an exemption on otherwise qualifying manufacturing equipment. [~~Tax refund or reduced amount. A person engaged in overhauling, retrofitting, or repairing jet turbine engines and their component parts is entitled to a refund, a reduction, or an exemption in the amount of sales and use tax for the purchase of qualifying items including aluminum oxide, nitric acid, and sodium cyanide used in electrochemical plating or a similar process that are used or consumed in the overhauling, retrofitting, or repairing of jet turbine engines or their component parts. The refund or reduced amount of tax is obtained in the same manner as is provided for manufacturers under subsections (g) and (h) of this section.~~]

(j) A taxpayer who claims an exemption under this section must prove that the exemption applies and that no exclusion under subsection (c) of this section applies. [~~Divergent use. Machinery and equipment purchased on or after January 1, 1995, and on which the full sales tax exemption is claimed is subject to tax on either the fair market rental value or on the full purchase price during any period of use for other than manufacturing purposes as provided for under §3.287 of this title (relating to Exemption Certificates). Machinery and equipment purchased between January 1, 1990, and December 31, 1994, and on which the reduced tax was paid must be used primarily or predominantly in the manufacturing process. No additional tax is due on a divergent use provided the divergent use is less than 50% of the overall use. Tax is due on the full purchase price if the use is primarily for a use not eligible for exemption.~~]

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

Filed with the Office of the Secretary of State, on January 12, 2001.

TRD-200100257
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 463-3699

♦ ♦ ♦

34 TAC §3.325

The Comptroller of Public Accounts proposes an amendment to §3.325, concerning refunds, interest, and payments under protest. Subsection (c) of this section is amended to provide for the payment of interest on a claim for refund or in an audit as directed under Senate Bill 1321, 76th Legislature, 1999. Amendments to this section for interest paid on a claim for refund or as the result of an audit are effective for reports due on or after January 1, 2000. Subsection (b) is amended to allow purchasers, who paid sales or use tax to a vendor in error, to request a refund directly from the state, pursuant to the decision in *Fleming Foods of Texas v. Rylander*. Subsections (c) and (d) were also amended to delete obsolete language. Nonsubstantive grammatical corrections are made to subsection (a).

James LeBas, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Mr. LeBas also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing taxpayers with additional information regarding their tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §111.064.

§3.325. Refunds, Interest, and Payments Under Protest.

(a) Tax paid to state. Any person, his attorney, assignee, executor, or administrator may request from the comptroller a refund of any tax [~~which he has~~] remitted to the state but that [~~which~~] was not due.

(1) A claim for refund of an amount paid pursuant to a deficiency determination is timely for all transactions that are included in the deficiency determination if made in accordance with subparagraphs (B) or (C) of this paragraph. A claim for refund for items that are not included in a deficiency determination must be made in accordance with subparagraph (A) of this paragraph. The refund request must be made within:

(A) four years from the date on which the tax was due and payable as defined in Tax Code, §151.401; or

(B) six months after a determination for the periods for which refund is claimed becomes final; or

(C) six months after any determination would have become final had payment not been made before the due date.[~~;~~]

[~~(D) a claim for refund of an amount paid pursuant to a deficiency determination is timely for all transactions included in the deficiency determination if made in accordance with subparagraphs (B) or (C) of this paragraph. A claim for refund for items not included in a deficiency determination must be made in accordance with subparagraph (A) of this paragraph.~~]

(2) Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension of the statute of limitations.

(3) An extension of the statute of limitations applies only to the periods that are specified [~~specifically mentioned~~] in the agreement. Any assessment or refund request that pertains [~~pertaining~~] to periods for which limitations have been extended must be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been agreed[~~authorized~~].

(4) The request for refund must be made in writing and must state the specific grounds upon which the claim is founded. The request must also indicate the period for which the claimed overpayment was made.

(5) In determining the statute of limitations for filing a refund claim, the time during which an administrative proceeding is pending before the comptroller for the same period is not counted. A taxpayer may not file a sales tax refund claim for the same transaction and for the same time period as a refund claim previously denied.

(6) Failure to file a claim within the limitation prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(b) Tax paid to seller. A person who remits tax to a permitted seller [~~rather than directly to the state~~] may [~~not~~] request from the seller or the comptroller a refund of Texas tax paid in error.[~~any tax which that person has remitted to a seller but contends was not due.~~] The following procedures must be used. [~~The tax must be recovered from the seller. See §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers) for provisions governing the allowances of credit for tax paid to a seller.~~]

(1) Seller who requests a refund from the comptroller.

(A) [~~1~~] Before a seller refunds to a purchaser tax collected in error, the seller must obtain from the purchaser [~~A written request for a refund must be directed to the seller and must be accompanied by~~] a properly completed exemption or resale certificate that[~~which~~] meets all the requirements of §3.285 of this title (relating to Sales for Resale; Resale Certificate) and §3.287 of this title (relating to Exemption Certificates). The seller must retain the certificate [~~should be retained by the seller~~] to document the basis for the refund. [~~reason tax was refunded.~~]

(B) [~~(2)~~] After the seller has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the seller may then seek reimbursement from the state in accordance with the procedures that are outlined in subsection (a) of this section or take a credit on the seller's next return in the amount refunded or credited to the account of the purchaser.

(2) A purchaser who requests a refund from the comptroller.

(A) A purchaser who requests a refund from the comptroller must submit to the comptroller a written request that states the basis for the refund and includes the following information:

(i) the seller's name, address, and either the sales tax permit number or information that will enable the comptroller to identify the seller's sales tax permit number;

(ii) the invoice number, if applicable;

(iii) the date of purchase;

(iv) a description of the item purchased;

(v) the basis for the refund;

(vi) information that identifies the local taxing authorities for which tax was paid; and

(vii) a statement or reasonable estimate of the amount of the tax refund requested.

(B) The comptroller may require a person to submit additional information to verify the refund claim. The person must show to the satisfaction of the comptroller that the refund is due and make available to the comptroller any documentation that the comptroller requires to process the refund.

(C) A purchaser who holds a sales and use tax permit may amend the return for the period in which the overpayment was made or file a refund claim with the comptroller for sales tax paid in error to a seller. The refund claim must identify the period in which the tax was originally paid. The purchaser must retain, for the period required in Tax Code, Chapter 111, all documentation that is necessary to support the credit.

(c) Interest. [~~Interest will be paid at the rate of 10% per annum on an amount found to have been erroneously paid to the comptroller for reporting periods after January 1, 1982. Refunds for reporting periods prior to January 1, 1982, will not accrue interest.~~]

(1) Except as provided by paragraphs (2) and (3) of this subsection, in a comptroller's final decision on a claim for refund or in an audit, interest accrues at the rate that is set in Tax Code, §111.060, on the amount that is found to be erroneously paid: [~~Interest begins to accrue either 60 days after the date of payment or 60 days after the due date of the tax report, whichever is later.~~]

(A) beginning on the later of 60 days after the date of payment or the due date of the tax report; and

(B) ending on, as determined by the comptroller, either:

(i) the date of allowance of credit that results from a final decision that the comptroller has issued, or from an audit; or

(ii) a date that is not more than 10 days before the date of the refund warrant.

(2) The interest rate for a refund that is granted for a period for which a report is due after December 31, 1999, is the rate set in Tax Code, §111.060. A refund for a period for which a report is due before January 1, 2000, does not accrue interest. [~~For overpayments and credits which occurred prior to October 4, 1986, interest stops on December 4, 1986. (This is the date the provision of the Tax Code authorizing payment of interest was repealed.) Overpayments and credits on transactions occurring after December 4, 1986, will not draw interest.~~]

(3) Credits taken by a taxpayer on the taxpayer's return do not accrue interest.

(4) No taxes, penalties, or interest will be refunded to a person who has collected the taxes from another person until all taxes [~~and interest~~] are first refunded to the party from whom they were collected.

(d) Payments under protest. A person who intends to file suit under Tax Code, Chapter 112, Subchapter B, must submit to the comptroller a letter of protest with the payment of the tax that is the subject of the protest. See subsection (e) of §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers). The letter of protest must state fully and in detail every reason that the taxpayer contends that the assessment is unlawful or unauthorized, and must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be deemed to have been made under protest. For the taxpayer's convenience, the comptroller will advise the taxpayer of the amount of payment under protest that the comptroller has received and the date of the payment.

[~~(1) Taxes which become due during the period September 1, 1987 through August 31, 1989, and which are paid under protest pursuant to the authority of the Tax Code, §112.051, shall be deposited to the general revenue fund. A written letter of protest which sets out fully and in detail each and every ground or reason why it is contended that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be deemed to have been made under protest. For the taxpayer's convenience, the comptroller will advise him of the amount received that is paid under protest and the date of the payment.~~]

[~~(2) Taxes which become due prior to or after the period September 1, 1987-August 31, 1989, and which are paid under protest pursuant to the authority of the Tax Code, §112.051, will be placed in a suspense account pending resolution of the matter in issue. A written letter of protest which sets out fully and in detail each and every~~

~~ground or reason why it is contended that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be placed in a suspense account and the payment will not be deemed to have been made under protest. For the taxpayer's convenience, the comptroller will advise him of the amount received that is paid under protest and the date of the payment. If suit is not filed in accordance with the statute, the protest payment will be cleared to the general fund after the expiration of 90 days from the date of payment.]~~

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

Filed with the Office of the Secretary of State, on January 12, 2001.

TRD-200100258
Martin Cherry
Deputy General for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 463-3699

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER V. DEPARTMENT FLEET VEHICLE MANAGEMENT PROGRAM

37 TAC §1.271

The Texas Department of Public Safety proposes new §1.271, relating to Department Fleet Vehicle Management Program in order to adopt the State Vehicle Management Plan as adopted by the Office of Vehicle Fleet Management of the General Services Commission as mandated by Texas Government Code, Chapter 2171.

House Bill 3125, 76th Texas Legislature, mandated the Office of Vehicle Fleet Management, under the direction of the Council on Competitive Government, to develop and implement a management plan to improve the administration and operation of the state's fleet. The plan, as adopted by the Council of Competitive Government on October 11, 2000, requires the department to adopt rules consistent with the plan by February 28, 2001.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be fiscal implications in the amount of $81,000 in fiscal year 2001, $51,000 in fiscal year 2002, and $15,000 in fiscal years 2003-2005 as a result of the purchase and maintenance of the required software. There are no anticipated fiscal implications to local government or local economies.

Mr. Haas also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the assurance of greater utilization and management of the fleet vehicles operated by the department. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Lester Mills, Chief, Staff Support Service, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0250, (512) 424-2102.

The new section is 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 Government Code, §2171, which directs each state agency to adopt rules implementing the plan.

Texas Government Code, §411.004(3) and §2171 are affected by this proposal.

§1.271. Department Fleet Vehicle Management Program.

(a) State Vehicle Management Plan. To the extent applicable, the department adopts the State Vehicle Management Plan as adopted by the Office of Vehicle Fleet Management of the General Services Commission as mandated by Texas Government Code, Chapter 2171. Specifically, the department will follow the data collection and reporting requirements for vehicles used for law enforcement purposes, including black and white pursuit vehicles as specified in Chapter 5 and Appendix A of the Plan, unless otherwise excepted by the Office of Vehicle Fleet Management due to security concerns. However, the department is exempt from all other plan requirements.

(b) Restrictions on Assignment of Vehicles. Compliance with the following statutorily mandated policies is required by Texas Government Code, §2171.1045.

(1) each department vehicle, with the exception of a vehicle assigned to a field employee, is to be assigned to the department motor pool and be available for check-out; and

(2) the department may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the department makes a written determination that the assignment is critical to the needs and mission 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 January 17, 2001.

TRD-200100307
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 424-2135

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CHAPTER 15. DRIVERS LICENSE RULES
SUBCHAPTER G. DENIAL OF RENEWAL OF DRIVER'S LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

37 TAC §§15.114, 15.118 - 15.120, 15.122, 15.123

The Texas Department of Public Safety proposes amendments to §§15.114, 15.118-15.120, 15.122, and 15.123, relating to denial of renewal of driver's license for failure to appear for traffic

violation. Upon review of the department's current rules, it was determined that a conflict existed between the rules and the governing statute, Texas Transportation Code, Chapter 706. In addition, there existed a discrepancy between the current rules and the Interlocal Cooperation Contract. Amendments to the sections include the addition and deletion of language in §§15.114, 15.118, 15.122 and 15.123, the reformatting of §15.119 due to the deletion of current subsection (a) and the addition of new paragraph (5) to §15.120. The amendments to the sections are necessary to eliminate inconsistencies with the current rules.

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 fiscal implications for state or local government, or local economies. A dollar amount for the effect on local government cannot be determined because it depends on the number of people that fail to appear for a traffic violation within the jurisdiction of the local government.

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 rule will be consistency between Texas Transportation Code, Chapter 706 and the administrative rules regarding the Denial Of Renewal Of Driver's License For Failure To Appear For Traffic Violation. There is no anticipated adverse economic effect on small businesses or micro-businesses. The anticipated cost to individuals will be the cost of paying the administrative fee for a failure to appear for a traffic violation as provided in Texas Transportation Code, Chapter 706, regardless of whether they have good cause for failure to appear.

Comments on the proposal may be submitted to Angela Parker, Director of Hearings, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0380, (512) 424-5235.

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, §706.012, which authorizes the Texas Department of Public Safety to adopt rules to implement Chapter 706 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §706.012 are affected by this proposal.

§15.114. Originating Court To File Failure To Appear Report.

If a person violated a promise to appear for an offense listed in §15.111 of this title (relating to Purpose and Scope), [~~without good cause,~~] a political subdivision may[~~shall~~] submit a failure to appear report to the department. The political subdivision shall make reasonable efforts to ensure that each failure to appear report is accurate, complete, and nonduplicative. The report shall include the following information:

(1) the name of the political subdivision submitting the report;

(2) the jurisdiction in which the alleged offense occurred;

(3) the name, date of birth, and the Texas driver's license number of the person alleged to have committed the violation;

(4) the date of the alleged violation;

(5) the offense title or a brief description of the alleged violation;

(6) a statement that the person promised to appear and failed to appear as promised, and the date on which the person failed to appear; and

(7) any other information required by the department.

§15.118. Clearance Report.

A clearance report is required to be filed by the political subdivision when there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear. In all cases when a clearance report is required, the political subdivision shall notify the department or the department's designee within a reasonable time not to exceed five[~~one~~] business days[~~day~~]. The clearance report shall contain the following information:

(1) the name of the political subdivision submitting the report;

(2) the jurisdiction in which offense occurred;

(3) the name, date of birth, and the Texas driver's license number of the person alleged to have committed the offense;

(4) the date of the alleged violation;

(5) the offense title or a brief description of the alleged violation;

(6) the basis for the clearance;

(7) whether a fee was required;

(8) whether a required fee was paid; and

(9) any other information required by the department

§15.119. Clearance Report When No Fee Is Required.

[~~(a) If the court finds that the license holder has established good cause for having previously failed to appear, the court shall file an appropriate clearance report to the department without requiring the license holder to pay a fee. For purposes of this section, "good cause" means a reasonable excuse such as would constitute a defense to a criminal prosecution for failure to appear. Examples of good cause are: death of a close family member; a serious, sudden accident or illness; required military service; or confinement.~~]

[~~(b)~~] If the person who failed to appear is acquitted of the underlying[~~traffic~~] charge for which the failure to appear report was filed, the court shall file an appropriate clearance report without requiring the license holder to pay a fee. Acquittal means an official fact-finding made in the context of the adversary proceeding by an individual or group of individuals with the legal authority to decide the question of guilt or innocence. For purposes of this section, acquittal also includes a discharge[~~dismissal~~] by the court upon proof of actual innocence. A person is not considered to have been acquitted [~~of the traffic charge~~] if the court imposes any conditions upon discharge[~~dismissal~~] of the offense[~~traffic complaint~~], such as penalties, court costs, educational programs, a period of probation, or any other sanction. For purposes of this section, a person is not considered to have been acquitted, and the prescribed administrative fee shall apply, in all cases that are dismissed under Texas Code of Criminal Procedure.

§15.120. Clearance Report When Fee is Required.

A clearance report shall be filed upon payment of a fee of $30 and one or more of the following conditions:

(1) the entry of a judgment against the person;

(2) the perfection of an appeal of the case for which the failure to appear report was submitted;

(3) the posting of bond, an agreed setting or resetting of the case, or the giving of security to reinstate the charges for which the warrant was issued[~~; or~~]

(4) the payment of fines owed on an outstanding court order to pay a fine; or[~~.~~]

(5) the dismissal of the charge for which the warrant of arrest was issued.

§15.122. Right to Appeal.

[~~A license holder may appeal denial as provided by Texas Transportation Code, §521.302.~~]Filing an appeal does not stay the denial of renewal pending final disposition of the case.

§15.123. Accounting Procedures.

(a) An officer collecting fees due under this section shall keep separate records of the funds collected under this section and shall deposit the funds in the appropriate municipal or county treasury. The custodian of the municipal or county treasury may deposit fees collected under this section in an interest-bearing account and retain for the municipality or county the interest earned on the account. The custodian shall keep records of funds received and disbursed under this section and shall provide a yearly report of all funds received and disbursed to the comptroller, the department, and other entities as provided by interlocal contract. The comptroller shall approve the form of the report.

(b) The custodian of a municipal or county treasury shall remit $20 of each fee collected under this section to the comptroller on or before the last day [~~of the month following the end~~] of each[~~the~~] calendar quarter and retain $10 of each fee collected under this section for deposit to the credit of the general fund of the municipal or county treasury. The amounts received by the comptroller under this section shall be deposited to the credit of the general revenue fund.

(c) All administrative fees collected by a political subdivision pursuant to Texas Transportation Code, Chapter 706, shall be distributed by the last day of the month following the end of the calendar quarter after collection. This section does not apply to the distribution of administrative fees to the Comptroller.

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 January 17, 2001.

TRD-200100305
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 424-2135

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37 TAC §15.121

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

The Texas Department of Public Safety proposes the repeal of §15.121, concerning denial of renewal of driver's license for failure to appear for traffic violation. Upon review of the current rule, it was determined that a conflict existed between the rule and the governing statute, Texas Transportation Code, Chapter 706. The repeal will eliminate this inconsistency.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal 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 repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the repeal may be submitted to Angela Parker, Director of Hearings, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0380, (512) 424-5235.

The repeal is 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, §706.012, which authorizes the Texas Department of Public Safety to adopt rules to implement Chapter 706 of the Texas Transportation Code.

Texas Government Code, §411.004(3) and Texas Transportation Code, §706.012 are affected by this repeal.

§15.121. Right to Hearing.

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

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Thomas A. Davis, Jr.
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CHAPTER 16. COMMERCIAL DRIVERS LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §16.3

The Texas Department of Public Safety proposes an amendment to §16.3, concerning Commercial Drivers License. Amendment adds and deletes language to paragraph (2)(A), reformats current paragraph (B) as paragraph (C) and adds new paragraph (B). The amendment to paragraph (A) is necessary to delete the reference to Texas Transportation Code, §541.201, which only allowed for drivers to be exempt when responding to emergency situations and no return trip. The amendments to this section will allow drivers to be exempt from the commercial driver's license (CDL) requirements when responding to, returning from and for training exercises with these types of vehicles.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule 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 rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure the public is aware of an additional exempt group of drivers under the commercial driver's license law. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Frank Elder, Assistant Chief of Driver License, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0300, (512) 424-2768.

The amendment is 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, §522.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.3. Persons Exempted.

Persons exempted from commercial driver's license (CDL) requirements are:

(1) A person operating a vehicle that is controlled and operated by a farmer which is used to transport agricultural products, farm machinery, or farm supplies to or from a farm and which is not used in the operations of a common or contract carrier and used within 150 miles of the person's farm.

(A) Under this exemption, a rancher is considered a farmer.

(B) A farmer and his farmhands are equally exempt when the farmhands are in the employ of the farmer.

(C) One who purchases a crop in a field and only harvests and transports the produce, but takes no part in the planting and cultivating of the product, is not considered a farmer.

(D) One who purchases acres of growing timber and cultivates and harvests it over a period of months or years is considered a farmer.

(2) A person operating a fire fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter, or a fire fighter employed by a private company, for example, a refinery. This would not exempt operators of vehicles used by utility companies.

(A) Drivers of industrial emergency response vehicles, including an industrial ambulance are exempt only if the vehicle is operated in compliance with criteria established by the Texas Industrial Fire Training Board or the State Firemen's and Fire Marshall's Association of Texas.[~~For purposes of this exemption drivers of authorized emergency vehicles defined in Texas Transportation Code, §541.201 are exempt.~~]

(B) Drivers of public or private ambulances are exempt only if they have been issued a license by the Texas Department of Health.

(C) [~~(B)~~] Electric company employees repairing downed power lines are not exempt.

(3) A person operating a military vehicle, when operated for military purposes by military personnel, members of the reserves and national guard on active duty (including personnel on full-time national guard duty), personnel on part-time training duty, and national guard military technicians. This exemption includes the operation of vehicles leased by the United States government for use by the military branches of government.

(4) A person operating a vehicle that is a recreational vehicle that is driven for personal use.

(A) For purposes of this exemption recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own motive power or is mounted on or towed by another vehicle.

(B) This exemption includes travel trailers, camping trailers, truck campers, and motor homes.

(5) A person operating a vehicle that is owned, leased, or controlled by an air carrier, as defined by Texas Transportation Code, §21.155(d), and that is driven or operated exclusively by an employee of the air carrier only on the premises of an airport, as defined by Texas Transportation Code, §22.001(2), on service roads to which the public does not have access.

(6) A person operating a vehicle used exclusively to transport seed cotton modules or cotton burrs.

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

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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CHAPTER 31. STANDARDS FOR AN APPROVED MOTORCYCLE OPERATOR TRAINING COURSE

37 TAC §31.1

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

The Texas Department of Public Safety proposes the repeal of §31.1, relating to Standards For An Approved Motorcycle Operator Training Course. Because many of the definitions were changed or deleted and new ones added, the current section is being repealed to allow for the simultaneous adoption of new §31.1 which includes new definitions that will differentiate between contracted sponsors and licensed sponsors, standard courses and instructors, and specialized courses and instructors.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal 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 repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated definitions relating to motorcycle operator training. There

is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Clif Burdette, Program Administrator III, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0257, (512) 424-2803.

The repeal is 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, §662.009.

Texas Government Code, §411.004(3) and Texas Transportation Code, §662.009 are affected by this repeal.

§31.1. Definitions.

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

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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37 TAC §§31.1 - 31.3, 31.5 - 31.10, 31.12

The Texas Department of Public Safety proposes new §§31.1 and 31.12 as well as amendments to §§31.2, 31.3, and 31.5-31.10, relating to Standards For An Approved Motorcycle Operator Training Course.

New §31.1 is filed simultaneously with a proposal for repeal of current §31.1 and will allow for new definitions that differentiate between contracted sponsors and licensed sponsors, standard courses and instructors, and specialized courses and instructors.

New 31.12 provides for administrative guidelines so the Motorcycle Safety Training Unit may license sponsors of specialized motorcycle training courses that are deemed beneficial to the public and can be offered in a safe manner. The new section further outlines the application process, the licensure terms and specifications by letter of agreement, and provides the department with reasons to reject or revoke licensure.

Amendment to §31.2 changes the title of the section to "Contracted Motorcycle Operator Training Site Sponsor" and amends subsection (a) to add the phrase "approval for a contract" in order to clarify that the subsequent requirements are for contracted training site sponsors. In addition, the word "contract" is added to specify that the subsequent requirements pertain to contracted training sites.

Amendment to §31.3 also changes the title of the section to "Standard Motorcycle Instructor" and amends subsection (c) by adding the phrase "deny or," in order to make the subsection more consistent with its reference back to a provision in §31.2 of this title (relating to Contracted Motorcycle Operator Training Site Sponsor). Further amendments to this subsection and subsection (d)(2) change the referenced titles of the sections to match the new titles that are being proposed.

The title of §31.5 is changed to "Verification of Standard Motorcycle Operator Training Course Completion." Amendments were also made to allow for the issuance of the serialized motorcycle operator training course completion cards by only those sites that are recognized by the department as conducting courses meeting or exceeding the requirements of Texas Transportation Code, §662.001(b). Amendment to subsection (a) changes the title of the MSB-8 to reflect title of the actual cards and adds that the cards are issued to students completing courses meeting those requirements listed in §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses). Paragraphs (1) and (2) are amended to include the words "department-approved" in order to identify the students that may receive the MSB-8. Amendment to subsection (b) changes the wording from "chief school official" to "designated school official" to allow persons designated by the chief school official to sign the MSB-8's.

§31.7(d)(1) is changed to allow for the use of mopeds and other motorcycles with automatic transmissions in the department approved Basic Motorcycle Operator Training Course. The Motorcycle Safety Foundation provides guidelines for teaching students using these vehicles in the basic course. The Motorcycle Safety Unit currently allows their use on a case by case basis to meet the reasonable accommodation requirements of the Americans with Disabilities Act. The change simply meets the reality of current operations. Subsection (d)(2) is changed to require students who elect to use their own motorcycle in the basic motorcycle operator training course to indicate on the Motorcycle Safety Course Waiver form that they elect to use their own motorcycle and that they accept all responsibility for any damages incurred as a result of their actions. Subsection (d) is added as new language allowing the department to require that motorcycles, trikes, sidecars, etc., be in safe operating condition at the time of the particular specialized motorcycle safety course.

§31.8 is amended to add the phrase "a contract or a license" to apply these requirements to both types of sponsors. The addition of the phrase "approval of a standard motorcycle" applies the requirements to only the standard motorcycle instructors. Control of specialized instructors is the responsibility of specialized training licensees. The department will revoke the license if a licensee fails to solve a problem involving an unsafe or unfit instructor. The reference to 1 TAC 155.1-155.59 (relating to Rules of Procedure) is necessary to match the current manner in which hearings involving state agency decisions are conducted.

Amendment to §31.9 is necessary to match proposed title changes and corrects a grammatical error in placement of the word "coordinator."

§31.10 subsection (a) is amended to reflect the proposed title changes of other sections and is necessary for consistency. Subsection (d) is added as new language and allows the department some degree of quality control over specialized motorcycle operator courses and states that licensees must allow access to their facilities for this purpose.

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 to 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 an upgrading of standards to ensure the public of quality motorcycle operator training and expansion of the number of training facilities. There

is no anticipated adverse economic effect on small businesses or micro-businesses. The anticipated cost for individuals will be the cost of student tuition per course.

Comments on the proposal may be submitted to Clif Burdette, Program Administrator III, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0257, (512) 424-2803.

The amendments and new sections 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, §662.009.

Texas Government Code, §411.004(3), and Texas Transportation Code, §662.009, are affected by this proposal.

§31.1. Definitions.

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

(1) Advanced Motorcycle Operator Training Course - A course of instruction, based on a curriculum developed by the Motorcycle Safety Foundation, designed to provide experienced motorcyclists with additional skills and knowledge found to be lacking in accident-involved motorcyclists. Satisfactory completion of this course is signified by the issuance of a Texas Department of Public Safety standardized Motorcycle Operator Training Course Completion Card, MSB-8.

(2) Basic Motorcycle Operator Training Course - A course of instruction, based on a curriculum developed by the Motorcycle Safety Foundation, designed to teach new or inexperienced motorcyclists basic riding skills and defensive street riding strategies. Satisfactory completion of this course is signified by the issuance of a Texas Department of Public Safety standardized Motorcycle Operator Training Course Completion Card, MSB-8.

(3) Contract Applicant - A person applying for a contract from the department to provide standard motorcycle operator training courses.

(4) Contracted Motorcycle Operator Training Site - An appropriate and safe place where standard motorcycle operator training is conducted by a contracted motorcycle operator training sponsor.

(5) Department - Texas Department of Public Safety. The department is the state agency designated by the governor to establish and administer the motorcycle operator training and safety program.

(6) License Applicant - A person applying for a license from the department to provide specialized motorcycle operator training.

(7) Licensed Motorcycle Operator Training Site - An appropriate and safe place where specialized motorcycle operator training is conducted by a licensed specialized motorcycle operator training sponsor.

(8) Mobile Site Sponsor - A public or private entity bound by contract to locally administer the motorcycle operator training program in locations serviced by the department's mobile training unit. The department provides the course equipment, material, and instructional staff. In its role as a mobile site sponsor, this entity is not an agent, servant, or employee of the department or the state of Texas.

(9) Motorcycle operator training and safety program - The motorcycle operator training and safety program provides information and courses in knowledge, skills, and safety relating to the operation of motorcycles to all motorcyclists in this state. It also provides information to the general public on sharing the roadway with motorcycles.

(10) Motorcycle Safety Unit - An administrative unit within the department assigned with the responsibility for establishing and administering the motorcycle operator training and safety program.

(11) Motorcycle Safety Foundation (MSF) - A national, nonprofit organization whose purpose is to improve the safety of motorcyclists on the nation's streets and highways. The MSF provides programs in rider education, licensing improvement, public information, and research.

(12) Specialized Motorcycle Instructor - An individual who has established sufficient credibility in teaching a form of specialized motorcycle operator training, and teaches such courses through a licensed motorcycle operator training site. This individual, unless directly employed by the department as a specialized motorcycle safety instructor, is not an agent, servant, or employee of the department or state of Texas.

(13) Specialized Motorcycle Operator Training Courses - Courses designed to teach knowledge and skills not addressed, or only lightly addressed, in standard motorcycle operator training courses, but considered by the department to be beneficial to public safety. These courses may include, but are not limited to, teaching the operation of trikes (i.e. three wheeled motorcycles), sidecar rigs, towing trailers behind motorcycles, trikes, or sidecar rigs, higher speed street skills taught on race tracks, or courses specific to a particular motorcycle brand, manufacturer, distributor, or dealership. Motorcycle courses taught by law enforcement agencies only to law enforcement officers are exempt from licensing under this definition.

(14) Sponsor - A public or private entity contracted or licensed by the department to provide motorcycle operator training. In its role as a motorcycle operator training sponsor, this entity is not an agent, servant, or employee of the department or the state of Texas.

(15) Standard Motorcycle Instructor - An individual certified and approved to teach the standard motorcycle operator training courses in Texas through contracted motorcycle operator training sites. This individual must meet the requirements set forth in §31.3 of this title (relating to Standard Motorcycle Instructor). This individual, unless directly employed by the department as a motorcycle safety instructor, is not an agent, servant, or employee of the department or the state of Texas.

(16) Standard Motorcycle Operator Training Courses - Basic or advanced courses, or motorcycle safety instructor courses, based on Motorcycle Safety Foundation curricula. These courses may not include information specific to any particular motorcycle brand, manufacturer, distributor, or dealership. These courses are offered by entities contracted to the Department of Public Safety and if satisfactorily completed, earn students the standardized Motorcycle Operator Training Course Completion Card, MSB-8, required for minors to obtain a motorcycle license, or to waive the state's skill test for a motorcycle license.

§31.2. Contracted Motorcycle Operator Training Site[~~Program~~]Sponsor.

(a) person may not offer training in motorcycle operation for a consideration unless the person is licensed by, or contracts with the department. Approval for a [~~license or~~] contract will be denied unless a sponsor applicant meets the following requirements. The applicant must demonstrate the capacity to register students, collect and account for tuition and state reimbursements as appropriate, arrange public notice of courses, provide required insurance coverage and make all necessary insurance premium payments, submit and maintain all required records, and contract with, schedule, and compensate approved instructors as appropriate. All contract applicants:

(1) must have access to a riding area for on-cycle training that is:

(A) a paved surface, including asphalt, concrete, or other all weather surface of suitable traction; and

(B) large enough to safely accommodate any motorcycle training range approved by the department, as flat as possible, secure from vehicular and pedestrian traffic, and free of surface hazards and obstacles;

(2) for permanent sites must also have access to:

(A) a secure storage area to physically and environmentally protect training motorcycles and other course equipment;

(B) a classroom, not located in a private residence, that is large enough to seat all students and instructors comfortably and that contains at least one adequate desk or equivalent seating and writing surface for each student, and at least one instructor's desk, table, or podium;

(C) audiovisual presentation equipment for the classroom, including a chalkboard or equivalent; and

(D) a first aid kit and at least one five-pound Class ABC fire extinguisher, or equivalent, for the riding area.

(b) The department may deny or suspend its approval for a program sponsor to conduct a course offered under this section if the applicant, sponsor, or instructor under contract to a sponsor:

(1) does not satisfy the requirements of subsection (a) of this section;

(2) has been convicted or placed on probation for:

(A) any felony of this state or any other jurisdiction;

(B) any offense involving moral turpitude within the previous 10 years from the date of approval or renewal except as provided hereinafter; or

(C) any offense involving tampering with a government record, or driving while intoxicated where the offense occurred within the previous five years;

(3) cannot provide sufficient information and documentation to enable the department to evaluate or reevaluate the applicant's request for approval;

(4) knowingly presents or allows to be presented to the department any false or misleading information relating to a request for approval;

(5) permits or engages in any fraud or fraudulent practice concerning an application or, in any action between the applicant or licensee and the public, induces or countenances any fraud or fraudulent practice on the part of an applicant for a driver's license or permit;

(6) knowingly or recklessly disregards or fails to comply with any departmental rule, written policy, or written procedure regarding the motorcycle operator training program; or

(7) knowingly allows an instructor to give, or a student to receive, classroom or riding instruction if either exhibits any evidence of or effects from an alcoholic beverage, controlled substance, or drug as defined in Texas Penal Code, §49.01 et seq.

(c) The department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

(d) The department may cancel its approval if:

(1) it was based on false or incorrect information or mistake, such as clerical or other nonsubstantive errors by either party; or

(2) if the discrepancy causing the suspension under these administrative rules has not been corrected within the time limit prescribed by a suspension; or

(3) any offense involving tampering with a government record or driving while intoxicated where the offense occurred within the previous five years.

(e) Each sponsor must designate a chief school official to be responsible for signing contracts with the department, instructors, or students and for signing any forms required of the sponsor. The chief school official must also be designated by the sponsor to be the custodian of all records, which shall be kept for a period of at least three years from the date of the final performance report under the contract.

(f) If the sponsor is an organization, that organization shall designate one of its members as the chief school official. If the sponsor is an individual, that person shall also be the chief school official.

(g) The control of the sponsor is considered to have changed:

(1) in the case of sole proprietorship, when more than 50% of the controlling interest has been sold or transferred;

(2) in the case of a partnership or a corporation, when more than 50% of the controlling interest has been sold or transferred; or

(3) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the sponsor.

(h) When control of the sponsor has changed, as outlined in subsection (g) of this section, the sponsor must notify the department. The contract will then be canceled and renegotiated through the appropriate rules and regulations.

§31.3. Standard Motorcycle Instructor.

(a) A person may not instruct or offer instruction in motorcycle operation to the public for a consideration without authorization from the department. To qualify for authorization, an instructor must be approved by the department. The department may deny approval unless an instructor applicant meets the following requirements. The applicant must agree to teach the training courses in accordance with the department's rules, policies, procedures, and approved curricula and must:

(1) hold a current national certification from the Motorcycle Safety Foundation (MSF);

(2) be a high school graduate or possess a valid GED;

(3) possess a current, valid Texas motorcycle license;

(4) be a licensed driver for at least five years;

(5) meet the current driving record evaluation standards established by the Texas Department of Public Safety for school bus drivers pursuant to Texas Transportation Code, §521.022;

(6) be free from addiction to alcoholic beverages or drugs; and

(7) be physically competent to conduct classroom and on-cycle instruction, including technically correct riding demonstrations.

(b) An applicant for approval to instruct an advanced motorcycle operator training course must meet all the requirements to instruct as

identified in subsection (a) of this section, plus attend a department-approved curriculum update, and be able to perform technically correct riding demonstrations on his or her personal motorcycle.

(c) The department may deny or suspend its approval if the instructor fails to meet or continue to meet the requirements of subsections (a) and (b) of this section or if the instructor, as an individual, fails to meet or continue to meet the requirements of §31.2(b) of this title (relating to Contracted Motorcycle Operator Training Site[~~Program~~] Sponsor).

(d) The department may cancel its approval if:

(1) it was based on false or incorrect information or mistake; or

(2) the discrepancy causing the suspension under §31.2 of this title (relating to Contracted Motorcycle Operator Training Site[~~Program~~] Sponsor), §31.3 of this title (relating to Standard Motorcycle Instructor), §31.4 of this title (relating to Student Admission Requirements), §31.5 of this title (relating to Verification of Standard Motorcycle Operator Training Course Completion), §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses), and §31.7 of this title (relating to Motorcycle Requirements) has not been corrected within the time limit prescribed by a suspension.

(e) A motorcycle instructor approved by the department may teach both the classroom and on-cycle phases of the courses for which the approval was granted.

(f) Motorcycle instructors approved by the department may not:

(1) give instructions or allow a student to receive instruction in motorcycle safety if either the instructor or student is using or exhibits any evidence of effect from an alcoholic beverage, controlled substance, or drug as defined in Texas Penal Code, §49.01 et seq.; or

(2) complete, issue, or validate a certificate of course completion to a person who has not successfully completed the course. A period of absence for any portion of scheduled course instruction will require that student repeat that portion of instruction prior to issuance of the certificate of completion.

§31.5. Verification of Standard Motorcycle Operator Training Course Completion.

(a) The sponsor will issue a Standardized Motorcycle Operator Training Course Completion Card, MSB-8[~~Motorcycle Operator Training Program Certificate of Completion MSB-8~~] to all students who have successfully completed the Department-Approved Basic or Advanced Motorcycle Operator Training Course as outlined in §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses).

(1) The MSB-8 indicating completion of the department-approved Basic Motorcycle Operator Training Course, is issued to verify:

(A) that a student age 15 or over, has met the educational training requirements for a motorcycle driver's license.

(B) that a student has successfully completed the training requirements to qualify for a motorcycle driver's license skills test waiver, providing the student already has an unrestricted Class A, B, or C driver's license.

(2) An MSB-8, indicating completion of the department-approved Advanced Motorcycle Operator Training Course, will be issued by the course sponsor to every student completing the approved advanced motorcycle operator training course.

(b) The department will accept only an original signature of the instructor or designated[~~chief~~] school official on form MSB-8.

§31.6. Approved Standard Motorcycle Operator Training Courses.

(a) Except as modified by subsection (c) of this section, the department adopts the educational, safety, and instructor standards, by reference, of the most current versions of the following Motorcycle Safety Foundation (MSF) courses:

(1) the approved basic motorcycle operator training course is the Motorcycle RiderCourse: Riding and Street Skills (MRC:RSS), Modules 1 through 15 and Exercise 22. Instructors shall adhere to the MSF's Evaluation, Coaching and Range Management - Instructor Guide requirements when conducting all range exercises;

(2) the approved advanced motorcycle operator training courses are the Experienced RiderCourse (ERC) and the Optional Experienced RiderCourse. The choice of curricula is determined by the size of the riding area. The skill and knowledge tests for either curricula are not required but may be used at the sponsor's discretion; and

(3) the approved instructor preparation course is the MSF instructor preparation course curriculum.

(b) Approved course curricula are available for inspection at the department's Austin headquarters.

(c) In addition to these curricula requirements, the minimum standards for motorcycle operator training courses include the following:

(1) The student to instructor ratio for the basic and advanced course classroom instruction may not exceed 24 students per instructor.

(2) The student to instructor ratio for on-cycle instruction may not exceed six students per instructor until the instructor has taught more than six courses. Once this has occurred and the instructor has requested in writing and received written permission from the department, they may teach up to eight students alone. In no case will there be more than 12 students on the range at any given time.

(3) The department may change these ratios on a case-by-case basis when such change is justified after considering the available facilities, the safety of the students and instructor(s), and the efficient conduct of the course.

(4) A separate motorcycle must be available for each individual student during an entire module of on-cycle instruction.

(d) All participants and instructors must wear protective gear when riding during the course. The minimum protective gear is as follows:

(1) a motorcycle helmet that meets Department of Transportation standards;

(2) eye protection;

(3) over-the-ankle, sturdy footwear (not cloth, canvas, etc.);

(4) long-sleeved shirt or jacket;

(5) long, non-flare[~~nonflare~~] denim pants or equivalent; and

(6) full-fingered gloves, preferably leather.

§31.7. Motorcycle Requirements.

(a) A motorcycle must be rejected for use by the lead course instructor if it fails to meet the requirements of this section or if, in the

discretion of the instructor, the motorcycle is unsafe for the rider, an instructor, another student, or any other person permitted in the riding area. A motorcycle may be deemed unsafe because of modification, damage, lack of maintenance, nonstandard configuration, or any other substantial safety reason.

(b) Any student-owned motorcycle must:

(1) meet all the requirements for operation on public highways;

(2) have proof of adequate insurance coverage available for inspection by the lead course instructor; and

(3) meet all other requirements of this section.

(c) A student may use a borrowed motorcycle if the student can show written permission from the owner to use the motorcycle in the course and if it meets all other requirements of this section.

(d) A moped, motor-driven cycle, or a motorcycle with a power drive system that does not require the operator to, or have the capability to, shift gears:

(1) may[~~not~~] be used in the basic or advanced motorcycle operator training courses if it is owned or borrowed by the student who uses it and meets the requirements of subsections (c) or (d) of this section[~~course unless necessary as a reasonable accommodation for a physically challenged student so to comply with the Americans with Disabilities Act~~]; and

(2) the student signs a document accepting all liability for damages caused by, or to the vehicle[~~may be used in the advanced motorcycle operator training course only if it meets all other requirements of this section~~].

(e) A motorcycle with an engine displacement of over 350cc:

(1) may not be used in the basic motorcycle operator training course; and

(2) may only be used in the advanced motorcycle operator training course if it meets all other requirements of this section.

(f) No sponsor may provide a motorcycle, loaned or owned for use in the basic motorcycle operator training course, to a student for use in the advanced motorcycle operator training course. If a sponsor provides a motorcycle to a student for use in the basic motorcycle operator training course, the motorcycle:

(1) must meet the safety requirements of subsection (a) of this section;

(2) must not be prohibited by subsection (d) of this section; and

(3) may, but is not required to, be registered, inspected, or insured for operation on public highways.

(g) Motorcycles, trikes, sidecar rigs, or any other combinations of motorcycle equipment used in specialized motorcycle training courses must be in safe operating condition, as determined by the instructor, at the time of use.

§31.8. Notice and Hearing Requirements.

If the department intends to deny, suspend, or cancel a contract or a license[~~approval~~] of a program sponsor or approval of a standard motorcycle instructor, notice and opportunity for hearing must be given as provided by Texas Government Code, Chapter 2001 [~~Chapter 2001.051 and Chapter 2001.052~~] and 1 TAC §§155.1-155.59 (relating to Rules of Procedure)[~~Texas Civil Statutes, Article 6252-13c and Article 6252-13d, §§2-5~~].

§31.9. Suspension.

The term of suspension under §31.2 of this title (relating to Contracted Motorcycle Operator Training[~~Program~~] Sponsor) and §31.3 of this title (relating to Standard Motorcycle Instructor) may not exceed one year. The term of suspension may be reduced by the [~~coordinator~~] Motorcycle Safety Unit Coordinator if corrective actions have been taken and the reason for suspension no longer exists. If the reason for suspension still exists at the end of the suspension period, the suspension automatically elevates to cancellation of approval. To regain approval, a sponsor or instructor whose approval has been canceled must reapply and meet all current requirements for approval.

§31.10. Quality Assurance Visits.

(a) Quality Assurance Visits (QAVs) will be scheduled and conducted at each of the contracted permanent motorcycle operator training program sites. During the QAV, the focus will be on the adherence to requirements outlined in §31.2 of this title (relating to Contracted Motorcycle Operator Training[~~Program~~] Sponsor), §31.3 of this title (relating to StandardMotorcycle Instructor), §31.4 of this title (relating to Student Admission Requirements), §31.5 of this title (relating to Verification of Standard Motorcycle Operator Training Course Completion), §31.6 of this title (relating to Approved Standard Motorcycle Operator Training Courses), and §31.7 of this title (relating to Motorcycle Requirements).

(b) The QAVs will be conducted by department personnel or by persons contracted by the department to perform them.

(c) While conducting the QAV, the evaluator will use the same pass/fail criteria as is utilized to evaluate the student teaching portion of the approved motorcycle safety instructor training course. Instructor(s) not meeting the requirements of the approved criteria will be suspended as outlined in §31.3 of this title (relating to Standard Motorcycle Instructor). Remedial actions necessary to remove the suspension will be determined by the Motorcycle Safety coordinator and may include, but is not limited to:

(1) attending a department-sponsored instructor curriculum refresher course;

(2) attending all or portions of a department-sponsored instructor training course; or

(3) teaching an entire course under the supervision of a Motorcycle Safety Unit staff member, an approved chief instructor, or other individual expressly designated by the department to perform such duties.

(d) A department representative may observe specialized motorcycle operator training sites, courses, and instructors for adherence to generally accepted instructional quality and safety practices relative to the type of specialized training for which a license has been issued. Licensed sponsors of specialized motorcycle operator training must provide department representatives access to their sites and instructors for such observations.

§31.12. Licensed Motorcycle Operator Training Sponsor.

(a) An entity wishing to offer specialized motorcycle operator training must submit a request to do so in writing to the department.

(1) The request must state the type of training to be offered,

(2) the perceived benefits to public safety; and,

(3) describe how the applicant intends to offer such training in a safe and prudent manner.

(b) The department may allow such training by issuing a letter of agreement with the entity setting forth the responsibilities and limits of the sponsor and the department.

(c) The letter of agreement shall be considered a license to offer specialized motorcycle operator training for the period set forth in the letter of agreement.

(d) The department may deny or revoke a license to offer specialized training if the applicant:

(1) cannot provide sufficient information and documentation to enable the department to evaluate or reevaluate the applicant's request for a license;

(2) knowingly presents or allows to be presented to the department any false or misleading information relating to a request for a license:

(3) knowingly or recklessly disregards or fails to comply with any departmental rule, written policy, or written procedure regarding specialized motorcycle operator training;

(4) knowingly allows an instructor to give, or a student to receive, classroom or riding instruction if either exhibits any evidence of or effects from an alcoholic beverage, controlled substance, or drug as defined in Texas Penal Code, §49.01 et seq.;

(5) has been convicted or placed on probation for:

(A) any felony of this state or any other jurisdiction;

(B) any offense involving moral turpitude within the previous 10 years from the date of a request for a license; or

(C) any offense involving tampering with a government record, or driving while intoxicated where the offense occurred within the previous five years.

(6) The department may construe any probation or conviction which is for a criminal offense arising from a penal provision from another state, federal, military, or foreign jurisdiction to be its closest equivalent under the penal provisions of this state.

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 January 17, 2001.

TRD-200100309
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 453. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

40 TAC §453.1

The Texas Veterans Commission proposes new §453.1, concerning Historically Underutilized Businesses. The new rule will incorporate by reference the rules adopted by the General Services Commission (GSC) for Historically Underutilized Businesses. The new rule conforms to Texas Government Code, §2161.003 that directed state agencies to adopt the GSC rules regarding Historically Underutilized Businesses (HUB) as the agencies own rules. The GSC rules appear in 1 TAC §§111.11-111.28. The Commission's proposed rule adopts by reference GSC's rules.

The GSC rules being adopted by reference provide for a policy and a purpose for the rules, definitions applicable to the HUB rules, annual procurement HUB utilization goals, subcontracting requirements, agency planning responsibilities, state agency reporting requirements, a HUB certification process, protests from denial of HUB applications, compilation of a HUB directory, HUB graduation procedures, review and revisions of GSC's HUB program, a memorandum of understanding between GSC and the Texas Department of Economic Development concerning technical assistance and budgeting for the HUB program, HUB Coordinator responsibilities, HUB forum programs for state agencies, and a mentor-protégé program.

Charles A. Buerschinger, Director of Finance and Information Resources, has determined that for each year of the five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

James E. Nier, Executive Director, has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be a more uniform and consistent approach for the procuring of goods and services from HUB vendors. There is no anticipated economic cost to persons who are required to comply with the rule. There is no difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities. State agencies are required to comply with the rules for Historically Underutilized Business as adopted by GSC.

Comments may be submitted to James E. Nier, Executive Director, Texas Veterans Commission, P.O. Box 12277 Austin, Texas 78711-2277. Adoption of rules will be a minimum of 30 days after publication.

The new section is proposed under §2161.003 of the Government Code which requires that the Commission adopt the GSC rules for Historically Underutilized Businesses. Section 434.010 of the Government Code provides that the Commission may adopt rules that it considers necessary for its administration.

The following articles are affected by this proposal: Government Code, §2161.003 Historically Underutilized Businesses. The Commission adopts by reference the rules promulgated by the GSC regarding Historically Underutilized Businesses, which are set forth in 1 TAC §§111.11-111.28.

§453.1. Historically Underutilized Business Program.

Historically Underutilized Business Program. The Commission adopts by reference the rules promulgated by the General Services Commission (GSC) that are set forth at 1 TAC Chapter 111, Subchapter B, as amended, regarding the Historically Underutilized Business Program. A copy of the GSC rules may be obtained by writing to: James E. Nier, Executive Director, Texas Veterans Commission, E.O. Thompson State Office Building, P.O. Box 12277, Austin, Texas 78711-2277 or by accessing the Web site of the Secretary of State, at www.sos.state.tx.us/tac/.

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 January 22, 2001.

TRD-200100385

James E. Nier
Executive Director
Texas Veterans Commission
Earliest possible date of adoption: March 4, 2001
For further information, please call: (512) 463-5538

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER H. INVESTMENTS

7 TAC §91.803

The Credit Union Department has withdrawn from consideration proposed amendment to §91.803 which appeared in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10861).

Filed with the Office of the Secretary of State on January 19, 2001.

TRD-200100370
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: January 19, 2001
For further information, please call: (512) 837-9236

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER K. AQUATIC VEGETATION MANAGEMENT

31 TAC §57.935

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The new section as proposed appeared in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6937).

Filed with the Office of the Secretary of State on January 22, 2001.

TRD-200100400

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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 2. TEXAS ETHICS COMMISSION

CHAPTER 50. LEGISLATIVE SALARIES AND PER DIEM

1 TAC §50.1

The Texas Ethics Commission adopts an amendment to §50.1, concerning legislative per diem. The amendment is adopted without changes to the proposed text as published in the December 8, 2000, issue of the *Texas Register* (25 TexReg 12029) and will not be republished. The amendment was made to reflect the increase in the per diem rate allowed for federal income tax purposes since the last legislative session.

No comments were received regarding the amendment.

This amendment is adopted under the Texas Constitution, Article III, §24a, which provides that the commission shall set the per diem of members of the legislature and the lieutenant governor, and the Government Code, Chapter 571, §571.062, which authorizes the Texas Ethics Commission to adopt rules to implement laws administered and enforced by the commission.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

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 January 12, 2001.

TRD-200100251
Tom Harrison
Executive Director
Texas Ethics Commission
Effective date: February 1, 2001
Proposal publication date: December 8, 2000
For further information, please call: (512) 463-5800

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.210

The Texas Credit Union Commission adopts amendments to §91.210, relating to certificate of authority to do business in the State of Texas, with no changes to the text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10854).

Two new subsections are added to the rule. The first allows a foreign credit union to add new occupational or associational groups to their fields of membership provided that reciprocity exists between Texas and the credit unions' home state or country and the proposed group can be conveniently served from the foreign credit union's office. The second subsection adds an enforcement and penalty provision that can be invoked by the Commissioner should a foreign credit union fail to comply with any applicable statute or administrative rule.

No comments were received on the proposal.

The amendments are adopted under the provisions of §122.013 of the Texas Finance Code that is interpreted as authorizing the Credit Union Commission to adopt rules that govern foreign credit union operations in this state.

The specific section affected by this rule is Texas Finance Code, §122.013.

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 January 19, 2001.

TRD-200100369
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: February 8, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 837-9236

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SUBCHAPTER C. MEMBERS

7 TAC §91.301

The Texas Credit Union Commission adopts amendments to rule §91.301 relating to field of membership, with changes to the text as published in the November 3, 2000 issue of the *Texas Register* (25 Tex Reg 10855).

The first amendment conforms the terminology used in the rule to that contained in the enabling statute, specifically the term "common bond" has been changed to "community of interests. Another change describes what constitutes a recognizable community with regards to a geographic community of interest. The third amendment inserts language addressing the treatment of overlaps resulting from a proposed field of membership change. Lastly, there is an amendment that allows credit unions the ability to add underserved communities regardless of location to their fields of membership provided certain criteria are met.

The amended rule is adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. Notice of Intention to Review Chapter 91 rules was published in the *Texas Register* on February 4, 2000 (25 TexReg 823) for the purpose of accepting public comment.

One comment from Brownsville Teachers' Credit Union was received regarding the language allowing a credit union to apply to add an underserved area to its FOM regardless of location of the underserved area in relation to the credit union's offices. The commenter believes this provision will present a safety and soundness issue for small and mid-sized credit unions because: (1) it will allow large credit unions to skip across the state in an unrestricted manner; and (2) the wording does not require a credit union to actually serve in an underserved area. The Commission disagrees with the commenter's characterization of this provision. All citizens of the state of Texas should not only have access to financial services, but to their choice of institutions to meet their specific needs. In an underserved community this opportunity does not exist. Therefore, credit unions that are willing to provide the needed services should be encouraged to expand into these areas. To ensure that a credit union complies with the intent of the rule, certain requirements are specified in the rule. To begin, the credit union must establish and maintain an office or facility in the underserved community at which business can be transacted. The credit union must also submit a business plan that describes how it will serve the community. The commissioner may require periodic status reports to ensure that the needs of the underserved community are being met. In summary, the Commission believes adequate safeguards have been put into place to ensure that credit unions expanding into underserved communities are doing so to actually serve those communities.

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

The specific sections affected by the amended rule are §§122.001 and 122.051 of the Texas Finance Code.

§91.301. Field of Membership.

State credit unions will be allowed to have, as a minimum, at least as much flexibility as federal credit unions in the regulation of fields of membership. The following guidelines and standards shall be considered by the commissioner in evaluating field of membership requests.

(1) Occupational community of interest.

(A) This community of interest is based on an employment relationship with a specified employer. Persons sharing this community of interest may be geographically dispersed. Employees of a parent corporation and its subsidiaries and persons under contract to work regularly for an enterprise may be considered under a single occupational community of interest. Each category to be served (e.g., subsidiaries, contractors) should be separately listed in section 3.01 of the credit union's bylaws, if practical. Persons employed by different entities, even if closely related geographically, persons working at a single shopping center, industrial park, or office building, for example, are not treated as having an occupational community of interest.

(B) All occupational communities of interest should include a geographic definition: e.g., "employees, officials, and persons who work under contract regularly for ABC Corporation or any of its subsidiaries, who work in Houston, Texas." Other acceptable geographic definitions are "employees ... who are paid from .... "or "employees ... who are supervised from ...."

(C) The employer may also be included in this community of interest -- e.g., "ABC Corporation and its subsidiaries."

(D) Some examples of occupational group definitions are:

(i) "employees of the Scott Manufacturing Company who work in El Paso, Texas ...;"

(ii) "employees and elected and appointed officials of municipal government in Tyler, Texas ...;"

(iii) "employees of Sharp Drillbit Company and its subsidiary, Drillbit Salvage Company, who work in Midland or Houston, Texas ...;"

(iv) "personnel of fleet units of the United States Navy home port at Ingleside, Texas ...;"

(v) "civilian and military personnel of the United States Government who work or are stationed at, or are attached or assigned to Fort Hood, Texas, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulations to receive and are receiving benefits or services from that military installation ...;"

(vi) "employees of these contractors who work regularly at United States Naval Shipyard in Ingleside, Texas ...;"

(vii) "employees, doctor, medical staff, technicians, medical and nursing students who work at Galveston Medical Center at the locations stated: ...;"

(viii) "employees, and teachers who work for the Fort Worth Independent School District in Fort Worth, Texas...."

(E) Some examples of insufficiently defined occupational groups are:

(i) "employees of engineering firms in Houston, Texas;" (No common employer; names of firms must be stated; however, may be the basis for a multiple group.)

(ii) "persons employed or working in Dallas, Texas;" (No common employer; names of firms must be stated.)

(iii) "persons working in the entertainment industry in Texas." (No common employer; names of firms should be stated.)

(2) Associational community of interest.

(A) This community of interest is generally based on groups consisting primarily of natural persons who participate in activities developing common loyalties, mutual benefits, and mutual interest. Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities providing for contact among natural persons members, and must have an authoritative definition of who is eligible for membership -- usually, this will be in the associations's constitution and bylaws. The clarity of the associational group's definition and compactness of its membership will be important criteria in reviewing the application. The department policy is to organize associational charters at the lowest organizational level which is economically feasible.

(B) Students constitute an associational community of interest and may qualify for a credit union charter.

(C) Associations formed primarily to obtain a credit union charter do not have a sufficient associational community of interest; nor do associations based on a client or customer relationship (e.g., an insurance company's customers or a buyer's club).

(D) The department normally charters associational credit unions consisting of natural person members. The department will allow nonnatural persons (e.g., corporate sponsor or organizations of members) to be eligible for membership.

(E) Moreover, the community of interest usually would extend to the association's members and their employees. However, situations may exist where the employees of a member of an association do not have a sufficiently close tie to the association to be included.

(F) Homeowner associations, tenant groups, electric co-ops, consumer groups, and other groups of persons having an interest in a particular cause and certain consumer cooperatives may be eligible to receive a charter, however, they must make a strong showing of common activities and economic viability. Newly-organized associations must make similar showing; experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

(G) All associational communities of interest will include a definition of the group and a geographic or operational area limitation, unless the constitution or bylaws of the associational group limit the geographical area -- e.g., "Members of the Small Businessmen Association living or working in Dallas, Texas who qualify for membership in accordance with its constitution and bylaws in effect on January 21, 1989."

(H) The association itself may also be included in the field of membership; e.g., "ABC Association."

(I) Some examples of associational group definitions are:

(i) "regular members of Locals 10 and 13, IBEW Union, Houston, Texas, who qualify for membership in accordance with their constitution and bylaws in effect on May 20, 1989;"

(ii) "members of the Texas Farm Bureau who live or work in Williamson or adjacent counties, who qualify for membership in accordance with its constitution and bylaws in effect on March 7, 1990;"

(iii) "members of the Catholic Church who live or work in Del Rio, Texas;"

(iv) "members of the First Baptist Church in Georgetown, Texas;"

(v) "regular members of the Corporate Executives Association, located in Dallas, Texas, who live or work in Dallas, Texas, who qualify for membership in accordance with its constitution and bylaws in effect on December 1, 1985;"

(vi) "members of the Lower Colorado River Authority located in Austin, Texas."

(J) Some examples of insufficiently defined association group definitions are:

(i) "members of military service clubs in the State of Texas." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group.)

(ii) "veterans of United States military service."

(K) Some examples of unacceptable associational communities of interest are:

(i) "ABC Buyers Club." (An interest in purchasing only does not meet associational standards.)

(ii) "customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

(3) Geographic community of interest.

(A) This community of interest is based upon employment, or residence within a clearly defined and specified geographic area(s). Business entities within the specified geographic area(s) may also qualify for membership. Given the diversity of community characteristics throughout the state and the department's goal of making credit union service available to all eligible groups who wish to have it, the department has established the following guidelines:

(i) The geographic area(s) must be clearly specified.

(ii) The application must establish that the area(s) is recognized as a distinct neighborhood, community, or geographic area(s). For the purposes of this section a recognizable community is a geographical area which possesses such characteristics that the residents of the area share a definable community of interest or sense of identification with each other which may be based upon mutual interests, goals, community pride or other similar elements.

(B) A typical definition of a geographic community of interest is: "Persons who live, work or are located in ABC, the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."

(C) Additional criteria may be considered for an application to convert to or expand an existing community and may include, but not be limited to, providing for a protective exclusion for honoring existing credit unions in the proposed area(s).

(D) Some examples of geographic community of interest definitions are:

(i) "persons who live, work or are located in Brown County, Texas;

(ii) "persons who live or work in and business entities located in Spring Branch Independent School District, Houston, Texas;"

(iii) "persons who live or work are located within a ten-mile radius of El Campo, Texas".

(E) Some examples of insufficiently defined geographic community of interest definitions are:

(i) "persons who live or work in East Texas;"

(ii) "persons who live or work in the ship channel section of Houston, Texas."

(4) Multiple-group charters.

(A) The department may charter a credit union to serve a combination of definable occupational, associational and/or geographical groups.

(B) In addition to general chartering requirements, special requirements pertaining to multiple-group applications may be required before the department will grant such a charter.

(i) Each group to be included in the proposed field of membership of the credit union must have its own community of interest.

(ii) Each group must individually request inclusion in the proposed credit union's charter.

(5) Overlap protection.

(A) The commissioner will consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap. Generally, the department will not charter or otherwise authorize two or more credit unions to serve the same single occupational or associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership outweighs any adverse effect on the overlapped credit union(s).

(B) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility, complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.

(C) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." Generally, overlap protection will not be considered warranted unless the financial effect on the overlapped credit union will present a safety and soundness concern. Exclusionary clauses are rarely appropriate for inclusion in a geographic community of interest credit union.

(D) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:

(i) whether the overlap is incidental in nature, ie., the group(s) in question is so small as to have no material effect on the overlapped credit union;

(ii) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;

(iii) whether the overlapped credit union provides requested service;

(iv) the financial effect on the overlapped credit union;

(v) the desires of the group(s); and

(vi) the best interests of the affected group(s) and the credit union members involved.

(E) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.

(F) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.

(6) Underserved communities.

(A) All credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for underserved areas. More than one credit union can serve the same underserved area.

(B) Once an underserved area has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the community. For the purposes of this subsection service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loan proceeds are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, and an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an atm.

(C) A credit union desiring to add an underserved area must document that the community meets the definition. In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as well as requiring such reports before allowing a credit union to add an additional unserved area.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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For further information, please call: (512) 837-9236

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SUBCHAPTER H. INVESTMENTS

7 TAC §91.802

The Texas Credit Union Commission adopts amendments to rule §91.802 relating to other investments for credit union, with nonsubstantive changes to the proposed text published in the November 3, 2000 issue of the *Texas Register* (25 Tex Reg 10858). The first request for comments was published in the May 5, 2000 issue of the *Texas Register* (25 TexReg 3889).

One of the amendments requires a credit union's board of directors to establish and annually review a written investment policy; however, that policy may be part of a broader asset-liability management policy. Another amendment adds restrictions for investments in mutual funds, municipal bonds, and asset-backed securities based on their ratings by a nationally recognized rating service, as well as limits investment in commercial paper to those issued by corporations domiciled within the United States. A third amendment mandates that credit unions document their due diligence in selecting a particular investment. A fourth amendment requires credit unions to classify any security in accordance with generally accepted accounting principles. In addition, the reporting requirements of the existing rule are removed from this rule and are placed into a new rule addressing only reporting requirements. Finally, certain language that is outdated or no longer used in the financial industry has been updated.

The amendments to the rule are adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. (Both contain provisions requiring state agencies to review and consider for readoption each of their rules every four years). Notice of Intention to Review Chapter 91 rules was published in the *Texas Register* on February 4, 2000 (25 TexReg 823) for the purpose of accepting public comment.

One comment letter was received from Dallas Teachers Credit Union (DTCU). Dr. Charles Idol, a credit union consultant, commented on the rule in person at the Legislative Advisory Committee's public meeting held on December 12, 2000. His comments were also provided in writing. DTCU pointed out that many terms defined in subsection (a) are used elsewhere in Subchapter H but are not redefined. Therefore, DTCU recommended for consistency that the definitions refer to their use in this "subchapter." The Commission agreed with the recommendation. DTCU also pointed out that definitions (6) and (13) contained in subsection (a) reference specific federal statutes which are not readily available to all credit unions. The Commission acknowledged this point and modified the language in definition (6) to remove the federal cite and added explanatory language to definition (13). Continuing with its comments on subsection (a) relating to definitions, DTCU commented that throughout the rule, certain references to a "security" were changed to "investment." The Commission made this change to recognize that a security is one type of investment. Therefore, where the rule applies to all investments, the word "investment" is used; where the rule applies to a security as used in the investment brokerage industry, the word "security" is used. DTCU stated its view that paragraph (9) of subsection (c) pertaining to money market mutual funds is overly complicated. In response, the Commission simplified the language but kept the requirement that money market mutual funds meet CFR 270.2a-7. This should not be a burden to credit unions given that the broker will have that information. Lastly, DTCU commented that the exception from documenting due diligence in making an investment purchase contained in subsection (d) should be extended to certain investments issued by the U. S. Government and its agencies, corporations, or enterprises. The Commission adopted the recommendation.

Dr. Idol made five recommendations for changes to the proposed rule amendments. The first was to include bank notes as authorized investments for credit unions in subsection (c) and to add the definition of bank notes in subsection (a). The Commission did not accept the recommendation, stating that state-chartered credit unions already have the authority to invest in bank notes under the federal parity provision of the Texas Finance Code. The second recommendation was to rewrite the language in subsection (b)(5) to require credit unions to document in policy the methods used to manage credit union's credit risk, interest-rate risk, and liquidity risk that are associated with its investment-related activities, rather than to limit such an assessment only to investments exceeding 25% of a credit union's reserves and undivided earnings. The Commission adopted this recommendation. The third recommendation was to add a new paragraph in subsection (b) to address reporting investments to the board of directors that become noncompliant with the credit union's investment policy after purchase. The Commission adopted the recommendation. The fourth recommendation was to add the language "that are insured by the National Credit Union Share Insurance Fund" to the definition of state-chartered credit unions in subsection (a), paragraph (6). The Commission rejected the proposed change, stating that the Texas Finance Code contains a provision that would allow state-chartered credit unions to operate with alternative insurance coverage. The last recommendation was to substitute the wording "National Credit Union Share Insurance Fund" for "National Credit Union Administration." The Commission did not adopt the recommendation given that the federally mandated insurance seals to be used by federally insured credit unions cites the National Credit Union Administration as the insuring authority.

The amendments are adopted under the provisions of §124.351 of the Texas Finance Code that are interpreted to authorize the Credit Union Commission to adopt rules authorizing other investments permissible for credit unions that are responsive to changes in economic conditions or competitive practices and to the need for safety and soundness of credit union investments.

The specific section affected by the amended rule is Texas Finance Code §124.351.

§91.802. Other Investments

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

(1) Bailment for hire contract--A contract whereby a third party, bank, or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers; also known as a custodial agreement.

(2) Bankers' acceptance--A time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

(3) Cash forward agreement--An agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of 30 days from the trade date.

(4) Eurodollar deposit--A deposit denominated in U. S. dollars in a foreign branch of a United States financial institution.

(5) Federal funds transaction--A short-term or open-ended transfer of funds to a financial institution.

(6) Financial institution--A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation, a federal or state-chartered credit union, or the National Credit Union Central Liquidity Facility.

(7) Repurchase transaction--A transaction in which a credit union agrees to purchase a security from a counterparty and to resell the same or any identical security to that counterparty at a later date and at a specified price.

(8) Reverse repurchase transaction--A transaction whereby a credit union agrees to sell a security to a counterparty and to repurchase the same or any identical security from that counterparty at a future date and at a specified price.

(9) Investment--Any security, obligation, account, deposit, or other item authorized for investment by the Act or this section other than an investment authorized by §124.351(a)(1) of the Act.

(10) Settlement date--The date originally agreed to by a credit union and a vendor for settlement of the purchase or sale of a security.

(11) Trade date--The date a credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

(12) Yankee dollar deposit--A deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state chartered, foreign controlled bank.

(13) Mortgage related security--A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a)(41); i.e., a privately-issued security backed by mortgages secured by real estate upon which is located a dwelling, a mixed residential and commercial structure, a residential manufactured home, or a commercial structure.

(14) Nationally recognized statistical rating organization (NRSRO)--A rating organization recognized by the Securities and Exchange Commission.

(15) Asset-backed security--A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(b) Policy. A credit union may invest funds not used in loans to members, subject to the conditions and limitations of the written investment policy of the board of directors. The investment policy may be part of a broader, asset-liability management policy. The board of directors must review the investment policy at least annually to ensure that the policies adequately address the following issues:

(1) The types of investments that are authorized by the board of directors.

(2) A specific limit on the amount that may be invested in any single investment or investment type.

(3) The delegation of investment authority to the credit union's officials or employees, including the person or persons authorized to purchase or sell investments, and a limit of the investment authority for each individual or committee.

(4) A list of authorized broker-dealers or other third-parties that may be used to purchase or sell investments, and an internal process for assessing the credentials and previous record of the individual or firm.

(5) The methods to be used to manage the credit union's credit risk, interest-rate risk, and liquidity risk that are associated with its investment-related activities.

(6) A list of authorized third-party safekeeping agents.

(7) If the credit union operates a trading account, the policy should specify the persons authorized to engage in trading account activities, trading account size limits, stop loss and sale provisions, time limits on inventoried trading account investments, and internal controls that specify the segregation of risk-taking and monitoring activities that related to trading account activities.

(8) The procedure for reporting to the board of directors investments and investment activities that become noncompliant with the credit union's investment policy subsequent to the initial purchase.

(c) Authorized activities.

(1) General authority. A credit union may contract for the purchase or sale of a security provided that delivery of the security is by regular-way settlement. Regular-way settlement means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for that type of security. All purchases and sales of investments must be delivery versus payment (i.e., payment for an investment must occur simultaneously with its delivery).

(2) Cash forward agreements. A credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(A) the period from the trade date to the settlement date does not exceed 90 days;

(B) if the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(C) if the credit union is the seller, it owns the security on the trade date; and

(D) the cash forward agreement is settled on a cash basis at the settlement date.

(3) Repurchase transactions. A credit union may enter a repurchase transaction provided:

(A) the purchase price of the security obtained in the transaction is at or below the market price;

(B) the repurchase securities are authorized investments under Texas Finance Code §124.351 or this section;

(C) the credit union has entered into signed contracts with all approved counterparties;

(D) the counterparty is rated no lower than BBB by Standard & Poor's or an equivalent rating by another NRSRO; and

(E) the credit union receives a daily assessment of the market value of the repurchase securities, including accrued interest, and maintains adequate margin that reflects a risk assessment of the repurchase securities and the term of the transaction.

(4) Reverse repurchase transactions. A credit union may enter into a reverse repurchase transaction, which is a borrowing transaction subject to the Act, provided:

(A) any securities received are authorized investments under Texas Finance Code §124.351 and this section;

(B) the credit union has entered into signed contracts with all approved counterparties; and

(C) for transaction with a maturity greater than one month, the credit union receives a monthly assessment of the market value of the securities received, including accrued interest, and maintains adequate margin that reflects a risk assessment of the securities and the term of the transaction.

(5) Federal funds. A credit union may enter into a federal funds transaction with a financial institution, provided that the interest or other consideration received from the financial institution is at the market rate for federal funds transactions and that the transaction has a maturity of one or more business days or the credit union is able to require repayment at any time.

(6) Yankee dollars. A credit union may invest in yankee dollar deposits.

(7) Eurodollars. A credit union may invest in eurodollar deposits.

(8) Bankers' acceptance. A credit union may invest in bankers' acceptances.

(9) Open-end Investment Companies (Mutual Funds). A credit union may invest funds in an open-end investment company established for investing directly or collectively in any authorized investment, including qualified money market mutual funds as defined by Securities and Exchange Commission regulations.

(10) Government-sponsored enterprises. A credit union may invest in government-sponsored enterprise obligations such as Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and the Student Loan Marketing Association.

(11) Commercial paper. A credit union may invest in commercial paper issued by corporations domiciled within the United States and having a rating of no less than A1 or P1 by Standard & Poor's or Moody's, respectively, or an equivalent rating by a NRSRO.

(12) Corporate bonds. A credit union may invest in corporate bonds which are rated in one of the three highest rating categories by a NRSRO (e.g. Standard & Poor's ratings AAA, AA, and A) and remaining maturities of five years or less.

(13) Municipal bonds. A credit union may invest in municipal bonds which are rated in one of the three highest rating categories by a NRSRO and remaining maturities of five years or less.

(14) Mortgage related securities. A credit union may invest in mortgage related securities, except not in the "accrual bond" (or Z-bonds) or the residual interest of the mortgage related security which are rated in one of the three highest rating categories by a NRSRO.

(15) Asset-backed securities. A credit union may invest in asset-backed securities rated in one of the two highest rating categories by a NRSRO provided the underlying collateral is domestic- and consumer-based.

(d) Documentation: A credit union shall maintain files containing credit and other information adequate to demonstrate evidence of prudent business judgement in exercising the investment powers under the Act and this rule. Except for investments that are issued, insured or fully guaranteed as to principal and interest by the U.S. Government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation, a credit union must conduct and document a credit analysis of the issuing entity and/or investment before purchasing the investment. The credit union must update the credit analysis at least annually as long as the investment is held. Credit and other due diligence documentation for each investment shall be maintained as long as the credit union holds the investment and until it has been both audited and examined.

(e) Classification. A credit union must classify a security as hold-to-maturity, available-for-sale, or trading, in accordance with generally accepted accounting principles and consistent with the credit union's documented intent and ability regarding the security.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
Commissioner
Credit Union Department
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7 TAC §91.808

The Texas Credit Union Commission adopts new §91. 808 relating to reporting investment activities to the board of directors, with nonsubstantive changes to the proposed text published in the November 24, 2000 issue of the *Texas Register* (25 Tex Reg 11613). The first request for comments was published in the May 5, 2000 issue of the *Texas Register* (25 TexReg 3895).

This rule incorporates the reporting requirement provisions formerly contained in §91.802(c) which the Commission is deleting from that rule. The new rule is adopted as a result of the general rule review mandated by the Government Code and General Appropriations Act. Notice of Intention to Review Chapter 91 rules was published in the *Texas Register* on February 4, 2000 (25 TexReg 823) for the purpose of accepting public comment.

Dr. Charles Idol, a credit union consultant, commented on the rule in person at the Legislative Advisory Committee's public meeting held on December 12, 2000. His comments were also provided in writing. Three of his four recommendations were found to have merit by the Commission and were incorporated into the rule. Specifically, paragraph (3) of subsection (a) was deleted to remove the yield to maturity report requirement because in times of rising interest rates, yield to maturity could mislead the board as to the degree of risk present. Paragraph (6) of subsection (a) was deleted because the reporting of those investments is required on a quarterly basis elsewhere in the rule. Lastly, some typographical errors were brought to the Commission's attention. The fourth recommendation not adopted by the Commission pertained to adding a subsection requiring that each board member to receive a copy of the reports described in the other subsections unless the credit union has an investment committee. In such circumstances, the full report would go to the committee with only a summary report going to the board. The Commission did not feel such a provision is necessary since the Standard Bylaws for State-Chartered Credit Unions would allow the board of directors to delegate these duties.

The new rule is adopted under the provisions of §15.402 of the Texas Finance Code that is interpreted to authorize the Credit

Union Commission to adopt reasonable rules necessary for administering Subtitle D, Title 3, Texas Finance Code (Texas Credit Union Act).

The specific section affected by this proposed rule is Texas Finance Code 124.351.

§91.808. Reporting Investment Activities To The Board Of Directors.

(a) A credit union shall provide its board of directors a monthly comprehensive report of investment activities, including:

(1) investments purchased and sold during the month;

(2) unrealized market gains or losses compared to book value at month's end;

(3) fair or market value of each marketable investment;

(4) total book value of investments outstanding at month's end;

(5) unrecorded and unreported obligations to buy or sell investments; and

(6) amount of investments, other than designated depositories, in other institutions that are not fully insured by the Federal Deposit Insurance Corporation, National Credit Union Administration, or federal or state governments or their agencies.

(b) The credit union shall also provide a quarterly report to the board of directors that summarizes the volatility of the investment portfolio, if the aggregate total of the investments with one or more of the features included below exceeds the credit union's reserves and undivided earnings:

(1) embedded options;

(2) remaining maturities greater than three years; or

(3) coupon formulas that are related to more than one index or are inversely related to, or multiples of, an index.

(c) The report described in subsection (b) must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on the:

(1) fair value of each marketable investment in the portfolio;

(2) fair value of the portfolio as a whole; and

(3) credit union's reserves and undivided earnings.

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 January 22, 2001.

TRD-200100397
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: February 11, 2001
Proposal publication date: November 24, 2000
For further information, please call: (512) 837-9236

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS

16 TAC §§77.10, 77.70, 77.80

The Texas Department of Licensing and Regulation adopts new §77.10 and amendments to §77.70 and §77.80 of the Service Contract Providers administrative rules without changes to the proposed text as published in the November 10, 2000 issue of the *Texas Register* (25 TexReg 11219) and will not be republished.

New §70.10 clarifies that only service contracts sold in Texas are under the Department's jurisdiction.

The amendment to §77.70 ensures that service contract holders are made aware in a timely manner of their rights and obligations under the service contracts.

The amendment to §77.80 specifies that the tiered registration fee structure applies to companies that have no service contracts and those that have exactly 500 contracts in force prior to registration.

One comment was received from Akin, Gump, Strauss, Hauer & Feld, L.L.P. on behalf of their client, The Texas Retailers Association, in support of the proposed rules.

The new rule and amendments are adopted under Texas Revised Civil Statutes Annotated, Article 9034, which authorizes the Commissioner of the Texas Department of Licensing and Regulation to adopt rules as necessary to implement the intent and purpose of the article.

The new section and amendments affect Texas Revised Civil Statutes Annotated, Article 9034 and Texas Occupations Code, Chapter 51.

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 January 17, 2001.

TRD-200100335
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: February 6, 2001
Proposal publication date: November 10, 2000
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.2

The Texas Board of Chiropractic Examiners adopts an amendment to §73.2, relating to renewal of license, without changes to the proposed text as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10109). The text of the rule as amended will not be republished. A new subsection (b) is adopted that requires a *locum tenens* licensee, that is, a licensee who fills in for another licensee in his or her absence, to provide the name and registration number of each facility at which the licensee practices for the previous 12 months. The Chiropractic Act, Occupations Code, §§201.312, .351 and .354 require the board to license chiropractic facilities and individuals practicing chiropractic. This proposal provides necessary information to the board to enable it to cross reference facilities with chiropractors in order to verify that all facilities that provide chiropractic services are properly registered, and that licensees are practicing, even temporarily, only in licensed facilities. It is anticipated that this rule will help provide better enforcement of the Chiropractic Act's licensing requirements, thus, better ensuring the public that chiropractic treatment is provided only at properly licensed facilities. Other non-substantive, conforming changes to internal references to particular subsections have been made as well.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.312, which the board interprets as authorizing it to adopt rules providing for the regulation of chiropractic facilities; and §201.351 and §201.354, that the board interprets as requiring the board to license individuals practicing chiropractic.

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 January 18, 2001.

TRD-200100351
Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Effective date: February 7, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 305-6709

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22 TAC §73.3

The Texas Board of Chiropractic Examiners adopts and amendment to §73.3, relating to continuing education, without changes to the proposed text as published in the October 6, 2000, issue of the *Texas Register* (25 TexReg 10110). The text of the rule as amended will not be republished. The amendment allows a licensee who serves as an examiner at the National Board Examination-Part IV to receive a maximum of two hours continuing education credit each year. A licensee who serves as an examiner devotes a considerable amount of time to this duty. As an examiner, a licensee observes and grades examinees who are performing procedures required of a chiropractor in a clinical setting. Serving as an examiner provides a licensee with a review of the core elements of the didactic and clinical science components of a chiropractic education. It is, therefore, appropriate to give limited continuing education credit for participating in the examination process.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.356, which the board interprets as authorizing it to adopt rules prescribing continuing education requirements for licensees.

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 January 18, 2001.

TRD-200100352
Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Effective date: February 7, 2001
Proposal publication date: October 6, 2000
For further information, please call: (512) 305-6709

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CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §§74.1 - 74.3, 74.5, 74.9

The Texas Board of Chiropractic Examiners adopts amendments to Chapter 74 (an amendment to §74.1 and new §§74.2, 74.3, 74.5 and 74.9), relating to chiropractic facilities, with changes to the proposed text as published in the November 17, 2000 issue of the *Texas Register* (25 TexReg 11369). The text of §§74.1, 74.2 and 74.5, which were the only sections with changes from the proposed version, will be republished. Changes in capitalization for consistency were made in §74.1(4); in grammar for clarity, in §74.2(b) and (g) and in (c)(3); and in text for clarity, in §74.5(a). The amendments revise the current structure of the board's facility regulatory program as provided in Chapter 74. With this adoption, Chapter 74 is divided into five sections, one section for definitions (§74.1), and the others, covering the process for applying for a facility license (§74.2), renewal (§74.3), including the imposition of late fees, rules of conduct (§74.5) and disciplinary action (§74.9). These changes are adopted in conjunction with the board's review of chapter 74, pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167. In accordance with §167, the board reviewed this chapter and determined that it should be readopted, with the proposed changes. The adopted review was published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11529). The board found that the reason for this chapter, with the proposed changes, continued to exist. The adopted amendments also make changes in format and text for clarification and for consistency, both internally and with the Chiropractic Act, and to delete redundant or unnecessary provisions in the current §74.1.

Chapter 74, as amended, sets out in detail the basic components of the board's facility regulatory program. The chapter will provide better notice to licensees, facility owners and managers and the public of the requirements for licensure and the rules of conduct and disciplinary procedure governing chiropractic facilities. The purpose of these rules is to ensure adequate regulation of chiropractic facilities for the public safety and notice of board policy and board regulations governing chiropractic facilities and to require the submission of specific information that the board must obtain from facilities in order to carry out its regulatory responsibilities.

No comments were received concerning the proposed rules.

The amendment and new rules are adopted under the Occupations Code §201.152, which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.312, which the board interprets as authorizing it to adopt rules relating to the regulation of chiropractic facilities.

§74.1. Definitions.

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

(1) Board-Texas Board of Chiropractic Examiners;

(2) Chiropractic Act-Occupations Code, Chapter 201;

(3) Chiropractic Radiologic Technologist (CRT)-A person who is registered with the board under chapter 78 of this title (concerning CRTs);

(4) Facility-An office or business that provides chiropractic services by or under the direction of a doctor of chiropractic licensed by the board;

(5) Health Professions Council Act (HPCA)-Occupations Code, Chapter 101;

(6) Licensee-A person who is licensed by the board to practice chiropractic in the State of Texas; and

(7) Medical Radiologic Technologist Certification Act (MRTCA)-Occupations Code, Chapter 601.

§74.2. Facility License Requirements.

(a) A facility shall not provide chiropractic services without first being licensed by the board.

(b) An applicant for a facility license shall submit to the board an application as prescribed by the board, along with the facility license fee as provided in §75.7 of this title (relating to fees), payable by personal or company check to the Texas Board of Chiropractic Examiners. The application must be signed by the owner, if a sole proprietorship, or by an authorized representative, if a partnership or corporation.

(c) The following information shall be included in the application and upon renewal:

(1) the legal name of the facility, the address, and telephone and facsimile numbers of the primary and secondary locations of the facility to be licensed;

(2) the type of legal entity (sole proprietorship, partnership, corporation);

(3) the name, address, and percentage of ownership of each person with a 10% or greater ownership interest in the facility; if a person is an individual, include the person's social security number, driver's license number, date of birth, and if a licensee, his or her license number;

(4) the name and license number of each doctor licensed by the board who is employed or otherwise engaged to provide chiropractic services at the facility; and

(5) any other information requested by the board that it deems necessary for processing the application or for other regulatory purposes.

(d) Social security numbers are collected for purposes of child support collection and student loan enforcement.

(e) A facility owner must be 21 years of age or older.

(f) A facility will be charged for one license, regardless of the number of locations for each facility. For administrative record keeping purposes, each separate location will be issued a separate license number. The application shall identify one location as the primary location; all other locations shall be designated as secondary. Facilities that share office space or staff but otherwise maintain separate business identities, including separate billing, accounting or other functions, shall be treated as separate facilities and each charged a license fee.

(g) No license will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(h) This chapter does not apply to hospitals or public health clinics registered with the Texas Department of Health or another state agency, or a chiropractic facility owned and operated by a Texas college of chiropractic as part of its chiropractic internship program.

§74.5. Rules of Conduct.

(a) Practicing chiropractic in a facility with an expired facility license constitutes practicing chiropractic without a license. A licensee shall not practice chiropractic in such facility until the facility license is renewed.

(b) A facility with an expired license that continues to provide chiropractic services shall be subject to the maximum sanctions for practicing without a chiropractic license.

(c) No facility owner or employee, other than the primary treating doctor of chiropractic, shall control or attempt to control, in any way whatsoever, the professional judgment of such treating doctor with respect to patient care and treatment.

(d) A facility shall maintain a current business address with the board for each location. A different mailing address may be provided in addition to the business address. A facility shall notify the board, in writing, of any change in business or mailing address or ownership within 30 days of the change. The notification shall be signed by the owner or authorized representative of the facility and must include the facility license number.

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 January 18, 2001.

TRD-200100353

Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Effective date: February 7, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 305-6709

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CHAPTER 80. MISCELLANEOUS

22 TAC §80.3, §80.5

The Texas Board of Chiropractic Examiners adopts amendments to chapter 80 (amendment to §80.3 and new §80.5) relating to miscellaneous provisions, without changes to the proposed text as published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11371). The text of the rules as amended will not be republished. The amendments provide a maximum rate for copies of chiropractic records in subsection (e) of §80.3 and set out record keeping requirements, including a maximum period of retention for chiropractic records, in new §80.5. The Chiropractic Act, Occupations Code §201.405(f), requires a person requesting records to pay the chiropractor a reasonable fee. Section 80.3(e) sets out the amount which the board deems is a reasonable fee. The rate is taken from the Board of Medical Examiners' rule on this same subject. Presently, the chiropractic board does not require that licensees maintain patient records for any length of time. Patient care requires the creation and maintenance of appropriate patient records. The board and others who may require access to patient records need to be assured that records are available for a reasonable period of time. Section 80.5 is also taken from the Board of Medical Examiners, and represents in the Board's opinion a reasonable manner of addressing this issue. These amendments will provide greater assurance that chiropractors will charge reasonable and uniform rates for copies of patient records and that patient records will be maintained and available for a reasonable period.

No comments were received concerning the proposed rules.

The amendment and new rule are adopted under Occupations Code, §201.152, which the board interprets as authorizing it to adopt rules necessary for performances of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §210.405 which sets out statutory responsibilities and requirements for release of patient records, and which the board interprets as one of the provisions it is charged with enforcing.

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 January 18, 2001.

TRD-200100354
Gary K. Cain, Ed.D.
Executive Director
Texas Board of Chiropractic Examiners
Effective date: February 7, 2001
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For further information, please call: (512) 305-6709

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 1. TEXAS BOARD OF HEALTH
SUBCHAPTER N. HISTORICALLY UNDERUTILIZED BUSINESSES

25 TAC §1.171

The Texas Department of Health (department) adopts new §1.171, concerning the Historically Underutilized Business (HUB) Program, without changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9360), and therefore the section will not be republished.

The rule adopts by reference the General Services Commission (GSC) rules at Title 1, Texas Administrative Code (TAC) §§111.11-111.27 concerning the Historically Underutilized Business (HUB) Program in order to comply with the legislative requirements of Senate Bill (SB) 178, 76th Legislative Session codified under the Government Code, Chapter 2161. Section 2161.003 requires each agency to adopt the GSC rules as agency rules. The rules are adopted to implement the new requirements of the Government Code, Chapter 2161 regarding the HUB policy statement, procurement utilization goals, agency determination of subcontracting opportunities, HUB subcontracting plans, HUB coordinator responsibilities and the agency forum program. The department, according to the rules and in accordance with the HUB Program's policies and procedures, will maintain the requirements.

The department received no comments on the proposal during the comment period.

The new section is adopted under the Government Code §2161.003, which requires agencies to adopt the GSC rules and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 January 18, 2001.

TRD-200100341
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 7, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 458-7236

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CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT
SUBCHAPTER B. DATA COLLECTION

25 TAC §§13.13, 13.15, 13.17 - 13.19

The Texas Department of Health (department) adopts amendments to §§13.13, 13.15, 13.17, 13.18, and 13.19, concerning hospital financial and utilization reporting and the reporting of charity care and community benefits data from nonprofit hospitals without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10619), and therefore the sections will not be republished.

The amended sections cover definitions; survey forms and methods of reporting data; duties of nonprofit hospitals under Health and Safety Code, Chapter 311; noncompliance with reporting requirements; and confidential data. The amendments are proposed to update obsolete language, to clarify wording, and to specify alternative methods that hospitals may use to report financial and utilization data.

In accordance with the requirements of the Government Code, §2001.039 and the General Appropriations Act, 76th Legislature, Article IX, §9-10.13, the sections have been reviewed and the department has determined that reasons for adopting the sections continue to exist; however, some of the sections were amended as described in this preamble. Sections 13.11, 13.12, 13.14, 13.16, and 13.20 were proposed for readoption in the proposed preamble and were opened for comment and are readopted without changes because no needed revisions were identified during the review and no comments were received on the proposal.

The department published a Notice of Intention to Review in the *Texas Register* on February 12, 1999 (24 TexReg 1001). No comments were received.

No comments were received as a result of the publication of the proposed rules.

A readoption notice concerning §§13.11, 13.12, 13.14, 13.16, and 13.20 can be found in the Adopted Rule Reviews under the Rule Review of Agency Rules in the February 2, 2001 issue of the Texas Register.

The amendments and the readopted sections are adopted under the Health and Safety Code, §104.42(a) which authorizes the Board of Health (board) to adopt rules relating to the collection and dissemination of data from health care facilities necessary to facilitate health planning and resource development; §311.032(b) which mandates the adoption of rules on the collection and reporting of hospital financial and utilization data; and §12.001 which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

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 January 19, 2001.

TRD-200100362
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 8, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 458-7236

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CHAPTER 102. DISTRIBUTION OF TOBACCO SETTLEMENT PROCEEDS TO POLITICAL SUBDIVISIONS

25 TAC §102.3

The Texas Department of Health (department) adopts an amendment to §102.3, relating to the distribution of tobacco settlement proceeds to political subdivisions, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10666), and therefore the section will not be republished.

This rule implements a portion of Acts 1999, 76th Legislature, Chapter 753, Article 2 (House Bill (HB) 1161), which designates the department's responsibilities under the Agreement Regarding Disposition of Tobacco Settlement Proceeds (agreement) filed on July 24, 1998, in United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91. The department collects information and certifies amounts of the tobacco settlement proceeds for annual distribution to political subdivisions. The term "political subdivision" means a hospital district, another local political subdivision owning or maintaining a public hospital, or a county of the State of Texas responsible for providing indigent health care to the general public. The Texas Health and Safety Code, Chapter 61 defines which entities are responsible for providing indigent health care to the general public.

The amendment improves the procedures for submission of the annual expenditure statement by political subdivisions.

The amendment will allow local governments to deliver a copy of their expenditure statement by fax or electronic mail by or on March 31 and deliver their original statement to the department by or on April 7. The expenditure statement that is delivered by fax or electronic mail on or by March 31 in lieu of the original statement must be an exact facsimile of the original. In contrast, the current rule requires that the original statement be mailed and postmarked by March 31. The additional time allowed in the proposed amendment should help local governments to meet the deadline. Political subdivisions that do not meet the deadline are ineligible to receive any portion of the distribution of tobacco settlement proceeds in that year.

No comments were received concerning the proposal during the comment period.

The amendment is adopted under the Health and Safety Code, Chapter 12, Subchapter J, which provides the Texas Board of Health (board) with the authority to adopt rules concerning the tobacco settlement proceeds; HB 1161, §2.04, which provides the board with the authority to adopt rules relating to the tobacco settlement proceeds in the lump sum trust account; and Health and Safety Code §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 January 18, 2001.

TRD-200100348
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 7, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 458-7236

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CHAPTER 128. PERMITS FOR CONTACT LENS DISPENSERS

25 TAC §§128.1, 128.2, 128.6, 128.10

The Texas Department of Health (department) adopts amendments to §§128.1- 128.2 and 128.6 and new §128.10 concerning the regulation of persons filling contact lens prescriptions. Section 128.10 is adopted with changes to the proposed text as published in the August 11, 2000, issue of the *Texas Register* (25 TexReg 7451). Sections 128.1- 128.2 and 128.6 are adopted without changes, and therefore the sections will not be republished.

The sections cover introduction; definitions; violations, complaints, and disciplinary actions; and fees. The sections are amended to correct citations throughout 25 Texas Administrative Code, Chapter 128 based on House Bill 3155, 76th Legislature, 1999, which compiled relevant laws into the Texas Occupations Code, and new §128.10 is amended to establish a schedule of fees for obtaining a contact lens dispensing permit. The schedule of fees set out in the Contact Lens Prescription Act, Texas Occupations Code, Chapter 353 (the Act) has been used to date; however, the Act authorizes the department to adopt fees in amounts sufficient to cover costs associated with the administration of provisions of the Act.

The following comment was received concerning the proposal during the comment period. Additionally, the department has made a minor grammatical change to §128.10(d) to clarify the intent and improve the accuracy of the subsection.

Comment: Concerning §128.10(a)(3), one commenter stated that the $300 fee for business entities makes it difficult for a small business owner to compete with big businesses because the margins on contacts are small and the big businesses do a larger volume business. The commenter requested the department reconsider raising the fee for business entities.

Response: The department disagrees with the commenter. The Act established a schedule of fees for the department to use until changed by the Texas Board of Health (board). The statutory fee schedule provided a higher fee for business entities and allows business entities to obtain one permit for up to nine locations. Additionally, the Act allows the board to adopt fees sufficient to cover the costs of administering the provisions of the Act. The fees set out in §128.10 reflect the amounts necessary to cover those costs. No change was made as a result of this comment.

The amendments and new section are adopted under Texas Occupations Code, Chapter 353, Chapter 352, and Chapter 53, which provide the Board of Health (board) with the authority to adopt rules; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health.

§128.10. Fees.

(a) The annual permit fees are as follows:

(1) $50 for an optician who has registered with the department under the Opticians' Registry Act, Texas Occupations Code, Chapter 352;

(2) $75 for an optician who has not registered with the department under the Opticians' Registry Act, Texas Occupations Code, Chapter 352; and

(3) $300 for a business entity.

(b) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to one and one-half times the normally required annual permit fee.

(c) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required annual permit fee.

(d) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with requirements and procedures for an original permit.

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 January 18, 2001.

TRD-200100343
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: February 7, 2001
Proposal publication date: August 11, 2000
For further information, please call: (512) 458-7236

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CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §157.25

The Texas Department of Health (department) adopts an amendment to §157.25 concerning the Out-Of-Hospital Do Not Resuscitate (DNR) identification devices, and is adopted with changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9390).

The amendment will give consumers greater choice in DNR devices by allowing more businesses to comply with the department rules in supplying the DNR identification devices. The amendment affects the specifications of DNR identification devices and will allow more businesses to become vendors of the DNR identification devices.

No public comments were received on the rule. However, the department is making the following changes, due to staff comments.

Concerning §157.25(i)(1) and (2), "may be honored" was changed to "shall be honored" to make it consistent with statutory language.

Concerning §157.25(i)(3), new language was added to meet statutory requirements.

The amendment is adopted under the Health and Safety Code, Chapter 166, which provides the Board of Health (board) with the authority to adopt and amend rules to implement the Advanced Directives Act; and §12.001, which provides the board with the authority to adopt and amend rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§157.25. Out-of-Hospital Do Not Resuscitate (DNR) Order.

(a) Purpose. The purpose of this section shall be to establish a statewide DNR protocol as required in the Health and Safety Code, Title 2, Chapter 166.

(b) DNR order. A DNR order may be issued by an attending physician for any patient. That attending physician has responsibility for ensuring that the form is filled out in its entirety and that the information regarding the existence of a DNR order is entered into the patient's medical record.

(c) Protocol development. A DNR protocol in accordance with this section, shall apply to all out-of-hospital settings including cardiac arrests which occur during interfacility transport. The protocol shall include the following:

(1) a copy of the Texas Department of Health (department) standardized DNR form listing the designated treatments that shall be withdrawn or withheld. Those treatments shall be:

(A) cardiopulmonary resuscitation;

(B) advanced airway management;

(C) artificial ventilation;

(D) defibrillation; and

(E) transcutaneous cardiac pacing.

(2) an explanation of the patient identification process to include an option to use a department-standardized identification device such as a necklace or bracelet; and

(3) an on-site DNR dispute resolution process which includes contacting an appropriate physician.

(d) Recordkeeping. Records shall be maintained on each incident in which an out-of-hospital DNR order or DNR identification device is encountered by responding healthcare professionals, and the number of cases where there is an on-site revocation of the DNR order shall be recorded.

(1) The data documented should include:

(A) an assessment of patient's physical condition;

(B) whether an identification device or a DNR form was used to confirm DNR status and patient identification number;

(C) any problems relating to the implementation of the DNR order;

(D) the name of the patient's attending physician; and

(E) the full name, address, telephone number, and relationship to patient of any witness used to identify the patient.

(2) If the patient is transported, the original DNR order or a copy of the original order will be kept with the patient.

(3) Copies of the original DNR order may be put on file with concerned parties, and the original order shall remain in the possession of the patient, a legal guardian, or the healthcare facility responsible for the patient's care.

(4) At the time of relicensure, the out-of-hospital provider shall submit a report to the Bureau of Emergency Management with the following information:

(A) number of times personnel have been presented with DNR documentation;

(B) number of times there was a problem and the DNR order could not be honored; and

(C) any problems that were encountered using the standardized form.

(e) Out-of-state DNR Orders. Personnel may accept an out-of-hospital DNR order or device that has been executed in any other state, if there is no reason to question the authenticity of the order or device.

(f) Failure to honor a DNR order. If there are any indications of unnatural or suspicious circumstances, the provider shall begin resuscitation efforts until such time as a physician directs otherwise.

(g) Pregnant persons. A person may not withhold the designated treatments listed in subsection (c)(1) from a person known by responding healthcare professionals to be pregnant.

(h) DNR Form. The Bureau of Emergency Management or their appointees shall furnish DNR forms to physicians, clinics, hospitals, nursing homes, hospices and home health agencies throughout the state upon request.

(1) The form shall contain all the information as prescribed in the Health and Safety Code, Chapter 166.

(2) The form shall be 8-1/2 inches by 11 inches, printed front and back, and in the format specified by the board as follows. Figure: 25 TAC §157.25(h)(2) (No change.)

(i) Identification devices. As an optional means of identification, a patient may obtain, at patient's expense, an Out-of-Hospital (OOH) DNR device. An OOH DNR device, as approved by the Texas Department of Health, must meet the following requirements:

(1) An intact, unaltered, easily identifiable plastic identification OOH DNR bracelet, with the word "Texas" (or a representation of the geographical shape of Texas and the word "STOP" imposed over the shape) and the words "Do Not Resuscitate", shall be honored by qualified EMS personnel in lieu of an original OOH DNR Order form.

(2) An intact, unaltered, easily identifiable metal bracelet or necklace inscribed with the words, "Texas Do Not Resuscitate - OOH" shall be honored by qualified EMS personnel in lieu of an OOH DNR Order form.

(3) The person or entity who provides an OOH DNR identification device to an individual shall send with the identification device a statement with the words, "Pursuant to Texas Health and Safety Code, §166.090 this identification device may only be worn by a person who has executed a valid out-of-hospital DNR order."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §157.32

The Texas Department of Health (department) adopts new §157.32 concerning emergency medical services (EMS) education program and course approval with changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9397).

In accordance with Health and Safety Code, Chapter 773, 76th Legislature, 1999, the department is required to adopt rules concerning emergency medical services (EMS) education program and course approval.

The following comments were received in regards to the proposal.

Comment: Concerning §157.32(p), two commenters suggested that the "grandfather" provision of exempting preexisting programs from the provisions of the proposed rule did not automatically continue the exemption upon program re-approval.

Response: The department agrees that the exemption language for program re-approval was inadvertently omitted and that language has been added as new language in §157.32(p)(3).

Comment: There were 38 written comments received opposing the proposed requirement in §157.32(h)(2) requiring advanced program sponsorship by a regionally accredited post- secondary educational institution or a health care institution accredited by an organization recognized by the department. The commenters were concerned that the requirement would cause unwarranted fiscal burdens and extended training delays for certain EMS providers by requiring the institutional sponsorships.

Response: The department presented the proposed rule controversy to the Governor's EMS and Trauma Advisory Council (GETAC) on November 20, 2000. Separate recommendations from the EMS Committee and the Medical Director Committee were reviewed and discussed and the council heard 23 public commenters. A motion was made and seconded that the language in §157.32(h)(2) be modified to include "or any other entity meeting standards and criteria for sponsoring advanced EMS courses". The motion passed unanimously. The language recommended by the council has been added to the proposed rule.

Comment: Concerning §157.32(m)(1), the advisory council also suggested that the department may exempt nationally accredited programs from portions of the requirements be changed to "shall exempt".

Response: The department disagrees that all nationally accredited programs should automatically be exempted from the provisions of the rule based on historical problems with certain accredited programs. No change was made as a result of this comment

The following minor change was made to clarify the intent of the section.

Change: Concerning §157.32(j), the word "established" was deleted after "standards".

All commenters were not against the rules in their entirety, however they expressed concerns, asked questions, and suggested recommendations for change as discussed in the summary of comments. There were 248 written comments received in favor of sending the rule through the process with no changes to the text. The comments were received during the 30-day comment period. The commenters included individuals and the Governor Appointed Emergency Medical Services and Trauma Advisory Council (GETAC) and the subcommittees of GETAC.

The new section is adopted under the Health and Safety Code, Chapter 773, which requires the department to adopt rules concerning emergency medical services (EMS) education program and course approval; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§157.32. Emergency Medical Services Education Program and Course Approval.

(a) Emergency medical services (EMS) Education Program Standards. The Bureau of Emergency Management (bureau) shall develop and publish an EMS Education and Training Manual (manual) outlining standards for EMS education that address at least the following areas:

(1) program sponsorship;

(2) program direction and administration;

(3) medical direction;

(4) instructor personnel;

(5) financial resources;

(6) physical resources, including classroom and laboratory facilities, equipment and supplies, and learning resources;

(7) clinical and field internship resources;

(8) academic and administrative policies, procedures and records requirements;

(9) program evaluation;

(10) curriculum; and

(11) delivery of instruction by distance learning technology.

(b) Consideration of training standards.

(1) The Texas Department of Health (department) shall base the manual on applicable standards and guidelines for evaluation and approval of EMS education programs adopted by national accrediting organizations.

(2) Before implementation or revision of the manual, the department shall ensure adequate time for public review and comment.

(3) Before implementation or revision of the manual, the department shall present the manual to the advisory council for review.

(c) Curriculum.

(1) Emergency Care Attendant (ECA)

(A) The minimum curriculum shall include all content required by the current national EMS First Responder educational standards and competencies as defined by the United States Department of Transportation (DOT).

(B) In addition to the minimum curriculum in subparagraph (A) of this paragraph, the curriculum shall include the following subjects:

(i) recognition and identification of hazardous materials as defined by the Federal Emergency Management Agency curriculum, "Recognizing and Identifying Hazardous Materials";

(ii) airway/ventilation adjuncts; to include use of the bag-valve mask, oxygen administration and oral suctioning;

(iii) measurement of baseline vital signs to include pulse, respiration and blood pressure by palpation and auscultation;

(iv) spinal motion restriction, to include sizing and application of cervical collars and short/long spinal motion restriction devices to supine, seated, and standing patients;

(v) patient assessment;

(vi) bandaging, splinting, and traction splinting;

(vii) cardiac arrest management, including use of the semi- automatic external defibrillator;

(viii) equipment used to lift and move patients;

(ix) communications and documentation; and

(x) ambulance operations, to include emergency vehicle laws.

(C) The course shall include a minimum of 40 clock hours of classroom and laboratory instruction in the approved curriculum.

(2) Emergency Medical Technician-Basic (EMT-B).

(A) The minimum curriculum shall include all content required by the current national EMT-B educational standards and competencies as defined by DOT.

(B) The course shall include a minimum of 140 clock hours of classroom, laboratory, clinical, and field instruction which shall include supervised experiences in the emergency department, with a licensed EMS provider and in other settings as needed to develop the competencies defined in the minimum curriculum.

(3) Emergency Medical Technician-Intermediate (EMT-I).

(A) The minimum curriculum shall include all content required by the portions of the current national paramedic education standards and competencies as defined by DOT which address the following areas:

(i) roles and responsibilities of the paramedic;

(ii) well being of the paramedic;

(iii) illness and injury prevention;

(iv) medical/legal issues;

(v) ethics;

(vi) general principles of pathophysiology;

(vii) pharmacology;

(viii) venous access and medication administration;

(ix) therapeutic communications;

(x) life span development;

(xi) patient assessment;

(xii) airway management and ventilation, including endotracheal intubation; and

(xiii) trauma.

(B) The course shall include a minimum of 160 clock hours of classroom, laboratory, clinical, and field instruction which shall include supervised experiences in the emergency department with a licensed EMS provider, and in other settings as needed to develop the competencies defined in the minimum curriculum.

(C) Certification as an EMT-Basic shall be required prior to beginning field and clinical rotations in an EMT-I course.

(4) Emergency Medical Technician-Paramedic (EMT-P).

(A) The minimum curriculum shall include all content required by the current national paramedic education standards and competencies as defined by DOT.

(B) The course shall include a minimum of 624 clock hours of classroom, laboratory, clinical and field instruction which shall include supervised experiences in the emergency department with a licensed EMS provider and in other settings as needed to develop the competencies defined in the minimum curriculum.

(C) Certification as an EMT-Basic shall be required prior to beginning field and clinical rotations in an EMT-P course.

(d) Sponsorship.

(1) EMS Education programs shall be sponsored by organizations or individuals with adequate resources and dedication to carry out successful educational endeavors.

(2) Program sponsors shall provide appropriate oversight and supervision to ensure that programs are:

(A) educationally and fiscally sound; and

(B) meet the responsibilities listed in subsection (o) of this section.

(e) Levels of program approval.

(1) A program may be approved as a basic EMS training program or an advanced training program.

(2) ECA and EMT training shall be conducted by a basic program and may be conducted by an advanced program.

(3) EMT-I and EMT-P training shall be conducted by an advanced program.

(4) An advanced program shall be considered to have met the requirements for approval as a basic program.

(f) Currently approved programs. Programs that have obtained approval as of the effective date of this rule shall be considered to have met the requirements of subsections (g) or (h) of this section appropriate to their current level of approval.

(g) Basic approval requirements. To approve a basic program, an applicant shall:

(1) submit a letter of sponsorship;

(2) submit letters of intent from qualified providers of clinical and field internship experience appropriate to the level of training;

(3) have at least one course coordinator certified as an EMT or higher;

(4) have a program director who contributes an adequate amount of time to assure the success of the program. In addition to other responsibilities, the program director shall be responsible for the development, organization, administration, periodic review and effectiveness of the program. In addition to other duties, the program director may function as a course coordinator if appropriately certified; and shall:

(A) routinely review student performance to assure adequate progress toward completion of the program;

(B) review and supervise the quality of instruction provided by the program; and

(C) document that each graduating student has achieved the desired level of competence prior to graduation;

(5) have a medical director if appropriate to the level or content of training. The medical director shall be a licensed physician approved by the department with experience in and current knowledge of emergency care. The medical director shall be knowledgeable about educational programs for EMS personnel. In addition to other duties assigned by the program, the medical director shall:

(A) review and approve the educational content of the program's curricula;

(B) review and approve the quality of medical instruction provided by the program; and

(C) attest that each graduating student has achieved the desired level of competence prior to graduation;

(6) have an advisory committee representing the program's communities of interest (individuals, groups of individuals, or institutions impacted by the program) designated and charged with assisting the program director and medical director in formulating appropriate goals and standards, monitoring needs and expectations and ensuring program responsiveness to change;

(7) submit a completed application to the appropriate regional office; and

(8) demonstrate substantial compliance with the EMS education standards by successfully completing the self study/on-site review process outlined in the manual.

(h) Advanced approval requirements. To approve an advanced program, an applicant shall:

(1) have successfully operated a basic program;

(2) submit documentation of sponsorship by a regionally accredited post- secondary educational institution or a health care institution accredited by an organization recognized by the department, or any other entity meeting standards and criteria for sponsoring advanced EMS courses;

(3) submit letters of intent from qualified providers of clinical and field internship experience appropriate to the level of training offered;

(4) have at least one advanced course coordinator certified at or above the highest level of training to be offered by the program;

(5) have a program director who contributes an adequate amount of time to assure the success of the program. In addition to other responsibilities, the program director shall be responsible for the development, organization, administration, periodic review and effectiveness of the program; and shall:

(A) routinely review student performance to assure adequate progress toward completion of the program; and

(B) review and supervise the quality of instruction provided by the program; and

(C) document that each graduating student has achieved the desired level of competence prior to graduation;

(6) have a medical director who shall be a licensed physician approved by the department with experience in and current knowledge of emergency care. The medical director shall be knowledgeable about educational programs for EMS personnel. In addition to other duties assigned by the program, the medical director shall:

(A) review and approve the educational content of the program's curricula;

(B) review and approve the quality of medical instruction provided by the program; and

(C) attest that each graduating student has achieved the desired level of competence prior to graduation;

(7) have an advisory committee representing the program's communities of interest (individuals, groups of individuals, or institutions impacted by the program) designated and charged with assisting the program director and medical director in formulating appropriate goals and standards, monitoring needs and expectations and ensuring program responsiveness to change;

(8) submit a completed application to the appropriate regional office; and

(9) demonstrate substantial compliance with the EMS education standards by successfully completing the self-study/on-site review process outlined in the manual.

(i) Provisional approval. If following the department's review of the self-study, the applicant is found to be in substantial compliance with established EMS education standards outlined in the manual, the department shall issue a provisional approval.

(j) Lack of substantial compliance. If following the department's review of the self- study, the applicant is not found in substantial compliance with EMS education standards outlined in the manual, the program director and sponsor shall receive a written report detailing:

(1) any deficiencies; and

(2) specific recommendations for improvement that will be necessary before provisional approval may be granted.

(k) On-site review. After the completion of a provisionally-approved program's first course, an on-site review shall be conducted as outlined in the manual.

(1) If the program is found to be in substantial compliance with established EMS education standards and all fees and expenses associated with the self-study and on-site review have been paid, the department shall approve the program for a period of years as set forth in the manual and issue an approval number. The program director and sponsor shall receive a written report of the site-review team's findings, including areas of exceptional strength, areas of weakness and recommendations for improvement.

(2) If the program is not in substantial compliance with established EMS education standards, the program director and sponsor shall receive a written report detailing deficiencies and specific requirements for improvement. Depending on the nature and severity of the identified deficiencies within the program, the program may or may not be allowed to continue training activities. In all cases the department in consultation with program officials shall devise a remedial plan for the deficiencies.

(3) Upon completion of a remedial plan a program shall be approved for a period of years as outlined by the manual.

(l) Exception to sponsorship requirements for advanced programs.

(1) If an urgent need for an advanced program or an EMS operator instructor program exists in an area and cannot be met by an entity that meets the sponsorship requirements defined in subsection (h)(2) of this section, a licensed EMS provider may request the department to grant an exception to allow the EMS provider to sponsor an advanced program.

(2) Such request must be submitted in writing and must include the following:

(A) documentation of the need for an advanced program and of the urgency of the situation;

(B) documentation that the EMS provider has successfully operated a basic program;

(C) documentation of attempts by the EMS provider to affiliate with an entity that meets the requirements of subsection (h)(2) of this section;

(D) a letter from the EMS provider agreeing to assume all responsibilities of advanced program sponsorship;

(E) letters of intent from qualified providers of clinical and field internship experience appropriate to the level of training to be offered; and

(F) a letter of intent from a medical director who will agree to perform the responsibilities listed in subsection (h)(6) of this section.

(3) In determining whether the request for an exception is to be approved or denied, the department shall consider, but not be limited to, the following issues:

(A) the quality of the basic program previously operated by the EMS provider;

(B) evidence that the EMS provider possesses the resources and dedication necessary to operate an advanced program that complies with the EMS education standards;

(C) the efforts of the EMS provider to affiliate with an entity that meets the requirements of subsection (h)(2) of this section;

(D) the availability of an approved advanced program within a reasonable distance of the affected area;

(E) the availability of an approved advanced program that will provide training to the affected area by outreach or distance learning technology;

(F) the probable impact on existing approved advanced programs if the exception is approved; and

(G) the probable adverse consequences to the public health or safety if the exception is not approved.

(4) After evaluation by the department, the EMS provider shall be notified in writing of the approval or denial of the request.

(5) An exception to the requirements of subsection (h)(2) of this section shall meet all other requirements of subsection (h) of this section, including completion of the self-study and the on-site review process, and shall demonstrate substantial compliance with the EMS education standards as outlined in the manual before being granted approval by the department.

(m) National accreditation.

(1) If a program has been accredited through a national accrediting organization recognized by the department, the department may exempt the program from the program approval or re-approval process. If a program is denied, the program has an opportunity to request a hearing in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(2) Nationally accredited programs shall provide the department with copies of:

(A) the accreditation self study;

(B) the accreditation letter or certificate; and

(C) any correspondence or updates to or from the accrediting organization that impact the program's status.

(3) On request of the department, programs shall permit the department's representatives to participate in site visits performed by national accrediting organizations.

(4) If the department takes disciplinary action against a nationally accredited program for violations that could indicate substantial noncompliance with a national accrediting organization's essentials or standards, the department shall advise the national accrediting organization of the action and the evidence on which the action was based.

(5) If a program's national accreditation lapses or is withdrawn, the program shall meet all requirements of subsections (g) or (h) of this section within a reasonable period of time as determined by the department.

(n) Denial of program approval. A program may be denied approval, provisional approval, or re-approval for, but not limited to, the following reasons:

(1) failure to meet the requirements established in subsections (g) or (h) of this section;

(2) failure, or previous failure, to meet program responsibilities as defined in subsection (o) of the this section;

(3) conduct, or previous conduct, that is grounds for suspension or revocation of program approval as defined in subsection (t) of this section;

(4) falsifying any information, record, or document required for program approval, provisional approval, or re-approval;

(5) misrepresenting any requirements for program approval, provisional approval, or re-approval;

(6) failing or refusing to submit a self-study or a required report of progress toward remediation of a documented program weakness or areas of non-compliance within a reasonable period of time as determined by the department;

(7) failing or refusing to accept an on-site program review by a reasonably scheduled date as determined by the department;

(8) issuing a check to the department which is returned unpaid;

(9) being charged with criminal activity while approved to provide EMS training;

(10) having disciplinary action imposed by the department on the provider license, personnel certification or licensure, or program for violation of any provision of Health and Safety Code, Chapter 773 or 25 Texas Administrative Code, Chapter 157.

(o) Responsibilities. A program shall be responsible to:

(1) plan for and evaluate the overall operation of the program;

(2) provide supervision and oversight of all courses for which the program is responsible;

(3) act as liaison between students, the sponsoring organization and the department;

(4) submit course notifications and approval applications, along with nonrefundable fees if applicable, to the department as described in the manual;

(5) assure availability of classroom(s) and other facilities necessary to provide for instruction and convenience of the students enrolled in courses for which the program is responsible;

(6) screen student applications, verify prerequisite certification if applicable and select students;

(7) schedule classes and assign course coordinators and/or instructors;

(8) verify the certification, license, or other proper credentials of all personnel who instruct in the program's courses;

(9) maintain an adequate inventory of training equipment, supplies and audio- visual resources;

(10) assure that training equipment and supplies are available and operational for each laboratory session;

(11) secure and maintain affiliations with clinical, and field internship facilities necessary to meet the instructional objectives of all courses for which the program is responsible;

(12) develop field internship and clinical objectives for all courses for which the program is responsible;

(13) train and evaluate internship preceptors;

(14) maintain all course records for a minimum of 5 years;

(15) along with the course coordinator develop and use valid and reliable written examinations, skills proficiency verifications, and other student evaluations;

(16) along with the course coordinator, supervise and evaluate the effectiveness of personnel who instruct in the program's courses;

(17) along with the course coordinator, supervise and evaluate the effectiveness of the clinical and EMS field internship training;

(18) along with the course coordinator, attest to the successful course completion of all students who meet the programs requirements for completion;

(19) provide the department with information and reports necessary for planning, administrative, regulatory, or investigative purposes; and

(20) provide the department with any information that will effect the program's interaction with the department; including but not limited to changes in:

(A) program director;

(B) course coordinators;

(C) medical director;

(D) classroom training facilities;

(E) clinical or field internship facilities; and

(F) program's physical and mailing address.

(p) Program Re-approval.

(1) Prior to the expiration of a program's approval period, the department shall send a notice of expiration to the program at the address shown in the current records of the department.

(2) If a program has not received notice of expiration from the department 45 days prior to the expiration, it is the program's duty to notify the department and request an application for re-approval. Failure to apply for re-approval shall result in expiration of approval.

(3) Programs that have obtained approval as of the effective date of this rule shall be considered to have met the requirements of subsections (g) or (h) of this section appropriate to their current level of approval.

(4) To be eligible for re-approval, the program shall meet all the requirements in subsections (g) or (h) of this section as appropriate to the level of approval requested; and

(A) prepare an update to the program's self-study that addresses significant changes in the program's personnel, structure, curriculum, resources, policies, or procedures;

(B) document progress toward correction of any deficiencies identified by the program or the department through the self-study and on-site review process; and

(C) host an on-site review if one is deemed necessary by the department or requested by the program.

(q) Fees.

(1) The following nonrefundable fees shall apply:

(A) $25 for review of a basic self-study, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training;

(B) $75 for conducting a basic site visit;

(C) $50 for review of an advanced self-study, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training;

(D) $200 for conducting an advanced site visit;

(E) $25 for processing a basic course notification or approval application, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training; and

(F) $50 for processing an advanced course notification or approval application, except that this nonrefundable fee may be waived if the program receives no remuneration for providing training.

(2) Program approvals shall be issued only after all required nonrefundable fees have been paid.

(r) Course Notification and Approval.

(1) Each course conducted by an approved program shall be approved by notice from the department and the issuance of an assigned course number. A program shall not start a course, advertise a course, or collect tuition and/or fees from prospective students until the course is approved by the department and the assigned course number issued.

(2) The program director of an approved program shall submit notice of intent to conduct a course and the appropriate fee, if required, to the department on a form provided by the department at least 30 days prior to the proposed start date of the course. The notification shall include the following information:

(A) training level of course;

(B) dates and times classes are to be conducted;

(C) physical location of the classroom;

(D) identification of clinical sites and internship providers, if required;

(E) name of principle instructor;

(F) enrollment status;

(G) anticipated number of students;

(H) number of contact hours;

(I) amount of tuition to be charged;

(J) proposed ending date of the course; and

(K) signature of the program director

(3) A nonrefundable course fee, unless program is not remunerated for the course in any way, shall be submitted as follows:

(A) $25 for a Basic Course (ECA or EMT);

(B) $50 for an Advanced Course (EMT-Intermediate or Paramedic);

(C) $25 for an EMS Instructor Course; and

(D) $50 for an Emergency Medical Information Operator Instructor Course.

(4) The department may require submission of a written course approval application, in accordance with the guidelines set forth in the manual, in lieu of the course notification from programs which:

(A) have not successfully completed a site visit review;

(B) have proposed courses which do not conform to the approved parameters of the current program standards;

(C) have not conducted a course of the same level in the previous 12 months; or

(D) the department has probable cause to suspect are in noncompliance with the provisions of this chapter.

(s) Denial of a course notification or course approval. A course may be denied for, but not limited to the following:

(1) submission of an incomplete application;

(2) failure to meet all requirements outlined in the manual;

(3) failure of the program to hold current approval to conduct the level of the course proposed;

(4) failure to follow the guidelines for submission of the course notification or course approval application and supporting documents;

(5) falsification or misrepresentation of any information required for course notification or course approval; and/or

(6) issuing a check which is returned unpaid.

(t) Disciplinary actions.

(1) Emergency suspension. The bureau chief may issue an emergency order to suspend a program's approval if the bureau chief has reasonable cause to believe that the conduct of the program creates an immediate danger to the public health or safety.

(A) An emergency suspension shall be effective immediately without a hearing or written notice to the program. Notice to the program shall be presumed established on the date that a copy of the emergency suspension order is sent to the address shown in the current records of the department. Notice shall also be sent to the program's sponsoring entity.

(B) If a written request for a hearing is received from the program within 15 days of the date of suspension, the department shall conduct a hearing not earlier than the 10th day nor later than the 30th day after the date on which the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(2) Non-emergency suspension or revocation. A program's approval may be suspended or revoked for, but not limited to, the following reasons:

(A) failing to comply with the responsibilities of a program as defined in subsection (o) of this section;

(B) failing to maintain sponsorship as identified in the program application and self-study;

(C) failing to maintain employment of at least one course coordinator whose current certifications are appropriate for the level of the program;

(D) falsifying a program approval application, a self-study, a course notification or course approval application, or any supporting documentation;

(E) falsifying a course completion certificate or any other document that verifies course activity and/or is a part of the course record;

(F) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception, or misrepresentation;

(G) failing to complete and submit course notifications or course approval applications and student documents within established time frames;

(H) offering or attempting to offer courses above the program's level of approval;

(I) compromising or failing to maintain the integrity of a department- approved training course or program;

(J) failing to maintain professionalism in a department-approved training course or program;

(K) demonstrating a lack of supervision of course coordinators or personnel instructing in the program's courses;

(L) compromising an examination or examination process administered or approved by the department;

(M) accepting any benefit to which there is no entitlement or benefitting in any manner through fraud, deception, misrepresentation, theft, misappropriation, or coercion;

(N) failing to maintain appropriate policies, procedures, and safeguards to ensure the safety of students, instructors, or other course participants;

(O) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;

(P) maintaining a passing rate on the examinations for certification or licensure that is statistically and significantly lower than the state average;

(Q) failing to maintain the fiscal integrity of the program;

(R) issuing a check to the department which is returned unpaid;

(S) failing to maintain records for initial or continuing education courses;

(T) demonstrating unwillingness or inability to comply with the Health and Safety Code and/or rules adopted thereunder;

(U) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code or the rules adopted thereunder;

(V) committing a violation within 24 months of being placed on probation; and/or

(W) offering or attempting to offer courses during a period when the program's approval is suspended.

(3) Notification. If the department proposes to suspend or revoke a program's approval, the program shall be notified at the address shown in the current records of the department. The notice shall state the alleged facts or conduct warranting the action and state that the program has an opportunity to request a hearing in accordance with Administrative Procedure Act, Government Code, Chapter 2001.

(A) The program may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the chief.

(B) If the program does not request a hearing within 15 days after the date of the notice of opportunity, the program waives the opportunity for a hearing and the department shall implement its proposal.

(4) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(5) Re-application.

(A) Two years after the revocation or denial of approval, the program may petition the department in writing for the opportunity to reapply.

(B) The department shall evaluate the petition and may allow or deny the opportunity to submit an application.

(C) In evaluating a petition for permission to reapply, the department shall consider, but is not limited to, the following issues:

(i) likelihood of a repeat of the violation that led to revocation;

(ii) the petitioner's overall record as a program;

(iii) letters of support or recommendation;

(iv) letters of protest or non-support of the petition; and

(v) the need for training in the area the program would serve.

(D) The petitioner shall be notified within 60 days at the address shown in the current records of the department of the decision to allow or deny the submission of an application for re-approval.

(6) A program whose approval expires during a suspension or revocation period may not petition to reapply until the end of the suspension or revocation period.

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 January 18, 2001.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: September 22, 2000
For further information, please call: (512) 458-7236

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 1. PLAN OF OPERATION

28 TAC §5.4007, §5.4008

The Commissioner of Insurance adopts amendments to §5.4007 and §5.4008, concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association (Association or TWIA). The amendments to §5.4007 and §5.4008 are adopted without changes to the text published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12320) and will not be republished.

The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. The Association's plan of operation specifies in §5.4008 the applicable building code standards to qualify for coverage from the Association for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after September 1, 1998, the effective date of the Building Code for Windstorm Resistant Construction (code) and the Windstorm Resistant Construction Guide (guide) adopted by reference in §5.4007(b). The proposed amendments are necessary to make editorial and clarifying changes that make the rules, the code and the guide more user-friendly and easier to use. The amendments to §5.4007 and §5.4008 insert new effective dates for the amendments to the code and the guide and are for clarification. The amendment made to §5.4007(b) will take effect on April 1, 2001. The amendments to §5.4008 are necessary to specify a new effective date, April 1, 2001, for the amendments to the code to take effect, and to change the reference from Windstorm Resistant Construction Code to Windstorm Resistant Construction Guide to clarify the document to be used.

The amendments to the code and the guide are a result of recommendations by the Building Code Advisory Committee on Specifications and Maintenance to expand the available use of the code and the guide in the designated catastrophe areas. The advisory committee's recommended changes were submitted to the Commissioner on November 13, 2000, and those recommended changes were considered by the Commissioner at a rulemaking hearing held on January 4, 2001.

Amended §5.4007 and §5.4008 adopt by reference the following amendments to the guide and the code: The amendments to the guide are as follows:

A. Section 300, Prescriptive Requirements, Inland Construction Guidelines and Section 400, Prescriptive Requirements, Seaward Construction Guidelines.

1. 312 and 412 Framing. Permit the use of wood structural panels to resist uplift loads.

The amendments to the code are as follows:

A. Section 200, Basic Definitions, Assumptions, and Limitations of the Prescriptive Code: Clarify the maximum limits for overhangs at gable endwalls.

B. Section 300, Prescriptive Requirements, Area Inland of Established Dividing Line and Section 400, Area Seaward of Established Dividing Line.

1. 301 and 401, Foundations. A typographical error regarding the maximum spacing for slab reinforcement was corrected.

2. 303 and 403, Wood Stud Wall Framing. The requirements for balloon and platform framing have been clarified which included figures that illustrate the construction of building corners when balloon framing is used. The corner stud pack arrangement detail was revised to reflect the use of a nailed holddown connector rather than bolted holddown connectors, which is more representative of the current construction practices along the Texas Gulf Coast. Guidance has been provided for the connection of multi-level top plates along exterior walls. A typographical error in the text for a reference in framing around garage doors was corrected. The uplift capacities for wood structural panels used for wall bracing and uplift were modified, and an additional table was included for uplift capacities when 10d fasteners are used. The blocking requirements for wood structural panels used for wall bracing and uplift were simplified by permitting the use of a single 2 by 4 block if the gypsum wallboard will not have a horizontal panel edge at the same location as a horizontal panel edge of the wood structural panels. The uplift capacities for wood structural panels used for uplift resistance were modified for the use of inch wood structural panels along with providing an option for use of inch wood structural panels. Two fastener options are provided in the tables for the uplift capacities for wood structural panels when used exclusively for uplift resistance. The blocking requirements for wood structural panels used for uplift resistance only were simplified by permitting the use of a single 2 by 4 block if the gypsum wallboard will not have a horizontal panel edge at the same location as a horizontal panel edge of the wood structural panels.

3. 306 and 406, Roof Framing. A new section was created to provide guidance for the construction of dormers. The existing section on construction of overhangs at gable endwalls was divided into three subsections to provide options for the construction of three types of gable endwall overhangs: (1) laddered soffits, (2) outlookers (laid on end), and (3) outlookers (laid flat). The new options also provide guidance on the attachment of the outlookers to the roof framing, and ten figures were included to illustrate the construction of the gable endwall overhangs. The attachment of roof sheathing along the perimeter of the roof has been clarified.

D. Appendices.

1. Texas Department of Insurance Standard TDI 1-98. A section was added to specify the information that should be reported following the tests specified in TDI 1-98. A clarification was included to indicate that guidance may be needed to determine the appropriate impact locations and cyclic loading requirements.

2. Figures. Illustrations are added to correspond to changes and clarifications for the code.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to the Insurance Code Article 21.49 and §36.001. Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the Association. Article 21.49, §6C requires the Commissioner to appoint a Building Code Advisory Committee on Specifications and Maintenance to advise and make recommendations to the Commissioner on building specifications and maintenance in the Association's plan of operation for structures to be eligible for windstorm and hail insurance through the Association. Article 21.49, §5(c) provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation with the advice of the Association's board of directors. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER L. AQUATIC VEGETATION MANAGEMENT

31 TAC §§57.930 - 57.934, 57.936

The Texas Parks and Wildlife Commission adopts new §§57.930-57.934 and 57.936, concerning the statewide aquatic vegetation management plan. Sections 57.930, 57.932, 57.934, and 57.936 are adopted with changes to the proposed text as published in the July 21, 2000, issue of the *Texas Register* (25 TexReg 6937). Section 57.931 and §57.933 are adopted without changes to the proposed text and will not be republished.

Section 57.930 has been changed, in response to a comment, to exclude "water being transported in a canal from the definition of "public body of surface water." A definition of "canal" has been added as §57.930(1). This change clarifies that the rules do not apply to canals that are transporting water solely for agricultural or industrial purposes.

The definition of "nuisance aquatic vegetation" in §57.930(8) has been clarified and now applies to vascular plants only. One commenter asked whether the rules were intended to apply to use of algaecides. The rules are not intended to apply to algae control. The definition of "nuisance aquatic vegetation" has also been changed, in response to a comment, to focus on potential for interference with water body uses. This change better reflects what "integrated pest management" means in the aquatic vegetation context.

A definition of "treatment proposal" has been added as §57.930(15). This change clarifies that a "treatment proposal" differs from a "local plan". The rules envision that persons operating under the state plan will submit treatment proposals to TPW that describe actions planned to address one or more nuisance aquatic vegetation problems. Treatment proposals are subject to review and approval by TPW as provided in §57.932(a)(3). A treatment proposal may propose a one-time treatment event, or a series of treatment events over several months. The guidance document will contain a form for submittal of treatment proposals. The form will ask for specific information about the type of nuisance aquatic vegetation problem faced (e.g. hydrilla) and the proposed treatment method (e.g. mechanical harvester).

By contrast, the purpose of a local plan is to transfer to a governing entity TPW's authority to oversee nuisance aquatic vegetation control on the public bodies of surface water that the local plan covers. Local plans must be approved by TNRCC, TDA, and TPW, as provided in §57.934. Where a local plan governs, treatment proposals are not subject to TPW approval. Local plans may or may not address specific nuisance aquatic vegetation problems and treatment alternatives. The law requires that the local plan be at least as stringent as the state plan. Section 57.932 has been changed, in response to comments, to add a "Purpose" statement in §57.932(a)(1). Section 57.932 has also been changed, in response to comments, to add "Standards" in §57.932(a)(2) that will govern the content of TPW guidance regarding nuisance aquatic vegetation. Section 57.932(a)(3), "Modification of Guidance", has been added, in response to comments, to set out a procedure for public notification when changes to the TPW guidance document are anticipated. Section 57.932(a)(4) contains the substance of what was §57.935 in the proposal. This section was moved to keep all notice requirements for treatment proposals under the state plan in the same section of the rules. Section 57.932 has been renumbered to reflect these changes. Some clarifying language has been added to §57.932 to reflect, as HB 3079 intends, that where a local plan has been adopted and approved, herbicide application must be done in accordance with the local plan. Where no local plan has been adopted and approved, the state plan applies, and herbicide application must be done in accordance with the state plan. An adopted and approved local plan supersedes the requirements of §57.932. Section 57.934 has been expanded, in response to comments, to provide more detail regarding the content of local plans and the process for local plan approvals. Section 57.936, regarding recordkeeping, has been changed, in response to a comment, to clarify that records to be kept include date, place, location, type, and amount of all aquatic herbicide applications.

House Bill 3079 of the 76th Legislature requires TPW to "develop and by rule adopt a state aquatic vegetation management plan following the generally accepted principles of integrated pest management". According to HB 3079, the state plan must: (1) establish minimum standards for a governing entity that regulates a public body of surface water; (2) require that any application of aquatic herbicide comply with label rates approved by the U.S. EPA; (3) ensure that any public drinking water provider that has an intake within two river miles of a site at which an application of aquatic herbicide is proposed to occur receives notice of the proposed application not later than the 14th day before the application is to occur; (4) provide for the coordination, oversight, public notification, and enforcement of all aquatic herbicide use to protect state fish and wildlife resources and habitat and to prevent unreasonable risk from the use of any aquatic herbicide; and (5) require that the written notice of a proposed application of herbicide include information demonstrating that the proposed application of herbicide under a plan will not result in exceeding the maximum contaminant level of the herbicide in finished drinking water as set by the TNRCC and EPA, or the maximum label rate, if the aquatic herbicide does not have an established maximum contaminant level.

The adopted rule incorporates the specific requirements of the statute regarding aquatic herbicide use. To implement the more general requirements of the statute, the rule envisions that TPW will create a guidance document that will help governing entities make decisions to manage nuisance aquatic vegetation consistent with the principles of integrated pest management.

Public bodies of surface water in Texas have many different characteristics, for example, depth, surface area, temperature, flow, shoreline, climate, wildlife, clarity, chemistry, and connection to other water bodies. Uses differ as well, and may include drinking water use, industrial use, agricultural use, recreational use, navigational use, and wildlife habitat use. There are a number of known species of nuisance aquatic vegetation that pose a variety of threats, including hydrilla, salvinia, waterhyacinth, Eurasian watermilfoil, waterlettuce, and alligatorweed. Strategies for prevention of nuisance aquatic vegetation problems include prevention of excess nutrient loading, prevention of habitat disturbance, and establishment of native aquatic vegetation. Options for controlling established nuisance aquatic vegetation include mechanical methods, such as harvesters, shredders, drawdowns, booms, bottom barriers, shading, and hand removal; biological methods, such as grass carp and alligatorweed flea beetles; chemical controls, such as 2,4-D; chelated copper; diquat; endothall; flouridone; and glyphosate. There are also experimental control options.

The guidance document will contain the level of detail necessary to guide governing entities through the available management choices, in light of the diversity of water body characteristics, water body uses, aquatic vegetation problems, and control options. The guidance document establishes a process for evaluating the situation and choosing the appropriate management strategy, rather than mandating any one solution. Management through the guidance document allows TPW greater flexibility to change management approaches, based for example on new scientific developments, without going through the more time-consuming rulemaking process. As §57.932(a)(3) provides, proposed changes to the guidance document will be publicly noticed

so that interested persons can be aware of what revisions are being proposed and can have an opportunity to comment.

The standards set forth in §57.932(a)(2) reflect TPW's overall principles regarding nuisance aquatic vegetation management in Texas. The standards govern the content of the guidance document, without mandating specific solutions on specific water bodies.

Section 57.932(a)(3) has been added in response to comments that expressed concern about the possibility of changes being made to the guidance document that might be unknown to governing entities or other interested persons. This concern is addressed by creating a procedure for notice and public comment that must precede guidance document changes.

TPW review, pursuant to §57.932(a)(4), of treatment proposals is intended to assure that these standards are being followed when management strategies are proposed. This review extends beyond herbicide use so that TPW can apply the principles of integrated pest management to all proposed control measures, consistent with HB 3079.

Subsection 57.932(b) specifically applies to use of aquatic herbicides to control nuisance aquatic vegetation. The substantive requirements in this subsection closely follow the statutory requirements for aquatic herbicide use set forth in HB 3079, except that a public notification requirement has been added that implements HB 3079, §1 (Parks and Wildlife Code §11.082(c)(4)).

Sections 57.933 and 57.934 address local plans for aquatic vegetation control. Section 57.933 implements Parks and Wildlife Code §11.083. Section 57.934 sets out procedures for local plan approval. In response to comments, these procedures have been described in more detail than in the proposed rule. A public participation requirement has been added as well as deadlines for agency responses to local plan submittals.

Section 57.936 has been modified in response to comments to add a specific requirement for recordkeeping regarding aquatic herbicide applications.

Groups and associations supporting the rule included the City of Austin, the Guadalupe/Blanco River Authority, the Texas Aquacultural Association, and the Texas Agricultural Industries Association. The City of San Angelo opposed the rule.

The department received 31 comments concerning adoption of the proposed rules. Eight individuals, including Representatives Kip Averitt and Jim Dunnam, and the City of Hallsburg commented regarding hydrilla coverage at Tradinghouse Creek Reservoir. A Waco-area newspaper ran an article that included a statement (not made by TPW) that TPW would not support action to control hydrilla until 30% lake surface coverage was reached. The commenters advocated a 10% standard, believing that 30% coverage would interfere with swimming, water skiing, and other lake uses. TPW responds that the rules adopted do not set any percentage standard for action on a particular lake. Instead, all nuisance aquatic vegetation problems will be evaluated for each individual public body of surface water, and appropriate measures will be chosen based on the uses of the water body and the nature of the problem. No changes were made as a result of the comments.

One individual commented in favor of mechanical control of water hyacinth in Caddo Lake, and noted that the moss and lily pads were heavy. This comment did not propose any changes to proposed rules. TPW intends to continue supporting appropriate management of aquatic vegetation on Caddo Lake, consistent with the rules and guidance document.

One individual commented in favor of restricting chemical controls to the utmost level possible, and supported investigating importation of manatees from Florida to control aquatic vegetation. TPW does not believe that manatees are a practical solution to nuisance aquatic vegetation problems in Texas. Chemical control measures are an available tool under the rules and guidance document if used in a manner consistent with the principles of integrated pest management. No change to the rules was made based on this comment.

The City of Mesquite commented regarding its practices when using algaecides in its ponds and lakes. The rules are not intended to deal with use of algaecides, accordingly, the definition of nuisance aquatic vegetation in §57.930(8) has been changed to clarify that the rules apply to vascular plants.

Guadalupe-Blanco River Authority commented in general support of the rules, and requested that TPWD remain active and involved in nuisance aquatic vegetation management, beyond review of treatment proposals and local plans.

LCRA requested that "public body of surface water" be defined to include "water being transported in a canal", and that a definition of canal be added. The rule was changed accordingly.

One individual commented that some non-native aquatic vegetation, such as hydrilla, has desirable attributes for aquatic life in some water bodies, while other species, such as water hyacinth and giant salvinia, have no redeeming features and should be totally eliminated. TPW believes that the guidance document will allow the flexibility to deal with specific aquatic vegetation issues on specific bodies of surface water, taking into account the uses of the water body and the type of vegetation present. This commenter's concerns should be addressed during the decision-making process that governing entities and TPW will go through in evaluating individual aquatic vegetation situations. No changes were made based on this comment.

Novartis Crop Protection proposed five changes: 1. An emergency provision for pesticide use. TPW disagrees with this proposed change, on the basis that the herbicide provisions in the rules are closely modeled on the language of HB 3079, which does not authorize an emergency exception. 2. A due process provision with an opportunity to appeal if a treatment proposal is denied. TPW disagrees with this comment. This would, in TPW's view, amount to a contested case hearing process for treatment proposals, which could require additional staff resources and create delays. 3. A requirement that local entities show a minimum level of expertise in the implementation of the state plan or their own approved plan. TPW disagrees with this comment. TPW will certainly consult with governing entities on how best to implement treatment proposals and local plans, however, evaluating the expertise of governing entities would be impractical and resource-intensive. 4. A requirement that local plans be adopted into the state rules if they are more stringent than the state plan with regard to pesticide application to avoid federal preemption. TPW disagrees with this comment. HB 3079 does not require this, and this would encumber adoption of local plans. If a local plan does propose more stringent controls on pesticide use than federal or state regulation requires, it may be necessary for the governing entity to work with TDA and EPA to change pesticide labels in order to avoid a preemption problem. This is outside TPW's jurisdiction. In any event, it is unclear that adoption of the local plan as

a TPW rule would avoid the federal preemption problem. 5. Require that a public meeting regarding a local plan be held by a state agency or the governing entity. TPW agrees that a state agency should hold this meeting, and this change to the rules has been made.

One individual advocated keeping hydrilla out of Texas lakes. No change was made based on this comment.

The San Jacinto River Authority (SJRA) commented regarding the fiscal note, and stated that SJRA spent $50,000 on water hyacinth control last year and over $46,000 so far this year. TPW responds that the fiscal note is intended to predict the fiscal effect that the rules are expected to have on state and local governments, not the fiscal effect of nuisance aquatic vegetation problems. TPW agrees that nuisance aquatic vegetation can be expensive to treat, however, these costs would exist whether or not these rules were adopted. Overall, TPW believes that the rules will help state and local governments save money by guiding the choice of the safest and most economical treatment alternatives. No change was made based on this comment. SJRA also commented requesting clarification whether local plans could prohibit herbicide applications by non-licensed applicators. TPW believes that a local plan that proposed to prohibit such applications would be approvable by TPW because it would be more stringent than the state plan. To make such a prohibition fully effective, however, it might be necessary for the governing entity to work with TDA and EPA to change pesticide labels and thereby avoid a federal preemption problem. No change was made based on this comment.

The Sabine River Authority (SRA) commented as follows: 1. The lack of a liability cap and funding creates practical problems for nuisance aquatic vegetation control. TPW responds that these are issues for the Legislature. No change was made based on this comment. 2. SRA disagrees with proposals to include more of the guidance document into the rules. Overall, TPW agrees with this comment. No change was made based on this comment. 3. Where no governing entity controls a public body of surface water, the rules should make TPW responsible for aquatic vegetation management activities. TPW responds that under the state plan, TPW is responsible for review of treatment proposals. TPW, TNRCC, and TDA are responsible for review of local plans. HB 3079 does not charge TPW with a duty to take control measures on bodies of surface water, nor does it provide resources to do so. Accordingly, while TPW will exercise its authority over exotic species as provided by statute and rule, TPW disagrees with this comment and no change is made to the rules. 4. The rules should explicitly limit control measures that could cause the spread of nuisance aquatic vegetation, for example, use of mechanical harvesters that could result in downstream infestation from release of viable plant fragments. TPW responds that it will consider this issue in its review of treatment proposals and local plans. No change was made based on this comment. 5. SRA made a number of comments regarding the guidance document, which are being considered for inclusion in that document as appropriate.

The City of San Angelo opposed the rules. In particular, the City objected that: 1. The City will have to staff and finance the administration of a state program. TPW disagrees. The rules do not impose a mandate on local governments to address nuisance aquatic vegetation. Instead, the rules say that if a local government intends to treat nuisance aquatic vegetation, it must do so consistent with a state plan so that the most effective, economical means are chosen and hazards are minimized. The rules provide a mechanism for transmitting TPW's expertise into local government decisions. This allows local governments to take advantage of state resources, which should benefit local governments rather than imposing additional costs. No change was made based on this comment. 2. Herbicide regulation is already done by another state agency and the rule duplicates that effort. TPW responds that the Legislature, through HB 3079, determined that TPW should develop the overall state plan, in consultation with TDA and TNRCC. TPW believes that herbicides are one tool that can be used to control nuisance aquatic vegetation, however, herbicides may not be the appropriate tool in a certain case when all factors are considered, even though federal and state regulation might allow herbicide use. HB 3079, as implemented through these rules, encourages governing entities to address the underlying causes of their problems and arrive at comprehensive solutions consistent with the principles of integrated pest management. These objectives go beyond ensuring the safe use of herbicides. No change was made based on this comment.

SMART (Sensible Management of Aquatic Resources Team), Texas Clean Water Action, and the Texas Center for Policy Studies, supported by the Lone Star Chapter of the Sierra Club, recommended changes to the proposed rules as follows: 1. Revise the definition of nuisance aquatic vegetation. TPW agrees with this comment and the rule is changed accordingly. 2. Add a section requiring that all applications of aquatic herbicide be consistent with the state plan. TPW believes that this proposed section would duplicate existing provisions of the rules and the statute, in particular §57.932(b)(1) of the rules and §11.084(a) of the statute, accordingly, no change is made in response to this comment. 3. Inclusion of aquatic vegetation management principles. TPW generally agrees with this comment and has accordingly revised §57.932(a). TPW does not agree with all of the specific principles advanced in the comment, particularly the preference for nonchemical control measures and the preference for least toxic chemicals if chemical measures are the only alternative. The preference for nonchemical control measures may be, in an individual case, inconsistent with the principles of integrated pest management, and may lead to inappropriate use of nonchemical measures, such as grass carp. While TPW agrees that less toxic chemicals are preferable, TPW does not have the expertise to judge the relative toxicity of EPA- and TDA-approved chemicals, and believes that this issue should be addressed through herbicide labeling. 4. Requirement of water body classification. TPW has included a description of the "Tier" system in the rules, in response to this comment, however, the rules make clear that the Tier system is a component of the guidance document that can be changed or eliminated within that document if a superior system is found. The comment also proposes that TPW make the initial Tier determination and treatment proposal, rather than the governing entity. TPW believes that this change would require a significant resource commitment, and accordingly disagrees. 5. More detail regarding the requirements for local plan approval. Overall, TPW agrees with this comment, and the rule has been changed accordingly. 6. Enhancement of recordkeeping requirements. TPW agrees with this comment and the rule has been changed accordingly. 7. Procedures and notice for guidance document modification. TPW agrees with this comment and the rule has been changed accordingly.

The City of Tyler commented as follows: 1. The meaning and intent of the proposed rules is vague and generic. TPW responds that a number of changes have been made to clarify the rules.

2. Tyler asks whether the rule applies strictly to aquatic elevation or whether it includes the application of herbicides to the shoreline above pool elevation. TPW responds that the statute uses the term "in a public body of surface water". 3. Clarification is requested regarding the 14-day notice requirement. Simply stated, under the state plan, TPW must be notified of all treatment proposals no later than the 14th day before the control measures are to begin. Where the treatment proposal includes use of aquatic herbicides, a number of additional requirements apply, as listed in §57.932(b). These include 14-day notice to the governing entity and certain public drinking water providers, as well as TPW. 4. The comment asks whether there is a list of aquatic herbicides that are acceptable for use in a drinking water supply. TPW responds that the guidance document identifies aquatic herbicides that are usable on certain species of nuisance aquatic vegetation, and the herbicide label should be consulted regarding restrictions on use in drinking water supplies. 5. The comment asks whether a local plan can prohibit the application of aquatic herbicide by individual property owners around a drinking water supply. TPW believes that a local plan that proposed to prohibit such application would be approvable by TPW because it would be more stringent than the state plan. To make such a prohibition fully effective, however, it might be necessary for the governing entity to work with TDA and EPA to change pesticide labels and thereby avoid a federal preemption problem. No changes other than clarifications were made based on the City of Tyler's comments.

The City of Wichita Falls expressed several concerns. 1. The City is concerned about reliance on a guidance document whose content is unknown and may change. TPW responds that the rules have been changed to establish a public procedure for changing the guidance document. The initial version of the guidance document will be finalized before the rules become effective. 2. The City expressed concern over whether chemicals used for water treatment and algae control will be regulated by these rules. TPW responds that the rule has been clarified and applies only to measures used to control vascular plants, not to water treatment chemicals or algae control chemicals. 3. The City questions why the notice requirement for public drinking water providers applies to upstream as well as downstream intakes. TPW responds that HB 3079 uses the term "within two river miles", not differentiating between upstream and downstream intakes. In some lakes, moreover, the currents may vary with conditions such as rainfall and releases. No changes were made based on this comment.

One individual commented in favor of aggressive control of "water weeds". No change was made based on this comment.

One individual requested that the scope of the rules include drainage areas and areas under the direct influence of a related water table. TPW responds that the scope of HB 3079 is public bodies of surface water. No change was made based on this comment.

One individual commented in favor of compassion for all of the earth's creatures. No change was made based on this comment.

One individual commented that approved aquatic herbicides are potentially the safest, most efficacious and cost-effective treatment, and questions whether herbicide opponents would give up outboard motors that have MTBE, gasoline, and benzene emissions. This individual also made comments regarding the guidance document. No change was made based on this comment.

The new rules are adopted under Parks and Wildlife Code, §11.082(a), which requires the department to develop and by rule adopt a state aquatic vegetation management plan.

§57.930. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms in this subchapter shall have the meanings assigned in the Texas Parks and Wildlife Code.

(1) Canal--an artificial waterway used for the transportation of water for agricultural and/or industrial purposes but for no other purpose.

(2) EPA--the United States Environmental Protection Agency.

(3) Governing entity--the state agency or other political subdivision with jurisdiction over a public body of surface water.

(4) Integrated pest management--the coordinated use of pest and environmental information and pest control methods to prevent unacceptable levels of pest damage by the most economical means and in a manner that will cause the least possible hazard to persons, property, and the environment. Integrated pest management includes consideration of ecological, biological, chemical, and mechanical strategies for control of nuisance aquatic vegetation.

(5) Licensed Applicator--a person who holds a valid license for aquatic herbicide application from the Texas Department of Agriculture.

(6) Local plan--a local aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.083 and meeting the requirements in §57.933 of this title (relating to Adoption and Applicability of Local Aquatic Vegetation Plans) and §57.934 of this title (relating to Local Aquatic Vegetation Plan).

(7) MCL--maximum contaminant level.

(8) Nuisance aquatic vegetation--any non-native or native vascular plant species that is determined, in consideration of TPWD guidance, to have the potential to substantially interfere with the uses of a public body of surface water.

(9) Public body of surface water--any body of surface water that is not used exclusively for an agricultural purpose. The term does not include impounded water on private property or water being transported in a canal.

(10) Public drinking water provider--any person who owns or operates a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals at least 60 days out of the year.

(11) State plan--the state aquatic vegetation management plan authorized by Parks and Wildlife Code, §11.082, and described in §57.931 of this title (relating to State Aquatic Vegetation Plan Applicability) and §57.932 of this title (relating to State Aquatic Vegetation Plan).

(12) TDA--the Texas Department of Agriculture.

(13) TNRCC--the Texas Natural Resource Conservation Commission.

(14) TPWD--the Texas Parks and Wildlife Department.

(15) Treatment proposal--a submission to TPWD on a TPWD-approved form that describes intended measures to control nuisance aquatic vegetation.

(16) Water district--a conservation and reclamation district or an authority created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, that has jurisdiction over a public body of surface water. The term does not include a navigation district or a port authority.

§57.932. State Aquatic Vegetation Plan.

(a) Requirements Applicable to All Measures to Control Nuisance Aquatic Vegetation.

(1) Purpose. The purpose of the state aquatic vegetation plan is to provide for the coordination, oversight, guidance and where applicable public notice and enforcement of all activities related to the management of nuisance aquatic vegetation on public bodies of surface water. This includes, but is not limited to, coordination, oversight, public notification and enforcement of all aquatic herbicide use to protect state fish and wildlife resources and habitat and to prevent unreasonable risk from the use of any aquatic herbicide.

(2) Standards. All measures that a person undertakes to control nuisance aquatic vegetation shall be consistent with the principles of integrated pest management as defined in §57.930 of this title (relating to Definitions). A guidance document prepared by TPWD will describe measures to control nuisance aquatic vegetation, and the minimum standards applicable to governing entities that regulate a public body of surface water and persons who propose to treat nuisance aquatic vegetation. The guidance document will include:

(A) Encouragement of the growth and, where lacking, establishment of native aquatic vegetation that provides habitat for fish, the food chain that supports desirable fish populations, other desirable aquatic organisms and wildlife without interfering with reasonable recreational use, navigation, drinking water supply, flow of water to power plants, industrial use, irrigation, or other beneficial uses;

(B) Encouragement of efforts to address the root causes supporting the overgrowth of nuisance aquatic vegetation;

(C) Support for continued monitoring and assessment activities to identify new nuisance aquatic vegetation species and act appropriately to eliminate or minimize ecological impacts;

(D) Support for continued research and evaluation of vegetation control methods that will cause the least possible hazard to persons, property and the environment as required by application of integrated pest management principles;

(E) Encouragement of public input in decision-making processes;

(F) Encouragement of ongoing education and outreach efforts as to the importance of managing aquatic vegetation to assure the ecological health of public waters;

(G) Information to guide individuals wishing to treat nuisance aquatic vegetation; and

(H) Criteria for choosing management responses to nuisance aquatic vegetation problems based on the uses of the water body and the nature of the problem. These criteria may take the form of a three-tier system: Tier I, which calls for immediate response and eradication; Tier II, which calls for ongoing control where nuisance aquatic vegetation is well-established; and Tier III, which calls for monitoring and a contingency plan in case the problem worsens. The three-tier system is subject to change as provided in paragraph (3) of this subsection.

(3) Modification of Guidance. TPWD will publish notice in the Texas Register and seek input from interested parties when it proposes to modify the guidance document. TPWD will also mail notice to persons who so request. Notice shall be provided at least 60 days prior to the effective date of any changes to the guidance document. The notice shall describe the proposed modifications and the reasons for the modifications, and how comments on the proposed modifications may be made to TPWD.

(4) Review by TPWD. Prior to undertaking any measures to control nuisance aquatic vegetation, a person operating under the state plan shall provide to TPWD a treatment proposal, on a form included in the guidance document, no later than the 14th day before the measures are to begin. TPWD will review and may disapprove or amend any treatment proposal and will respond no later than the day before the proposed control measures are to begin. Where appropriate, TPWD will provide technical advice and recommendations regarding prevention of nuisance aquatic vegetation problems. The person submitting the treatment proposal shall have the burden of demonstrating compliance with the state plan. Where a local plan governs, treatment proposals are not subject to TPWD review, approval, and amendment, but are to be submitted to TPWD (pursuant to §57.934(b) of this title, relating to Local Aquatic Vegetation Plan) for informational purposes.

(b) Additional Requirements Applicable to the Use of Aquatic Herbicides to Control Nuisance Aquatic Vegetation.

(1) No person shall apply aquatic herbicide in a public body of surface water where the state plan governs unless the herbicide is applied in a manner consistent with the state plan. No person shall apply aquatic herbicide in a public body of surface water where a local plan governs unless the herbicide is applied in a manner consistent with the local plan. Where a local plan has been adopted and approved, the requirements of the local plan supersede the requirements of this subsection.

(2) All persons intending to apply an aquatic herbicide shall provide written notice to the governing entity, TPWD, all public drinking water providers that have an intake within two river miles of a site at which an application of aquatic herbicide is proposed to occur, and all persons who have requested notice (TPWD will maintain a list) no later than the 14th day before the application is to occur. The notice shall include:

(A) the dates of the proposed application;

(B) all label information for the aquatic herbicide to be applied;

(C) a statement that TPWD's guidance document has been reviewed and the proposed herbicide application is consistent with the principles of integrated pest management as set forth in subsection (a)(2) of this section and that document;

(D) information demonstrating that the proposed application will not result in exceeding:

(i) the maximum contaminant level of the herbicide in finished drinking water as set by the TNRCC and the EPA; or

(ii) if the aquatic herbicide does not have an MCL established by the TNRCC and the EPA, the maximum label rate; and

(E) TDA applicator license number, if any.

(3) An individual who is not a licensed applicator may not apply aquatic herbicides unless the governing entity affirmatively finds, after receiving the proper notice as provided in subsection (b)(2) of this section, that the application will be consistent with the state plan. The governing entity shall respond to the notice given by an individual who is not a licensed applicator no later than the day before the date the application is scheduled to occur.

(4) An individual who is a licensed applicator may apply aquatic herbicide after notice consistent with subsection (b)(2) of this section if the governing entity finds that the application would be consistent with the state plan or does not disapprove the application no later than the day before the application is to occur.

(5) After receiving notice of a proposed application of aquatic herbicide, a governing entity, or TPWD in the absence of such an entity, shall:

(A) provide the individual proposing the application with the state plan;

(B) notify the individual in writing that it is a violation of state law to apply aquatic herbicides in a public body of water in a manner inconsistent with the state plan; and

(C) determine whether the proposed application is consistent with the state plan.

(6) The governing entity shall prohibit the proposed application of aquatic herbicide if the governing entity finds that the proposed application is inconsistent with the state plan, or, if the proposed application is consistent with the state plan, so notify the person.

(7) State money shall not be used to pay for treatment of a public body of surface water with an aquatic herbicide unless the application of the herbicide is performed by an applicator licensed for aquatic herbicide application by the TDA.

(8) Any application of aquatic herbicide shall comply with label rates approved by the EPA.

§57.934. Local Aquatic Vegetation Plan.

(a) To be approvable by TNRCC, TPWD, and TDA, a local plan must meet the minimum standards set forth in §57.932 of this title (relating to State Aquatic Vegetation Plan). Additional or more specific requirements are approvable.

(b) A local plan may take into account the particular needs and uses of the public body or bodies of surface water to which it will apply. The local plan may allow herbicide use if the person proposing to apply the herbicide notifies the governing entity not later than the 14th day before the proposed date of application. The local plan shall provide that treatment proposals shall be submitted concurrently to TPWD and the governing entity (on the form provided in the guidance document) no later than the 14th day before the measures are to begin and that the governing entity will review and may disapprove or amend any treatment proposal and will respond no later than the day before the proposed control measures are to begin. The person submitting the treatment proposal shall have the burden of demonstrating compliance with the local plan.

(c) Proposed local plans should be developed in cooperation with TPWD, TDA, and TNRCC, and shall be submitted to TPWD on a form prepared by TPWD. TPWD will coordinate review of the plan by TNRCC and TDA.

(d) Governing entities shall seek and encourage public participation in the creation and review of local plans. At a minimum, TPWD, TNRCC, or TDA will hold at least one public meeting in the area affected by the local plan. Public comment will be received by TPWD, TNRCC, and TDA for 30 days after the local plan is submitted for agency approval. TPWD, TNRCC, and TDA will review and respond to local plan submittals within 60 days of receipt.

§57.936. Recordkeeping.

Governing entities shall retain copies of the following documents generated under this subchapter for a minimum of five years from generation: all local plan submissions and approvals, all treatment proposals submitted to TPWD, all notices received and provided, all control measures taken by the governing entity (including records of date, place, location, type, and amount of all aquatic herbicide applications), and any other information relevant to a particular individual request for shoreline treatment.

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 January 17, 2001.

TRD-200100303
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Effective date: February 6, 2001
Proposal publication date: July 21, 2000
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. INVESTMENT RULES

The Texas Water Development Board (the board) adopts amendments to 31 TAC §365.1 and §365.21, concerning Investment Rules without change to the proposed text as published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11900) and will not be republished. The amendments provide clarification and compliance with the Public Funds Investment Act (PFIA), Government Code, Chapter 2256.

Section 365.1 is amended to delete the reference to the Board's Statement of Investments Owned in describing the scope of the Board's investment portfolio. The statement is no longer included in the Board's Annual Financial Report.

Section 365.21 is amended to delete the reference to accrued interest. Accrued interest is not a required element under the PFIA in the Board's investment reports, and should therefore not be included in the Board's Investment Rules.

No comments were received on the adopted amendments.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §365.1

The amendment is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapters 2256 and 2257 which requires each State agency to adopt rules regarding the investment of its funds.

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 January 17, 2001.

TRD-200100301

Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 6, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 463-7981

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SUBCHAPTER C. INVESTMENT PROCEDURES

31 TAC §365.21

The amendment is adopted under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and the Texas Government Code, Chapters 2256 and 2257 which requires each State agency to adopt rules regarding the investment of its funds.

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 January 17, 2001.

TRD-200100302
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: February 6, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 463-7981

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

34 TAC §3.32

The Comptroller of Public Accounts adopts the repeal of §3.32, concerning prepayment procedures for crude oil production tax, without changes to the proposed text as published in the November 17, 2000, issue of the *Texas Register* (25 TexReg 11376).

Because the state must pay interest on overpayments made on tax reports due on or after January 1, 2000, prepayment accounts are being eliminated. As a result, this section is being repealed.

No comments were received regarding adoption of the repeal.

This repeal 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 repeal implements the Tax Code, §111.064.

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 January 19, 2001.

TRD-200100355
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: February 8, 2001
Proposal publication date: November 17, 2000
For further information, please call: (512) 463-4062

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SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.173

The Comptroller of Public Accounts adopts an amendment to §3.173, concerning refunds on gasoline and diesel fuel, without changes to the proposed text as published in the November 24, 2000, issue of the *Texas Register* (25 TexReg 11639).

Amendment is being made to correct a punctuation error in §3.173, concerning refunds for tax paid on gasoline and diesel fuel used off the highway and sales for certain resale. A comma was inadvertently omitted from subsection (b).

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 the Tax Code, Title 2.

The amendment implements Tax Code, §§153.104, 153.119, 153.203, and 153.222.

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 January 12, 2001.

TRD-200100254
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: February 1, 2001
Proposal publication date: November 24, 2000
For further information, please call: (512) 463-4062

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION
SUBCHAPTER U. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM POLICIES

37 TAC §1.261

The Texas Department of Public Safety adopts new §1.261, concerning the Department of Public Safety's (DPS) Historically Underutilized Business (HUB) Program, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10667) and will not be republished.

The justification for the new section will be the good faith effort of the department to increase purchase and contract awards to HUBs.

The new section is necessary to fulfill the requirements of Texas Government Code, §2161.003, which requires state agencies to adopt General Services Commission (GSC) rules for HUB purchases of goods and services paid for from state appropriated funds.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Government Code, §2161.003, which requires state agencies to adopt the General Services Commission rules governing Historically Underutilized Businesses.

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 January 17, 2001.

TRD-200100310
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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CHAPTER 14. SCHOOL BUS TRANSPORTATION
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §14.1

The Texas Department of Public Safety adopts amendments to §14.1, concerning school bus transportation, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10667) and will not be republished.

The justification for this section will be the employment of eligible school bus drivers and uniformity of forms used to determine eligibility and administrate the School Bus Driver Safety Training Program.

Amendments to the section add new Figure 8: 37 TAC §14.1(8), Specifications For Text Upload File for DPS Bus Driver Database. New Figure 8 includes instructions for the Regional Service Centers to electronically submit their data of Driver Enrollments, Driver Certifications, and Instructor Certifications. New Figure 8 is necessary because the staffing in the School Bus Driving Division is not sufficient enough to maintain the entry of 50,000 records per year. Since all Regional Service Centers already enter the required information into a computer system, the DPS established a way for the Regional Service Centers to download their information. The DPS School Bus Division then uploads that information into its computers. This will enable the School Bus Division to generate reports showing the number of certified drivers, enrolled drivers, or the number of certified trainers. This type of information would then be available by state, county, or school district.

Figure 1: 37 TAC §14.1(1), Medical Examination Report for School Bus Drivers is amended to include changes to the list of those persons who may conduct medical and vision examinations made as a result of a change in Texas Transportation Code, §521.022(c).

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements; and Texas Transportation Code, §521.005, which authorizes the Department to adopt rules necessary to administer Chapter 521 of the Transportation Code, (Driver's License and Personal Identification Cards).

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 January 17, 2001.

TRD-200100311
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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SUBCHAPTER B. SCHOOL BUS DRIVER ELIGIBILITY AND APPLICATION PROCEDURES

37 TAC §14.12

The Texas Department of Public Safety adopts amendments to §14.12, concerning school bus driver eligibility and application procedures, without changes to the proposed text as published

in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10668) and will not be republished.

The justification for the section will be the employment and training of eligible school bus drivers and uniformity of forms used to determine eligibility.

Subsection (a) is amended to include language stating the Medical Examination Report for School Bus Drivers should be dated for the current school year. With the current school year at the top of each Medical Examination Report the school district will know they have a current form. Language in subsection (c)(2) is amended to include a current list of those persons who may conduct medical and vision examinations and is necessary to conform to the recently amended Texas Transportation Code, §521.022(c).

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code (Driver's Licenses and Personal Identification Cards).

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 January 17, 2001.

TRD-200100312
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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SUBCHAPTER C. SCHOOL BUS DRIVER SAFETY TRAINING PROGRAM

37 TAC §§14.32 - 14.35

The Texas Department of Public Safety adopts amendments to §§14.32-14.35, concerning school bus driver safety training program, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10670) and will not be republished.

The justification for the sections will be the employment of eligible school bus drivers and uniformity of forms used to determine eligibility and administrate the School Bus Driver Safety Training Program.

Amendments to §14.32(1) reflect the new twenty-hour certification course curriculum as developed by Southwest Texas Quality Institute in cooperation with the department through a 1999 Texas Department of Transportation grant. The new twenty-hour course material replaced a Texas Education Agency curriculum last modified in 1993. In addition, it changes the chapter titles to match the new course curriculum. §14.32(2) is being amended to reflect the correct unit numbers from the current Course Guide for School Bus Driver Training in Texas. That way the rules are consistent with the current Course Guide. §14.32(3) has been amended to include an 80% score for an open book test. In December of 1999, the Texas DPS School Bus Unit had a meeting which was represented by the school bus coordinators for the twenty Education Service Centers. The coordinators recommended changing the passing grade from 70% to 80% when the exam is open book. The original 70% passing grade was based on a closed book exam.

Amendment to §14.33(c) states that verification information to the department must be submitted electronically as required in 37 TAC §14.1(8) of this title (relating to Appendix). Subsection (d) is amended to indicate that each instructor must teach one certification and one re-certification course each year in order to maintain instructor certification status. The eight-hour re-certification was developed in 1998 which gave the Department two different courses for school bus driver instruction. This change is necessary to keep instructors familiar with both courses by requiring them to teach each course once a year.

Amendment to §14.34(a) adds the word "electronically" and changes Figure 5: §14.1(5) to Figure 8: §14.1(8). The change is necessary because verification of driver certification can no longer be accepted on paper and must now be submitted electronically as indicated by Figure 8: 37 TAC §14.1(8).

Amendment to §14.35(a)(6) adds language clarifying the knowledge and training requirements a school district or contractor should give a new school bus driver before allowing him/her to drive a school bus with an enrollment certificate. It also amends chapter numbers to match the new twenty-hour course curriculum. Amendment to (b)(2) adds and deletes language to indicate a new driver should receive the safety training as soon as possible. This would ensure drivers driving on an enrollment certificate receive the benefit of the safety education that is provided in the certification program by not allowing them to drive any longer than necessary prior to taking the course. Paragraph (b)(4) is amended to add the word "safety" for consistency in wording. Paragraph (b)(5) adds the word "electronically" and changes Figure 5: §14.1(5) to Figure 8: §14.1(8), in order to reflect the change in the reporting of information to the department in electronic form.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.022, which requires the Texas Department of Public Safety to adopt rules and procedures necessary for determining school bus driver employment eligibility and School Bus Driver Safety Training Program requirements; and Texas Transportation Code, §521.005, which authorizes the department to adopt rules necessary to administer Chapter 521 of the Transportation Code (Driver's Licenses and Personal Identification Cards).

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 January 17, 2001.

TRD-200100313
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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CHAPTER 15. DRIVERS LICENSE RULES
SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §§15.81 - 15.83

The Texas Department of Public Safety adopts the repeal of §§15.81-15.83, concerning Driver Improvement, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10673) and will not be republished.

The justification for the repeals will be clarification of department policy regarding Driver Improvement.

Section 15.81 is repealed due to substantial changes being made in accordance with House Bill 3641, 76th Texas Legislature. Sections 15.82 and 15.83 are renumbered in order to be reorganized with new §§15.81-15.87. There are no changes to the substance of §15.82 and §15.83. The repeals are being adopted simultaneously with the adoption of new §§15.81-15.87 which outline the department's administrative hearing process concerning driver license suspensions, revocations, disqualifications, and cancellations.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.005, which gives the Texas Department of Public Safety the authority to adopt rules necessary to implement Chapter 521 of the Transportation 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.

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TRD-200100314
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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37 TAC §§15.81 - 15.87

The Texas Department of Public Safety adopts new §§15.81-15.87, concerning driver improvement. Section 15.81 is adopted with changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10673). Sections 15.82-15.87 are adopted without changes and will not be republished.

The justification for the new sections will be more efficient processing of administrative hearings.

The new sections promulgate the department's administrative hearing process concerning driver license suspensions, revocations, disqualifications, and cancellations and are necessary in order for the department to comply with House Bill 3641, 76th Texas Legislature. The new sections further outline procedural requirements for the new administrative hearing process, give information on how and where to request the administrative hearing and information on the department's measures of notification. The time periods and notification requirements referenced in these rules are established by statute.

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 Texas Transportation Code, §521.005; Texas Transportation Code, §521.291, which requires the department to adopt rules for the administration of Subchapter N regarding License Denial, Suspensions, or Revocations, and Texas Transportation Code, §522.005, which gives the Department of Public Safety the authority to adopt rules necessary to administer Chapter 522 of the Texas Transportation Code.

§15.81. Definition of terms.

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

(1) Address of record--refers to the address established as the licensee's residence address that is on record with the Department.

(2) Hearing location--will be determined by the address of record at the time the notice of suspension is sent. However, if the licensee denotes a new address on the request for hearing that address will be used for setting the hearing.

(3) Mailing address--an official address provided by the licensee through application for an original, renewal or duplicate license.

(4) Moving violation--any act committed in connection with the operation of a motor vehicle on a public street or highway, which constitutes a hazard to traffic and is prohibited by state law or city ordinance. Does not include violations exempt by statute.

(5) Reexamination of drivers--will normally consist of a comprehensive review of the required examinations including the vision, rules and signs tests, and a driving demonstration. The driving demonstration is to determine if restrictions or limitations should be imposed, and may be more intensive than a routine driving test. Guidelines for requiring the reexamination include:

(A) minimum of six entries (convictions for moving violations and accidents where negligence is indicated) in a two-year period with a minimum of 3 entries within the 12 month period proceeding the examination request;

(B) determined by a driver improvement analyst following a review of two or more accidents within a 12-month period in which the licensee was at fault;

(C) recommendation by proper medical authority following a professional evaluation of the medical facts; or

(D) recommendation by an experienced field representative of the department or any law enforcement agency following a thorough investigation showing clear and convincing evidence that such examination is reasonable and necessary.

(6) Reliable report--refers to any report that can be verified or substantiated.

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 January 17, 2001.

TRD-200100315
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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CHAPTER 21. EQUIPMENT AND VEHICLE STANDARDS

37 TAC §21.1

The Texas Department of Public Safety adopts amendments to §21.1, concerning vehicle equipment, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10675) and will not be republish.

The justification for the section will be a clearer interpretation and understanding of the exemptions associated with sun screening devices and safety guards or flaps.

Amendment to §21.1(b)(6) provides the public with the proper address for submission of applications for exemption from the sun screening device requirements of this section. Applications are currently referred to this address but often after being sent to other offices, which delays the procedure. Amendment further adds new (b)(8)(D), which provides that law enforcement vehicles are exempted from the sun screening device requirements of this section and will track Texas Transportation Code, §547.613(b)(15). Amendment to (c)(1) clarifies vehicles already exempted from the safety guard or flap requirements of this section.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101.

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 January 17, 2001.

TRD-200100319
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
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 §23.93

The Texas Department of Public Safety adopts amendments to §23.93 concerning vehicle emissions inspection requirements, with changes to the proposed text as published in the September 15, 2000, issue of the *Texas Register* (25 TexReg 9196). The change in subsection (b)(3) is to correct a typographical error. The change in subsection (e)(1)(B)(v) is to clarify that labor costs can not be considered in qualified emissions-related repairs for all vehicles unless performed at a Recognized Emissions Repair Facility of Texas. The corrected text will be republished in this order.

The justification for the section will be improved air quality by the reduction of emissions of hydrocarbons, carbon monoxide, and other pollutants from mobile sources in the additional counties.

The amendments are needed in order to enforce the Vehicle Emissions Inspection and Maintenance Program as modified by the adoption of amendments to 30 Texas Administrative Code, §114.52, by the Texas Natural Resource Conservation Commission.

The amendments update definitions of designated counties, loaded mode testing to include Acceleration Simulation Mode 2, and On-Board Diagnostics. The amendments delete past time-dated events and clarify text to show current program requirements. The amendments change the Minimum Expenditure Amount for all program areas to $450.00. The amendments add Denton and Collin counties to designated counties on May 1, 2002; and Ellis, Johnson, Kaufman, Parker, and Rockwall counties on May 1, 2003.

The department received one written comment from Dr. Donald H. Stedman, Chemistry Department, University of Denver, Denver, Colorado. The commentator made several different points which are presented separately below, followed by the department's response to each point.

COMMENT: New I/M programs should have evaluation built into the planning at the outset and the rule does not contain an evaluation plan.

RESPONSE: The department agrees with the need for an evaluation plan, however evaluation of the success of the Inspection and Maintenance Program is outside the scope of the rule. The purpose of the rule is to establish which vehicles are to be tested and how they are to be tested. The evaluation of how well the I/M program meets the requirements of the State's Implementation Program is under the purview of the Texas Natural Resource Conservation Commission. The evaluation of how well emissions inspections are performed is an enforcement function of the Department of Public Safety and is addressed in the department's enforcement procedures and the State Implementation

Plan (SIP). Therefore, no change was made to the rule based on this comment.

COMMENT: Recommendation for a "SMART SIGN" public information program to get public support.

RESPONSE: The scope of this rule is mandatory station based vehicle emissions testing and does not include remote sensing. The "Smart Sign" is a remote sensing device, which immediately alerts drivers regarding the emissions reading (good, fair, and poor) for their vehicles for voluntary compliance. The department agrees with the thrust of this comment and uses a different remote sensing program to notify registered owners of high emitting vehicles by mail. The "Smart Sign" provides an excellent public information tool regarding potential performance of a vehicle and emissions may be considered as a program element pending available funding. No change was made to the rule based on this comment.

COMMENT: The 0.1% on-road measurement requirement in federal Clean Air Act and EPA regulations is absent from the rule.

RESPONSE: The scope of this rule is mandatory station based vehicle emissions testing and does not address the on-road testing requirement, however, in accordance with 49 CFR §51.371 (the lesser of 0.5% of subject fleet or 20,000 vehicle), Transportation Code §548.306 and the State Implementation Plan, the department conducts on-road testing using remote sensing technology to meet this requirement. Therefore, no change was made to the rule based on this comment.

COMMENT: Dr. Stedman states he has "never seen believable data showing NO_x reduction from any I/M program, most show small INCREASE".

RESPONSE: The scope of this rule is mandatory station based vehicle emissions testing requirements and the comment is outside the scope of this rule. No change was made to the rule based on this comment.

COMMENT: An aggressive mechanic training is certainly going to be needed for a successful program especially if any NO_x reductions are desired.

RESPONSE: The department agrees with this comment and the rule requires that Recognized Repair Technicians be certified under tests offered by the National Institute of Automotive Service Excellence as A1, A6, A8, and L1. These are the highest mechanic certifications available. Additional specific repair training related to NO_x will be a program component, however, this element of the program is still in the planning stage and will most probably not require a department rule. No change was made to the rule based on this comment.

COMMENT: Dr. Stedman comments that "OBDII as specified by EPA will get zero MOBILE5 and lots of credits in the MOBILE6 model, however the credits are a figment of EPA's imagination and will not actually happen in the real world in which we live and breathe."

RESPONSE: While On-board Diagnostic (OBDII) testing under this rule is part of the mandatory station based vehicle emissions testing regime for 1996 and above model year vehicles, this comment is beyond the scope of this rule which does not address emission credits under the EPA models. The department, however, believes OBDII will receive full credit as indicated in the EPA draft guidance released in September 2000. Therefore, no change was made to the rule based on this comment.

COMMENT: Requiring scheduled I/M (emission inspection) on zero to six year old cars except fleets or the few high-mileage on-road gross emitters found by remote sensing is not a bit cost effective.

RESPONSE: The department agrees, to an extent, and the rule exempts zero to two year-old vehicles from emissions testing since on-board diagnostic emission components virtually insures emission compliance. The department can not agree in the lack of cost effectiveness comment of emissions testing vehicles three to six years old. First, on-board diagnostics (OBDII) are only available on 1996 and newer vehicles. Exempting six year-old vehicles would exempt OBD and some non-OBD vehicles from emissions testing. Second, requiring inspection assures that the OBD systems are still functioning correctly. Third, in the State Implementation Plan submitted by the state to the Environmental Protection Agency, the department is obligated to conducting emissions testing on these vehicles. Fourth, criteria established by the Environmental Protection Agency requires vehicle emission test data to project emission reductions and that data is obtained by station based vehicle emissions testing. Finally, the department believes the maintenance obtained from OBDII testing is very cost effective in obtaining current and future emissions reductions. Therefore, no change was made to the rule based on this comment.

COMMENT: On-road remote sensing, clean screening, gross polluter detection, etc., can provide for a system in which fewer dynamometers are needed and which might also be able to motivate owners to do preventative maintenance year round, not just at test time.

RESPONSE: The department agrees with the comment. The department plans to use such elements in the overall program, however this is outside the scope of this rule. Therefore, no change was made to the rule based on this comment.

The amendment is adopted 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, §548.301, which authorizes the Commission to adopt rules establishing a motor vehicle emission inspection and maintenance program.

§23.93. Vehicle Emissions Inspection Requirements.

(a) General. The rules of the Texas Department of Public Safety set out herein are to maintain compliance with the Texas Clean Air Act. The department is authorized to establish and implement a vehicle emissions testing program that is a part of the annual vehicle safety inspection program, in accordance with the Health and Safety Code, Chapter 382 and rules adopted thereunder.

(b) Terms and/or Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Department of Public Safety (DPS), the terms used by the DPS have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection. In addition to the terms which are defined by the TCAA, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adjusted annually--refers to the percentage, if any, by which the Consumer Price Index (CPI) for the preceding calendar year differs (as of August 31) from the CPI for 1989; adjustments shall be effective on January 1 of each year.

(2) Department--refers to the Texas Department of Public Safety.

(3) Designated Counties--refers to:

(A) Dallas, Tarrant, Harris, and El Paso counties;

(B) Dallas, Tarrant, Denton, Collin, Harris, and El Paso counties, effective May 1, 2002 through April 31, 2003; and

(C) Dallas, Tarrant, Denton, Collin, Ellis, Johnson, Kaufman, Parker, Rockwall, Harris and El Paso counties effective May 1, 2003 and thereafter.

(4) Designated Vehicles--refers to all motor vehicles, as defined in the Texas Transportation Code, §541.201, unless otherwise exempted or excepted, that are:

(A) capable of being powered by gasoline;

(B) from two years old to and including 24 years old; and

(C) registered in or required to be registered in and primarily operated in a designated county.

(5) Director--refers to the director of the Texas Department of Public Safety or the designee of the director.

(6) Emissions control component--refers to a device designed to control or reduce the emissions of substances from a motor vehicle or motor vehicle engine installed on or incorporated in a motor vehicle or motor vehicle engine in compliance with requirements imposed by the Motor Vehicle Air Pollution Control Act (42 United States Code, §1857 et seq) or other applicable law. This term shall include, but not be limited to the following components: air injection system (AIS); catalytic converter; coil; distributor; evaporative canister; exhaust gas recirculation (EGR) valve; fuel filler cap/gas cap; ignition wires; oxygen sensor; positive crank case ventilation (PCV) valve; spark plugs; thermal reactor/thermostatic air cleaner; and hoses, gaskets, belts, clamps, brackets, filters or other accessories and maintenance items related to these emissions control components and systems.

(7) Emissions tune-up--refers to a basic tune-up along with functional checks and any necessary replacement or repair of emissions control components.

(8) EPA--refers to the United States Environmental Protection Agency; the federal agency that monitors and protects air and water resources.

(9) Exempt vehicles--refers to vehicles otherwise considered "designated vehicles" that are:

(A) antique vehicles, as defined by Texas Transportation Code, §502.275;

(B) slow-moving vehicles, as defined by Texas Transportation Code, §547.001; or

(C) motorcycles, as defined by Texas Transportation Code, §502.001.

(10) I/M--refers to Inspection and Maintenance.

(11) Inspection station--refers to an inspection station/facility as defined in the Texas Transportation Code, §548.001.

(12) Inspector--refers to an inspector as defined in the Texas Transportation Code, §548.001.

(13) Loaded mode I/M test-- Loaded mode I/M test equipment specifications shall meet EPA requirements for Acceleration Simulation Modes equipment. The Acceleration Simulation Mode (ASM-2) test is an emissions test using a dynamometer (a set of rollers on which a test vehicle's test vehicle's tires rest) which applies an increasing load or resistance to the drive train of a vehicle, thereby simulating actual tailpipe emissions of a vehicle as it is moving and accelerating. The ASM-2 vehicle emissions test is comprised of two phases:

(A) the 50/15 mode--in which the vehicle is tested on the dynamometer simulating the use of 50% of the vehicle available horsepower to accelerate at a rate of 3.3 miles per hour (mph) per second at a constant speed of 15 mph; and

(B) the 25/25 mode--in which the vehicle is tested on the dynamometer simulating the use of 25% of the vehicle available horsepower to accelerate at a rate of 3.3 mph per second at a constant speed of 25 mph.

(14) Motorist--refers to a person or other entity responsible for the inspection, repair, maintenance or operation of a motor vehicle, which may include, but is not limited to, owners or lessees.

(15) Non-attainment area--refers to any portion of an air quality control region where any pollutant exceeds the National Ambient Air Quality Standards (NAAQS) for the pollutant as designated pursuant to the Federal Clean Air Act (FCAA).

(16) Out-of-cycle test--refers to an emissions test not associated with the annual vehicle safety inspection testing cycle.

(17) OBD (On-board diagnostic system)--Computer system installed in a 1996 and newer vehicles by the manufacturer which monitors the performance of the vehicle emissions control equipment, fuel metering system, and ignition system for the purpose of detecting malfunction or deterioration in performance that would be expected to cause the vehicle not to meet emissions standards.

(18) Person--refers to a human being, a partnership or a corporation that is recognized by law as the subject of rights and duties.

(19) Primarily operated in--refers to the use of a motor vehicle greater than 60 days per calendar year in designated counties. It is presumed that a vehicle is primarily operated in the county in which it is registered; the burden is on the motorist to overcome this presumption by a preponderance of the evidence.

(20) Program area--refers to county or counties in which the Texas Department of Public Safety administers the vehicle emissions inspection and maintenance program contained in the revised Texas Inspection and Maintenance (I/M) State Implementation Plan. These program areas include:

(A) Dallas/Fort Worth (DFW) program area which consists of the following counties: Dallas and Tarrant counties. Effective May 1, 2002, this program area will consist of Dallas, Denton, Colin, and Tarrant counties;

(B) El Paso program area which consists of El Paso County;

(C) Houston/Galveston program area which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties; and

(D) Extended DFW (EDFW) program area which consists of Ellis, Johnson, Kaufman, Parker, and Rockwall Counties. These counties will become part of the program area as of May 1, 2003.

(21) Re-test--refers to a successive vehicle emissions inspection following the failure of an initial emissions test by a vehicle.

(22) Revised Texas I/M SIP--refers to the most current Texas Inspection and Maintenance State Implementation Plan.

(23) Safety inspection--refers to a compulsory vehicle inspection performed as required by Texas Transportation Code, Chapter 548, by an official inspection station issued a certificate of appointment by the department.

(24) Safety inspection certificate--refers to an inspection certificate issued under Texas Transportation Code, Chapter 548, after a safety inspection as defined herein.

(25) Tampering-related repairs--refers to repairs to correct tampering modifications, including but not limited to engine modifications, emissions system modifications, or fuel-type modifications disapproved by the TNRCC or the EPA.

(26) Testing cycle--refers to an annual cycle for which a motor vehicle is subject to a vehicle emissions inspection.

(27) Test-only facilities--refers to inspection stations certified to do emissions testing that are not engaged in repairing, replacing and/or maintaining emissions control components of vehicles. Acceptable repairs in test-only facilities shall be oil changes, air filter changes, repairs and/or maintenance of non-emissions control components, and the sale of auto convenience items.

(28) Test-and-repair facilities--refers to inspection stations certified to do emissions testing that engage in repairing, replacing and/or maintaining emissions control components of vehicles.

(29) TNRCC--refers to the Texas Natural Resource Conservation Commission.

(30) Two years old--refers to a vehicle upon the expiration of the initial two-year inspection certificate or any time the vehicle is presented for inspection or required to be inspected during the year when the vehicle model year is two years less than the current calendar year (current calendar year minus two years), whichever comes first.

(31) Twenty-four years old--refers to a vehicle when the vehicle model year is 24 years less than the current calendar year (current calendar year minus 24 years).

(32) Uncommon part--refers to a part that takes more than 30 days for expected delivery and installation.

(33) VIR--refers to the Vehicle Inspection Report.

(34) VRF--refers to the Vehicle Repair Form.

(c) Applicability. The requirements of this section and those contained in the Revised Texas I/M SIP shall be applied to motorists, vehicles, vehicle inspection stations and inspectors certified by the department to inspect vehicles, and to Recognized Emissions Repair Facilities of Texas and Recognized Emissions Repair Technicians of Texas, as defined herein.

(d) Control requirements.

(1) In designated counties, in order to be certified by the department as a vehicle inspection station, the vehicle inspection station must be certified by the department to do vehicle emissions testing. This provision does not apply to vehicle inspection stations certified by the department as vehicle inspection stations endorsed only to issue one or more of the following inspection certificates: trailer certificates, motorcycle certificates, commercial windshield certificates, commercial trailer certificates.

(2) In designated counties, only department certified inspection stations that are certified by the department to do emissions testing may perform the annual vehicle safety inspection on designated vehicles.

(3) An inspection station in a county not "designated" as a designated county herein shall not inspect a vehicle that is capable of being powered by gasoline, from two years old to and including twenty-four years old and registered in a designated county unless the inspection station is certified by the department to do emissions testing, or unless the motorist presenting the vehicle signs an affidavit on a form provided by the department stating one of the following: (The affidavit will be held by the inspection station for collection by the department.)

(A) the vehicle is not a designated vehicle;

(B) the vehicle no longer qualifies as a designated vehicle; or

(C) the vehicle will not return to a designated county prior to the expiration of the current inspection certificate however immediately upon return to a designated county the vehicle will be reinspected at an inspection station certified to do vehicle emissions testing.

(4) All designated vehicles must be emissions tested at the time of and as a part of the designated vehicle's annual vehicle safety inspection at a DPS certified inspection station that is certified to do vehicle emissions testing. The exceptions to this provision are for:

(A) commercial motor vehicles as defined by the Texas Transportation Code, §548.001, that meet the definition of "designated vehicle" as defined herein. Said "designated" commercial motor vehicles must be emissions tested at a DPS certified inspection station that is certified to do vehicle emissions testing and must have a unique emissions test-only inspection certificate, as authorized by Texas Transportation Code, §548.251, affixed to the lower left-hand corner of the windshield of the vehicle, immediately above the registration sticker, prior to receiving a commercial motor vehicle safety inspection certificate pursuant to Texas Transportation Code, Chapter 548. The unique emissions test-only inspection certificate must be issued within 15 calendar days of the issuance of the commercial motor vehicle safety inspection certificate. The unique emissions test-only inspection certificate will expire at the same time the newly issued commercial motor vehicle safety inspection certificate expires; and

(B) vehicles presented for inspection by motorists in counties not designated herein that meet the requirements of paragraph (3)(C) of this subsection.

(5) Any vehicle not listed as an exempt vehicle that is capable of being powered by gasoline, from two years old to and including 24 years old, presented for the annual vehicle safety inspection in designated counties will be presumed to be a designated vehicle and will be emissions tested as a part of the annual vehicle safety inspection.

(6) Vehicles registered in designated counties will be identified by a distinguishing validation registration sticker as determined by the Texas Department of Transportation.

(7) Vehicles inspected under the vehicle emissions testing program and found to meet the requirements of the program in addition to all other vehicle safety inspection requirements will be passed by the certified inspector, who will thereafter affix to the windshield a unique emissions inspection certificate pursuant to Texas Transportation Code, §548.251. The only valid inspection certificate for designated vehicles shall be a unique emissions inspection certificate issued by the department, unless otherwise provided herein.

(8) The department shall perform challenge tests to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle as a quality control measure of the emissions testing program. A motorist whose vehicle has failed an emissions test may request a free challenge test through the department within 15 calendar days, not including the date of the emissions test being challenged or questioned.

(9) Federal and State governmental or quasi-governmental agency vehicles that are primarily operated in designated counties that fall outside the normal registration or inspection process shall be required to comply with all vehicle emissions I/M requirements contained in the Texas I/M SIP.

(10) Any motorist in a designated county whose designated vehicle has been issued an emissions-related recall notice shall furnish proof of compliance with the recall notice prior to having their vehicle emissions tested the next testing cycle. As proof of compliance, the motorist may present a written statement from the dealership or leasing agency indicating the emissions repairs have been completed.

(11) Inspection certificates issued prior to the effective date of this section shall be valid and shall remain in effect until the expiration date thereof.

(12) A unique emissions test-only inspection certificate expires at the same time the annual vehicle safety inspection certificate it relates to expires.

(13) The department will perform quarterly gas audits on all vehicle exhaust gas analyzers used to perform vehicle emissions tests. If a vehicle exhaust gas analyzer fails the calibration process during the gas audit, the department shall cause the appropriate inspection station to cease vehicle emissions testing with the failing exhaust gas analyzer until all necessary corrections are made and the vehicle exhaust gas analyzer passes the calibration process.

(14) Pursuant to the Revised Texas I/M SIP, the department shall administer and monitor a follow-up loaded mode I/M test on at least 0.1% of the vehicles subject to vehicle emissions testing in a given year to evaluate the mass emissions test data as required in 40 CFR 51.353(c)(3). A contractor(s) may be used to assist in collecting, reviewing and evaluating program data.

(e) Waivers and extensions. Under this section, the department may issue an emissions testing waiver or time extension to any vehicle that passes all requirements of the standard safety inspection portion of the annual vehicle safety inspection and meets the established criteria for a particular waiver or time extension. An emissions testing waiver or a time extension defers the need for full compliance with vehicle emissions standards of the vehicle emissions I/M program for a specified period of time after a vehicle fails an emissions test. Applications for emissions testing waivers and time extensions shall be accepted by the department. There are four types of emissions testing waivers and time extensions: Minimum Expenditure Waiver; Individual Vehicle Waiver; Parts Availability Time Extension; and Low-Income Time Extension. The motorist may apply once each testing cycle for the Minimum Expenditure Waiver, Individual Vehicle Waiver, and Parts Availability Time Extension. The motorist may apply every other testing cycle for the Low-Income Time Extension.

(1) Minimum Expenditure Waiver.

(A) Eligibility. A vehicle may be eligible for a Minimum Expenditure Waiver provided that it has:

(i) failed both its initial emissions inspection and re-test; and

(ii) incurred qualified emissions-related repairs, as defined herein, whose cost is equal to or are in excess of the minimum expenditure amounts, as defined herein for the county in which the vehicle is registered.

(B) Qualified Emissions-Related Repairs. Qualified emissions-related repairs are those repairs to emissions control components, including diagnosis, parts and labor, that count toward a minimum expenditure waiver. In order to be considered qualified emissions-related repairs, the repair(s):

(i) must be directly applicable to the cause for the emissions test failure;

(ii) must be performed after the initial emissions test or have been performed within 60 days prior to the initial emissions test;

(iii) must not be tampering-related repairs, as defined herein;

(iv) must not be covered by any available warranty coverage unless the warranty remedy has been denied in writing by the manufacturer or authorized dealer; and

(v) must be performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas in order to include the labor cost and/or diagnostic costs. When repairs are not performed by a Recognized Emissions Repair Technician of Texas at a Recognized Emissions Repair Facility of Texas, only the purchase price of parts, applicable to the emissions test failure, qualify as a repair expenditure for the minimum expenditure waiver.

(C) Minimum expenditure amounts. The minimum expenditure waiver in any program area shall be at least $450 or that amount adjusted by the Consumer Price Index.

(D) Validity. A Minimum Expenditure Waiver shall be valid through the end of the twelfth month from the date of issuance.

(E) Conditions. The following conditions must be met in order to receive a Minimum Expenditure Waiver:

(i) the vehicle must pass a visual inspection performed by a department representative to insure that the emissions repairs being claimed have actually been performed;

(ii) the diagnosis, parts and labor receipts for the qualified emissions-related repairs must be presented to the department and support that the emissions repairs being claimed have actually been performed; and

(iii) the valid re-test Vehicle Inspection Report (VIR) and valid Vehicle Repair Form (VRF) for the applicant vehicle must be presented to the department. If labor and/or diagnostic charges are being claimed towards the minimum expenditure amount, the VRF shall be completed by a Recognized Emissions Repair Technician of Texas.

(2) Low-Income Time Extension. A Low-Income Time Extension may be granted in accordance with the following conditions:

(A) The applicant must supply to the department proof in writing that:

(i) the vehicle failed the initial emissions inspection test; proof shall be in the form of the original failed VIR;

(ii) the vehicle has not been granted a Low-Income Time Extension in the previous testing cycle;

(iii) the applicant is the owner of the vehicle that is the subject of the Low-Income Time Extension; and

(iv) the applicant receives financial assistance from the Texas Department of Human Services due to indigence (subject to approval by the director) or the applicant's adjusted gross income (if the applicant is married, the applicant's adjusted gross income is equal to the applicant's adjusted gross income plus the applicant's spouse's adjusted gross income) is at or below the current federal poverty level

as published by the United States Department of Health and Human Services, Office of the Secretary, in the Federal Register; proof shall be in the form of a federal income tax return or other documentation authorized by the director that the applicant certifies as true and correct.

(B) After a vehicle receives an initial Low-Income Time Extension, the vehicle must pass an emissions test prior to receiving another Low-Income Time Extension.

(3) Parts Availability Time Extension. A Parts Availability Time Extension may be granted in accordance with the following conditions:

(A) The applicant must demonstrate to the department:

(i) reasonable attempts were made to locate necessary emissions control parts by retail or wholesale parts suppliers; and

(ii) emissions-related repairs cannot be completed before the expiration of the safety inspection certificate or before the 30-day period following an out-of-cycle inspection because the repairs require an uncommon part, as defined herein.

(B) The applicant shall provide to the department:

(i) an original VIR indicating the vehicle failed the emissions test;

(ii) an invoice, receipt, or original itemized document indicating the uncommon part(s) ordered by: name; description; catalog number; order number; source of part(s), including name, address and phone number of parts distributor; and expected delivery and installation date(s). The original itemized document must be prepared by a Recognized Emissions Repair Technician of Texas before a Parts Availability Time Extension can be issued.

(C) A Parts Availability Time Extension is not allowed for tampering-related repairs, as defined herein.

(D) If the vehicle does not pass an emissions re-test prior to the expiration of the Parts Availability Time Extension, the applicant must provide to the department, adequate documentation that one of the following conditions exists:

(i) the motorist qualifies for a Minimum Expenditure Waiver, Low-Income Time Extension or Individual Vehicle Waiver; or

(ii) the motor vehicle will no longer be operated in the program area, as defined herein.

(E) A vehicle that receives a Parts Availability Time Extension in one testing cycle must have the vehicle repaired and re-tested prior to the expiration of such extension or must qualify for another type of waiver or time extension, in order to be eligible for a Parts Availability Time Extension in the subsequent testing cycle.

(F) The length of a Parts Availability Time Extension shall depend upon expected delivery and installation date(s) of the uncommon part(s) as determined by the department representative on a case by case basis. Parts Availability Time Extensions will be issued for either 30, 60 or 90 days.

(G) The department shall issue a unique time extension sticker for Parts Availability Time Extensions.

(4) Individual Vehicle Waiver. If a vehicle has failed an emissions test, a motorist may petition the director for an Individual Vehicle Waiver. Upon demonstration that the motorist has taken every reasonable measure to comply with the requirements of the vehicle emissions I/M program contained in the Revised Texas I/M SIP and such waiver shall have minimal impact on air quality, the director may approve the petition, and the motorist may receive a waiver. Motorists may apply for the Individual Vehicle Waiver each testing cycle.

(f) Prohibitions.

(1) No person may operate or allow to be operated any motor vehicle that does not comply with:

(A) all applicable air pollution emissions control-related requirements included in the annual vehicle safety inspection administered by the department, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP.

(2) No person or entity may own, operate, or allow the operation of a designated vehicle in a designated county unless the vehicle has complied with all applicable vehicle emissions inspection and maintenance requirements contained in the Revised Texas I/M SIP, unless otherwise provided for herein.

(3) No person may issue or allow the issuance of a Vehicle Inspection Report (VIR), as authorized by the department, unless all applicable air pollution emissions control-related requirements of the annual vehicle safety inspection and the vehicle emissions inspection and maintenance requirements and procedures contained in the Revised Texas I/M SIP are completely and properly performed in accordance with the rules and regulations adopted by the department and the TNRCC.

(4) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents which may be used to circumvent the vehicle emissions inspection and maintenance requirements and procedures contained in Texas Transportation Code, Chapter 548 and the Revised Texas I/M SIP.

(5) No organization, business, person, or other entity may represent itself as an inspector certified by the department, unless such certification has been issued pursuant to the certification requirements and procedures contained in the Revised Texas I/M SIP and the rules and regulations of the department.

(6) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas or a Recognized Emissions Repair Facility of Texas, as defined in subsections (h) and (i) of this section, without first obtaining and maintaining recognition by the department.

(g) Violation/Penalties. Pursuant to Texas Transportation Code, §548.601, any person who operates a designated vehicle in a designated county without displaying a valid unique emissions inspection certificate, may be subject to a fine in an amount not to exceed that set out in Texas Transportation Code, §548.604.

(h) Requirements for Recognized Emissions Repair Technicians of Texas. The department will recognize automotive repair technicians that meet the qualifications as set forth herein.

(1) In order to be recognized by the department as a Recognized Emissions Repair Technician of Texas, the technician must:

(A) have a minimum of three years full-time automotive repair service experience;

(B) possess current certification in the following areas based on the following tests offered by the National Institute of Automotive Service Excellence (ASE):

(i) Engine Repair (ASE Test Al);

(ii) Electrical/Electronic Systems (ASE Test A6);

(iii) Engine Performance (ASE Test A8); and

(iv) Advanced Engine Performance Specialist (ASE Test Ll); and

(C) must be employed by a Recognized Emissions Repair Facility of Texas, as defined herein.

(2) A Recognized Emissions Repair Technician of Texas shall perform the following duties:

(A) complete and certify the VRF form(s); and

(B) notify the DPS in writing within 14 days of changes in the technician's ASE testing status.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein may result in the department ceasing to recognize the technician.

(i) Requirements for Recognized Emissions Repair Facilities of Texas.

(1) In order to be recognized by the department as a Recognized Emissions Repair Facility of Texas, the facility must:

(A) employ at least one full-time Recognized Emissions Repair Technician of Texas, as described in subsection (h) of this section; and

(B) possess equipment to perform the functionality of the following items:

(i) ammeter;

(ii) alternator, regulator or starting circuit tester;

(iii) battery load tester;

(iv) compression tester;

(v) cooling system tester;

(vi) dwellmeter;

(vii) engine analyzer;

(viii) exhaust gas analyzer (which meets department and TNRCC specifications);

(ix) fuel pressure/pressure drop tester;

(x) ohmmeter;

(xi) propane gas bottle (carburetor lean drop check);

(xii) repair reference information;

(xiii) scan tool;

(xiv) tachometer;

(xv) timing light;

(xvi) vacuum/pressure gauge;

(xvii) vacuum pump;

(xviii) volt meter;

(xix) a department-approved device with required adapters for checking fuel cap pressure; and

(xx) OBD testing equipment.

(2) A Recognized Emissions Repair Facility of Texas shall:

(A) notify the DPS in writing within 14 days of changes in the facility's technicians' ASE testing status or employment status and the facility's equipment functionality status; and

(B) agree in writing upon application for recognition by the department to maintain compliance with the qualifications enumerated in paragraph (1) of this subsection, in order to maintain recognition by the department.

(3) Failure to comply with these rules and failure to meet the qualifications set out herein, may result in the department ceasing to recognize the facility.

(j) Certified emissions inspection station requirements.

(1) In order to be certified by the department as an emissions inspection station, for purposes of the emissions I/M program, the station must:

(A) be licensed by the department as an official vehicle inspection station;

(B) comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department;

(C) complete all applicable forms and reports as required by the department;

(D) purchase or lease emissions testing equipment that is currently certified by the TNRCC to emissions test vehicles, or upgrade existing emissions testing equipment to meet the current certification requirements of the TNRCC;

(E) have a designated telephone line dedicated for each vehicle exhaust gas analyzer to be used to perform vehicle emissions tests; and

(F) enter into and maintain a business arrangement with the Texas Datalink contractor to obtain a telecommunications link to the Texas Datalink System Vehicle Identification Database (VID) for each vehicle exhaust gas analyzer to be used to inspect vehicles as described in the Revised Texas I/M SIP.

(2) Failure to comply with these rules may result the in denial, suspension or revocation of an inspection station's certificate of appointment, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(k) Certified emissions inspector requirements.

(1) To qualify as a certified inspector, an individual must:

(A) be licensed by the department as an official vehicle inspector;

(B) must complete the training required for the Vehicle Emissions Inspection Program and receive the department's current inspector's certificate for such training;

(C) must comply with the DPS Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors and other applicable rules and regulations of the department; and

(D) complete all applicable forms and reports as required by the department.

(2) Failure to comply with these rules may result in the denial, suspension or revocation of a certified inspector's certificate, pursuant to Texas Transportation Code, §548.405, or in a fine, pursuant to Texas Transportation Code, §542.301, in an amount not to exceed that set out in Texas Transportation Code, §542.401.

(l) Inspection and Maintenance Emissions Testing Fees. The fees for emissions testing will be set by the TNRCC. The fee for an emissions test shall provide for one free re-test for each failed initial emissions inspection, provided that the motorist has the re-test performed at the same inspection station where the vehicle originally failed and the re-test is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(m) Audits.

(1) The department is authorized to perform covert and overt audits pertaining to the emissions testing program.

(2) The department may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(n) Authority to publish manuals. The Public Safety Commission authorizes the director of the Department of Public Safety to promulgate, publish and distribute necessary manuals of instruction and procedure for the implementation of the emissions I/M testing program in a manner not inconsistent with these rules. The department adopts by reference the VEHICLE EMISSIONS INSPECTION AND MAINTENANCE RULES AND REGULATIONS MANUAL FOR OFFICIAL VEHICLE INSPECTION STATIONS AND CERTIFIED INSPECTORS as the standard for conducting emissions inspections in designated counties. Any violation of these rules and regulations may result in the suspension or revocation of the certificate of appointment of the vehicle inspection station or certificate of the certified inspector. Such manual(s) shall be available for public inspection at reasonable times at offices of the department as designated by the director.

This agency hereby certifies that the 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 January 17, 2001.

TRD-200100320
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: September 15, 2000
For further information, please call: (512) 424-2135

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CHAPTER 34. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

The Texas Department of Public Safety adopts new Chapter 34, Subchapters A-C, §§34.1, 34.2, 34.21-34.29, and 34.51-34.58, concerning procedures for the negotiation and mediation of certain contract disputes, without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10679) and will not be republished.

The justification for the new sections will be the more timely and efficient resolution of contract disputes between contractors and the department.

Subchapter A (General, §34.1, and §34.2). §34.1 states that Chapter 34 will govern the negotiation and mediation of claims of breach of contract asserted by a contractor against the department. §34.2 provides definitions.

Subchapter B (Negotiation of Contract Disputes, §§34.21-34.29). §34.21 sets out the requirements and procedures of the notice of claim of breach of contract that contractor must assert. §34.22 sets out the requirements and procedures of the counterclaim that the department must assert. §34.23 provides that the parties shall negotiate to settle the dispute. §34.24 provides the statutory timetable as it relates to the negotiations between the contractor and the department. §34.25 explains the negotiation process. §34.26 addresses the parties' settlement approval procedures. §34.27 announces the requirements of any resulting settlement agreement. §34.28 explains how the costs of negotiations shall be handled by the parties. If the breach of contract claim is not resolved in its entirety, §34.29 specifies the process by which a contractor may seek resolution of the dispute by SOAH.

Subchapter C (Mediation of Contract Disputes, §§34.51-34.58.). §34.51 explains the mediation timetable. §34.52 discusses the qualifications, immunities, and duties of a mediator. §34.53 discusses the confidentiality of a mediation and clarifies that a resulting final settlement agreement is governed by the Public Information Act, Texas Government Code, Chapter 552. §34.54 explains how the costs of mediation shall be handled by the parties. §34.55 addresses settlement approval procedures. §34.56 details the initial settlement agreement. §34.57 provides details regarding a final settlement agreement. §34.58 provides that if mediation does not resolve the dispute the contractor may request that the claim be referred to SOAH.

No comments were received regarding adoption of the new sections.

SUBCHAPTER A. GENERAL

37 TAC §34.1, §34.2

The new sections are adopted under the statutory authority contained in Texas Government Code, Chapter 411, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying our the department's work; Texas Government Code, Chapter 411, §411.006, which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2001.

TRD-200100316
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES

37 TAC §§34.21 - 34.29

The new sections are adopted under the statutory authority contained in Texas Government Code, Chapter 411, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, Chapter 411, §411.006, which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2001.

TRD-200100317
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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SUBCHAPTER C. MEDIATION OF CONTRACT DISPUTES

37 TAC §§34.51 - 34.58

The new sections are adopted under the statutory authority contained in Texas Government Code, Chapter 411, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, Chapter 411, §411.006, which provides that the director of the department shall adopt rules, subject to commission approval, considered necessary for the control of the department; and Texas Government Code, Chapter 2260, which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2001.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: February 6, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 12. SPECIAL NUTRITION PROGRAMS

SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM

40 TAC §§12.2, 12.3, 12.8, 12.19

The Texas Department of Human Services (DHS) adopts amendments to §§12.2, 12.3, 12.8, and 12.19 without changes to the proposed text published in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12165).

Justification for the amendments is to incorporate provisions of the Child and Adult Care Food Program (CACFP) mandated by federal legislation, Federal Crop Insurance Act of 2000 (Public Law 106-224).

The department received no comments regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provide the department with the authority to administer public and nutritional assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.024 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 January 22, 2001.

TRD-200100395
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: February 11, 2001
Proposal publication date: December 8, 2000
For further information, please call: (512) 438-3108

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §19.303, §19.326

The Texas Department of Human Services (DHS) adopts amendments to §19.303 and §19.326 without changes to the proposed text in the December 8, 2000 issue of the *Texas Register* (25 TexReg 12167).

Justification for the amendments regarding emergency electrical power and safety operations lessen requirements that are more stringent than necessary to protect resident health and safety. The amended rules require duplex receptacles only when life-support electrical appliances, such as ventilators and suction equipment, are being used.

The department received no comments regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, Chapter 242, which authorizes the department to license and regulate nursing facilities.

The amendments 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 January 22, 2001.

TRD-200100396
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Effective date: March 1, 2001
Proposal publication date: November 8, 2000
For further information, please call: (512) 438-3108

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PART 3. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

CHAPTER 143. FUNDING

40 TAC §§143.1 - 143.3, 143.11 - 143.15, 143.17, 143.21, 143.22

The Texas Commission on Alcohol and Drug Abuse adopts amendments to §§143.1-143.3, 143.11-143.15, 143.17, 143.21, and 143.22 concerning Funding. These sections contain information regarding applicability, allocation of funds, service procurement plan, selection criteria, notice, request for proposals, application process, application criteria, funding decisions, and alternative competition. Section 143.22 is adopted with a non-substantive change to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 11086). Sections 143.1-143.3, 143.11-143.15, 143.17, and 143.21 are adopted without changes and will not be republished.

These amendments are adopted to update the funding rules, to state them more clearly and concisely and to eliminate unnecessary procedural details. Changes from Chapter 143 include: reference to an overall funding methodology instead of a formula; acceptance of input regarding the annual service procurement plan from all interested parties; the inclusion of service goals in the annual service procurement plan; compliance from all applicants with the Texas Review and Comment System (TRACS) requirements; the requirement for all treatment providers to be appropriately licensed and in good standing by the first effective service day they proposed in their applications; the elimination of unnecessary details regarding contract negotiations and funding decisions; the inclusion of a timeframe for notification of successful applicants; a new streamlined alternative funding process; and updated rules for other funding processes.

No comments were received regarding adoption of these amendments.

These amendments are adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the adopted amendments is the Texas Health and Safety Code, Chapter 461.

§143.22. Other Funding Processes.

(a) The commission may solicit a proposal from only one source if it is not feasible to use competitive procedures or state law does not require competition.

(b) One of the following must apply:

(1) A competitive process failed to elicit acceptable bids.

(2) The agency awarding or appropriating the funds to the commission either authorized the noncompetitive negotiation or approved the entity to receive funds.

(3) Because of an emergency, it is necessary to proceed without formal advertising to avoid delay.

(4) The material or service to be purchased is available from only one source.

(5) State law does not require competition.

(c) If the available funds exceed $25,000, a notice that services will be purchased is published on the commission's website and on the state's electronic business daily.

(d) After a noncompetitive award is made, the commission reserves the right to use a competitive process in subsequent years.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 17, 2001.

TRD-200100333
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: February 6, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 349-6668

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40 TAC §§143.16, 146.18, 146.23 - 143.25

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §§143.16, 143.18, and 143.23-143.25 concerning Funding without changes to the proposal as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10891).

The sections contain the peer review process and procedures for the cancellation or suspension of solicitation, emergency purchase, noncompetitive renewal, and developmental funding.

The repeal is adopted because the requirements contained in these sections have been incorporated into other sections or eliminated because they contain unnecessary procedural details.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Health and Safety Code, §461.012(a)(15) which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission when funding services, and §461.0141 which provides the commission with authority to adopt rules regarding purchase of services.

The code affected by the adopted repeal is the Texas Health and Safety Code, Chapter 461.

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 January 17, 2001.

TRD-200100334
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: February 6, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 349-6668

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CHAPTER 146. INTERAGENCY AGREEMENTS

40 TAC §146.21

The Texas Commission on Alcohol and Drug Abuse adopts new §146.21, concerning Criteria to Measure the Effectiveness of Substance Abuse Prevention Programs. The section is adopted with changes to the proposed text as published in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10892).

The new section contains the criteria the Texas Commission on Alcohol and Drug Abuse, Texas Juvenile Probation Commission, Texas Youth Commission and Texas Department of Protective and Regulatory Services shall use to measure the effectiveness of substance abuse prevention programs as required by the 76th Legislature, Acts 1999, Chapter 1051, Sections 1 to 3. Each agency shall also require substance abuse prevention programs to submit an annual report describing the program's effectiveness in meeting the criteria. The criteria include targeting problems that are specific to a given community or school, providing social services to children who have a family member with a drug addiction, using strategies that are appropriate for children of different ages, and providing continuity in services and intervention strategies for all grade levels.

The commission received comments from the Texas Youth Commission and the Greater Dallas Council on Alcohol and Drug Abuse, which are summarized below.

Comment: Clarify that the prevention programs referenced throughout the section are substance-abuse related prevention programs.

Response: The commission accepts this comment and the words "substance-abuse" have been added to describe the prevention programs referenced throughout the section.

Comment: The proposed rule states that programs should use "strategies that are appropriate for children of different ages." Chapter 144 of the commission's rules defines "children" as those under 13 years of age. Is it your intention that this item refer to adolescents (ages 13-17) as well?

Response: The text has been revised to refer to both children and adolescents.

Comment: Programs are required to use "the format specified by the funding agency" for evaluation. When do you expect to have that format ready for distribution?

Response: Each funding agency is responsible for defining the format. Chapter 144 of the commission's rules directs commission-funded programs to use Prevention Plus III as the format for program evaluation.

The new section is adopted under the Texas Health and Safety Code, §461.012(a)(15) which authorizes the Texas Commission on Alcohol and Drug Abuse to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the adopted rule is the Texas Health and Safety Code, Chapter 461.

§146.21. Criteria Established to Measure the Effectiveness of Substance Abuse Prevention Programs.

(a) Texas Commission on Alcohol and Drug Abuse, Texas Juvenile Probation Commission, Texas Youth Commission and Texas Department of Protective and Regulatory Services have agreed on the following criteria as measures of a substance abuse prevention program's effectiveness. According to the 76th Legislature, Acts 1999, Chapter 1051, Section 2, all funded substance abuse prevention programs shall:

(1) Target problems that are specific to a given community or school.

(A) The provider shall determine what population(s) the program is designed to serve: universal, selective or indicated.

(i) Universal programs reach the general population (such as all students in a school).

(ii) Selective programs target a subset of the general population which is at high risk for substance abuse (such as children of drug users).

(iii) Indicated programs are designed for those who may already be experimenting with drugs or who exhibit other problem-related behaviors.

(B) The program shall identify and describe the primary and secondary target populations including specific information about:

(i) age, gender, and ethnicity;

(ii) risk and protective factors;

(iii) patterns of substance use;

(iv) social and cultural characteristics;

(v) knowledge, beliefs, values, and attitudes; and,

(vi) needs.

(C) The program shall identify long-range goals which:

(i) address identified risks, needs and/or problems of the primary and secondary target populations;

(ii) are designed to enhance protective factors;

(iii) clearly describe behavioral and/or societal changes to be achieved; and

(iv) are realistic in relation to available resources.

(D) The program shall establish objectives for each contract period that are linked to the goals. Objectives must be realistic, outcome oriented, measurable and time-specific.

(2) Provide social services to children who have a family member with a drug addiction.

(A) The program shall identify needs that cannot be met by the program and help the participant access appropriate support systems and community resources. The program shall maintain a current list of referral resources, including other services provided by the organization.

(B) The program shall provide information, referrals and follow-up for participant and/or family needs that cannot be met by the program.

(3) Use strategies that are appropriate for children and adolescents of different ages. The program design, content, communications and materials shall:

(A) be available in the primary language of the target population;

(B) be appropriate to the literacy level, gender, race, ethnicity, sexual orientation, age and developmental level of the target population; and

(C) recognize the cultural identification (context) of the family unit.

(4) Provide continuity in services and intervention strategies for all grade levels as stipulated in any contracts the program enters into with the agencies in this interagency agreement.

(A) The substance abuse prevention program shall be designed to build on and support other related prevention and intervention efforts in the community. The program shall secure and maintain the support of key decision makers and leaders and shall establish formal linkages and coordinate with other community resources.

(B) Each substance abuse prevention program that provides activities within this strategy shall work with other service providers, organizations, individuals and families to promote substance abuse services and improve the community's ability to prevent substance abuse and related problems.

(C) The program must use existing community services and resources effectively to enhance the substance abuse prevention program.

(D) The program must establish formal linkages with other service providers to build a continuum of substance abuse services in the community. The program shall document active participation in collaborations to support community resource development.

(E) The program shall provide information, referrals and follow-up for participant and/or family needs that cannot be met by the program.

(b) In addition, according to the 76th Legislature, Acts 1999, Chapter 1051, Section 3, each agency shall require the substance abuse prevention program to submit an annual report that describes the program's effectiveness in meeting established criteria.

(1) The program shall perform self-evaluation to verify, document and quantify program activities and effectiveness.

(2) The program shall submit a written evaluation report using the format specified by the funding agency. The provider must submit the report at the end of each contract period, no later than September 30, unless otherwise stipulated in the contract.

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 January 17, 2001.

TRD-200100332
Karen Pettigrew
General Counsel
Texas Commission on Alcohol and Drug Abuse
Effective date: February 6, 2001
Proposal publication date: November 3, 2000
For further information, please call: (512) 349-6668

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission adopts amendments to Subchapter H, §§800.301-800.307 and new §800.308, relating to Agency Monitoring Activities. Section 800.302 and §800.303 are adopted with changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10714) and will be republished. Section 800.301 and §§800.304-800.308 are adopted without changes and will not be republished.

The Texas Workforce Commission adopts amendments to Subchapter I, §§800.351-800.355 and §§800.357-800.359, and new §800.360, relating to Subrecipient and Contract Service Provider Monitoring Activities. Sections 800.352, 800.353, 800.355, 800.357, and 800.359 are adopted with changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10714) and will be republished. Sections 800.351, 800.354, 800.358, and 800.360 are adopted without changes and will not be republished.

Concurrent with this proposal, the Commission adopts the review of Subchapters H and I of Chapter 800 relating to Monitoring in accordance with Texas Government Code §2001.039,

without changes to the proposed text as published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10773). No comments were received on the proposed review.

The term "Agency" when used in these rules refers to the state agency which operates the integrated workforce development system. The term "Commission" is used to refer to the three member governance body authorized to adopt rules by Texas Labor Code §301.061.

Purpose: The purpose of the amendments is to include in the rules the monitoring requirements imposed by the Workforce Investment Act (WIA) (29 U.S.C.A. §§2801 et seq.), and to clarify the use of some of the terms in the rules.

Background. Regarding general amendments to both Subchapter H and Subchapter I, the proposed rules included changes to clarify the definitions of "contract service provider" and "subrecipient." Likewise, the proposed language amended the definitions section to delete the term Board and Commission as unnecessary.

The purpose of the rules and proposed changes to Subchapter H include the following:

Section 800.303 clarifies the provisions relating to program and fiscal monitoring.

Section 800.304 describes the requirement that records involving the use of funds administered by the Agency be made available by Boards, other subrecipients and contract service providers to the Agency. Record-keeping and documentation requirements are based on OMB Circular A-133 and the Agency's Financial Grants and Contracts Manual.

Section 800.305 was amended to clarify the processes and procedures used to determine performance.

Section 800.306 describes the fiscal monitoring activities of the Agency including evaluation of compliance with appropriate uniform administrative requirements and cost principles. The rules also include provisions regarding compliance with the requirements of WIA cost categories and cost limitations.

Section 800.307 was amended to clarify the provisions relating to resolution activities, and the appeal process.

Section 800.308 describes the Agency resolution process including the applicability of sanctions.

Concurrent with this adoption is an error correction that reflects that the proposed section "300.308" is properly cited as "800.308".

The purpose of the rules and proposed changes to the rules in Subchapter I include the following:

Section 800.352 sets forth the applicable definitions and modifies the terms "contract service providers" and "subrecipients";

Section 800.353 describes subrecipient and contract service provider monitoring requirements.

Section 800.354 describes required risk assessment activities.

Section 800.355 describes the monitoring plan.

Section 800.356 is intentionally skipped.

Section 800.357 lists the required controls over monitoring.

Section 800.358 describes reporting and resolution requirements.

Section 800.359 is revised to remove an unnecessary provision and describes the independent audit requirements.

Section 800.360 sets forth the requirements relating to access to records.

The Commission received comments on the rules from the Gulf Coast Workforce Development Board and from the West Central Workforce Development Board. Following each comment is the Commission's response. The commenters made suggestions regarding the rules but did not state whether they were for or against the rules.

Comment: Regarding §800.302 and §800.352, one commenter suggested that the change in the definition of service provider would create an adverse financial impact on entities contracting with Boards if these entities were required to monitor program activities. Even though monitoring costs are allowable, if not budgeted, sufficient funds may not be available to adequately monitor program activities. Local Boards should be allowed to determine the scope and extent to which contract service providers must conduct monitoring.

Response: The Commission agrees that Boards should be allowed to determine the extent to which monitoring activities are conducted by contract service providers. While the definition of contract service provider was amended for clarification, it was not intended that the scope of the definition extend beyond that in the original definition. Additionally, §800.353 of the original rule requires contract service providers to monitor entities that receive public funds, i.e., all subcontractors without regard to size. The proposed amendment allows more flexibility by requiring that contract service providers "assure" that monitoring activities occur. The proposed rules allows contract service providers to reach an agreement with the Board on how best to handle monitoring activities. The Board can elect to meet all monitoring responsibilities by including contract service provider coverage in the Board's monitoring plan and risk assessment and delineating the division of monitoring responsibilities in contracts with contract service providers and subrecipients.

Comment: Regarding §800.303 and §800.353, one commenter suggested that the rules be amended to limit required compliance with official directions such as Texas Workforce Commission Workforce Development Letters and U.S. Department of Labor Information Notices to only the mandatory policies contained within the documents. The commenter noted that such documents often provide guidance rather than policy and in such cases the Boards should have the opportunity to adopt alternate policies and procedures that better suit the needs of the local areas.

Response: The Commission agrees that Boards are not required to adopt all policies and procedures which are suggested in official "guidance," but rather are required to read and consider such guidance before developing policies and procedures for local areas. The proposed changes to §800.303 and §800.353 were not intended to require Boards to comply with all suggestions and "best practices" contained in authoritative pronouncements, but rather to provide examples of types of authoritative pronouncements. Because guidances may reference and include interpretations of requirements of law, the Commission does not agree with removing the reference from the rules.

Comment: Regarding §800.306, one commenter suggested that the Commission include a timeframe for reports to be issued; such as "within 60 days of completion of monitoring activities" or similar language. The commenter suggested that this would

further ensure and demonstrate the Commission's commitment and practice of providing feedback within a reasonable time period.

Response: The Agency agrees that reporting timelines are necessary and has already established such in written internal agency operating procedures. However, since the detailed monitoring findings may vary significantly, the Commission does not agree with setting forth a rigid timeline in the rule language.

Comment: Regarding §800.307, one commenter recommended that the Commission include a timeframe for response and resolution activities in the section. The commenter also stated that the addition of timeframes for response from the Board and issuance of initial determinations would seem to be necessary in relationship to the timeframe in §800.307(2).

Response: The proposed rule requires completion of response and resolution activities by a date specified by the Agency rather than establishing a fixed timeframe for all situations. It is important that Boards, subrecipients, and contract service providers have the opportunity to respond fully and adequately to monitoring findings. Identifying due dates for such responses allows consideration of individual circumstances while respecting the need to complete the process in a timely manner.

Comment: Regarding §800.355, one commenter asked that the section be clarified because as written, the commenter suggested that the section could be read to require that Boards monitor Agency-funded activities even when the activities occur under a contract between the Agency and a third party. The commenter suggested that the section be amended to indicate clearly that subrecipients and contract service providers are only responsible for monitoring Agency-funded activities provided by entities which acted under a contract funded directly or indirectly by the subrecipient or service provider.

Response: The Agency agrees that the proposed rule as written could be misinterpreted. The rule will be changed accordingly.

Comment: Regarding §800.356, which is numbered as §800.357 in the text of the proposed rules, one commenter questioned the need for the requirement that all providers brief the Board or Board subcommittee on monitoring activities. The commenter suggested that this requirement would result in a significant number of reports to the Board or Board subcommittee. The commenter suggested that it would be more appropriate to provide a briefing on Board monitoring activities, which would include a review of contract monitoring. The commenter proposed that the section be amended to apply only to subrecipients or Boards.

Response: Regarding §800.357 and §800.358, the Commission intends that the Boards be briefed so they are informed of the results of monitoring activities because of the Boards' ultimate responsibility for oversight of all activities funded through the Boards. The Commission does not agree with removing the requirement that the Board be fully informed of all monitoring activities. The rules consistently require that monitoring information be provided to the Boards. Section 800.358(c) states that copies of all monitoring reports be provided to Boards. Section 800.357 requires that reports on monitoring activities be presented to the Board at a regularly scheduled meeting of the Board or Board subcommittee. The purpose of §800.357 is to ensure that the Board or a committee of the Board is briefed on the results of monitoring activities at regularly scheduled meetings by an appropriate party. Section 800.357 was not intended to require briefings by all the individual providers themselves, and so the Commission agrees to clarify that a person other than the provider or subrecipient may provide the briefing. Section 800.357 will be changed to clarify this point.

SUBCHAPTER H. AGENCY MONITORING ACTIVITIES

40 TAC §§800.301 - 800.308

The rules are adopted under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

§800.302. Definitions.

In addition to the definitions found in §800.2, the following words or terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Contract Service Provider--An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* engaged to provide goods, services, or both under a contract with a subrecipient, or other provider of services pursuant to an executed contract that is funded with funds administered by the Agency.

(2) Subrecipient--An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* receiving funds through a direct contract with the Agency. Boards are subrecipients.

§800.303. Program and Fiscal Monitoring.

(a) Subrecipients shall cooperate with the Agency's program and fiscal monitoring activities, site visits, reviews of documentation and requests for information. The Agency is committed to ensuring the accountability of subrecipients and contract service providers. Therefore, monitoring activities have been developed to:

(1) ensure programs achieve intended results;

(2) ensure resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse; and

(3) ensure reliable and timely information is captured and reported to serve as the basis to improve decision-making.

(b) Comprehensive monitoring activities are conducted by the Agency to assess subrecipient and contract service provider progress in achieving program goals and maintaining fiscal accountability. Program and fiscal monitoring activities include site visits, desk reviews, and analyses of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in substandard performance or questioned costs. Monitoring activities shall assess a subrecipient's or contract service provider's compliance with applicable laws, regulations, contract provisions, and official directives including such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters. The Agency shall assess the subrecipient's or contract service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the circulars or rules of the Office of Management and Budget. Monitoring activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Monitoring reviews result in recommendations that provide practical solutions used to take immediate corrective action.

(c) Subrecipients and contract service providers are subject to audit and review by the Agency. The Agency may audit and review all relevant records or a sample of the records as needed to determine subrecipient and contract service provider performance.

(d) Failure to comply with this subchapter shall result in corrective action and possible sanctions pursuant to Chapter 800, of this title, Subchapter E, (relating to Sanctions).

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 January 19, 2001.

TRD-200100359
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: February 8, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 463-3041

SUBCHAPTER I. SUBRECIPIENT AND CONTRACT SERVICE PROVIDER MONITORING ACTIVITIES

40 TAC §§800.351 - 800.355, 800.357 - 800.360

The rule is adopted under Texas Labor Code, Title 4, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Agency's services and activities.

§800.352. Definitions.

In addition to the definitions found in §800.2, the following words or terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Contract Service Providers--An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* engaged to provide goods, services, or both under a contract with a subrecipient or other provider of services pursuant to an executed contract that is funded with funds administered by the Agency.

(2) Subrecipient--An entity other than a vendor as defined in the *Office of Management and Budget Circular A-133* receiving funds through a direct contract with the Agency. Boards are subrecipients.

§800.353. Subrecipient and Contract Service Provider Monitoring.

(a) Subrecipients and contract service providers shall assure that regular oversight of their own activities and regular monitoring of the activities of their contract service providers which receive public funds administered by the Agency, is conducted and completed. Monitoring shall include monitoring of both the fiscal and program performance of the entities or contract service providers administering and delivering services. These monitoring activities should be designated to ensure programs achieve intended results and resources are efficiently and effectively used for authorized purposes and are protected from waste, fraud, and abuse. Monitoring activities must be planned to focus on areas of highest risk to help ensure the most effective use of monitoring resources.

(b) Monitoring activities shall assess a contract service provider's compliance with applicable laws, regulations, contract provisions, and official directives including such documents as U.S. Department of Labor Training and Employment Guidance Letters, U.S. Department of Labor Training and Employment Informational Notices, U.S. Department of Health and Human Services Guidance Letters, and Texas Workforce Commission Workforce Development Letters. The subrecipient shall assess the contract service provider's compliance with the appropriate uniform administrative requirements for grants and agreements applicable to the type of entity receiving funds, as promulgated in the circulars or rules of the Office of Management and Budget. These activities shall encompass both financial and programmatic monitoring and shall be evaluated on a periodic basis. Each subrecipient and contract service provider shall conduct regular oversight and monitoring of its subrecipients and contractors in order to:

(1) determine that expenditures have been charged to the cost categories and within the cost limitations specified in the applicable laws and regulations;

(2) determine whether or not there is compliance with other provisions of applicable laws and regulations; and

(3) provide technical assistance as necessary and appropriate.

(c) The monitoring function shall include the development and implementation of:

(1) a risk assessment tool;

(2) a monitoring plan;

(3) a monitoring program, including established policies and procedures; and

(4) reporting and resolution processes.

(d) The subrecipient shall develop and implement written policies and procedures that describe and support the monitoring process.

§800.355. Monitoring Plan.

(a) Subrecipients and contract service providers shall develop their own local-level monitoring plan based on the results of the risk assessment. This monitoring plan shall incorporate all of the following:

(1) a schedule or timetable for monitoring Agency funded activities, subrecipients, and contract service providers receiving funds under a contract with the subrecipient or contract service provider or a subcontractor of a subrecipient or contract service provider based upon risk assessment results;

(2) identification of the type of review planned for each subrecipient and contract service provider, such as on-site review, comparative financial analysis, desk review, staff analysis, or other type of appropriate review; and

(3) the estimated time budgeted to perform each review.

(b) Subrecipients and contract service providers may perform monitoring reviews either formally or informally, but shall incorporate the risk assessment results in scheduling decisions.

§800.357. Controls Over Monitoring.

To ensure comprehensive and effective monitoring, subrecipients and contract service providers shall:

(1) require periodic reports from their contract service providers outlining monitoring reviews, noncompliance issues, and the status of corrective actions;

(2) ensure that a briefing regarding monitoring activities and findings is provided to the Board or appropriate Board subcommittee at regularly scheduled meetings;

(3) require an annual evaluation of the monitoring function to determine its effectiveness, by a person or entity independent of the monitoring function; and

(4) develop a written monitoring procedure to be used in monitoring both program and fiscal operations.

§800.359. Independent Audit Requirements.

(a) Subrecipients and contract service providers subject to the Single Audit Act must have an independent audit performed in compliance with the *Office of Management and Budget Circular A-133*.

(b) Subrecipients shall submit to the Agency for review and acceptance a complete copy of the audit within nine months of the end of the designated fiscal year. Contract service providers shall submit to the Board, from which contract funds originated, for review and acceptance a complete copy of the audit within nine months of the end of the designated fiscal year.

(c) Subrecipients and contract service providers may be reimbursed by the Agency for their share of audit expenses if:

(1) funding is available and reimbursement is permitted by applicable funding sources;

(2) the audit is found to be acceptable upon review by the Agency; and

(3) the audit and reimbursement request follows Agency policies and procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 19, 2001.

TRD-200100360
John Moore
Assistant General Counsel
Texas Workforce Commission
Effective date: February 8, 2001
Proposal publication date: October 27, 2000
For further information, please call: (512) 463-3041

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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

The Commissioner of Insurance, at a public hearing under Docket No. 2481 scheduled for March 7, 2001 at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1999, 2000, and 2001 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0101-01-I), was filed on January 18, 2001.

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 1999, 2000, and 2001 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 Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0101-0I-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the *Texas Register*, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Deputy Commissioner, Personal and Commercial Lines Division, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-200100402
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: January 22, 2001

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 Transportation

Title 43, Part 1

Notice of Intention to Review: In accordance with the General Appropriations Act of 1999, House Bill 1, Section 10.13, Article IX, and Government Code, §2001.039, as added by Senate Bill 178, 76th Legislature, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part I, Chapter 22, Use of State Property; Chapter 25, Traffic Operations; and Chapter 29, Maintenance.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comment or questions regarding this rule review may be submitted in writing to Carlos Lopez, Director, Traffic Operations Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (512) 416-3200.

TRD-200100337
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: January 18, 2001

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Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 227. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 227. Admission to an Educator Preparation Program: §§227.1, 227.10, 227.20, 227.30, 227.32, 227.34, 227.36, 227.38, 227.40, 227.42, 227.44, 227.46, 227.48, 227.50, 227.52, 227.54, 227.56, 227.58.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 227.

TRD-200100372
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 228. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 228. Requirements for Educator Preparation Programs: §§228.1, 228.2, 228.10, 228.20, 228.30, 228.40, 228.50, 228.60.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 228.

TRD-200100373
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 229. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 229. Accountability System for Educator Preparation: §§229.1-229.5.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 229.

TRD-200100374
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 232. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 232. General Requirements Applicable to All Certificates Issued: §§232.500, 232.510, 232.515, 232.800, 232.810, 232.820, 232.830, 232.840, 232.850, 232.851, 232.860, 232.870, 232.880, 232.890, 232.900.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 232.

TRD-200100375
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 240. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 240. American Sign Language Certificate: §240.1.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 240.

TRD-200100376
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 241. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 241. Principal Certificate: §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35, 241.40.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 241.

TRD-200100377
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

♦ ♦ ♦

The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 242. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 242. Superintendent Certificate: §§242.5, 242.10, 242.15, 242.20, 242.25, 242.30, 242.35.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 242.

TRD-200100378
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

♦ ♦ ♦

The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 244. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 244. Certificate of Completion of Training for Appraisers. §§ 244.1-244.4.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 244.

TRD-200100379
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

♦ ♦ ♦

The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 245. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 245. Certification of Educators from Other Countries: §§ 245.1, 245.5, 245.10, 245.15

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 245.

TRD-200100380
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

♦ ♦ ♦

The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 247. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 247. Educator's Code of Ethics: §§ 247.1-247.2.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 247.

TRD-200100381

Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

♦ ♦ ♦

The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 249. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases, Including Enforcement of the Educator's Code of Ethics, Subchapters A-F: §§ 249.1-249.56.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

2) conforming amendments proposed in connection with the new Transitional Permit rules: Chapter 227, Subchapter A, §§ 227.1, 227.10 and 227.20, relating to Admission to an Educator Preparation Program (repeal all); Chapter 228, relating to Requirements for Educator Preparation Programs (amend §§ 228.1, 228.10, and 228.30; repeal §§ 228.2, 228.20, 228.40, and 228.60); and Chapter 245, relating to Certification of Educators from Other Countries (amend §§ 245.5 and 245.10).

3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 249.

TRD-200100382
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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The State Board for Educator Certification adopts its review of 19 TAC Part 7, Chapter 250. As a result of the review, the Board readopts the following rules, with proposed changes as noted:

Chapter 250. Agency Administration, Subchapters A-C: §§ 250.1-250.3, 250.20, 250.30-250.34.

The review was conducted pursuant to Article IX-74, Section 9-10.13, of the General Appropriations Act (House Bill 1), 76th Legislature, Regular Session, 1999, and Texas Government Code, §2001.039. The purpose of the review was to determine whether the Board's reasons for adopting the rules contained in the above chapters continued to exist. Notice of the proposed rule review was published in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10769) to advise the public of the review and to invite comments about the rules under review. The comment period ended Comments December 15, 2000. The agency received only one set of comments related to the rule review.

At its November 2000 meeting, the Board took public testimony on its review of rules other than those found in Chapter 230. Only one party testified, the Texas Association of Developing Colleges (TADC), presented jointly by Dr. Jean D. Fitts, Associate Vice President for Academic Affairs at Texas College, and Dr. Robert Watkins, Chair of Education for Paul Quinn College (see Attachment I). TADC is a consortium of the five historically black colleges of the state: Huston-Tillotson College, Jarvis Christian College, Paul Quinn College, Texas College, and Wiley College.

TADC recommended changes to SBEC's rule at 19 Texas Administrative Code, § 229.3, which addresses the accountability calculation for programs with fewer than 30 certification examinees a year. TADC complained that the rule unfairly overlooks an educator preparation program's dramatic improvement in the course of one year.

To remedy the problem, TADC recommends three changes to §229.3:

1) revert to the 1998 version of the rule;

2) recognize programs' incremental progress year-by-year and over time; and

3) consider other indicators of a program's performance rather than just the pass rates of its certification students/candidates, such as its graduates' performance as first-year teachers and retention rates in the profession.

At its January 2001 meeting, the Board appointed an advisory committee to consider changes to the accountability system rules, including the rule identified by TADC, 19 Texas Administrative Code, § 229.3.

Also during the review period, the Board adopted or proposed the following changes to the rules under review:

1) conforming amendments adopted in connection with the new School Counselor and School Librarian certificates: Chapter 232, § 232.510, relating to Classes of Certificates; and

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3) amendments to the Standard Principal Certificate rules: Chapter 241.

This concludes the review of Chapter 250.

TRD-200100383
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Filed: January 22, 2001

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) readopts Title 25, Texas Administrative Code, Part 1, Chapter 13. Health Planning and Resource Development, Subchapter B. Data Collection §§13.13, 13.15, 13.17, 13.18, and 13.19, without changes to the proposed text as published in the issue of the *Texas Register* (25 TexReg 10619). Sections 13.11, 13.12, 13.14, 13.16, and 13.20 were proposed for readoption in the proposed preamble without changes and are readopted without changes because no needed revisions were identified during the review. The effective date of §§13.11 - 13.20 is February 8, 2001.

The Notice of Intention to Review §§13.11 - 13.20 was published in the February 12, 1999, issue of the *Texas Register* (24 TexReg 1001). These sections has been reviewed in accordance with the requirements of the General Appropriations Act, 75th Legislature, (1997), Article IX, §167; the General Appropriations Act, 76th Legislature, (1999), Article IX, §9- 10.13; and Government Code §2001.039 which requires that each state agency review and consider for readoption each rule adopted by that agency. The department has determined that reasons for readopting the sections continue to exist. No comments were received as a result of the publication of the Notice of Intention to Review.

The adopted preamble and rules are being published in this same issue under the Adopted Rules Section.

TRD-200100431
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 24, 2001

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Texas Youth Commission

Title 37, Part 3

In accordance with the General Appropriation Act, Article IX, Section 167, 75th Legislature, the Texas Youth Commission is adopting the review of Title 37, Part III, Chapters §97 and §99, concerning Security Control and General Provisions. The proposed review was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12820).

The Commission has determined that the reason for adopting these rules continues to exist.

The Commission has adopted new 37 TAC§97.40 and §97.43 and amendments to 37 TAC §§97.23,97.39, and 97.41, which may be found in the Proposed Rules section of the December 1, 2000 issue of the *Texas Register*. In addition, the Commission has adopted the repeal to §97.37 as proposed in the December 1, 2000 issue of the *Texas Register*. These rules will be effective on February 15, 2001.

Comments or questions pertaining to this notice should be directed to Sherma Cragg, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765 or e-mail sherma.cragg@tyc.state.tx.us.

TRD-200100425
Steve Robinson
Executive Director
Texas Youth Commission
Filed: January 24, 2001

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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 Bond Review Board

Biweekly Report of the 2001 Private Activity Bond Allocation Program

The information that follows is a report of the 2001 Private Activity Bond Allocation Program for the period of January 6, 2001 through January 19, 2001.

Total amount of state ceiling remaining unreserved for the $325,809,688 subceiling for qualified mortgage bonds under the Act as of January 19, 2001: $156,703,288

Total amount of state ceiling remaining unreserved for the $143,356,262 subceiling for state-voted issue bonds under the Act as of January 19, 2001: $143,356,262

Total amount of state ceiling remaining unreserved for the $97,742,906 subceiling for qualified small issue bonds under the Act as of January 19, 2001: $81,342,906

Total amount of state ceiling remaining unreserved for the $215,034,394 subceiling for residential rental project bonds under the Act as of January 19, 2001: $30,934,394

Total amount of state ceiling remaining unreserved for the $136,840,069 subceiling for student loans bonds under the Act as of January 19, 2001: $101,840,069

Total amount of state ceiling remaining unreserved for the $384,455,431 subceiling for all other issue bonds under the Act as of January 19, 2001: $131,955,431

Total amount of the $1,303,238,750 state ceiling remaining unreserved under the Act as of January 19, 2001: $646,132,350

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from January 6, 2001 through January 19, 2001:

1) Issuer: Travis County HFC

User: Stonebridge Park

Description: Multifamily Residential Rental Project--Stonebridge Apts.

Amount: $15,000,000

2) Issuer: TDHCA

User: Reed Road South Apartments

Description: Multifamily Residential Rental Project--Reed Road South Apts.

Amount: $11,250,000

3) Issuer: Harris County HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $25,000,000

4) Issuer: TDHCA

User: Hemma, Ltd.

Description: Multifamily Residential Rental Project--Hays Villas

Amount: $9,000,000

5) Issuer: Jefferson County HFC

User: Starcrest Apartments

Description: Multifamily Residential Rental Project--Starcrest Apts.

Amount: $3,550,000

6) Issuer: TDHCA

User: SDC Investments

Description: Multifamily Residential Rental Project-- Ewing Villas Apts.

Amount: $12,250,000

7) Issuer: Gulf Coast Waste Disposal Authority

User: Valero Energy Corp.

Description: All Other Issue--Texas City, Texas

Amount: $25,000,000

8) Issuer: Gulf Coast Waste Disposal Authority

User: CITGO Petroleum Corp.

Description: All Other Issue--Pasadena, Texas

Amount: $25,000,000

9) Issuer: Port of Port Arthur Navigation District of Jefferson County, Texas

User: The Premcor Refining Group, Inc.

Description: All Other Issue--Port Arthur, Texas

Amount: $25,000,000

10) Issuer: Fort Bend County IDC

User: Continental Poly Bags, Inc.

Description: Qualified Small Issue Bonds

Amount: $3,400,000

11) Issuer: Austin HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $23,000,000

12) Issuer: Laredo HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: $12,289,900

13) Issuer: Harris County IDC

User: L. Bentley Sanford Investments

Description: Qualified Small Issue Bonds

Amount: $3,000,000

14) Issuer: Harris County HFC

User: Palomino Place Apts., Ltd.

Description: Multifamily Residential Rental Project--Palomino Place Apts.

Amount: $7,200,000

15) Issuer: North Central Texas HFC

User: One Bent Tree, Ltd.

Description: Multifamily Residential Rental Project--Bent Tree Apts.

Amount: $13,400,000

16) Issuer: Houston HFC

User: Newport Finlay Partners

Description: Multifamily Residential Rental Project--Newport Apts.

Amount: $8,000,000

17) Issuer: Houston HFC

User: Cullen Park Apartments

Description: Multifamily Residential Rental Project--Cullen Park Apts.

Amount: $9,520,000

18) Issuer: Brazos River Harbor Navigation District of Brazoria County, Texas

User: BASF Corp.

Description: All Other Issue--Freeport, Texas

Amount: $25,000,000

19) Issuer: Gulf Coast Waste Disposal Authority

User: ExxonMobil Corp.

Description: All Other Issue--Baytown, Texas

Amount: $25,000,000

20) Issuer: Port of Port Arthur Navigation District of Jefferson County, Texas

User: Motiva Enterprises LLC

Description: All Other Issuer--Port Arthur, Texas

Amount: $25,000,000

Following is a comprehensive listing of applications, which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from January 6, 2001 through January 19, 2001: None

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from through January 19, 2001:

1) Issuer: Bexar County HFC

User: MAGI Management

Description: Multifamily Residential Rental Project--Pearsall Road

Amount: $15,000,000

2) Issuer: Laredo HFC

User: MAGI Management

Description: Multifamily Residential Rental Project--Cielito Lindo Apts.

Amount: $12,500,000

3) Issuer: North Central Texas HFC

User: One Clear Brook, Ltd.

Description: Multifamily Residential Rental Project--Clear Brook Apts.

Amount: $13,600,000

4) Issuer: Houston HFC

User: Rosslyn 250 Tidwell Partners

Description: Multifamily Residential Rental Project--Woodland Point Apts.

Amount: $11,250,000

5) Issuer: Austin HFC

User: Arbor Trails Housing, Ltd.

Description: Multifamily Residential Rental Project--Southridge Apts.

Amount: $8,000,000

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from January 6, 2001 through January 19, 2001: None

For a more comprehensive and up-to-date summary of the 2001 Private Activity Bond Allocation Program, please visit the website (www.brb.state.tx.us). If you have any questions or comments, please

contact Steve Alvarez, Program Administrator, at 512/475-4803 or via email at alvarez@brb.state.tx.us.

TRD-200100384
Steve Alvarez
Program Administrator
Texas Bond Review Board
Filed: January 22, 2001

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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 project(s) during the period of December 21, 2000, through January 11, 2001. The public comment period for these projects will close at 5:00 p.m. on February 12, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Lailah Suki; Location: The project site is located at 1309 Todville Road, in Seabrook, Harris County, Texas. CCC Project No.: 01-0013-F1; Description of Proposed Action: The applicant proposes to fill approximately 0.5 acre of jurisdictional adjacent wetlands to construct residential townhouses. Approximately 2,000 to 4,000 cubic yards of clean dirt and/or sand will be required as fill for the proposed project. Type of Application: U.S.A.C.E. permit application #22243 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: TransTexas Gas Corporation; Location: The project area is located entirely within State Tract 331, Galveston Bay, Galveston County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled: "Texas City, Texas." Approximate UTM Coordinates: Zone 15; Easting: 314800; Northing: 3261100. CCC Project No.: 01-0014-F1; Description of Proposed Action: The applicant proposes to install a 424 foot long, 8-inch diameter gathering line from State Tract 331, Well #6 to the existing production platform also located in State Tract 331 and designated as #1. Type of Application: U.S.A.C.E. permit application #20643(04)/019 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Sterling Exploration & Production Co., LLC; Location: The project site is located in State Tract 53, Matagorda Bay, Calhoun County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled "Keller Bay, Texas". Approximate UTM Coordinates: Zone 14; Easting: 745841; Northing: 3160722. CCC Project No.: 01-0018-F1; Description of Proposed Action: The applicant proposes to drill and maintain Well No. 1 in State Tract 53 under Oil Field Development Permit 21641. Type of Application: U.S.A.C.E. permit application #21642/007 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Millennium Petrochemicals, Inc.; Location: The project site is located in the Upper San Jacinto Bay, Harris County, Texas. The site can be located on the U.S.G.S. quadrangle map entitled "LaPorte, TX." Approximate UTM Coordinates: Zone 15; Easting: 300500; Northing: 3290200. CCC Project No.: 01-0019-F1; Description of Proposed Action: The applicant proposes to add the Peggy Lake Dredged Material Placement Area to their existing permit for placing dredged material. Type of Application: U.S.A.C.E. permit application #14206(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Brazos River Harbor Navigation District; Location: The project site is located on the Freeport Harbor Channel, Freeport, Brazoria County Texas. Approximate UTM Coordinates: Zone 15; Easting: 273880; Northing: 3202880. CCC Project No.: 01-0020-F1; Description of Proposed Action: The applicant proposes to dredge a tug harbor, install four 36-inch mooring dolphins, and a T-head pier. The applicant also proposes removal of the existing concrete block revetment from the existing shoreline, dredge approximately 12,000 cubic yards of clay and sand from the project site, and deposit the material on a bermed, upland disposal site adjacent to the proposed harbor. The applicant will also replace the concrete block revetment along the new shoreline. Type of Application: U.S.A.C.E. permit application #22229 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and section 404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information for the applications listed above may be obtained from Ms. 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-200100423
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: January 24, 2001

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Comptroller of Public Accounts

Notice of Request for Information

Pursuant to Chapters 2305 and 403, Texas Government Code, the State Energy Conservation Office of the Comptroller, on behalf of the State Energy Conservation Office (SECO), Renewable Energy Demonstration Program (REDP), issues this Request for Information (RFI) from Texas Independent School Districts (ISDs) to participate in the REDP Solar for Texas Schools Education Outreach Program (Program). SECO requests information from ISDs under this RFI interested in working with SECO's contractor in installing small-scale educational solar energy systems, procuring and installing hands-on monitoring systems, developing and implementing a renewable energy education curriculum relative to the small-scale solar energy systems, and developing and implementing a community outreach program to showcase the solar energy systems installed. Respondents should also detail in their responses recommended means to secure additional funding for the project in their ISDs through public-private partnerships with utilities or other entities. SECO reserves the right, in its sole discretion, to

select one or more respondents to participate in the Program. Selected ISDs will work with SECO's contractor selected under a separate Request for Proposals (RFP). That RFP describes the coordination between SECO's contractor and the ISDs. Such RFP will be posted on SECO's website at: http://www.seco.cpa.state.tx.us/re_html.htm. Interested ISDs are strongly encouraged to review the RFP and submit written questions to SECO prior to responding to this RFI.

Contact: Parties interested in submitting information in response to this RFI should contact Pam Groce, State Energy Conservation Office, Comptroller of Public Accounts, 111 E. 17th St., Room 1114, Austin, Texas, 78744, telephone number: (512) 463-1931, no later than 5:00 p.m. Central Zone Time (CZT), on Monday, March 5, 2001. All written responses, inquiries, questions, and other information must be received at the location specified above, prior to 5:00 p.m. (CZT) on the deadline in order to be considered.

Closing Date: All responses to this RFI must be submitted no later than 5:00 p.m. (CZT), on Monday, March 5, 2001. Responses received after this time and date will not be considered.

Comptroller and SECO reserve the right, in their sole judgment and discretion, to accept or reject any or all responses received. Responses received by the deadline will be subject to evaluation by Comptroller, SECO, and/or a committee and all responses shall become the property of SECO and Comptroller. Responses will be public information and available to any requester. Neither Comptroller nor SECO is under any legal or other obligation to issue a solicitation or execute a contract on the basis of this notice or any responses received as a result of the issuance of this RFI. Neither SECO nor Comptroller shall pay for any costs incurred by any ISD, or any other entity in responding to this RFI.

Responses must be four pages or less and include the following information: (1) name of ISD, address, location, complete with contact name and phone numbers; (2) proposed project title; (3) identification of the respondent's enrollment, size, approximate numbers of students who will benefit from implementation of this project, together with the names, addresses, locations, and contact information for all major participants or partners, including subcontractors, if any; (4) general description of plan for implementation of the Texas Solar for Schools Project, including objectives and major tasks for each participant; (5) approximate budget and itemization of matching funds or other contributions available, if any; (6) details of the proposed approximate schedule and timeline for completion; and (7) a concise statement of the reasons the respondent or respondent's ISD is suited to receive the project. All responses must be submitted no later than 5:00 p.m., CZT, on Monday, March 5, 2001.

TRD-200100438
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: January 24, 2001

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Notice of Request for Proposals

Pursuant to Chapters 2305 and 403, Texas Government Code, and Chapter 113, Natural Resources Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), on behalf of the Texas Alternative Fuels Council (Council), announces the issuance of a Request for Proposals (RFP #120b) from qualified, independent firms, institutions, and entities currently involved in alternative fuels projects statewide, to submit proposals detailing alternative fuels projects demonstrating off-road emission reductions in air quality and non-attainment areas of the state (Project). The projects submitted and detailed in the proposals must have the potential for replication, be near commercialization, and be highly visible. Respondents should detail in their proposals any matching fund amounts, sources, or other funding mechanisms. Council estimates total budget for the project to be approximately $150,000. The successful respondent(s) will be expected to begin performance of the contract or contracts, resulting from this RFP, if any, on or about April 2, 2001.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, February 2, 2001, between 2 p.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://www.marketplace.state.tx.us after 2 p.m. (CZT) on Friday, February 2, 2001. All written inquiries and questions regarding the RFP or Project should be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Tuesday, February 20, 2001. Official responses to questions received by the foregoing de! adline will be posted electronically on the Texas Marketplace no later than February 21, 2001, or as soon thereafter as practical.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Wednesday, February 28, 2001. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Council will make the final decision regarding the award of a contract or contracts resulting from this RFP. The Council reserves the right to award one or more contracts under this RFP.

The Comptroller and Council reserve the right to accept or reject any or all proposals submitted. Neither the Comptroller nor the Council is under any legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Neither the Comptroller nor the Council shall pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - February 2, 2001, 2 p.m. CZT; All Inquiries and Questions Due - February 20, 2001, 2 p.m. CZT; Official Responses to Questions Posted - February 21, 2001, or as soon thereafter as practical; Proposals Due - February 28, 2001, 2 p.m. CZT; Contract Execution - April 2, 2001, or as soon thereafter as practical; Commencement of Project Activities -April 2, 2001.

TRD-200100437
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: January 24, 2001

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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 01/29/01 - 02/04/01 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 01/29/01 - 02/04/01 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-200100409
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 23, 2001

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Texas Commission for the Deaf and Hard of Hearing

Invitation for Bid

The purpose of this Invitation for Bid (IFB) is to secure bids which shall result in a contract between the Texas Commission for the Deaf and Hard of Hearing (TCDHH) and a vendor for development of sign language interpreter test materials and for psychometric services.

NOTE: Texas Commission for the Blind (TCB) completes administrative functions including purchasing for TCDHH. This contract shall be with TCDHH. TCDHH shall be responsible for approving all work completed under the contract and all payments made to the awarded vendor.

The Board for Evaluation of Interpreters (BEI) was created as an advisory body in 1980 as part of the enabling legislation that re-established the Texas Commission for the Deaf, now known as the Texas Commission for the Deaf and Hard of Hearing (TCDHH). This legislation gave the Commission authority to establish a program for the testing and certification of interpreters who have demonstrated varying levels of proficiency in sign language interpreting. The BEI board was given responsibility to design and develop a system for interpreter evaluation and certification (Chapter 81, Human Resources Code, §81.007).

SCOPE OF WORK

TCDHH has five separate phases of work for which bids are being solicited. These phases are: Job Analysis, Written Test Development, Performance Test Development, Evaluation/Evaluator Training, and Statistical Analysis Services.

TCB expects to post this solicitation on the Texas Marketplace (www.marketplace.state.tx.us) on approximately February 2, 2001. If internet access is not available or a hard copy of the solicitation is preferable, a request may be submitted by facsimile or e-mail:

By facsimile: (512) 377-0647

By e-Mail: Elizabeth.Ward@tcb.state.tx.us

All bid responses must be postmarked or hand-delivered no later than March 2, 2001 at 3:00 p.m. to Ms. Elizabeth Ward, Contract Specialist, Texas Commission for the Blind, 4800 North Lamar, Suite 360, Austin, Texas 78756.

TRD-200100350
David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Filed: January 18, 2001

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Texas Education Agency

Standard Application System Concerning Public Charter Schools

Eligible Applicants. The Texas Education Agency (TEA) is requesting competitive applications under Standard Application System (SAS)-#A516 from open-enrollment and local campus charter schools as established by Texas Education Code (TEC), Chapter 12, to support dissemination activities. Open-enrollment charter schools that have been in operation for at least three consecutive years and have demonstrated overall success are eligible to apply. Eligibility criteria include the following: (a) substantial progress in improving student achievement; (b) high levels of parent satisfaction; and (c) the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school. Campus charters and campus program charters that have been successfully operating for three years and **meet criteria (a)-(c)** are also eligible to apply. Applications will be mailed automatically to each eligible public charter school so designated in the agency organizational database. Campus charters and campus program charters not included in the TEA database must request a copy of the RFA from TEA.

Description. In accordance with the purpose of the federal Public Charter Schools Dissemination Grant Program, funds may be used to support activities that help open new public schools (including public charter schools) or share the lessons learned by charter schools with other public schools. **Activities** may include: (a) assisting other individuals with the planning and start-up of one or more new public schools, including charter schools, that are independent of the assisting charter school and its developers and that agree to be held to at least as high a level of accountability as the assisting charter school; (b) developing partnerships with other public schools, including charter schools, designed to improve student performance in each of the schools participating in the partnership; (c) developing curriculum materials, assessments, and other materials that promote increased student achievement and are based on successful practices within the assisting charter school; and (d) conducting evaluations and developing materials that document the successful practices of the assisting charter school that are designed to improve student achievement.

Dates of Project. The federal Public Charter Schools Dissemination Grant Program will be implemented between April 30, 2001, and May 31, 2002. Applicants should plan for a starting date of no earlier than April 30, 2001, and an ending date of no later than May 31, 2002.

Project Amount. Funding will be provided for the charter schools that have had three years of successful operation and that meet the eligibility criteria. Each project will receive a maximum of $40,000. Project funding in any subsequent year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval by the State Board of Education and the commissioner of education **and grant** award and appropriations by the U.S. Congress. This project is funded 100% from the Public Charter Schools federal funds. It is estimated that approximately 20 dissemination grants will be awarded.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted. The TEA is not committed to pay any costs before an application is approved. The TEA is not obligated to award a grant or pay any costs incurred in preparing an application.

Requesting the Application. A copy of the complete SAS-#A516 will be mailed to each eligible public charter school. Campus charters and campus program charters may obtain a complete copy of SAS-#A516

by writing to: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please provide your name, complete mailing address, and telephone number including area code and refer to the SAS number in your request. 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 SAS, contact Esther Murguia, Division of Charter Schools, TEA, (512) 463-9575.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA no later than 5:00 p.m. (Central Time), Tuesday, March 13, 2001.

TRD-200100436
Criss Cloudt
Associate Commissioner, Accountability Reporting and Research
Texas Education Agency
Filed: January 24, 2001

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Golden Crescent Regional Planning Commission

Feasibility Study Request for Proposals

The Golden Crescent Regional Planning Commission, a political subdivision of the State of Texas covering the 7 county Uniform Planning Region 17, is soliciting a request for proposal (RFP) for a feasibility study to determine the impact of direct marketing on the income of agricultural producers in the mid-Texas Gulf Coast Region to end-users in Mexico, utilizing the Port of Port Lavaca-Point Comfort. This study will include, among other things, analyzing the existing market to identify the number of people who would use the port in Calhoun County, the types of producers, and the users of the end product in Mexico; evaluating the existing infrastructure at the Port of Port Lavaca-Point Comfort and the destination facilities; evaluating how agricultural commodities are transported to the port, shipped, stored and processed at the final delivery point; evaluating the economics of transportation taking into consideration economies of scale, handling efficiency, and the commitment of resources; and presenting findings in the form of a project cost-benefit analysis, a project risk assessment, a project beneficiaries assessment and a summary evaluation.

Potential respondents may obtain a copy of the RFP by contacting Patrick J. Kennedy, Executive Director, Golden Crescent Regional Planning Commission, P.O. Box 2028, Victoria, Texas 77902 or by calling (361) 578-1587. The deadline for RFP submission is 5:00 P.M., Monday, February 12, 2001.

TRD-200100368
Patrick J. Kennedy
Executive Director
Golden Crescent Regional Planning Commission
Filed: January 19, 2001

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Irving	COR Specialty Associates of North Texas PA	L05373	Irving	00	01/10/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	67	01/10/01
Alvin	Solutia Inc	L00219	Alvin	63	01/08/01
Austin	Austin Radiological Association	L00545	Austin	91	01/03/01
Channelview	Pheonix Non Destructive Testing Co Inc	L04454	Channelview	38	01/08/01
Conroe	Sadler Clinic	L04899	Conroe	14	01/10/01
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	21	01/04/01
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	14	01/10/01
Dallas	Saint Paul Medical Center	L01065	Dallas	54	01/10/01
Deer Park	Safety Kleen (Deer Park) Inc	L02870	Deer Park	17	01/12/01
DFW Airport	Delta Airlines Inc	L03967	DFW Airport	17	01/10/01
Edinburg	The University of Texas Pan American	L00656	Edinburg	21	01/04/01
Euless	COR Specialty Associates of North Texas	L05062	Euless	11	01/10/01
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	47	01/05/01
Houston	Cardiovascular Ventures of West Houston Inc	L04882	Houston	09	01/12/01
Houston	Sisters of Charity of the Incarnate Word	L02279	Houston	42	01/03/01
Houston	Memorial Hermann Hospital System	L00439	Houston	68	01/08/01
Houston	CHCA West Houston LP	L02224	Houston	52	01/10/01
Houston	Cardiology of Houston	L05285	Houston	01	01/11/01
Houston	Cardiovascular Ventures of West Houston Inc	L04882	Houston	08	01/12/01
Humble	Mohan Jacob MD PA Cardiology	L04442	Humble	05	01/12/01
Kingsville	Spohn Kleberg Memorial Hospital	L02917	Kingsville	23	01/05/01
Mckinney	Numed Imaging Centers Inc	L05250	Mckinney	03	01/09/01
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	34	01/05/01
Orange	Chevron Phillips Chemical Company LP	L00031	Orange	49	01/12/01
Paris	Physician Reliance Network Inc	L04664	Paris	09	01/03/01
Plano	Presbyterian Hospital of Plano	L04467	Plano	19	01/08/01
Port Arthur	Beaumont Hospital Holdings Inc	L01707	Port Arthur	40	01/10/01
Round Rock	Columbia St Davids Healthcare System LP	L03469	Round Rock	27	01/12/01
San Antonio	The UT Health Science Center at San Antonio	L05217	San Antonio	02	01/02/01
San Antonio	The UT Health Science Center at San Antonio	L01279	San Antonio	86	01/08/01
San Antonio	Alamo Cement CO LTD	L04951	San Antonio	04	01/11/01
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	16	01/03/01
Texarkana	Red River Pharmacy Services	L05077	Texarkana	06	01/11/01
Throughout Tx	X Ray Inspection Inc	L05275	Beaumont	07	01/11/01
Throughout Tx	Panhandle NDT & Inspection Inc	L02627	Borger	44	01/08/01

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Omalley Engineers	L02310	Brenham	18	01/10/01
Throughout Tx	Metco	L03018	Houston	106	01/11/01
Throughout Tx	American Pipe Inspection Company I LTD	L02576	Houston	17	01/11/01
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	83	01/08/01
Throughout Tx	PMI Specialist Inc	L04686	Liberty	07	01/05/01
Throughout Tx	Reeves Wireline Services Inc	L04405	Midland	10	01/08/01
Throughout Tx	Chevron Phillips Chemical Company LP	L00230	Pasadena	67	01/10/01
Throughout Tx	TN Technologies Inc	L03524	Round Rock	58	01/02/01
Throughout Tx	All American Maintenance	L01336	San Antonio	36	01/12/01
Throughout Tx	Pitt Des Moines Inc	L04502	Santa Fe	25	01/05/01
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	07	01/12/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	80	01/05/01
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	51	01/10/01
Waco	Hillcrest Baptist Medical Center	L00845	Waco	66	01/12/01
Webster	CHCA Clear Lake LP	L01680	Webster	47	01/10/01
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	77	01/02/01
Wichita Falls	United Regional Healthcare System Inc	L00403	Wichita Falls	35	01/04/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Coldspring	Services and Compliance Consultants Inc	L03873	Coldspring	13	01/09/01
Nacogdoches	Nacogdoches Medical Center	L02853	Nacogdoches	25	01/11/01
Plano	Presbyterian Hospital of Plano	L04467	Plano	20	01/11/01
Throughout Tx	Radiographic Specialists Inc	L02742	Houston	43	01/09/01
Throughout Tx	Ruiz Testing Services Inc	L04948	San Antonio	06	01/10/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	St Paul Medical Center	L05075	Dallas	05	12/29/00
Plano	Arco Exploration and Production Technology Company	L00134	Plano	68	01/04/01

LICENSE EXCEPTION ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Midland	Bob Herell Inc	L04462	Midland		12/15/00

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has de-termined that the applicants are qualified by reason of training and ex-perience to use the material in question for the purposes requested in accordance with Title 25 Texas Administrative Code (TAC) Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the

license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200100434
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 24, 2001

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Notice of Emergency Cease and Desist Order on Family Wellness Chiropractic Clinic

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Family Wellness Chiropractic Clinic (registrant-R23420) of Lubbock to cease and desist performing lumbo-sacral spine (AP) procedures and thoracic spine (AP) procedures with the Tingle x-ray unit (Model Number TXR325D; Serial Number 13609) until the exposure at skin entrance is within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200100433
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 24, 2001

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on NEXTMED

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to NEXTMED (registrant-R25877) of Tucson, Arizona. A total penalty of $8,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code §289.226.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200100432
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: January 24, 2001

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Texas Department of Housing and Community Affairs

Section 8 Program Five-Year Plan and Annual Plan

Notice of Public Hearing on Agency Plans

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P.L. 205-276 and 24 CFR 90.17) require the Texas Department of Housing and Community Affairs (the Department) to prepare a Five-Year Plan and an Annual Plan covering operations of the Section 8 Program. On Wednesday, March 21, 2001 at 1:00 P.M., the Department will hold a public hearing to receive comments on the Department's Five-Year Plan and Annual Plan. The hearing will take place at the Ennis City Hall, 115 Brown Street, Ennis, Texas.

The Draft Plans and all supporting documentation are available to the public for viewing at the Department administration office, 507 Sabine, Suite 400, Austin, Texas on weekdays during the hours of 8:00 A.M. until 4:30 P.M. and on the Department's website at www.tdhca.state.tx.us.

Questions or requests for additional information may be directed to Willie Faye Hurd, Manager of Section 8 Programs at whurd@tdhca.state.tx.us or by mail at P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. Comments must be received by 5:00 P.M. Friday, March 30, 2001.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled hearing.

TRD-200100430
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 24, 2001

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Houston-Galveston Area Council

Request for Information

Houston-Galveston Area Council (H-GAC) solicits information from individuals and organizations interested in providing test administration for Gulf Coast Careers personnel. Prospective proposers may obtain a copy of the Request for Information package by contacting Carol Kimmick at (713) 627-3200 or by sending email to ckimmick@hgac.cog.tx.us. Responses are due at H-GAC offices by 12:00 p.m. on Friday February 9, 2001. Late proposals will not be accepted. There will be no exceptions.

TRD-200100407
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: January 22, 2001

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Request for Information

Houston-Galveston Area Council (H-GAC) solicits information from individuals and organizations interested in providing training/course facilitation for Gulf Coast Careers personnel. Prospective proposers may obtain a copy of the Request for Information package by contacting Carol Kimmick at (713) 627-3200 or by sending email to ckimmick@hgac.cog.tx.us. Responses are due at H-GAC offices by 12:00 p.m. on Friday February 9, 2001. Late proposals will not be accepted. There will be no exceptions.

TRD-200100411
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: January 23, 2001

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Request for Proposal

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas is currently requesting proposals and qualification submittals to develop comprehensive advertising, public relations and marketing program designed to promote awareness in the Houston-Galveston region of the air quality and associated benefits of a Teleworking/Emissions Reduction Program. This program should promote teleworking as an innovative, viable, attractive and cost-effective alternative to commuting to work alone thereby reducing traffic congestion, improving air quality and receiving emissions reduction credits.

Proposals must be received by 12:00 Noon, February 19, 2001.

Interested firms may obtain the Request for Proposal and Qualifications by contacting the H-GAC Transportation Department, P. O. Box 2277, 3555 Timmons Lane, Houston, Texas 77227-2777. Telephone requests, (713) 993-4557, must be followed up by written requests or faxed to 713- 993-4508. For more information, please contact Alan Clark, MPO Director at (713) 627-3200.

TRD-200100412
Alan C. Clark
MPO Director
Houston-Galveston Area Council
Filed: January 23, 2001

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Texas Department of Insurance

Insurer Services

Application for incorporation to the State of Texas by UNIFIED LIFE INSURANCE COMPANY OF TEXAS, a domestic life company. The home office is in Austin, Texas.

Application to change the name of SUNAMERICA NATIONAL LIFE INSURANCE COMPANY to SBLI USA FINANCIAL SERVICES LIFE INSURANCE COMPANY, INC., a foreign life company. The home office is in Phoenix, Arizona.

Application for incorporation to the State of Texas by USAA TEXAS LLOYD'S COMPANY, a domestic lloyds company. The home office is in San Antonio, 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-200100435
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 24, 2001

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual filing submitted by Amica Mutual Insurance Company proposing to use a rating manual different than that promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101, §3(l). The company is proposing to adopt a companion policy discount. The discount provides a 5% reduction in premium for all personal auto coverages when the named insured insures his/her home under a homeowner's policy issued by Amica Mutual Insurance Company. The discount is applicable to premiums for bodily injury liability, property damage liability, medical payments, personal injury protection, uninsured motorists bodily injury and property damage, comprehensive and collision coverages. This discount will not apply to miscellaneous type vehicles.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, §3(h), is made with the Senior Associate Commissioner for Property & Casualty, Mr. C.H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701, by March 5, 2001.

TRD-200100421
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 23, 2001

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Notice

The Commissioner of Insurance, or his designee, will consider approval of a rating manual filing submitted by Metropolitan Group Property & Casualty Insurance Company, Metropolitan Direct Property & Casualty Insurance Company, Metropolitan Casualty Insurance Company, Metropolitan Property & Casualty Insurance Company, and Metropolitan General Insurance Company proposing to use a rating manual different than that promulgated by the Commissioner of Insurance, pursuant to TEX. INS. CODE ANN. art 5.101, §3(l). The companies are proposing the adoption of a companion policy discount. The discount provides a 5% reduction in premium on certain personal auto coverages when the named insured insures his/her home under a homeowners policy (excluding Renters Policy) issued by any Metropolitan Group of Companies. The discount is applicable to premiums for bodily injury liability, property damage liability, medical expense, personal injury protection, uninsured motorist bodily injury, uninsured motorist property damage, comprehensive and collision coverages.

Copies of the filing may be obtained by contacting George Russell, at the Texas Department of Insurance, Automobile/Homeowners Division, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 305-7468.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to art. 5.101, §3(h), is made with

the Senior Associate Commissioner for Property & Casualty, Mr. C.H. Mah, at the Texas Department of Insurance, MC 105-5G, P.O. Box 149104, Austin, Texas 78701 by March 5, 2001.

TRD-200100422
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 23, 2001

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Notice of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket No. 2481 scheduled for March 7, 2001 at 9:00 a.m., in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1999, 2000, and 2001 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. A-0101-01-I), was filed on January 18, 2001.

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 1999, 2000, and 2001 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 Angie Arizpe at (512) 463-6326; refer to (Ref. No. A-0101-0I-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to Marilyn Hamilton, Deputy Commissioner, Personal and Commercial Lines Division, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-200100403
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: January 22, 2001

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Texas Natural Resource Conservation Commission

Enforcement Orders

An agreed order was entered regarding CITY OF WEST TAWAKONI, Docket No. 1999-0953-PWS-E; TNRCC ID NO. 1160012 on January 15, 2001 assessing $6,615 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding ASHRAF IBRAHIM & ESSRA CORPORATION, Docket No. 1999- 1473-PST-E; SOAH DOCKET NO. 582-00-0853; PST FACILITY ID NO. 0049944 on January 15, 2001 assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting ROBIN S HOUSTON, Staff Attorney at (512)239-3400, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KCCC, INC. DBA KING'S CREEK GOLF CLUB, Docket No. 1999-0531-PST-E; PST FACILITY ID NO. 0063011 on January 15, 2001 assessing $17,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SCOTT MCDONALD, Staff Attorney at (817)588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF RHOME, Docket No. 1999-0952-MWD-E; TNRCC ID NO. 10701-001 on January 15, 2001 assessing $16,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting REBECCA PETTY, Staff Attorney at (512)239-1738, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TOMMY COOKE DBA TOMMY COOKE AND SONS DAIRY, Docket No. 1999-0784-AGR-E; NO TNRCC ID No. on January 15, 2001 assessing $3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BARTEN WATER/SEWER SUPPLY CORPORATION, Docket No. 2000-0553-PWS-E; PWS NO. 0450022 on January 15, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting BRIAN LEHMKUHLE, Enforcement Coordinator at (512)239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BRENDA SHUGART DBA COUNTRY FOOD STORE, Docket No. 2000-0654-PWS-E; PWS NO. 0200288 on January 15, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARINAS USA, LP DBA LAKE COUNTRY MARINA AND LAKE COUNTRY RESTAURANT, Docket No. 2000-0513-PWS-E; PWS NOS. 2200276 & 2200339 on January 15, 2001 assessing $2,925 in administrative penalties with $260 deferred.

Information concerning any aspect of this order may be obtained by contacting JAYME BROWN, Enforcement Coordinator at (512)239-

1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH LOOP 197 INC DBA RED OAK II CHEVRON, Docket No. 2000-0653-PWS-E; PWS NO. 0200569 on January 15, 2001 assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting SUBHASH JAIN, Enforcement Coordinator at (512)239-5867, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SCOTTS MARINAS AT LAKE GRAPEVINE, L.P. DBA TWIN COVES MARINA, Docket No. 2000-1110-PWS-E; PWS NO. 0610231 on January 15, 2001 assessing $1,300 in administrative penalties with $260 deferred.

Information concerning any aspect of this order may be obtained by contacting JAYME BROWN, Enforcement Coordinator at (512)239-1683, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N. R. MANAGEMENT, INC. DBA SHELL/TACO BELL, Docket No. 2000-0683-PWS-E; PWS NO. 1013026 on January 15, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting KIMBERLY MCGUIRE, Enforcement Coordinator at (512)239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COPEVILLE WATER SUPPLY CORPORATION, Docket No. 2000-0459-PWS-E; PWS NO. 0430029 on January 15, 2001 assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting JOSEPH DALEY, Enforcement Coordinator at (512)239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. M.J. WOOTAN DBA DEER COUNTRY WATER SYSTEM, Docket No. 2000-0792-PWS-E; PWS NO. 1500121 on January 15, 2001 assessing $4,200 in administrative penalties with $840 deferred.

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 EXXON MOBIL CORPORATION, Docket No. 2000-0472-EAQ- E; EAQ PROTECTION PROGRAM NO 96011301 on January 15, 2001 assessing $450 in administrative penalties with $90 deferred.

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 ALLWASTE TANK CLEANING, INC., Docket No. 1999-0613- AIR-E; AIR ACCOUNT NO. BL-0046-V on January 15, 2001 assessing $17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting VICTOR SIMONDS, Staff Attorney at (512)239-6201, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ABRAXAS PETROLEUM CORPORATION, Docket No. 2000- 0758-AIR-E; AIR ACCOUNT NOS. SD-0083-G, SD-0048I & SD-0072-L on January 15, 2001 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting AUDRA BAUMGARTNER, Enforcement Coordinator at (361)825-3312, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EQUISTAR CHEMICALS, L.P., Docket No. 2000-0604-AIR-E; AIR ACCOUNT NO. HG-0033-B on January 15, 2001 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting MIRIAM HALL, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOUR COLLINS GROUP CORP DBA COLLINS BROS., Docket No. 2000-0781-AIR-E; AIR ACCOUNT NO. CP-0511-A on January 15, 2001 assessing $1,250 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 CITY OF PORT NECHES, Docket No. 2000-0555-AIR-E; AIR ACCOUNT NO. JE-0238-F on January 15, 2001 assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting LAURA CLARK, Enforcement Coordinator at (409)898-3838, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RIO VALLEY GRAIN, INC., Docket No. 2000-0557-AIR-E; AIR ACCOUNT NO. CD-0360-J on January 15, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting COREY BURKE, Enforcement Coordinator at (512)239-5259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. JOHN FINCHER DBA TEXAS CAR CENTER, Docket No. 2000-0859-AIR-E; AIR ACCOUNT NO. TA-2799-R on January 15, 2001 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MELINDA HOULIHAN, Enforcement Coordinator at (817)469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNION CARBIDE CORPORATION, Docket No. 2000-0432- AIR-E; AIR ACCOUNT NO. GB-0076-J on January 15, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MIRIAM HALL, Enforcement Coordinator at (512)239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ACACIA NATURAL GAS CORPORATION, Docket No. 2000- 0523-AIR-E; AIR ACCOUNT NO. MQ-0021-P on January 15, 2001 assessing $19,438 in administrative penalties with $3,888 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 UNION PACIFIC RESOURCES, Docket No. 2000-0562-AIR-E; AIR ACCOUNT NOS. RI-0149-J, RI-0156-M, RI-048-L, RI-0153-S, RI-0155-O, RI-0151-W, RI-0154-Q, RI- 0150-B, RI-0152-U, MM-0099-W, MM-0090-R, MM-0098-B, MM-0091-P, MM-0094-J, MM-0093-L, MM- 0097-D, MM-0095-H, MM-0092-N, MM-0096-F, MM-0100-Q, FC-0178-G, LF-0062-T, FC-0182-P, FC-0183- N & LF-0066-L on January 15, 2001 assessing $10,940 in administrative penalties with $2,190 deferred.

Information concerning any aspect of this order may be obtained by contacting REBECCA CLAUSEWITZ, Enforcement Coordinator at (512)239-2359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VINTAGE PETROLEUM, INC., Docket No. 2000-0785-AIR-E; AIR ACCOUNT NO. JB-0054-E on January 15, 2001 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting CAROL MCGRATH, Enforcement Coordinator at (361)825-3275, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DARREL DANNEN DBA DOUBLE D MOTORS, Docket No. 2000-0545-AIR-E; AIR ACCOUNT NO. DB-3447-D on January 15, 2001 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting TEL CROSTON, Enforcement Coordinator at (512)239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EQUISTAR CHEMICALS, L.P., Docket No. 2000-0494-IHW-E; SWR NO. 32390 on January 15, 2001 assessing $19,250 in administrative penalties with $3,850 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 ALDINE INDEPENDENT SCHOOL DISTRICT; Docket No. 2000-0651-MWD-E; TDPES PERMIT NO. 13609-001 on January 15, 2001 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting PAMELA CAMPBELL, Enforcement Coordinator at (512)239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF TRENTON, Docket No. 1999-1517-MWD-E; WQ PERMIT NO. 10704-001; NPDES PERMIT NO. TX0026794 on January 15, 2001 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting JOSEPH DALEY, Enforcement Coordinator at (512)239-3308, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DAVID D. MOODY & BERTHA DOMINGUEZ DBA WINFIELD'S RESTAURANT & MOTEL, Docket No. 2000-0525-MWD-E; NO WQ PERMIT NO. on January 15, 2001 assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting MALCOLM FERRIS, Enforcement Coordinator at (210)403-4061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF ANSON, Docket No. 2000-0421-MWD-E; WQ PERMIT NO. 10500-002 on January 15, 2001 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting KARA DUDASH, Enforcement Coordinator at (915)698-6104, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LARRY WILLIAMS, Docket No. 1999-1239-OSI-E; TNRCC ID NO. OS4949 on January 15, 2001 assessing $313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting JOSHUA OLSZEWSKI, Staff Attorney at (512)239-3645, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RUBINA MARWAHA & BRIJINDER NIJJAR DBA SHOP N GO, Docket No. 1998-1365-PST-E; PST FACILITY ID NO. 0027223 on January 15, 2001 assessing $5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting SCOTT MCDONALD, Staff Attorney at (817)588-5888, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANADARKO DEVELOPMENT COMPANY, Docket No. 2000- 0356-PST-E; PST FACILITY ID NOS. 0954 & 27198 on January 15, 2001 assessing $9,800 in administrative penalties with $1,960 deferred.

Information concerning any aspect of this order may be obtained by contacting MARK L 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 CITY OF ALAMO, Docket No. 2000-0206-PWS-E; PWS NO. 1080001 on January 15, 2001 assessing $3,238 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 NORTHROP GRUMMAN CORPORATION, Docket No. 2000- 0641-IHW-E; SWR NO. 31268 on January 15, 2001 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting WENDY COOPER, Enforcement Coordinator at (817)469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200100429
Ladonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: January 24, 2001

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Notice of Opportunity to Comment on Guidance Document

Notice is hereby given that the documents entitled, *Guidance for Assessing Texas Surface and Finished Drinking Water Quality Data, 2002* and *Methodology for Developing the Texas List of Impaired Water Bodies* are available for public review and comment for a period of 30 days from today's date. The draft documents, *Guidance for Assessing Texas Surface and Finished Drinking Water Quality Data, 2002* and the draft, *Methodology for Developing the Texas List of Impaired Water Bodies*, can be viewed on the Texas Natural Resource Conservation Commission (TNRCC) website at **www.tnrcc.state.tx.us/water/quality/02_303d.html**. Copies can be obtained by submitting an e-mail request to **303d@tnrcc.state.tx.us** or by contacting Patrick Roques, telephone number (512) 239-4604.

The federal Clean Water Act (CWA), §305(b) requires states to produce a periodic inventory comparing water quality conditions to established standards (30 TAC Chapter 307, Texas Surface Water Quality Standards and 30 TAC §§290.101 - 290.121, Public Drinking Water). In addition, CWA, §303(d) requires development of a list of impaired water bodies not meeting established standards. The most recent inventory and list of impaired water bodies for Texas were prepared in 2000. The draft assessment guidance and methodology describe the procedures the TNRCC will use to develop the 2002 water quality inventory and list of impaired water bodies. An additional document entitled, *Guidance for Submitting Data and Information to the TNRCC for the 2002 Clean Water Act, Section 305(b), Water Quality Inventory and Section 303(d), List of Impaired Water Bodies* is also available as supplemental information on the TNRCC website at **www.tnrcc.state.tx.us/water/quality/02_303d.html.**

The public is invited to submit comments on the draft, *Guidance for Assessing Texas Surface and Finished Drinking Water Quality Data, 2002* and the draft, *Methodology for Developing the Texas List of Impaired Water Bodies* to TNRCC. Comments must be received by **5:00 p.m. on March 5, 2001**. Please submit comments to: Patrick Roques, Surface Water Quality Monitoring Team, Texas Natural Resource Conservation Commission, P.O. Box 13087, MC 150, Austin, TX 78711-3087, or by e-mail: **303d@tnrcc.state.tx.us.**

TRD-200100358
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: January 19, 2001

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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 of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 5, 2001**. 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 March 5, 2001**. 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: Airline MHP LLC dba Airline Mobile Home Park, Ltd.; DOCKET NUMBER: 2000-0976-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 1650003; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(1)(B), (formerly §290.46(e)(1)), and Code, §341.033(a), by failing to provide direct daily supervision by a person with a Grade "C" or higher ground water operator's certificate; PENALTY: $360; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570- 1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705- 5404, (915) 570-1359.

(2) COMPANY: Alamo Cement Company; DOCKET NUMBER: 2000-0679-AIR-E; IDENTIFIER: Air Account Number BG-0259-G; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: cement manufacturing; RULE VIOLATED: 30 TAC §116.116(a) and the Code, §382.085, by failing to include the emissions of carbon monoxide and volatile organic compounds from the kiln stack; 30 TAC §116.115(c) and the Code, §382.085, by failing to control excess opacity emissions; and 30 TAC §101.7(a), §116.115(b)(2)(H), and the Code, §382.085, by failing to properly operate and maintain the control device on its kiln stack; PENALTY: $70,280; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: City of Amherst; DOCKET NUMBER: 2000-0987-MSW-E; IDENTIFIER: Municipal Solid Waste Permit Number 363 and Water Quality Permit Number 10118-001; LOCATION: Amherst, Lamb County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.133(a), by failing to cover waste material weekly; and 30 TAC §305.125(1) and (5) and Permit Number 10118-001, by failing to maintain and operate the wastewater treatment facility to obtain optimum efficiency, submit a groundwater monitoring plan, and perform the appropriate grounds and building maintenance; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Gary Shipp, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414- 3520, (806) 796-7092.

(4) COMPANY: CMS Taurus Field Services, L.P.; DOCKET NUMBER: 2000-1040-AIR-E; IDENTIFIER: Air Account Number FD-0003-I; LOCATION: Hamlin, Fisher County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.146(1) and the Code, §382.085(b), by failing to certify compliance with their Title V permit; PENALTY: $6,250; ENFORCEMENT

COORDINATOR: Kara Dudash, (915) 698-9674; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: Crockett County Water Control and Improvement District Number 1; DOCKET NUMBER: 1998-1451-PWS-E; IDENTIFIER: PWS Number 0530011; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(D), (3)(A), (C), (F), (O), and (P), by failing to ensure well numbers two, three, and four were not located within 500 feet of animal pens, ensure that livestock were not allowed within 50 feet of supply wells, provide and maintain well data, pressure cement all six active wells, acquire sanitary easements for all six wells, provide fencing and housing on well number four, and provide all-weather roads; 30 TAC §290.106(a)(1), by failing to develop a written sample siting plan; 30 TAC §290.46(f)(1)(A), (n), (p)(1) and (2), and (t), by failing to maintain a 0.2 milligram per liter free chlorine residual, develop and maintain an updated distribution map, conduct an annual inspection of ground storage and pressure tanks, and maintain the underground storage tank (UST) in a watertight condition; 30 TAC §290.42(e)(4)(B) and (j), by failing to provide automatic proportioning of the disinfectant dosage and compile a thorough plant operations manual; and 30 TAC §290.43(c)(3) and (e), by failing to provide an overflow for the UST, provide the ground storage tank with an inspection ladder, and provide intruder-resistant fencing; PENALTY: $4,313; ENFORCEMENT COORDINATOR: John Mead, (512) 239-6010; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(6) COMPANY: Mr. Floyd Harrison dba Euless Auto Sales; DOCKET NUMBER: 2000-0903- AIR-E; IDENTIFIER: Air Account Number TA-2840-W; LOCATION: Euless, Tarrant County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1), Commission Order Docket Number 1999-0723-AIR-E, and the Code, §382.085(b), by offering for sale a vehicle with missing or tampered emission control devices; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(7) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2000-0973-AIR-E; IDENTIFIER: Air Account Number PF-0031-I; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: oil and gas compressor station; RULE VIOLATED: 30 TAC §§101.27, 122.143(4), 122.143(11), Air Permit Number O-00591, and the Code, §382.085(b), by failing to pay emission fees; 30 TAC §122.146(5)(D), §122.514(b)(1), Air Permit No. O-00591, and the Code, §382.085(b), by failing to submit an accurate annual certification of compliance; and 30 TAC §§122.143(4), 122.145(2), 122.514(b)(1) and (2), Air Permit Number O-00591, and the Code, §382.085(b), by failing to submit a deviation report for the failure to pay emission fees; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Farmers Transports, Inc. dba Enchanted Harbor Utility; DOCKET NUMBER: 2000-0503-PWS-E; IDENTIFIER: PWS Number 0290050; LOCATION: near Port Alto, Calhoun County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113, by failing to provide water that meets secondary chemical standards for fluoride and iron; and 30 TAC §290.45(b)(1)(C)(i), (ii), (iii), and (iv), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection, provide a total capacity of 200 gallons per connection, provide a service pump capacity of two gpm per connection, and provide a pressure tank capacity of 20 gallons per connection; PENALTY: $1,063; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412- 5503, (361) 825-3100.

(9) COMPANY: Flat Rock Water Cooperative; DOCKET NUMBER: 2000-1082-PWS-E; IDENTIFIER: PWS Number 1550084; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e)(2), (formerly §290.120(e)(2)), by failing to conduct reduced monitoring tap sampling for lead and copper; and 30 TAC §291.76, by failing to pay all required regulatory assessment fees; PENALTY: $313; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Mr. Alvin Kidd dba Greenwood Terrace Mobile Home Subdivision; DOCKET NUMBER: 2000-0789-PWS-E; IDENTIFIER: PWS Number 1650048; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (3)(B), (J), (K), (M), and (O), by failing to have a recorded sanitary control easement for each well, extend the casing of the eastern well, provide a concrete sealing block, provide a screened casing vent for each well, provide sampling taps for each well, and provide intruder resistant fencing or housing for each well; 30 TAC §290.46(e) and (p), by failing to provide direct supervision by a certified waterworks operator and record and maintain copies of the annual inspections of the pressure tanks; 30 TAC §290.42(e)(3), (formerly §290.42(e)(4)), by failing to provide mechanical chlorination equipment to ensure continuous disinfection of the water; 30 TAC §290.109(c), (formerly §290.106(a)), by failing to submit monthly samples of water for bacteriological analysis; and 30 TAC §290.45(b)(1)(E)(ii), by failing to meet pressure tank capacity requirement of 50 gallons per connection with a maximum of 2,500 gallons; PENALTY: $2,960; ENFORCEMENT COORDINATOR: Dan Landenberger, (915) 570-1359; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(11) COMPANY: Jackson County Water Control and Improvement District No. 1; DOCKET NUMBER: 2000-0885-MWD-E; IDENTIFIER: Water Quality Permit Number 10911-001; LOCATION: Lolita, Jackson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (5), (9), (17), §319.7(d), Water Quality Permit Number 10911-001, and the Code, §26.121, by failing to comply with the permitted effluent limits for minimum chlorine residual, minimum dissolved oxygen (DO), total suspended solids, and five-day biochemical oxygen demand, adequately maintain the plant yard, ensure that the plant and its treatment systems are properly operated and maintained, notify the regional office when permitted effluent limits were exceeded by more than 40%, submit monthly effluent reports, control the unauthorized discharge of raw sewage, and notify the regional office of an unauthorized discharge; and 30 TAC §319.11(a), by failing to conduct appropriate self-monitoring procedures and monitor DO at required intervals; PENALTY: $11,000; ENFORCEMENT COORDINATOR: Gary McDonald, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Lamar Power Partners, LP; DOCKET NUMBER: 2000-0857-AIR-E; IDENTIFIER: Air Account Number LA-0182-R; LOCATION: Paris, Lamar County, Texas; TYPE OF FACILITY: power generation plant; RULE VIOLATED: 30 TAC §122.121 and the Code, §382.054 and §382.085(a), by failing to obtain permit authority prior to commencing commercial operation; and 30 TAC §122.410(b) and the Code, §382.054 and §382.085(a), by failing to submit a

complete acid rain permit; PENALTY: $1,350; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13) COMPANY: Little Hope-Moore Water Supply Corporation; DOCKET NUMBER: 2000- 0869-PWS-E; IDENTIFIER: PWS Number 2340011 and Certificate of Convenience and Necessity Number 11263; LOCATION: Canton, Van Zandt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(1), (f)(3)(E)(iii), (m), and (r), and §290.110(c)(5)(A), (formerly §290.46(f)(2), (p) and (u)), by failing to conduct and maintain records of daily disinfection residual tests, have records of the calendar year 1999 annual storage and pressure tank inspections available for review, initiate a maintenance program to facilitate cleanliness, provide a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.45(b)(1)(D)(i), (iii), and (iv), and the Code, §341.0315(c), by failing to meet the minimum well capacity requirement of 0.6 gpm per connection, meet the minimum pump capacity requirement of two or more service pumps with a total capacity of two gpm per connection, and provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.43(c)(2) and (3), and (d)(3), by failing to provide each ground storage tank with a properly designed roof opening and properly locate the overflow to provide the pressure tanks with devices to readily determine air-water- volume; and 30 TAC §290.42(e)(6), (formerly §290.42(e)(7)), by failing to have adequate ventilation; PENALTY: $4,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Marathon Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2000-0300-MWD-E; IDENTIFIER: Water Quality Permit Number 0010974-001; LOCATION: Marathon, Brewster County, Texas; TYPE OF FACILITY: oxidation pond system; RULE VIOLATED: the Code, §26,121, by failing to prevent the unauthorized discharge of effluent wastewater from the oxidation pond system; and Water Quality Permit Number 0010974-001 and 30 TAC §305.125(1) and (5), by failing to operate the oxidation pond system in order to achieve efficiency of treatment capacity; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Cynthia Salas, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: City of Nacogdoches; DOCKET NUMBER: 2000-0862-MWD-E; IDENTIFIER: Water Quality Permit Number 10342-004 (National Pollutant Discharge Elimination System (NPDES) Permit Number TX0055123); LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10342-001, NPDES Permit Number TX0055123, and the Code, §26.121, by failing to comply with effluent permit limits for ammonia nitrogen, five-day carbonaceous biochemical oxygen demand, and dissolved oxygen; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: North Texas Trench Burn, Incorporated; DOCKET NUMBER: 2000-0978- AIR-E; IDENTIFIER: Air Account Number 92-2395-L; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: air curtain trench burner; RULE VIOLATED: 30 TAC §116.110(a) and the Code, §382.085(b), by failing to meet the requirements of 30 TAC §106.496 for an air curtain trench burner at sites one and two; and 30 TAC §111.201 and the Code, §382.085(b), by failing to meet all the requirements for outdoor burning; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(17) COMPANY: Petroleum Wholesale, Inc.; DOCKET NUMBER: 2000-1250-IWD-E; IDENTIFIER: Enforcement Identification Number 12890; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: bulk storage and distribution; RULE VIOLATED: the Code, §26.121 and §26.266(a), by failing to prevent an unauthorized discharge of gasoline and diesel and immediately take all reasonable action to abate and remove gasoline and diesel discharged to surface waters; and 30 TAC §334.78(c), by failing to submit within 45 days of completing the cleanup a written response describing the details and providing supporting documents of the corrective action taken; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Gilbert Angelle, (512) 239- 4489; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Robroy Industries - Texas, L.P.; DOCKET NUMBER: 2000-0979-AIR-E; IDENTIFIER: Air Account Number UA-0012-S; LOCATION: Gilmer, Upshur County, Texas; TYPE OF FACILITY: corrosion resistant electrical conduit and fittings manufacturing; RULE VIOLATED: 30 TAC §122.130(b)(1) and the Code, §382.054 and §382.085(b), by failing to submit an application for a Title V abbreviated permit; and 30 TAC §122.121 and the Code, §382.085 and §382.085(b), by failing to obtain permit authority for continued plant operation; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Elnora Moses, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(19) COMPANY: The City of San Marcos; DOCKET NUMBER: 2000-0487-MWD-E; IDENTIFIER: Enforcement Identification Number 14973; LOCATION: San Marcos, Hays County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121, by allegedly discharging chlorinated drinking water and discharging 770,000 gallons of partially treated drinking water containing potassium permanganate; PENALTY: $1,080; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(20) COMPANY: T-C Oil Company; DOCKET NUMBER: 2000-1163-AIR-E; IDENTIFIER: Air Account Number RG-0053-W; LOCATION: Refugio, Refugio County, Texas; TYPE OF FACILITY: natural gas compression station; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit the 1998 annual compliance certification; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: Vista Stores L.L.C.; DOCKET NUMBER: 2000-1113-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0015607; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and the Code, §382.085(b), by failing to conduct annual Stage II pressure decay compliance testing; 30 TAC §115.244(3) and the Code, §382.085(b), by failing to conduct monthly Stage II inspections; and 30 TAC §115.222(3) and the Code, §382.085(b), by failing to repair the leaking premium unleaded gasoline Stage I dry break; PENALTY: $2,160; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-200100410

Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: January 23, 2001

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Notice of Water District Applications

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of S. E. THOMPSON MUNICIPAL UTILITY DISTRICT NO. 1 of Kerr County (District). The petition was initiated by the Texas Medical Association and Members of the Board of Directors of S. E. Thompson Municipal Utility District No. 1 of Kerr County (Petitioners). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, April 4, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created on June 14, 1985 by House Bill 2522, 69th Legislature, Regular Session. It operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1990 through 1996 are on file. An affidavit from the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 126 (District). The petition was initiated by the law firm of Winstead Sechrest & Minick representing the owners of a majority of the property located within the District (Petitioners). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, April 4, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by the Texas Water Rights Commission on April 14, 1976. It operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1993 through 1998 are on file. An affidavit from the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The Texas Natural Resource Conservation Commission (TNRCC) will conduct a hearing on a petition for dissolution of HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 265 (District). The petition was initiated by the law firm of Winstead Sechrest & Minick representing the owners of a majority of the property located within the District (Petitioners). The TNRCC will conduct this hearing under the authority of Chapters 49 and 54 of the Texas Water Code, 30 Texas Administrative Code Chapter 293 and the procedural rules of the TNRCC. The TNRCC will conduct the hearing at: 9:30 a.m., Wednesday, April 4, 2001, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas. The District was created by the Texas Water Commission on July 11, 1984. It operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition states the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. Certified copies of the Annual Financial Dormancy and Filing Affidavits for the years 1992 through 1998 are on file. An affidavit from the State Comptroller of Public Accounts has been included in the petition, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74, Property Code.

The TNRCC may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. The TNRCC may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Docket Number; (3) the statement "I/we request a contested case hearing"; and (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the petition which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the Office of Public Assistance at 1-800-687-4040 or 1- 800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-200100428
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: January 24, 2001

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on January 11, 2001 Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Mir Ali Haider and Moon Business,Inc. d/b/a Sunny's Chevron Respondent; SOAH Docket No.582-00-0846 TNRCC Docket No.1999-0654-PST-E. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's

Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087 ,Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200100426
Doug Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: January 24, 2001

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Proposal for Decision

The State Office Administrative Hearing issued a Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on January 17, 2001 Executive Director of the Texas Natural Resource Conservation Commission, Petitioner v. Angelos Kavadas and Ioannis Daglas dba Katy Freeway Texaco Respondent; SOAH Docket No. 582-00-2098; TNRCC Docket No.1999-1197-PST-E, PST ID No. 0023174. In the matter to be considered by the Texas Natural Resource Conservation Commission on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105 TNRCC PO Box 13087 ,Austin Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Chief Clerk's Office, (512) 239-3317.

TRD-200100427
Doug Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: January 24, 2001

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission is soliciting bids for a contract to purchase twelve (12) personal computers (PCs) and related equipment. This solicitation is a reissue and modification of the computer procurement notification of December 29, 2000.

To comply with our funding agency's requirements, PRPC will only accept bids for PCs produced by a Tier1/Tier2 manufacturer as designated by the Gartner Group. Tier 1/Tier 2 manufacturers include: Acer, AST, Compaq, Digital, Dell, Gateway, HP, IBM, Micron, NEC, Unisys and Zenith Data Systems.

Bid specifications may be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 West Eighth Ave., Amarillo, Texas 79101. For further information, please contact Mark Dubina, mdubina@prpc.cog.tx.us, or Leslie Hardin, lhardin@prpc.cog.tx.us, or at (806) 372-3381.

Bids must be submitted to the Panhandle Regional Planning Commission no later than 5:00 p.m., February 5, 2001. Bids received after the indicated date and time will not be accepted or considered for award. PRPC reserves the right to reject any and all bids, to waive any irregularities in any bids or in the bidding process, and may accept the bid or bids deemed to be in its best interest.

TRD-200100406
Tom Dressler
Workforce Development Director
Panhandle Regional Planning Commission
Filed: January 22, 2001

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Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience for Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 18, 2001, for a certificate of convenience for a proposed transmission line in Harris and Liberty Counties pursuant to P.U.C. Substantive Rule §25.101(c)(1)(C), and Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 37.051, 37.054, 37.056 and 37.057 (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows.

Docket Style and Number: Application for a Certificate of Convenience and Necessity (CCN) for 138 kV Transmission Line in Harris and Liberty Counties, Texas. Docket Number 23577.

The Application: Reliant Energy HL&P plans to construct a transmission substation to interconnect Sempra Energy Resources' Cedar Bluff Power Station. The transmission substation will be served by a loop from 138 kV Atascocita-Crosby circuit 66E. An expandable three-breaker ring bus will be installed. The substation is designed to ultimately accommodate a six- breaker ring bus.

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 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200100404
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 16, 2001, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Buena Communications for a Service Provider Certificate of Operating Authority, Docket Number 23562 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest.

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 February 7, 2001. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200100338
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 18, 2001

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Notice of Application for Waiver of Requirements in P.U.C. Substantive Rule §26.130

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 12, 2001, for waiver of requirements in P.U.C. Substantive Rule §26.130, Selection of Telecommunications Utilities.

Docket Title and Number: Application of Sprint Communications Company, L.P. doing business as Sprint for Waiver of Requirements in P.U.C. Substantive Rule §26.130. Docket Number 23552.

The Application: Sprint advises the commission that it will no longer be a provider of residential resale local exchange service and of its intent to default customers that do not select an alternative provider to the underlying providers in order to avoid discontinuance of service. Sprint has notified each of its residential local telephone service customers by letter of the need to select a new local telephone service provider no later than February 16, 2001, or service will default to the underlying service provider. Sprint requests that the commission acknowledge that such default of a customer to the underlying provider does not violate the commission's slamming rules.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Docket Number 23552.

TRD-200100356
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2001

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 19, 2001, to amend certificated service area boundaries in Montgomery and Harris Counties pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows.

Docket Style and Number: Application of Entergy Gulf States, Inc. (EGSI) and Reliant Energy HL&P (Reliant) to Amend Certificated Service Area Boundaries in Montgomery and Harris Counties. Docket Number 23589.

The Application: The properties involved in the boundary changes are located on four tracts of land. Tract 1, located in an unincorporated area of Montgomery county, consists of approximately 14.9 acres and is located in Imperial Oaks Estates II, Section 4, which consists of 48 lots, none of which currently receive electric service. Tract 1 is certificated to EGSI and will be transferred to Reliant. Tract 2, located in the Woodlands in an unincorporated area of Montgomery County, consists of approximately 52.79 acres located between SH 1488 and property owned by The Woodlands Development Company (WDC). The Parkwood Baptist Church owns the area of Tract 2. Tract 2 is certificated to Reliant and will be transferred to EGSI. Tract 3, located in Montgomery County within the extra-territorial jurisdiction of the City of Houston, involved a transfer between EGSI and Reliant of various tracts of WDC property located in The Woodlands. The WDC requested that EGSI and Reliant make these transfers in order to realign the certificated areas of EGSI and Reliant in Village 5 located along Woodlands Parkway in The Woodlands so that only one utility provides electric service in a given area. EGSI provides service to 26 customers in Parcel 3M of Tract 3. The southern part of Parcel 3M is in Reliant's certificated service area. Tract 4, located in an unincorporated area of Harris County, consists of 140 lots (approximately 280 acres) located in the Commons Lake Houston (The Commons). Tract 4 is certificated to EGSI and will be transferred to Reliant. Tract 4 is located in the northern half of Section 1 and the southern half of Section 3 of The Commons. Reliant is presently serving 59 lots in The Commons and has electrical facilities installed in Tract 4. The realignment does not effect electric service to any existing customers.

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 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200100424
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 24, 2001

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Notice of Application to Amend Certificated Service Area Boundary

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on January 12, 2001, to amend a certificated service area boundary in Frio County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2001) (PURA). A summary of the application follows.

Docket Style and Number: Application of Medina Electric Cooperative, Inc. and Central Power and Light Company to Amend a Certificated Service Area Boundary Within Frio County. Docket Number 23551.

The Application: Medina Electric Cooperative, Inc. (Medina) and Central Power and Light Company (Applicants) filed a joint application to amend a certificated service area boundary in Frio County. The service boundary amendment is requested to provide service to a home site in an area without existing service. The area is singly certified to Medina. Medina has no facilities close to the requested location. Granting the application would reduce construction costs.

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 or (888) 782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention on or before the intervention deadline.

TRD-200100357
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 19, 2001

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Public Notice of Amendment to Interconnection Agreement

On January 16, 2001, Southwestern Bell Telephone Company and DSLnet Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23561. 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 23561. 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 February 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23561.

TRD-200100387
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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Public Notice of Amendment to Interconnection Agreement

On January 16, 2001, Southwestern Bell Telephone Company and Quality Telephone, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23563. 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 23563. 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 February 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23563.

TRD-200100388
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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Public Notice of Amendment to Interconnection Agreement

On January 17, 2001, Southwestern Bell Telephone Company and New Connects, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23574. 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 23574. 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 February 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23574.

TRD-200100389
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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Public Notice of Amendment to Interconnection Agreement

On January 17, 2001, Southwestern Bell Telephone Company and Level 3 Communications, LLC, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 23575. 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 23575. 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 February 16, 2001, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 23575.

TRD-200100390
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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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. Central Telephone Company of Texas doing business as Sprint for Approval of LRIC Study for Late Payment Charges Pursuant to P.U.C. Substantive Rule §26.214 on or about January 22, 2001, Docket Number 23554.

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 23554. 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-200100392
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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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. United Telephone Company of Texas, Inc. doing business as Sprint for Approval of LRIC Study for Late Payment Charges Pursuant to P.U.C. Substantive Rule §26.214 on or about January 22, 2001, Docket Number 23555.

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 23555. 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-200100393
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215.

Docket Title and Number. Verizon Southwest's Application for Approval of LRIC Study for Conference Connection Services Pursuant to P.U.C. Substantive Rule §26.215 on or after January 28, 2001, Docket Number 23581.

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 23581. Written comments or recommendations should be filed no later than 45 days after the date of sufficiency and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200100401
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: January 22, 2001

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University of Houston

Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston furnishes this notice of request for proposal. The University of Houston, by and through it's Division of Information Technology, seeks to create a quality management program using the Malcolm Baldrige National Quality Award (MBNQA) excellence criteria for performance excellence in order to improve its custom responsiveness, employee performance and morale, and overall contribution

to the University computing needs. The successful candidate be expected to create and implement a quality management system in Information Technology (IT) to be integrated into the IT strategic plan, which will include (i) developing and conducting workshops with IT executives and managers to create improvement plans based on the Malcolm Baldrige National Quality Award criteria for performance excellence, (ii) conduct quality assessments, (iii) work with IT leadership to set priorities and action plans, (iv) conduct focus groups for unit implementation strategies and (v) implement and evaluate plans.

Proposals for Consultant Services will be received before 5:00 p.m., March 5, 2001 and submitted to: Dr. Betty J. Roberts, Assoc. Vice Chancellor/Assoc. Vice-President for Technology Support Services, University of Houston System, Houston, Texas 77204, telephone: (713) 743-1703, facsimile: (713) 743-1701, e-mail: mailto:BJRoberts@uh.edu

RFP evaluative criteria are: (i) demonstrated competence in creating quality management systems, (ii) demonstrated skills with the Malcolm Baldridge excellence criteria and service as a Senior Examiner on the Macolm Baldridge Board of Examiners, (iii) demonstrated success in leading companies in winning national quality awards, (iv) demonstrated ability to translate MBNQA excellence criteria to a university setting, (v) a minimum of 15 years of experience as a Quality executive, (vi) examples/references of prior consulting or experience in these areas Resume/work vitae of individual(s) who will conduct the program, (vii) cost and (viii) timeframe.

TRD-200100439
Dennis P. Duffy
General Counsel
University of Houston
Filed: January 24, 2001

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Texas Water Development Board

Request for Applications

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355, Subchapter A, as amended, the submission of planning proposals leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning applications may be submitted by eligible political subdivisions from any area of the State. To be eligible for funding at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans as defined in Senate Bill 1, 75th Session, Texas Legislature are not eligible for funding under this Request for Proposals. The purpose of this program is for the State to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Evaluation of environmental, social, and cultural factors for possible solutions identified in the plan. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to $600,000 has been initially authorized for FY 2001 assistance for regional facility planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10 (a), as amended, as economically disadvantaged. In the event that acceptable proposals are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., March 14, 2001. Proposals can be directed either in person to Ms. Phyllis Thomas, Room 447, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5, as amended. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Ms. Phyllis Thomas at the preceding mailing address, or by e-mail at phyllis@twdb.state.tx.us or by calling (512) 463-7926. This information can be found on the Internet at the following address: http://www.twdb.state.tx.us

TRD-200100405
Suzanne Schwartz
General Counsel
Texas Water Development Board
Filed: January 22, 2001

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Texas Workforce Commission

Correction of Error

The Texas Workforce Commission (Commission) published proposed new §300.308 in the October 27, 2000, issue of the *Texas Register* (25 TexReg 10714).

Due to an error, by the Commission, the section number was published incorrectly. On page 10717, right column, fourth paragraph, the section number reads as: "§300.308." The section number should read as: "§800.308."

TRD-200100361

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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

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