
TEXAS REGISTER

Volume 26 Number 11 March 16, 2001

Pages 2089-2246



This month's front cover artwork:

Artist: *Cindy Armstrong*

11th grade

Tatum High School

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

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

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

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

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

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

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



a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 22607199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
Secretary of State - Henry Cuellar
Director - Dan Procter

Customer Relations
Leti Benavides
LaKiza Fowler-Sibley

Texas Administrative Code

Dana Blanton
Roberta Knight

Texas Register

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

Circulation/Marketing

Jill S. Ledbetter

ATTORNEY GENERAL

Request for Opinions2095
Opinions2095

PROPOSED RULES

TEXAS RACING COMMISSION

DEFINITIONS

16 TAC §301.12097

RACETRACK LICENSES AND OPERATIONS

16 TAC §309.2142100

OTHER LICENSES

16 TAC §311.52101

TEXAS OPTOMETRY BOARD

PRACTICE AND PROCEDURE

22 TAC §277.72101

TEXAS DEPARTMENT OF HEALTH

RESPIRATORY CARE PRACTITIONER

CERTIFICATION

25 TAC §§123.1-123.152102

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

OTHER AGENCIES AND THE PUBLIC

25 TAC §§403.41 - 403.532115

LOCAL AUTHORITY RESPONSIBILITIES

25 TAC §§412.101 - 412.1142115

TEXAS HEALTH CARE INFORMATION COUNCIL

HEALTH CARE INFORMATION

25 TAC §§1301.11-1301.13, 1301.16-1301.202121

TEXAS JUVENILE PROBATION COMMISSION

TEXAS JUVENILE PROBATION STANDARDS

37 TAC §§341.1 - 341.12, 341.21 - 341.232130

TEXAS JUVENILE PROBATION COMMISSION STANDARDS

37 TAC §341.12131

37 TAC §§341.2 - 341.62131

37 TAC §§341.13 - 341.172133

37 TAC §§341.24 - 341.312134

37 TAC §§341.38 - 341.422134

37 TAC §§341.48 - 341.532135

37 TAC §§341.58 - 341.622137

37 TAC §341.682138

37 TAC §341.752138

37 TAC §§341.82 - 341.922139

37 TAC §§341.98 - 341.1092141

37 TAC §341.113, §341.1142142

37 TAC §§341.121 - 341.1252143

37 TAC §§341.132 - 341.1372144

37 TAC §§341.138 - 341.1432145

37 TAC §341.1502146

37 TAC §341.157, §341.1582146

WITHDRAWN RULES

TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

OTHER AGENCIES AND THE PUBLIC

25 TAC §§403.41 - 403.532149

LOCAL AUTHORITY RESPONSIBILITIES

25 TAC §§412.101 - 412.1142149

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.8092149

TEXAS JUVENILE PROBATION COMMISSION

TEXAS JUVENILE PROBATION COMMISSION STANDARDS

37 TAC §341.12149

37 TAC §§341.2 - 341.62150

37 TAC §§341.13 - 341.172150

37 TAC §§341.24 - 341.312150

37 TAC §§341.38 - 341.422150

37 TAC §§341.48 - 341.522150

37 TAC §§341.58 - 341.622150

37 TAC §341.682151

37 TAC §341.752151

37 TAC §§341.82-341.922151

37 TAC §§341.98-341.1082151

37 TAC §341.113, §341.1142151

37 TAC §§341.121-341.1252151

37 TAC §§341.132-341.1372152

37 TAC §§341.138-341.1432152

37 TAC §341.1502152

37 TAC §341.157, §341.1582152

ADOPTED RULES

TEXAS RACING COMMISSION

GENERAL PROVISIONS

16 TAC §303.832153

RACETRACK LICENSES AND OPERATIONS

16 TAC §309.1172153

16 TAC §309.3552154

OTHER LICENSES

16 TAC §311.1032154

OFFICIALS AND RULES FOR GREYHOUND RACING

16 TAC §315.1022154

VETERINARY PRACTICES AND DRUG TESTING

16 TAC §319.142155

16 TAC §319.3042155

16 TAC §319.3622155

PARI-MUTUEL WAGERING

16 TAC §§321.1-321.82156

16 TAC §§321.31-321.392156

16 TAC §§321.61-321.69, 321.71, 321.722156

16 TAC §§321.101-321.1192156

16 TAC §§321.201-321.2102157

16 TAC §§321.232-321.2352157

16 TAC §§321.271-321.2772157

16 TAC §§321.301-321.3062157

16 TAC §§321.321-321.3372158

16 TAC §§321.351-321.3632158

PARI-MUTUEL WAGERING

16 TAC §§321.1, 321.3, 321.5, 321.7, 321.9, 321.11, 321.13, 321.15, 321.17, 321.19, 321.212158

16 TAC §§321.23, 321.25, 321.272158

16 TAC §§321.29, 321.31, 321.33 - 321.35, 321.37, 321.39, 321.41, 321.43, 321.452159

16 TAC §§321.101, 321.103, 321.105, 321.1072159

16 TAC §§321.121, 321.123, 321.125, 321.1272160

16 TAC §§321.131, 321.133, 321.135, 321.137, 321.139, 321.141, 321.1432160

16 TAC §§321.201, 321.203, 321.205, 321.207, 321.209, 321.211, 321.213, 321.215, 321.2172160

16 TAC §§321.301-321.3182161

16 TAC §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413, 321.415, 321.417, 321.419, 321.4212161

16 TAC §§321.451, 321.453, 321.455, 321.457, 321.459, 321.4612162

16 TAC §§321.501, 321.503, 321.505, 321.507, 321.5092162

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

RULES RELATING TO PRACTICE AND PROCEDURE

22 TAC §§151.1-151.82163

22 TAC §§151.9-151.142163

22 TAC §§151.15-151.19, 151.302163

PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.7-153.10, 153.13, 153.15-153.22, 153.252163

RULES RELATING TO STANDARDS OF PRACTICE

22 TAC §155.12169

RULES RELATING TO PRACTICE AND PROCEDURE

22 TAC §§157.2-157.82169

22 TAC §§157.9-157.142170

22 TAC §§157.15-157.202170

TEXAS DEPARTMENT OF HEALTH

TEXAS BOARD OF HEALTH

25 TAC §1.62170

INJURY PREVENTION AND CONTROL

25 TAC §§103.1, 103.10-103.242170

MASSAGE THERAPISTS

25 TAC §§141.1, 141.3 - 141.232184

25 TAC §§141.1 - 141.32184

25 TAC §§141.5 - 141.72186

25 TAC §§141.10 - 141.172188

25 TAC §§141.20 - 141.252189

25 TAC §§141.26 - 141.472189

25 TAC §§141.50 - 141.552193

25 TAC §§141.60 - 141.662193

FOOD AND DRUG

25 TAC §§229.111 - 229.1202194

25 TAC §§229.111 - 229.1152194

25 TAC §§229.211, 229.217, 229.2192195

25 TAC §§229.432-229.436, 229.439, 229.441, 229.4432196

TEXAS HEALTH CARE INFORMATION COUNCIL

HEALTH CARE INFORMATION

25 TAC §§1301.61-1301.692198

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.8222198
34 TAC §3.8222199

RULE REVIEW

Proposed Rule Reviews

Texas Department of Health2201
Texas Commission on Human Rights.....2201

Adopted Rule Reviews

Texas Juvenile Probation Commission2202
Texas Racing Commission.....2202

TABLES AND GRAPHICS

Tables and Graphics

Tables and Graphics2205

IN ADDITION

Texas State Affordable Housing Corporation

Notice of Public Hearing2221
Notice of Public Hearing2221

Alamo Area Council of Governments

Request for Proposal--Household Hazardous Waste Collection RFP
2001-0042222

Office of the Attorney General

Contract Award2223

Texas Bond Review Board

Biweekly Report Of The 2001 Private Activity Bond Allocation Pro-
gram2223

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency
Agreement/Concurrence Under the Texas Coastal Management
Program.....2224

Comptroller of Public Accounts

Notice of Contract Award2224
Notice of Contract Award2225
Notice of Request for Proposals2225
Notice of Request for Proposals2225

Office of Consumer Credit Commissioner

Notice of Rate Ceilings.....2226

Court Reporters Certification Board

Certification of Court Reporters2226

Deep East Texas Council of Governments

Request for Qualifications2226

Finance Commission of Texas

Requests for Proposals to Perform a Comprehensive Survey and Anal-
ysis of Small Business Lending in Texas.....2226

Golden Crescent Workforce Development Board

Public Notice.....2227
Public Notice.....2227

Office of the Governor

Notification of Consultant Award2227
Notification of Consultant Award2228
Notice of Request for Grant Applications for Local Law Enforcement
Block Grant Fund.....2228

Texas Department of Health

Designation of Medstaff, Inc. as a Site Serving Medically Underserved
Populations.....2228
Licensing Actions for Radioactive Materials.....2229
Notice of an Amendment to the Request for Proposals for Human Im-
munodeficiency Virus Administrative Agencies2232
Notice of Emergency Impoundment Order on Highland Medical Center
.....2233
Notice of Emergency Impoundment Order on Lubbock Wrecker Ser-
vice2233
Notice of Emergency Impoundment Order on South Plains Radiology
Associates2233
Notice of Preliminary Report for Assessment of Administrative Penal-
ties and Notice of Violation to North Texas Lithotripsy, L.P.2234
Notice of Revocation of the Industrial Radiographer Identification Card
of Michael L. Crow2234

Texas Health and Human Services Commission

Public Notice.....2234

Texas Department of Insurance

Insurer Services.....2234
Third Party Administrator Applications2234

Texas Natural Resource Conservation Commission

Notice of Application and Preliminary Decision for a Municipal Solid
Waste Permit2235
Notice of Opportunity to Comment on Settlement Agreements of Ad-
ministrative Enforcement Actions2235
Notice of Public Hearings and Opportunity for Comment2239
Notice of Revised Water District Applications.....2239
Notice of Water Rights Applications2240

Nortex Regional Planning Commission

Request for Proposal.....2241

North Central Texas Council of Governments

Request for Proposals to Prepare a Rail Planning and Implementation Study for the Dallas/Fort Worth International Airport.....2241

Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority.....2242

Notice of Application for Exemption from P.U.C. Substantive Rule §26.25.....2242

Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.252242

Notice of Applications for Waiver to Requirements in P.U.C. Substantive Rule §26.252242

Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.54(b)(3)2243

Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.252243

Notice of Application to Amend Certificate of Convenience and Necessity2243

Public Notice of Workshop on the Implementation of the Capacity Auction Rule.....2244

Request for Comments on Deemed Savings Estimates and Notice of Workshop2244

Texas Department of Transportation

Notice of Public Hearing2244

Texas Water Development Board

Applications Received2245

Texas Workforce Commission

Request for Proposals Texas School-Linked Child Care Program 2245

Open Meetings

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

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

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

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

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site. <http://www.texas.gov/>

•••

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

OFFICE OF THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0349-JC

Mr. Thomas A. Davis, Jr. Director, Texas Department of Public Safety
5805 North Lamar Boulevard, Box 4087 Austin, Texas 78773-0001

Re: Whether section 46.04 of the Penal Code, which makes it unlawful for a convicted felon to possess a firearm, applies to an individual who has received a pardon or had his conviction set aside (Request No. 0349-JC)

Briefs requested by April 2, 2001

RQ-0350-JC

The Honorable Jeff Wentworth Chair, Redistricting Committee Texas
State Senate P.O. Box 12068 Austin, Texas 78711-2548

Re: Whether the Llano County Commissioners Court may delegate its management authority over certain school land to the board of trustees of the Llano Independent School District (Request No. 0350-JC)

Briefs requested by April 2, 2001

RQ-0351-JC

The Honorable J.E "Buster" Brown Chair, Natural Resources Committee
Texas State Senate P.O. Box 12068 Austin, Texas 78711-2548

Re: Whether an individual employed by a company that receives its revenue from a contract with the State of Texas may be compensated as a director of a municipal utility district (Request No. 0351-JC)

Briefs requested by April 2, 2001

For further information, please call 512 463-2110.

RQ-0352-JC

The Honorable Cheryl Mabray Llano County Attorney P.O. Box 821
Llano, Texas 78643

Re: Whether a commissioners court is required to order an election limiting the taxing authority of an emergency services district, and related questions (Request No. 0352-JC)

RQ-0353-JC

RQ-0354-JC Ms. Evelyn M. Lord Chair, Spindletop Centennial Commission
Lamar University, John Gray Center Building B, Suite 103,
855 Florida Beaumont, Texas 77705 Re: Whether the Spindletop Centennial
Commission continues in existence until the end of 2001 (Request No. 0354-JC)

Briefs requested by April 2, 2001

For further information, please call 512 463-2110.

TRD-200101376

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: March 7, 2001



Opinions

Opinion No. JC-0350

Mr. Robert J. "Sam" Tessen, M.S. Executive Director Telecommunications
Infrastructure Fund Board 1000 Red River, Suite E208 Austin,
Texas 78701

Re: Whether the Telecommunications Infrastructure Fund Board has authority to spend appropriated funds to inform the general public of its activities and accomplishments and of the opportunities it provides (RQ-0292-JC)

S U M M A R Y

The Telecommunications Infrastructure Fund Board has authority to make information about its functions available to the public and may use appropriated funds for that purpose. It lacks authority to engage in an advertising or public relations campaign regarding the Fund and may not use appropriated funds for that purpose. The Telecommunications Infrastructure Fund Board may not use appropriated funds to contract with a public relations firm.

Opinion No. JC-0351

The Honorable Chad Cowan Jones County Attorney Third Floor Court-
house P.O. Box 68 Anson, Texas 79501

Re: Whether the City of Anson is a home-rule municipality (RQ-0295-JC)

S U M M A R Y

The City of Anson is a home-rule municipality, and has been so since April 6, 1920.

Opinion No. JC-0352

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

Re: Whether Government Code section 551.125 permits absent members of a governmental body to participate in a meeting by telephone conference call when a quorum of the governmental body has convened in one location, and related questions (RQ-0297-JC)

S U M M A R Y

A governmental body need not state in the notice of a meeting that the meeting will be held by telephone conference call pursuant to section 551.125 of the Government Code. See Tex. Gov't Code Ann. § 551.125 (Vernon Supp. 2001). Section 551.125, in permitting a meeting by telephone conference call only in case of an emergency or public

necessity and only if it is "difficult or impossible" to convene a quorum in one location, contemplates meetings by telephone conference call in extraordinary circumstances and not merely when attending a meeting at short notice would inconvenience members of the governmental body. See *id.* § 551.125(b). When a quorum of the governmental body has convened for an emergency meeting at the meeting location, section 551.125 does not permit absent members to participate in the meeting by telephone conference call. Given that a court might void actions taken at a meeting for which a member does not receive notice, a governmental body should make every effort to provide every member with actual notice of meetings.

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

TRD-200101377

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: March 7, 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 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission proposes an amendment to §301.1, relating to definitions. The amendment deletes the definition of the term "declaration". The deletion is necessary because the term has become obsolete in the racing industry. The amendment also capitalizes the word "commission" and change the phrase "rules of the commission" to "the Rules" to conform to current rule style.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the public benefit anticipated will be increased accuracy and therefore, increased reliance, in terminology within the Rules. There will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the rule as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before April 20, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse races; and §11.011, which authorizes the

Commission to adopt rules to implement pari-mutuel wagering on simulcasting races.

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

§301.1. Definitions.

(a) (No change.)

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

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

(5) Application period--a period designated by the Commission [~~commission~~] for the submission of application documents for a racetrack license.

(6) Association grounds--all real property approved by the Commission [~~commission~~] for use by an association in the conduct of a race meeting.

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

(14) Chief veterinarian--the chief veterinarian employed by the Commission [~~commission~~].

(15)-(19) (No change.)

~~[(20) Declaration--the withdrawal of an entered horse or greyhound from a race.]~~

(20) [~~(21)~~] Double entry--an entry of two or more greyhounds in the same race that have either common ownership or the same trainer and are separate wagering interests.

(21) [~~(22)~~] Encrypted--scrambled or otherwise manipulated audio-visual signals to mask the original video content of the signal to cause the signals to be indecipherable and unrecognizable to any person receiving the signal.

(22) [~~(23)~~] Entry--a horse, or horses in the case of a coupled entry, made eligible to run in a race.

(23) [~~(24)~~] Established weight--the racing weight for a greyhound established in accordance with the Rules [~~rules of the commission~~].

(24) [(25)] Exempt institutional investor--an investor who is:

(A) an insurance company as defined by the Securities Act of 1933, §2(13), a bank as defined by that Act, §3(a)(2), a savings and loan association or other institution referenced in that Act, §3(a)(5)(A), or a foreign bank or savings and loan association or equivalent institution;

(B) an investment company as defined by the Investment Company Act of 1940, §3(a), an issuer that would have been deemed an investment company under that Act except for the exclusion in that Act, §3(c)(1), or a business development company as defined by that Act, §2(c)(48);

(C) a small business investment company licensed by the United States Small Business Administration under the Small Business Investment Act of 1958, §301(c) or (d);

(D) a plan established and maintained by a state, its political subdivisions, or an agency or instrumentality of a state or its political subdivisions for the benefit of its employees;

(E) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(F) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in subparagraph (D) or (E) of this definition, except trust funds that include as participants individual retirement accounts or H.R. 10 plans;

(G) a business development company as defined by the Investment Advisers Act of 1940, §202(a)(22), or an investment adviser registered under that Act;

(H) an organization described in the Internal Revenue Code, §501(c)(3);

(I) a dealer registered under the Securities Exchange Act of 1934, §15;

(J) a legal entity with a market value of at least \$50 million whose securities are traded on a nationally recognized or foreign securities exchange or interdealer quotation system, such as NASDAQ; and

(K) a legal entity, acting for its own account or the account of other exempt institutional investors, that in the aggregate owns and invests on a discretionary basis at least \$25 million in securities of issuers that are not affiliated with the entity, with the aggregate value of the securities being the cost of the securities, except if the entity reports its securities holdings in its financial statements based on their market value and no current information regarding the cost of the securities has been published, in which case the securities may be valued at market.

(25) [(26)] Exotic pool--a mutuel pool that involves wagers on more than one entered horse or greyhound or on entries in more than one race.

(26) [(27)] False start--failure of the starting gate or box doors to open simultaneously.

(27) [(28)] Foul--an action by a horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

(28) [(29)] Greyhound race--a contest among greyhounds for purse, stakes, premium, or wager for money, run in the presence of the racetrack officials, including the following:

(A) Hurdle race--a race over a course in which jumps or hurdles are used.

(B) Match race--a race between two or more greyhounds, each the property of different owners, on terms agreed on by the owners and approved by the Commission [~~commission~~].

(C) Overnight race--a race for which entries close 96 hours or less before the time set for the first race of the day on which the race is to be run.

(D) Purse race--a race for money or other prize to which the owners of the greyhounds engaged in the race do not contribute an entry.

(E) Race on the flat--a race over a course in which no jumps or other obstacles are placed.

(F) Stakes race--a race in which all money is to be deposited by the owners of the greyhounds engaged in the race, including a race of the day on which the stakes race is to be run.

(29) [(30)] Groom--an individual employed by an owner or trainer of a race horse to tend to the physical appearance of the horse and to perform chores in and around the stable.

(30) [(31)] Growing medium--the substance immediately below the grass on a turf track.

(31) [(32)] Handle--the total amount of money wagered at a racetrack during a particular period.

(32) [(33)] Horse--an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(33) [(34)] Horse Race--a running contest between horses for entry fees, purse, prize, or other reward, including the following:

(A) Claiming race--a race in which a horse may be claimed in accordance with the Rules [~~rules of the commission~~].

(B) Derby race--a race in which the first condition of eligibility is to be three years old.

(C) Futurity race--a race in which the first condition of eligibility is to be two years old.

(D) Guaranteed race--a race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) Handicap race--a race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) Match race--a race between only two horses that are owned by different owners.

(G) Maturity race--a race in which the first condition of eligibility is to be four years of age or older.

(H) Optional claiming race--a claiming race in which there is an option to have horses entered to be claimed for a stated price or not eligible to be claimed.

(I) Progeny race--a race restricted to the offspring of a specific stallion or stallions.

(J) Purse or overnight race--a race for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) Stakes race--a race to which nominators of the entries contribute to a purse.

(L) Starter race--an overnight race under allowance or handicap conditions, restricted to horses which have previously started

for a designated claiming price or less, as stated in the conditions of the race.

(M) Walkover race--a stakes race in which only one horse starts or all the starters are owned by the same interest.

(N) Weight for age race--a race in which weights are assigned in keeping with the scale of weights in these rules.

(34) [(35)] In today horse--a horse that is in the body of a race program which is entered into a race on the next consecutive race day.

(35) [(36)] Kennel area--an area on association grounds for the boarding or training of greyhounds.

(36) [(37)] Lead out--an individual who handles a greyhound from the lockout kennel to the starting box.

(37) [(38)] Locked in the gate--a horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate or box to open simultaneously with the other doors.

(38) [(39)] Lure--a mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

(39) [(40)] Maiden--a horse or greyhound that has never won a race at a recognized race meeting authorized by the Commission [eommission] or by another racing jurisdiction.

(40) [(41)] Minus pool--a pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

(41) [(42)] Mutuel field--a group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

(42) [(43)] No race--a race that is canceled after being run due to a malfunction of the starting gate or box or any other applicable reason as determined by the Rules [rules of the eommission].

(43) [(44)] Nominator--the person in whose name a horse or greyhound is entered for a race.

(44) [(45)] Occupational licensee--an individual to whom the commission has issued a license to participate in racing with pari-mutuel wagering.

(45) [(46)] Odds--a number indicating the amount of profit per dollar wagered to be paid to holders of winning pari-mutuel tickets.

(46) [(47)] Odds board--a facility at a racetrack that is easily visible to the public on which odds, payoffs, advertising, or other pertinent information is posted.

(47) [(48)] Off time--the moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

(48) [(49)] Paddock--the area in which horses or greyhounds gather immediately before a race.

(49) [(50)] Patron--an individual present on association grounds during a race meeting who is eligible to wager on the racing.

(50) [(51)] Pecuniary interest--~~includes~~ [includes] a beneficial ownership interest in an association, but does not include bona fide indebtedness or a debt instrument of an association.

(51) [(52)] Performance--the schedule of horse or greyhound races run consecutively as one program.

(52) [(53)] Photofinish--the system of recording pictures or images of the finish of a race to assist in determining the order of finish.

(53) [(54)] Place--to finish second in a race.

(54) [(55)] Post position--the position assigned to a horse or greyhound in the starting gate or box.

(55) [(56)] Post time--the time set for the arrival at the starting gate or boxes by the horses or greyhounds in a race.

(56) [(57)] Purse--the cash portion of the prize for a race.

(57) [(58)] Race date--a date on which an association is authorized by the Commission [eommission] to conduct races.

(58) [(59)] Race day--a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

(59) [(60)] Race meeting--a group of days on which horse or greyhound racing is conducted at a racetrack.

(60) [(61)] Racetrack facility--the buildings, structures and fixtures located on association grounds used by an association to conduct horse or greyhound racing.

(61) [(62)] Racetrack official--an individual appointed or approved by the Commission [eommission] to officiate at a race meeting.

(62) [(63)] Racing judge--the executive racing official at a greyhound track.

(63) [(64)] Reasonable belief--a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

(64) [(65)] Recognized race meeting--a race meeting held under the sanction of a turf authority.

(65) [(66)] Refunded ticket--a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

(66) [(67)] Rule off--to bar an individual from the enclosure of an association and to deny all racing privileges to the individual.

(67) [(68)] Rules--the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(68) [(69)] Schooling race--a practice race conducted under actual racing conditions but for which wagering is not permitted.

(69) [(70)] Scratch--to withdraw an entered horse or greyhound from a race after the closing of entries.

(70) [(71)] Scratch time--the closing time set by an association for written requests to withdraw from a race.

(71) [(72)] Show--to finish third in a race.

(72) [(73)] Specimen--a bodily substance, such as blood, urine, or saliva, taken for analysis from a horse, greyhound, or individual in a manner prescribed by the Commission [eommission].

(73) [(74)] Stakes payments--the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate.

(74) [(75)] Stallion owner--a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(75) [(76)] Starter--a horse or greyhound entered in a race when the doors of the starting gate or box open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

(76) [(77)] Straight pool--a mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

(77) [(78)] Subscription--money paid to nominate, enter, or start a horse or greyhound in a stakes race.

(78) [(79)] Tack room--a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(79) [(80)] Totalisator--a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(80) [(81)] Tote room--the room in which the totalisator equipment is maintained.

(81) [(82)] Tout--an individual licensed to furnish selections on a race in return for a set fee.

(82) [(83)] Trial--a race designed primarily to determine qualifiers for finals of a stakes race.

(83) [(84)] Uplink--an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data emanating from a sending racetrack, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the receiving location.

(84) [(85)] Weigh in--the process by which a jockey is weighed after a race or by which a greyhound is weighed before being placed in the lockout kennel.

(85) [(86)] Weighing in weight--the weight of a greyhound on weighing in to the lockout kennel.

(86) [(87)] Weigh out--the process by which a jockey or greyhound is weighed before a race.

(87) [(88)] Weighing out weight--the weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

(88) [(89)] Win--to finish first in a race.

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 March 5, 2001.

TRD-200101272

Judith L. Kennison

General Counsel

Texas Racing Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER C. HORSE RACETRACKS

DIVISION 1. RACETRACKS

16 TAC §309.214

The Texas Racing Commission proposes an amendment to §309.214 relating to distance markers around horse racetracks. The amendment clarifies the demarcation of distances around a horse racetrack. These distances are to be measured in either miles, fractions of miles, or yards, not poles.

Judith L. Kennison, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule is in effect there are no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Kennison has also determined that for each of the first five years the rule is in effect the anticipated public benefit is increased reliability in the accuracy of the rule. Because the amendment modifies language only and not the requirements for the racetracks, there will be no fiscal implications for small or micro-businesses. There is no anticipated economic cost to an individual required to comply with the rule as proposed. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before April 20, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §3.021 which authorizes the Commission to regulate all aspects of greyhound and horse racing in the State; and §6.06 which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

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

§309.214. *Distance Markers.*

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

(c) The starting point markers and distance poles must be marked as follows:

(1) 1/16 mile [poles]--Black and white stripes

(2) 1/8 mile [poles]--Green and white stripes

(3) 1/4 mile [poles]--Red and white stripes

(4)-(13) (No change.)

(14) 870 [880] yards--Blue and white stripes

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 March 5, 2001.

TRD-200101273

Judith L. Kennison

General Counsel

Texas Racing Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 833-6699



CHAPTER 311. OTHER LICENSES

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.5

The Texas Racing Commission proposes an amendment to §311.5, relating to license fees. The proposed amendment permits licensees to pay fees and fines by use of a credit card. This change would provide more convenience to the licensees and better productivity to the agency.

Judith L. Kennison, General Counsel for the Texas Racing Commission, determined that for the first five-year period the rule is in effect will be minimal fiscal implications for state government due to the initial purchase of necessary processing machines and transaction fees. Each machine will cost approximately \$695 and each transaction fee will cost approximately 68 cents. At the present time, the Commission anticipates these costs will be paid through the current fee structure without an increase in fees. There will be no fiscal implication, however, on local government as a result of enforcing the proposals. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Ms. Kennison has also determined that the anticipated public benefit for each of the first five years the rule is in effect will be increase convenience for the licensees and increased productivity to the agency. There is no anticipated economic cost to an individual required to comply with the rule as proposed.

Comments on the proposal may be submitted on or before April 20, 2001, to Judith L. Kennison, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §7.02, which authorizes the Commission to establish categories of occupational licenses and the qualifications and experience required for licensing in each category.

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

§311.5. License Fees.

(a) (No change.)

(b) A license fee must be paid by ~~in the form of~~ a money order, a certified check, a cashier's check, a credit card, or a personal check. The executive secretary may approve payment in cash at a race-track if the association submits a plan that is approved by the executive secretary. The plan shall provide for the safety and security of the licensing office where the cash will be received and stored and licensing employees who will be responsible for handling and depositing the cash received.

(c) (No change.)

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

Filed with the Office of the Secretary of State, on March 5, 2001.

TRD-200101274

Judith L. Kennison

General Counsel

Texas Racing Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 833-6699

TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.7

The Texas Optometry Board proposes new rule §277.7 in order to establish minimum standards for patient records which will permit the enforcement of Texas Optometry Act §351.353, which sets out the procedures required in the initial examination of a patient.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Lois Ewald also has determined that for each of the first five years the new rule is in effect, the public benefit anticipated as a result of enforcing the new rule is that the public will be assured that the Board is properly investigating its licensees' compliance with statutory examination requirements. It has also been determined that the new rule does not impose any additional costs on persons required to comply with the new rule (the Board's licensees), since licensees currently meeting the required standard of care will be in compliance with the provisions of the new rule. Therefore the new rule does not impose any new duties on small and micro businesses, and no adverse economic effect on small or micro businesses is forecast.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the Texas Register.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151 and 351.353.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets §351.353 to require the performance of certain procedures in an initial eye examination. No other section is affected by the rule.

§277.7. Patient Records.

(a) In order to protect the patient's health, an optometrist or therapeutic optometrist shall create and maintain a legible and accurate written patient record for each patient. Every patient record shall provide sufficient information such that:

(1) another optometrist or therapeutic optometrist can identify the examination performed and the results obtained, and

(2) the Board can accurately assess a licensee's compliance with §§279.5 and 279.7 of this title, and Optometry Act §351.353.

(b) This rule is adopted to assist the Board in determining whether a licensee has complied with the requirements of Optometry Act §351.353, Initial Examination of Patient. This rule is not adopted to establish a standard of care for the practice of optometry.

(c) Notations to a detailed preprinted checklist are acceptable if the results of an examination may clearly and accurately be presented in this format. The use of a check mark or similar minimal notation to record the performance of an examination, if not made to a detailed

checklist, does not meet the requirements of subsection (a). Any patient record that is created or maintained in an electronic format must have the capability of printing a paper record that meets the requirements of this rule.

(d) The patient record for each initial examination for which an ophthalmic lens prescription is signed shall contain, at a minimum, written notations recording the procedures and findings required by §§279.5 and 279.7 of this title, and Optometry Act §351.353, in the following format:

- (1) An accurate identification of the patient;
- (2) The date of the examination;
- (3) The name of the optometrist or therapeutic optometrist conducting the examination;
- (4) Past and present medical history, including complaint presented at visit;
- (5) A numerical value of the monocular uncorrected or monocular corrected visual acuity in a standard acceptable format;
- (6) The results of a biomicroscopic examination of the lids, cornea, and sclera;
- (7) The results of the internal examination of the media and fundus, including the optic nerve and macula, all recorded individually;
- (8) The results of a retinoscopy. A tape from an automatic refractor is acceptable;
- (9) The subjective findings of the examination. A tape from a computer assisted refractor/photometer is acceptable if the instrument is being used to obtain subjective findings;
- (10) The results of an assessment of binocular function, including the test used and the numerical endpoint value;
- (11) The amplitude or range of accommodation expressed in numerical endpoint value including the test used in the examination;
- (12) A tonometry reading including the type of instrument used in the examination; and
- (13) Angle of vision: the extent of the patient's field to the left and right.

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 March 1, 2001.

TRD-200101226

Lois Ewald

Executive Director

Texas Optometry Board

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 305-8500



TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §§123.1-123.15

The Respiratory Care Practitioner Certification Program (advisory committee) with the approval of the Texas Board of Health proposes (board) amendments to §§123.1-123.14 and new §123.15 concerning the certification of respiratory care practitioners. Specifically the amendments cover the purpose and scope; definitions, advisory committee, fees, exemptions, application requirements and procedures, types of certificates and temporary permits and applicant eligibility, examination, certificate renewal, continuing education requirements, changes of name or address, and violations, complaints and subsequent actions. The proposed new section covers informal disposition.

The Government Code, §2001.39 requires each state agency to review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Title 25 Texas Administrative Code (TAC), Chapter 123 which includes §§123.1-123.14 has been revised in its entirety and the advisory committee and staff has determined that reasons for adopting the sections continue to exist.

The Notice of Intention to Review the sections as required by Government Code, §2001.039 was published in the *Texas Register* on December 17, 1999 (24 TexReg 11542). No comments were received in response to the notice.

The advisory committee held a meeting to conduct a preliminary review of its rules. As a result of this meeting, the advisory committee is amending its existing rules located in Chapter 123 to satisfy the requirements of Government Code, §2001.39; delete language that is no longer necessary; add fees for returned check and continuing education extension fee; amend the rules pursuant to the codification of the Respiratory Care Practitioner Certification Act into the new Texas Occupations Code, Chapter 604; and update and clarify existing language. Additional, proposed new §123.15 concerning informal disposition is being added.

L. Jann Melton-Kissel, Associateship for Health Care Quality and Standards, has determined that for each year of the first five years the sections are in effect, there will be a fiscal impact on state government sections 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 respiratory therapists. There will be no adverse affect on small businesses and micro-businesses that require respiratory therapists services who utilize proper business management practices. The fiscal impact to the respiratory care practitioners requesting a continuing education extension which would require a \$30 fee and returned checks would require a \$50 collection fee. There will be no impact on local employment.

Comments on the proposal may be submitted Pam K. Kaderka, Program Administrator, Respiratory Care Practitioners Certification Program, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834 6632. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under Texas Occupations Code, §604.052, which requires the Respiratory Care Practitioners Certification Program to adopt rules, with the approval of the Texas Board of Health; and the Health and Safety

Code §12.001 that are reasonable necessary to properly perform its duties under this Act.

The amendments and new section affect the Occupations Code, Title 3. Health Professions, Subtitle K, Chapter 604; Texas Civil Statutes, Article 4512I; and Government Code §2001.039.

§123.1. *Context [Purpose and Scope]*

~~[(a) Purpose. These sections are intended to implement the provisions of Texas Civil Statutes, Article 4512I, as amended concerning the regulation and certification of respiratory care practitioners.]~~

~~[(b) Scope.] These sections cover definitions; the advisory committee's operation; fees; exceptions to certification; application requirements and procedures; types of certificates, temporary permits, and applicant eligibility; examination; certificate renewal; continuing education requirements; changes of name or address; professional and ethical standards; certifying or permitting persons with criminal background to be respiratory care practitioners; violations, complaints and subsequent actions.~~

§123.2. *Definitions.*

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

(1) (No change.)

(2) ~~Act--Texas Occupations Code, Chapter 604; and Texas Revised Civil Statutes portions of 4512I, as amended) [Texas Civil Statutes, Article 4512I], as amended.~~

(3)-(7) (No change.)

(8) ~~Appropriate educational agency--The Texas Education Agency or other governmental agency authorized by law or statute to approve educational institutions and curriculum, or an educational accrediting body of a professional organization, such as the Committee on [Allied Health Education and] Accreditation for Respiratory Care (COARC) and its predecessor or [of the American Medical Association (CAHEA) or its] successor organization.~~

(9)-(12) (No change.)

(13) ~~Delegated authority--As defined in the Texas Medical Practice Act, Texas Occupations Code Chapter 157 [Texas Civil Statutes, Article 4495b, §3.06(d)(1)] and the rules pertaining thereto adopted by the BME.~~

(14) (No change.)

(15) ~~Diagnostic--Of or relating to or used in the art or act of identifying a disease or disorder[disorders.]~~

(16)-(20) (No change.)

~~[(21) Practitioner--A person who holds a certificate or temporary permit issued under the Act to practice respiratory care.]~~

(21) [(22)] ~~Qualified medical director--A physician licensed and in good standing with the BME, and who has special interest and knowledge in the diagnosis and treatment of respiratory care problems who is actively engaged in the practice of medicine. This physician must be a member of the active medical staff of a health care facility, agency or organization who supervises the provision of respiratory care.~~

(22) [(23)] ~~Respiratory care--The treatment, management, control, diagnostic evaluation, and care of inpatients or outpatients who have deficiencies and abnormalities associated with the cardiorespiratory system. Respiratory care does not include the delivery, assembly, set up, testing, and demonstration of respiratory care equipment upon~~

the order of a licensed physician. Demonstration is not to be interpreted here as the actual patient assessment and education, administration, or performance of the respiratory care procedure(s).

(23) [(24)] ~~Respiratory care education program--~~

(A) ~~a program in respiratory care approved by the educational accrediting body;~~

(B) ~~a program approved by an appropriate education agency and working toward becoming an approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an approved program in respiratory care; or~~

(C) ~~a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.~~

(24) [(25)] ~~Respiratory care practitioner (RCP)--A person permitted or certified under the Act to practice respiratory care.~~

(25) [(26)] ~~Respiratory care procedure--Respiratory care provided by the therapeutic and diagnostic use of medical gases, humidifiers, and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique employed to assist in diagnosis, monitoring, treatment, and research, including the measurement of ventilatory volumes, pressures and flows, the specimen collection of blood and other materials, pulmonary function testing, and hemodynamic and other related physiological forms of monitoring or treating, as ordered by the patient's physician, the cardiorespiratory system. These procedures include:~~

(A) ~~administration of medical gases--such as nitric oxide, helium and carbon dioxide;~~

(B) ~~providing ventilatory assistance and ventilatory control--including high frequency oscillatory ventilation and high frequency jet ventilation;~~

(C) ~~providing artificial airways--including insertion, maintenance and removal;~~

(D) ~~performing pulmonary function testing--including neonatal and pediatric studies;~~

(E) ~~hyperbaric oxygen therapy;~~

(F) ~~monitoring--including pulse oximeter, end-tidal carbon dioxide and apnea monitoring;~~

(G) ~~extracorporeal membrane oxygenation (ECMO);~~

(H) ~~patient assessment, respiratory patient care planning; and~~

(I) ~~implementation of respiratory care protocols.~~

(26) [(27)] ~~Respiratory therapist--A person permitted or certified under the Act to practice respiratory care.~~

~~[(28) Temporary certificate--A certificate which expires August 31, 1987, issued to a person who at the time of application to the department, is not registered or certified by the NBRC, and who is practicing respiratory care under the direction of a qualified medical director or other physician licensed by and in good standing with the BME.]~~

(27) [(29)] Temporary permit--A permit issued in accordance with §123.7(d) of this title (relating to Types of Certificates, Temporary Permits, and Applicant Eligibility) for a period of six months.

(28) [(30)] Therapeutic--Of or relating to the treatment of disorders by remedial agents or methods.

(29) [(31)] Under the direction--Assuring that established policies are carried out; monitoring and evaluating the quality, safety, and appropriateness of respiratory care services and taking action based on findings; and providing consultation whenever required, particularly on patients receiving continuous ventilatory or oxygenation support.

§123.3. Respiratory Care Practitioners Advisory Committee

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

(g) Terms of office. The term of office of each member shall be six years, and members [Members] shall serve after expiration of their term until a replacement is appointed.

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

(h)-(p) (No change).

§123.4. Fees.

The following fees are prescribed by the board and are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

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

(E) certificate fee for upgrade of temporary permit--\$30; [and]

(F) written verification of certification status--\$10; [-]

(G) returned check fee--\$50; and

(H) continuing education extension fee--\$30.

(2) Schedule of fees for a temporary permit as a respiratory care practitioner:

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

(C) temporary permit and/or identification card replacement fee--\$20; [and]

(D) written verification of certification status--\$10; [-]

(E) returned check fee--\$50.

(3) An applicant whose check for the application fee is returned due to insufficient funds, account closed, or payment stopped shall be allowed to reinstate the application by remitting to the department a money order or check for guaranteed funds in the amount of the application fee plus the returned check fee within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) An approved applicant whose check for the temporary permit or certificate fee is returned marked [due to] insufficient funds, account closed, or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the temporary permit or certificate fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the application and the approval shall be invalid.

(5) A temporary permit holder whose check for the temporary permit extension fee is returned due to insufficient funds, account closed or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the temporary permit extension fee plus the returned check fee within 30 days of the date of the department's notice. Otherwise, the temporary permit shall not be extended, or if already extended shall be invalid.

(6) A certificate holder whose check for the renewal fee is returned due to insufficient funds, account closed or payment stopped shall remit to the department a money order or check for guaranteed funds in the amount of the renewal fee plus the returned check fee within 30 days of the date of receipt of the department's notice. Otherwise, the certificate shall not be renewed. If a renewal certificate has already been issued, it shall be invalid.

(7) If the department's notice, as set out in paragraphs (3)-(6) of this section, is returned unclaimed, the department shall mail the notice to the applicant or certificate holder by first class mail. If a money order or check for guaranteed funds is not received by the department's cashier within 30 days of the postmarked [~~postmark~~] date on the second mailing, the approval or certificate issued shall be invalid. The department shall notify the applicant's or certificate holder's employer that the person has failed to comply with this section.

(8) (No change.)

§123.5. Exemptions. [~~Exceptions to Certification.~~]

[(a) The purpose of this section is to set out who is exempt from certification under the Act and who must be certified under the Act.]

(a) [(b)] Except as specifically exempted by subsection (b)[(c)] of this section, the provisions of the Act and this chapter apply to any person representing that he or she practices or provides respiratory care services.

(b) [(c)] These sections do not prohibit:

(1) the practice of respiratory care that is an integral part of the program of study by a student enrolled in a respiratory care education program approved by the department;

(2) the employment by a health care facility of a person to deliver limited respiratory care support services under the supervision of an individual who holds a certificate issued under this Act, if such a person does not perform an invasive procedure related to critical respiratory care, including therapeutic, diagnostic, or palliative procedures as part of the person's employment and if the person:

(A) is enrolled for credit in the clinical portion of an approved respiratory care education program; or

(B) has completed all of the clinical portion of an approved respiratory care education program within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program;

(3) the gratuitous care of the ill by a friend or member of the family or care provided in an emergency situation by a person who does not claim to be a respiratory care practitioner who holds a temporary permit or certificate issued under the provisions of the Act;

(4) a respiratory care practitioner from performing advances in the art and techniques of respiratory care, as defined in the Act and in §123.2 of this title (relating to Definitions), learned through formal or specialized training;

(5) the practice of respiratory care by health care personnel who have been formally trained in the care used and who are:

(A) licensed under the practice acts regulating their professions; or

(B) acting under the delegated authority of a physician licensed by the Board of Medical Examiners;

(6) the practice of any legally qualified respiratory care practitioner employed by the United States government while in the discharge of official duties; or

(7) any person who is licensed, registered, or certified under another law of this state from engaging in the profession or occupation for which the person is licensed, registered, or certified.

(c) ~~(d)~~ Student status. ~~[is further clarified as follows:]~~

(1) Students who are not enrolled in the clinical portion or have not completed the clinical portion of their respiratory care education program within the preceding 12 months may not be employed by a health care facility to provide limited respiratory care services unless they hold a temporary permit.

(2) Students in a nontraditional accredited respiratory care education program may be considered as being engaged in the clinical portion of their education program during its entire duration. For the purposes of this section nontraditional shall mean those respiratory care education programs recognized as nontraditional education systems by the Committee on Accreditation for Respiratory Care ~~Joint Review Committee for Respiratory Care Education of the AMA~~ or its successor organization.

(3) A clinical student who is employed by any health care facility, agency or organization to provide limited respiratory care services should provide his or her employer, on a semi-annual basis, verification that he or she is a bona fide student in an approved respiratory care education program. Acceptable verification shall be a letter on program letterhead with the original signature of the program director attesting to the student's bona fide status as an active student in the clinical portion of that program or that the student has completed the clinical portion of the course within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program.

(4) Limited respiratory care services provided by an employed clinical student must be supervised by a practitioner certified under this Act. Students may not perform invasive procedures related to critical respiratory care.

(5) Students who are within 45 days of graduation may apply to the department for a temporary permit in accordance with §123.6 of this title (relating to Application Requirements and Procedures). A person who holds a temporary permit may perform any and all respiratory care procedures which he or she has been trained to perform.

(d) ~~(e)~~ All persons who apply to become certified or permitted as a practitioner, all persons who believe they are exempt under the Act and this chapter, and all other persons who are interested in practicing respiratory care need to be aware of the:

(1) penalty provisions under the Texas Occupations Code §604.351 ~~[Aet, §13]~~, violations. Any person who knowingly or intentionally violates a provision of the Act commits a Class B misdemeanor; and

(2) prohibited acts provisions under the Texas Occupations Code §604.102 ~~[Aet, §4]~~. Persons who are not certified or permitted under the Act may not use in connection with their practice or employment the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," or the letters

"RCP," or any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner.

§123.6. *Application Requirements and Procedures.*

~~[(a) Purpose: The purpose of this section is to set out the application procedures for examination and certification.]~~

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

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department forms.

(2) The department shall not consider an application as officially submitted until the applicant pays the application fee and the fee clears the appropriate financial institution. The fee must accompany the application form.

(3) The administrator shall send a notice listing the additional materials required 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 shall be invalid.

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

(1) Application form. The application form shall contain:

(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 these sections and agrees to abide by them;

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

(D) a statement that the applicant, if issued a certificate or temporary permit, shall return the certificate or temporary permit and identification card(s) to the department upon the revocation or suspension of the certificate or temporary permit;

(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 department 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 ~~[any]~~ certificate or permit, or the revocation of a ~~[any]~~ certificate or permit issued;

(H) a statement that if issued a ~~[any]~~ certificate or permit the practitioner shall keep the department advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated and notarized; ~~[and]~~

(J) a full-face color photograph signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within the two year period prior to application to the department and the minimum size is one and one-half inches by one and one-half inches.

(2) Educational records. Applicants for a certificate, who were not certified or registered in respiratory care by the NBRC on or before September 1, 1985, or a temporary permit must submit:

(A) a photocopy which has been notarized as a true and exact copy of an unaltered:

(i) an official diploma or official transcript indicating graduation from high school;

(ii) certificate of high school equivalency issued by the appropriate educational agency; or

(iii) official transcript from an accredited college or university indicating that the applicant received a high school diploma or equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and

(B) a photocopy which has been notarized as a true and exact copy of an unaltered certificate of completion from a respiratory care education program. The certificate must contain:

(i) name and number of the program (exactly as listed with the educational accrediting body);

(ii) name of the graduate;

(iii) exact day and month individual is recognized as a program graduate;

(iv) accreditation statement; and

(v) signatures of the medical director, program director and administrative official; or

(C) an expected graduation statement signed by the program director. Within 30 days of the completion date noted in the statement, the department must receive either:

(i) a notarized copy of the certificate of completion, as set out in subparagraph (B) of this paragraph; or

(ii) a notarized statement signed by the program director indicating that the applicant officially completed the program but the certificate is not available within 30 days of the completion date.

(3) Examination results.

(A) If the applicant is making application for a temporary permit, an examination score release form shall be signed allowing the department to obtain the applicant's examination results from the NBRC, or other agency administering the examination prescribed by the board.

(B) If an applicant for a regular certificate is:

(i) recognized as certified respiratory therapist ~~[therapy technician]~~ or registered respiratory therapist by the NBRC at the time of application, a photocopy of the certificate issued by NBRC shall be submitted in lieu of examination results; or

(ii) unable to show proof of successful completion or otherwise provide documentation acceptable to the department of the applicant's examination results, the application shall be disapproved.

(4) Employment/experience documentation report form. Persons applying for any certificate or permit who are not recognized as a certified respiratory therapist ~~[therapy technician]~~ or registered respiratory therapist by the NBRC and who are licensed, registered, or otherwise regulated in another state, territory, or country at the time of application must submit with their applications a properly completed employment/experience documentation report form signed by their medical director as defined in §123.2 of this title (relating to Definitions), attesting that the applicant is currently practicing, or has practiced respiratory care within the 12-month period immediately preceding application to the department.

(5) Medical direction requirement. If the applicant is practicing respiratory care in Texas at the time of application to the department, the applicant shall obtain on the application form the signature and the license number of the qualified medical director as defined in §123.2 of this title (relating to Definitions) or other Texas licensed physician directing the provision of respiratory care services.

(c) ~~[(4)]~~ Information/Documentation form. Persons applying for any certificate or permit who are licensed, registered, or otherwise regulated in any profession at the time of application to the department must submit with their applications a properly completed information/documentation form signed by an agency official. The signature must be notarized if the agency does not have or does not affix its official seal on the form.

(d) ~~[(e)]~~ Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for a permit or certificate.

(A) The following periods of time shall apply from the date of receipt of an application 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:

(i) letter of acceptance of application for permit or certification--14 working days. The notice of acceptance may include a statement that an application for temporary permit received more than 45 days from the date of the applicant's graduation will be held pending until the applicant is within 45 days of graduation; and

(ii) letter of application deficiency--14 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. 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:

(i) letter of approval--14 working days; and

(ii) letter of denial of permit or certificate--180 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. ~~Requests [Application]~~ for reimbursement shall be made to the program administrator. If the program administrator 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.

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

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the program administrator, the applicant may appeal to the commissioner of health for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) 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 paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing

(e) ~~(f)~~ Application approval.

(1) The administrator shall be responsible for reviewing all applications.

(2) The administrator shall approve all applications which are in compliance with subsections (a)-(c)~~(b)-(d)~~ of this section and which properly document applicant eligibility, unless the application is disapproved under the provisions of subsection (f)~~(g)~~ of this section.

(f) ~~(g)~~ Disapproved applications.

(1) The department shall disapprove the application if the person:

(A) has not completed the requirements in subsection (b)~~(c)~~ of this section;

(B) has failed to pass the examination prescribed by the board as set out in §123.8 of this title (relating to Examination) during the period for which the temporary certificate, or temporary permit or temporary permit extension, was valid, if applicable;

(C) has failed to remit any applicable fees required in §123.4 of this title (relating to Fees);

(D) has failed or refused to properly complete or submit any application form(s) or endorsement(s), or presented false information on the application form, or any other form or document required by the department to verify the applicant's qualifications;

(E) has been in violation of the Act, §123.14 of this title (relating to Violations, Complaints, and Subsequent Actions), the code of ethics as set out in §123.12 of this title (relating to Professional and Ethical Standards), or any other applicable provision of this chapter;

(F) has been convicted of a felony or misdemeanor, if the crime directly relates to the duties and responsibilities of a respiratory care practitioner as set out in §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners);

(G) holds a license, certification, or registration to practice respiratory care in another state or jurisdiction and that license, certification, or registration has been suspended, revoked, or otherwise

restricted by the licensing entity in that state or jurisdiction for reasons relating to the person's professional competence or conduct which could adversely affect the health and welfare of a patient;

(H) is not currently practicing, or has not practiced within the 12-month period preceding the date of application, respiratory care, as set out in §123.7(d)(1)(B) of this title (relating to Types of Certificates and Temporary Permits and Applicant Eligibility); or

(I) has submitted a copy of a National Board for Respiratory Care, Inc. (NBRC) certificate in lieu of examination results in accordance with subsection (b)~~(c)~~(3)(B)(i) of this section, but is not recognized by the NBRC as a certified respiratory ~~therapist~~~~therapist~~ or registered respiratory therapist.

(2) If after review the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The formal hearing shall be conducted according to the Administrative Procedure Act, Texas Government Code §2001, et seq. ~~[department's formal hearing procedures in Chapter 4 of this title (relating to Texas Board of Health)]~~ Within 10 days after receipt of the written notice, the applicant shall give written notice to the administrator that the applicant either waives the hearing, or wants the hearing. Receipt of the written notice is deemed to occur on the ~~tenth~~~~(10th)~~ day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt. If the applicant fails to respond within 10 days after receipt of the notice of opportunity, or if the applicant notifies the administrator that the hearing be waived, the applicant is deemed to have waived the hearing. If the hearing has been waived, the department shall disapprove the application.

(3) An applicant whose application has been disapproved under paragraph (1)(E) and (F) 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 department of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication. The date of disapproval is the effective date of a disapproval order signed by the commissioner of health.

§123.7. *Types of Certificates and Temporary Permits and Applicant Eligibility.*

(a) General. ~~This section sets~~~~[The purpose of this section is to set]~~ out the types of certificates and permits issued, and the qualifications of applicants for certification as respiratory care practitioners.

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

(b)-(c) (No change.)

(d) Applicant eligibility.

(1) Temporary permit. The department shall issue a temporary permit to practice respiratory care to:

(A) (No change.)

(B) an applicant who has applied on the forms prescribed by the department; who has paid the prescribed application fee; who is currently practicing respiratory care or has within the 12-month period immediately preceding the date of the application to the department practiced respiratory care in another state, territory, or country; who holds a valid license or other form of registration to practice respiratory care in that state, territory, or country; who is in good standing in that state, territory, or country and who is not recognized, at the time of application to the department, as a certified respiratory ~~therapist~~~~therapist~~ or registered respiratory therapist by the National Board for Respiratory Care, Inc. (NBRC).

A regular certificate may be issued by the department upon approval of the application and payment of prescribed fees to an applicant who submits evidence, satisfactory to the department, that he or she has passed the examination, as set out in §123.8 of this title (relating to Examination), and is in good standing with the agency or organization with which they are licensed or registered to practice respiratory care. Applicants for a temporary permit under this paragraph who have not passed the examination, as set out in §123.8 of this title (relating to Examination), shall not be issued a regular certificate; or

(C) an applicant who holds a valid temporary permit pending reexamination who has applied for an extension of the temporary permit on the form prescribed by the department and who has paid the additional prescribed fee. This temporary permit shall expire not more than 12 months from the date of issuance of the original permit. A temporary permit holder is not entitled to an extension if the person has not submitted a certificate of completion from a respiratory care education program in accordance with §123.6(b)(2)(C) of this title (relating to Application Requirements and Procedures). After the applicant passes the examination as set out in §123.8 of this title (relating to Examination) and has paid the prescribed fee, a regular certificate shall be issued and the temporary permit shall become null and void.

(2) Regular certificate. The department shall issue a regular certificate to practice respiratory care to an applicant who has applied on a form prescribed by the department, who has paid the prescribed application fee and who:

(A) has, prior to making application to the department, passed the entry level certified respiratory therapist [therapy technician] examination administered by or under the auspices of the NBRC with a score equal to or exceeding the pass rate determined by the NBRC at the time of examination or reexamination; [ø]

(B) has, prior to making application to the department, passed the registered respiratory therapist (RRT) examination administered by or under the auspices of the NBRC; [ø]

(C)-(D) (No change.)

(3) Out-of-State License/Certification/Registration. The department shall issue a regular certificate to practice respiratory care to an applicant who is in good standing and holds a valid license or other form of registration to practice respiratory care in another state, territory, or country, whose requirements for licensure or certification were at the time of approval substantially equal to the requirements set forth in the Act and this chapter, and who:

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

(E) has submitted satisfactory evidence on a form prescribed by the department that the applicant is currently practicing or has within the 12-month period immediately preceding the date of application to the department practiced respiratory care in the state, territory, or country in which the applicant is licensed or otherwise regulated if the applicant is not recognized, at the time of application to the department, as a certified respiratory therapist [therapy technician] or registered respiratory therapist; and

(F) (No change.)

§123.8. Examination.

~~[(a) Purpose. This section sets out the rules governing the administration, content, grading, and other procedures for examination for certification.]~~

(a) [(b)] Examination eligibility. Holders of temporary permits are allowed to take the examination provided the holder complies with the requirements of the Act and these sections. Persons who are

certified or registered in respiratory care by the NBRC at the time of application to the department are not required to be reexamined for state certification.

(b) [(e)] Approved examination. The approved examination for all applicants consists of an entry level certified respiratory therapist (CRT) [therapy technician (CRTT)] examination administered for [under the auspices of] the National Board for Respiratory Care, Inc. (NBRC) or its designee, or the advisory committee may recommend an equivalent examination.

(c) [(d)] Standards of acceptable performance. The cut-score determined by the NBRC at the time of examination or reexamination shall be the cut-score utilized by the department to determine pass or fail performance.

(d) [(e)] Completion of application forms. Each applicant shall be responsible for completing and transmitting appropriate application forms and paying appropriate fees by the deadlines set by the NBRC, if an NBRC examination is prescribed.

(e) [(f)] Results.

(1) Results of an examination prescribed by the board but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) The applicant or temporary permit holder is responsible for arranging to have examination scores forwarded to the department. If the score report does not come directly from the NBRC in writing or on data tape, the results shall be in the form of a copy which has been notarized as a true and exact copy of the original of either:

(A) a letter, or other official notification, from the examining agency to the examinee; or

(B) the CRT [certified respiratory therapy technician] certificate issued by the NBRC.

(3) If the examination is graded by a national or state testing service, or by the NBRC or its designee, the department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(4) If the examination is graded by the department or its designee, the department shall notify each examinee of the results of the examination within 60 days of the date of the exam. If the results will be delayed for more than 60 days after the examination, the department shall notify each applicant of the reason for the delay.

(5) If the department is required to provide official notice of examination results to the applicant, no matter what numerical or other scoring system is used in arriving at examination results, the results shall be stated in terms of pass or fail.

(f) [(g)] Refunds. Examination fee refunds to persons who fail to appear for the examination will be in accordance with policies and procedures of the NBRC, or other agency approved by the board to administer an examination prescribed in this section.

§123.9. Certificate Renewal.

~~[(a) Purpose. The purpose of this section is to set out the rules governing certificate renewal.]~~

(a) [(b)] General. Except as provided by subsection (b) of this section, a practitioner shall renew the certificate annually.

~~[(1) When issued, a certificate is valid until the practitioner's next birth month except as provided by subsection (e) of this section.]~~

~~(2)~~ A practitioner shall renew the certificate annually.

~~(1)~~ ~~(3)~~ The renewal date of a certificate shall be the last day of the practitioner's birth month.

~~(2)~~ ~~(4)~~ Each practitioner shall be responsible for renewing the certificate on or before the expiration date and shall not be excused from paying reinstatement fees. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal or reinstatement.

~~(3)~~ ~~(5)~~ The department may not renew the certificate or permit of the practitioner who is in violation of the Act or board rules at the time of application for renewal.

~~(4)~~ ~~(6)~~ The department shall deny renewal of a certificate or permit if renewal is prohibited by the Education Code, §57.491, concerning guaranteed student loan defaults.

~~(b)~~ ~~(e)~~ Staggered renewals. The department shall use a staggered system for certificate renewals. ~~[Certificates issued within six months of a practitioner's birth month shall be issued for that period of time plus the next full year.]~~

~~(c)~~ ~~(4)~~ Certificate renewal.

(1) At least 30 days prior to the expiration date of a person's certificate, the department shall send notice to the practitioner of the expiration date of the certificate, the amount of the renewal fee due, and a renewal form which the practitioner must complete and return to the department with the required renewal fee.

(2) The renewal form for all practitioners shall require the provision of the preferred mailing address, primary employment address and telephone number, and category of employment, misdemeanor and felony convictions, statement concerning status with The National Board for Respiratory Care, Inc., and continuing education completed. If the applicant is practicing as a respiratory care practitioner at the time of renewal the name, signature and license number of the physician directing the provision of respiratory care and the physician's institutional affiliation(s), if any, shall be provided on the renewal form~~[-]~~ if requested by the department.

(3) A practitioner has renewed the certificate when the department has received the completed renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements), and the required renewal fee on or prior to the expiration date of the certificate. The postmark date shall be considered as the date of mailing.

(4) The department shall issue identification cards for the current renewal period to a practitioner who has met all requirements for renewal.

~~(d)~~ ~~(e)~~ Late renewal or reapplication.

(1) A person whose certificate has expired may renew the certificate by submitting to the department the renewal form, continuing education as set out in §123.10 of this title (relating to Continuing Education Requirements) completed since the last renewal, and if respiratory care procedures were performed after the certificate expired, a notarized statement indicating how the person complied with the Act, §604.003~~[\$9 of the Act]~~.

(A) If renewal is requested from one day up to 90 days after expiration, the applicant shall submit a fee that is equal to one and one half times the renewal fee, as set out in §123.4 of this title (relating to Fees).

(B) If renewal is requested more than 90 days after expiration but less than one year after expiration, the applicant shall submit

a fee that is equal to two times the renewal fee, as set out in §123.4 of this title.

(C) If the person received a 90-day extension of the person's certificate pursuant to §123.10~~(f)~~~~(4)~~ of this title (relating to Continuing Education Requirements), the expiration date under subparagraphs (A)-(B) of this paragraph is the expiration date of the person's last annual certificate.

(D) After the certificate is renewed, the next continuing education reporting period starts on the date the certificate is renewed and continues until the next ~~expiration~~~~[renewal]~~ date.

(2) The department shall inform a person who has not renewed a certificate by the expiration date of the amount of the fee required for renewal, the continuing education required for renewal, and the date the certificate expired.

(3) A person whose certificate has been expired for one year or more may apply for a new certificate by complying with the then-current requirements for obtaining a certificate.

(4) After a certificate is expired and until a person has renewed the certificate, a person may not practice ~~[as a]~~ respiratory care ~~[practitioner]~~ in violation of the Act.

(5) A person who fails to renew a certificate within one year may obtain a new certificate without examination if the person:

(A) pays a fee that is equal to two times the renewal fee;

(B) is currently certified as a respiratory care practitioner in another state;

(C) has been practicing respiratory care in the state where the certification is held for the two years preceding the date of application for renewal; and

(D) submits proof of completion of the continuing education requirements as set out in §123.10 of this title within the 12 month period preceding the date of application for a new certificate.

~~(e)~~ ~~(4)~~ Renewal Processing.

(1) The department shall issue a certificate renewal within 14 working days after receipt of documentation of all renewal requirements.

(2) The reimbursement of fees, appeals, and contested cases relating to renewals shall be governed by the provisions of §123.6~~(d)~~~~(4)~~(2)-(4) of this title (relating to Application Requirements and Procedures).

~~(f)~~ ~~(4)~~ Military duty. If a practitioner fails to timely renew his or her permit or certificate ~~[on or after August 1, 1990,]~~ because the practitioner is or was on active duty with the armed forces of the United States of America, serving outside the State of Texas, the practitioner may renew the permit or certificate pursuant to this subsection.

(1) Renewal of the permit or certificate may be requested by the practitioner, the practitioner's spouse, or an individual having power of attorney from the practitioner. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the permit or certificate.

(3) A copy of the official orders or other official military documentation showing that the practitioner is or was on active duty, serving outside the State of Texas, shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the practitioner shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A practitioner renewing under this subsection shall pay the renewal fee.

(6) A practitioner renewing under this subsection shall submit proof of having earned any clock hours of continuing education prior to being called to active duty serving outside the State of Texas and no further continuing education hours shall be required for renewal.

(g) [(h)] Inactive status. A respiratory care practitioner who holds a certificate under the Act and who is not actively engaged in the practice of respiratory care may make application to the department in writing on a form prescribed by the department to be placed on an inactive status list maintained by the department. The application for inactive status must be postmarked prior to the expiration of the practitioner's annual certificate. No refund will be made of any fees paid prior to application for inactive status

(1) A person on inactive status is not required to pay the annual renewal fee.

(2) A person on inactive status may not perform any activities regulated under this[the] Act. Practice as a respiratory care practitioner in any capacity for compensation or as a volunteer is prohibited, and the person may not use the title respiratory care practitioner while on inactive status.

(3) A person on inactive status is not required to complete the requirements in accordance with §123.10 of this title (relating to Continuing Education Requirements), except as provided in paragraph (4)(D) of this subsection.

(4) If a person on inactive status desires to reenter active practice, the person shall:

(A) notify the department in writing;

(B) complete appropriate forms;

(C) pay a renewal fee for the current renewal period plus a reinstatement fee equal to one-half the renewal fee; and

(D) submit to the department proof of successful completion, within the 12-month period prior to reentering active status, of the continuing education hours as set out in §123.10 of this title.

(5) A person in compliance with this subsection is not subject to subsection (d)[(e)] of this section.

(h) [(i)] Expiration of certificate. A person whose certificate has expired may not use the title or represent or imply that he has the title of certified respiratory care practitioner, respiratory care practitioner, or respiratory therapist, or use the letters RCP, and may not use any facsimile of those titles in any manner. Until a person has renewed the certificate, a person may not practice respiratory care in violation of the Act. [Any person who practices respiratory care with an expired certificate is in violation of the Act.]

§123.10. Continuing Education Requirements.

[(a) Purpose. The purpose of this section is to establish the continuing education requirements which a respiratory care practitioner must complete annually to maintain certification. These requirements are intended to maintain and improve the quality of professional services in respiratory care provided to the public and keep the practitioner knowledgeable of current research, techniques, and practice and provide other resources which will improve skill and competence in respiratory care.]

(a) [(b)] General. Continuing education requirements for renewal shall be fulfilled each renewal year.

(1) The initial period shall begin with the date the department issues the certificate and end on the last day of the birth month at the time of the second renewal.

(2) At the time the certificate is mailed, each practitioner shall be notified of the beginning and ending dates of the continuing education period.

(3) A practitioner must complete 12 clock hours of continuing education acceptable to the department during each renewal year.

(4) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(b) [(c)] Types of acceptable continuing education. Continuing education must be in skills relevant to the practice of respiratory care and must have a direct benefit to patients and clients and shall be acceptable if the experience falls in one or more of the following categories:

(1) respiratory care course work seminars, workshops, review sessions, or other organized educational programs completed at or through any respiratory care education program;

(2) participation in any program (e.g., in-service educational training programs, institutes, seminars, workshops and conferences) which is:

(A) directly related to the profession of respiratory care;

(B) instructor directed; and

(C) approved, recognized, accepted, or assigned continuing education credits by professional organizations or associations or offered by a federal, state, or local governmental entity. A list approved by the advisory committee is available from the department upon request;

(3) instruction or teaching in programs set out in paragraphs (1) and (2) of this subsection, provided that such instruction or teaching is not a part of, or required as a part of, one's employment, or;

(4) up to four credit hours during each renewal period of self-directed Internet-based or computer-based studies, including a post-test, which meets the requirements described in paragraphs (2)(A) and (2)(C) of this subsection.

(c) [(d)] Determination of clock hours. The department shall credit continuing education experiences as follows.

(1) Completion of course work at or through a respiratory care educational program as set out in subsection (b)[(c)](1) of this section shall be credited on the basis of 15 clock hours for each semester hour successfully completed for credit or audit, evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs, activities, workshops, seminars, sessions, etc., which meet the criteria of subsections (b)[(c)](1) or (2) of this section shall be credited on a one-for-one basis with one clock hour for each clock hour spent in the continuing education activity.

(3) Teaching in programs which meet the department's criteria as set out in subsection (b)[(c)](3) of this section shall be credited on the basis of two clock hours for each hour actually taught.

(4) Passing the certified respiratory therapist recertification examination shall be credited on the basis of ten clock hours.

(5) Passing the written registry examination for advanced respiratory therapy practitioners for credentialing or recredentialing shall be credited on the basis of nine clock hours.

(6) Passing the registered respiratory therapist clinical simulation examination for credentialing or recredentialing shall be credited on the basis of nine clock hours.

(7) Passing the National Board for Respiratory Care, Inc. (NBRC) pediatric specialty examination shall be credited on the basis of ten clock hours.

(8) Successful completion of the initial course in advanced cardiac life-support, pediatric advanced life-support, the neonatal advanced life-support course, basic trauma life-support or pre-hospital trauma life-support shall be credited on the basis of 12 clock hours. Recertification courses shall be credited for the number of hours actually completed during the recertification course, but shall not count for more than 12 hours.

(9) Passing the certification examination for entry level pulmonary function technologists or the registry examination for advanced pulmonary function technologists for credentialing shall be credited on the basis of ten clock hours.

(10) Passing the registration examination offered by the Board of Registered Polysomnographic Technologists shall be credited on the basis of ten clock hours.

(d) [(e)] Reporting of continuing education. Each practitioner shall be responsible for reporting to the department the continuing education activities completed.

(1) A practitioner shall report the number of hours of continuing education completed during the renewal period. If requested by the department, each practitioner shall submit proof of completion of the required continuing education activity to the department at the time of certificate renewal, or at other times as directed by the department. However, if an extension has been granted in accordance with subsection (f)[(g)] of this section, the practitioner shall file the continuing education hours immediately following completion of the activity.

(2) Each continuing education activity filed by a practitioner must be accompanied by appropriate documentation of the continuing education claimed as follows:

(A) for a program attended, signed certification by a program leader or instructor of the practitioner's participation in the program by certificate, or letter on letterhead of the sponsoring agency, or official continuing education validation form or official transcript of the sponsoring agency accompanied by a brochure, agenda, program, or other applicable information, indicating content of the program;

(B) for teaching or instruction in approved programs, a letter on sponsoring agency's letterhead giving name of program, location, dates, and subjects taught, and giving total clock hours of teaching or instruction;

(C) for completion of course work at or through respiratory care education programs, a certificate of successful completion or an official transcript.

(e) [(f)] Activities unacceptable as continuing education. The department may not grant continuing education credit to any practitioner for:

(1) education incidental to the regular professional activities of a practitioner such as learning occurring from experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization;

(3) any program or activity which is not approved in accordance with subsection (b)[(c)](2) of this section;

(4) any experience which does not fit the types of acceptable continuing education in subsection (b)[(c)] of this section;

(5) any continuing education activity completed before or after the renewal year for which the continuing education credit is submitted except as allowed under subsection (f)[(g)](1) of this section;

(6) self-study continuing education programs or activities except those set out in subsection (b)[(c)](4) of this section; or

(7) activities which have been completed more than once during the continuing education period.

(f) [(g)] Failure to complete required continuing education.

(1) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a)[(b)] of this section may be granted up to a 90-day extension to a reporting period if the renewal fee and continuing education extension fee is paid on or prior to the expiration date. The 90-day extension is the maximum that may be granted and there will be no exceptions.

(A) Following the receipt of the current renewal form, renewal fee and continuing education extension fee, the department shall issue identification cards [which are certificates] valid for a 90-day period beginning with the day following the expiration date of the practitioner's annual certificate and a written notice that the continuing education period has been extended.

(B) If the deficiency is made up prior to the end of the extension, the department will notify the practitioner that the next reporting period commences on the day following the completion of the credits to correct the deficiency. The new reporting period shall end on the next renewal date. In other words, whenever an extension is granted, the time is borrowed from the next reporting period.

(C) If an excess number of credits were earned during an extension, the excess will be credited toward the new reporting period.

(D) A practitioner may not receive another extension at the end of the 90-day extension.

(2) A practitioner who has failed to complete the requirements for continuing education as specified in subsection (a)[(b)] of this section and who has not completed the continuing education requirement during the 90-day extension shall return the certificate and identification cards to the department and shall not advertise or represent himself or herself as a respiratory care practitioner in any manner. The person may renew the certificate or reapply for a new certificate in accordance with §123.9(d)[(e)] of this title (relating to Certificate Renewal).

(g) [(h)] Other miscellaneous provisions.

(1) Audiovisual programs may be accepted by the department if such a program represents one of the instructional methods or strategies rather than constituting the entire program and provided the program meets the criteria as set out in subsection (b)[(c)] of this section.

(2) A practitioner who also holds a current license, registration, or certification in another health care profession or a current license, registration, or certification as a respiratory care practitioner in another state, territory, or country may satisfy the continuing education requirements for renewal in Texas with hours counted toward

renewal of another license, registration, or certification as long as all of the hours meet all of the requirements of this section.

(3) Hardships will be considered and granted by the department on a case by case basis.

(4) The department may conduct random audits of continuing education completed by practitioners to determine compliance with this section.

(5) No continuing education hours may be carried over from one renewal period to another renewal period unless the hours were earned during a continuing education extension as set out in subsection (f)(e) of this section.

§123.11. *Changes of Name or Address.*

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(a) (b) The practitioner shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 days of such change(s).

(b) (e) Notification of address changes shall be made in writing, including the name, mailing address, and zip code(eodes) and be mailed to the administrator.

(c) (d) All notices required by this chapter shall be addressed to the last known preferred mailing address of the practitioner or applicant.

(d) (e) Before any certificate or permit and identification cards will be issued by the department, notification of name changes must be mailed to the administrator and shall include a notarized copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The practitioner shall [return any previously issued certificate or permit and identification cards and] remit the appropriate replacement fee as set out in §123.4 of this title (relating to Fees).

§123.12. *Professional and Ethical Standards.*

The purpose of this section shall be to establish the standards of professional and ethical conduct required of a practitioner pursuant to the Act, §604.201(b)(4).

(1) Professional representation and responsibilities.

(A)-(L) (No change.)

(M) A practitioner shall conform to medically accepted principles and standards of respiratory care which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the American Association for Respiratory Care[AART], the National Board for Respiratory Care[NBRC], the Texas Society for Respiratory Therapy, the board, the department, and other professional or governmental bodies.

(N) A practitioner shall not delegate respiratory care functions or responsibilities to a person who lacks the ability or knowledge to perform the function or responsibility. A practitioner providing respiratory care services may be assisted by an aide or orderly. Aides, orderlies and other unlicensed assistive personnel[Aides/orderlies] may not perform respiratory care procedures.

(O)-(P) (No change.)

(2)-(6) (No change.)

§123.13. *Certifying or Permitting Persons with Criminal Backgrounds To Be Respiratory Care Practitioners.*

(a) Purpose: This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to

obtain certificates or temporary permits as respiratory care practitioners.

(a) (b) Criminal convictions which directly relate to the profession of respiratory care.

(1) The department may suspend or revoke any existing certificate or permit, disqualify a person from receiving any certificate or permit, or deny to a person the opportunity to be examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a respiratory care practitioner.

(2) In considering whether a criminal conviction directly relates to the occupation of a respiratory care practitioner, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as a respiratory care practitioner. The following felonies and misdemeanors relate to any certificate or permit of a respiratory care practitioner because these criminal offenses indicate an inability or a tendency to be unable to perform as a respiratory care practitioner:

(i) the misdemeanor of knowingly or intentionally acting as a respiratory care practitioner without any certificate or permit under the Texas Occupations Code, §604.352 [Act, §13];

(ii) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(iii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

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

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

(C) the extent to which any certificate or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of a respiratory care practitioner. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53[Texas Civil Statutes, Article 6252-13e, §4(e)(1)-(7)], the legal authority for the provisions of this section.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i)-(iii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Act and these sections.

(b) (e) Procedures for revoking, suspending, suspending on an emergency basis, or denying a certificate or temporary permit to persons with criminal backgrounds.

(1) The administrator shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary permit after hearing in accordance with the provisions of the Administrative Procedure [and Texas Register] Act, §2001, Texas Government Code, Texas Occupations Code, Chapter 53 [Texas Civil

Statutes, Article 6252-13a, and the department's formal hearing procedures in Chapter 4 of this title (relating to Texas Board of Health).

(2) If the department denies, suspends, suspends on an emergency basis, or revokes a certificate or temporary permit under these sections after hearing, the administrator shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(D) of the earliest date the person may appeal.

§123.14. Violations, Complaints, and Subsequent Actions.

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

(1) offenses and prohibited actions under Texas Occupations Code, §604.102 [~~§4 of the Act~~] which result in the penalty of a Class B misdemeanor;

(2)-(4) (No change.)

(b) Types of offenses and prohibited actions. A person is guilty of a Class B misdemeanor if:

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

(9) a person who holds a certificate or permit to practice respiratory care practices medicine, as defined by the Medical Practice Act, Texas Occupations Code, Chapter 157 [~~(Texas Civil Statutes, Article 4495b)~~] without holding an appropriate license issued by the BME; or

(10) a person otherwise violates Texas Occupations Code, §§604.002, 604.102, 604.351, or 604.352 [~~§§4, 10, or 13~~].

(c) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Act or that a certificate or permit holder has violated the Act or a this chapter [~~board rule~~].

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against a practitioner or other person shall notify the administrator. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. (Mailing address: 1100 West 49th Street, Austin, Texas 78756-3183, Phone: 512-834-6632 [~~(512) 458-7111~~].

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

(d) Investigation of complaints.

(1) The administrator and the department are responsible for handling complaints.

(2) The administrator, or his or her designee, shall make the initial investigation and report the findings to the director of Professional Licensing and Certification Division or his or her designee, or the director or designee of its successor.

(e) The department's action.

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

(4) Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, [~~board~~] the complainant, and the accused party.

(f) (No change.)

(g) Formal hearing.

(1) The formal hearing shall be conducted according to the Administrative Procedure Act (APA), Texas Government Code Chapter 2001, [~~department's formal hearing procedures in Chapter 4 of this title (relating to Texas Board of Health) or §123.13 of this title (relating to Certifying or Permitting Persons with Criminal Backgrounds to be Respiratory Care Practitioners).~~]

(2) (No change.)

(3) To initiate formal hearing procedures, the administrator shall give the practitioner written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 10 days after receipt of the notice, the practitioner must give written notice to the administrator that he or she either waives the hearing or wants the hearing. Receipt of the notice is deemed to occur on the 10th day after the notice is mailed unless another date of receipt is reflected on a United States Postal Service return receipt.

(A) (No change.)

(B) If the practitioner requests a hearing within 10 days after receiving the notice of opportunity for hearing, APA, Texas Government Code §2001, [~~the department shall initiate formal hearing procedures in accordance with §§1.21-1.34 of this title (relating to Formal Hearing Procedures).~~]

(h) Final action.

(1) If the department [~~commissioner~~] suspends a certificate or permit, the suspension remains in effect until the administrator or the department determines that the reasons for suspension no longer exist. The practitioner whose certificate or permit has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The administrator or the department shall investigate prior to making a determination.

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

(4) If the department [~~commissioner~~] suspends a temporary permit and the suspension is in effect at the time of the expiration of the temporary permit, the former temporary permit holder must reapply in order to obtain a new temporary permit. The department may not issue a new temporary permit until the administrator or the department determines that the reasons for suspension have been removed.

(5) A person whose application is denied or whose temporary permit or certificate is revoked or surrendered is ineligible for a temporary permit or certificate under this Act for one year from the date of the denial or revocation or surrender.

(6) (No change.)

§123.15. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a temporary permit or certificate holder or an applicant for licensure may be made through an informal settlement conference held to determine whether an agreed settlement order may be approved.

(b) If the program administrator determines that the public interest would be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A temporary permit or applicant may request

an informal settlement conference; however, the decision to hold a conference shall be made by the program administrator.

(c) An informal conference shall be voluntary. It shall not be a prerequisite to a formal hearing.

(d) The program administrator shall decide upon the time, date, and place of the settlement conference and provide written notice to the temporary permit or certificate holder or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the temporary permit or certificate holder or applicant or by personal delivery. The ten days shall begin on the date of mailing or personal delivery. The temporary permit or certificate or applicant may waive the ten-day notice requirement.

(1) The notice shall inform the temporary permit or certificate holder or applicant of the following:

(A) the nature of the alleged violation;

(B) that the temporary permit or certificate holder or applicant may be represented by legal counsel;

(C) that the temporary permit or certificate holder or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(D) that the temporary permit or certificate holder or applicant's attendance and participation is voluntary;

(E) that the complainant may be present; and

(F) that the settlement conference shall be canceled if the temporary permit or certificate holder or applicant notifies the program administrator that he or she or his or her legal counsel will not attend.

(2) A copy of this section concerning informal disposition shall be enclosed with the notice of the settlement conference.

(e) The notice of the settlement conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the settlement conference. The complainant shall be notified if the conference is canceled.

(f) The settlement conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(g) The temporary permit or certificate holder or applicant's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(h) The program's legal counsel will be requested to attend each settlement conference. The program administrator may call upon the program's attorney at any time for assistance in the settlement conference.

(i) The respondent shall be afforded the opportunity to make statements that are material and relevant.

(j) Access to the investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552.

(k) At the discretion of the program administrator, a tape recording may be made of none or all of the settlement conference.

(l) The complainant shall not be considered a party in the settlement conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the settlement conference, the program administrator may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. They may also conclude that the department lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(n) The temporary permit or certificate holder or applicant may either accept or reject at the conference the settlement recommendations. If the recommendations are accepted, an agreed settlement order shall be prepared by the program staff and approved by the program's legal counsel and forwarded to the temporary permit or certificate holder or applicant. The order shall contain agreed findings of fact and conclusions of law. The temporary permit or certificate holder or applicant shall execute the order and return the signed order to the department office within ten days of his or her receipt of the order. If the temporary permit or certificate holder or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(o) If the temporary permit or certificate holder or applicant rejects the proposed settlement, the matter shall be referred to the program administrator for appropriate action.

(p) If the temporary permit or certificate holder or applicant signs and accepts the recommendations, the agreed order shall be submitted to the program administrator for its approval.

(q) The program administrator shall enter an agreed order approving the accepted settlement recommendations. The program administrator may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the temporary permit or certificate holder or applicant agrees to other terms proposed by the program administrator.

(r) If the program administrator does not approve a proposed agreed order, the temporary permit or certificate holder or applicant and the complainant shall be so informed.

(s) A temporary permit or certificate holder or applicant's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

(1) If the program administrator determines that an informal conference shall not be held, the program administrator shall give written notice to the temporary permit or certificate holder or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the temporary permit or certificate holder or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the program administrator.

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 March 1, 2001.

TRD-200101220

Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 15, 2001
For further information, please call: (512) 458-7236



PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 403. OTHER AGENCIES AND THE PUBLIC

SUBCHAPTER B. CHARGES FOR COMMUNITY-BASED SERVICES

25 TAC §§403.41 - 403.53

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeals of §§403.41 - 403.53 of Chapter 403, Subchapter B, concerning charges for community-based services. New §§412.101 - 412.114 of Chapter 412, Subchapter C, concerning charges for community services, which would replace the repealed sections, are contemporaneously proposed in this issue of the *Texas Register*.

The repeals would allow for the adoption of new and more current rules governing the same matters. The proposal would also fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Gerry McKimmey, deputy commissioner for community programs, has determined that for each year of the first five years the proposed repeals are in effect, the proposed repeals do not have foreseeable implications relating to costs or revenues of the state or local governments.

Sam Shore, director, Behavioral Health Services, has determined that, for each year of the first five years the proposed repeals are in effect, the public benefit expected is the adoption of new and more current rules governing the same matters. It is anticipated that there would be no economic cost to persons required to comply with the proposed repeals.

It is not anticipated that the proposed repeals will affect a local economy.

It is not anticipated that the proposed repeals will have an adverse economic effect on small businesses or micro-businesses because the proposed repeals do not place requirements on small businesses or micro-businesses.

Written comments on the proposed repeals may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These sections are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas Board of

Mental Health and Mental Retardation (board) with broad rule-making authority, and §534.067, which requires TDMHMR to establish a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

The proposed sections would affect the Texas Health and Safety Code, §534.067.

- §403.41. Purpose.
- §403.42. Application.
- §403.43. Definitions.
- §403.44. Principles.
- §403.45. Financial Assessment.
- §403.46. Determination of Ability to Pay.
- §403.47. Rates.
- §403.48. Billing Procedures.
- §403.49. Monthly Ability-to-Pay Fee Schedule.
- §403.50. Training.
- §403.51. Information for Persons.
- §403.52. References.
- §403.53. Distribution.

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 March 5, 2001.

TRD-200101270

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 206-5216



CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §§412.101 - 412.114

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§412.101 - 412.114 of new Chapter 412, Subchapter C, concerning charges for community services. The repeals of §§403.41 - 403.53 of Chapter 403, Subchapter B, concerning charges for community-based services, which the new sections would replace, are contemporaneously proposed in this issue of the *Texas Register*.

The proposed new sections describe TDMHMR's uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue as required by the Texas Health and Safety Code, §534.067.

Although the subchapter proposed for repeal states that the Monthly Ability-To-Pay Fee Schedule is based on 150% of the current Federal Poverty Guidelines, the current fee schedule actually *begins charging for services* at 150% of the current Federal Poverty Guidelines *for a family of one person*. This current calculation results in families of two or more being charged a higher percentage of their income than families of

one. The proposed new rules would continue to state that the Monthly Ability-To-Pay Fee Schedule is based on 150% of the current Federal Poverty Guidelines; however, the fee schedule calculation would be revised to begin charging for services at 150% of the current Federal Poverty Guidelines for a family of two persons, three persons, four persons, and so on. For example, 150% of the 2000 Federal Poverty Guidelines for a family of two is \$16, 875. A family of two whose annual income is less than \$16, 875 would have a maximum monthly fee of zero. A family of two whose annual income is more than \$16, 875 would have a maximum monthly fee of greater than zero. The revised fee schedule would also be calculated using smaller increments between each annual/monthly gross income level.

The proposed sections would fulfill the requirements of the Texas Government Code, §2001.039, concerning the periodic review of agency rules.

Cindy Brown, chief financial officer, has determined that for each year of the first five years the proposed new sections are in effect, enforcing or administering the sections does not have foreseeable implications relating to costs or revenues of the state government. There will be some impact to revenues of local governments (i.e., local mental health and mental retardation authorities) due to revisions in the fee schedule's calculation; however, the extent of the impact cannot be determined because TDMHMR does not require local authorities to report consumer fee collection data based on income levels. The revised fee schedule calculation applies the same formula to all family sizes, which has a negative fiscal impact because families of two or more persons will not be charged a fee until their income is 150% of Federal Poverty Guidelines. To offset this impact, the fee schedule will have slightly smaller increments between each income level, which will result in the next higher fee being reached more frequently.

Sam Shore, director, Behavioral Health Services, has determined that, for each year of the first five years the proposed sections are in effect, the public benefit expected is the implementation of a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue. It is anticipated that there would be no additional economic cost to persons required to comply with the proposed sections because the sections do not place additional requirements related to costs on such persons than those in the sections proposed for repeal.

It is not anticipated that the proposed sections will affect a local economy.

It is not anticipated that the proposed sections will have an adverse economic effect on small businesses or micro-businesses because the sections do not place additional requirements on small or micro-businesses than those in the sections proposed for repeal.

Written comments on the proposed sections may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

These new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation (board) with broad rulemaking authority, and §534.067, which requires TDMHMR to establish a uniform fee collection policy for all local authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

The proposed sections would affect the Texas Health and Safety Code, §534.067.

§412.101. Purpose.

(a) The purpose of this subchapter is to comply with the Texas Health and Safety Code, §534.067, and the Health Care Financing Administration's interpretation of the Social Security Act, Section 1902(a)(17)(B) (which prohibits Medicaid payments for a free service), by establishing a uniform fee collection policy for local authorities for community services contracted for through the performance contract that are funded by TDMHMR and required local match and provided to members of the priority population that:

- (1) is equitable;
- (2) provides for collections; and
- (3) maximizes contributions to local revenue.

(b) The provisions of this subchapter are not intended to preempt payment for community services by other funding sources (e.g., Texas Commission on Alcohol and Drug Abuse, Texas Department of Criminal Justice, third-party coverage).

§412.102. Application.

(a) This subchapter applies to all local authorities for community services contracted for through the performance contract that are funded by TDMHMR and required local match and provided to members of the priority population.

(b) This subchapter does not apply to:

(1) programs and services that are prohibited by statute or regulation from charging fees to persons served (e.g., Early Childhood Intervention Program);

(2) the TDMHMR In-Home and Family Support Program;

(3) community-based residential services and inpatient services; and

(4) specialized services mandated by the Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90, for preadmission screening and annual resident reviews (PASARR) provided to non-Medicaid eligible persons.

§412.103. Definitions.

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

(1) Ability to pay - A person has third-party coverage that will pay for needed services, the person's maximum monthly fee is greater than zero, or the person has identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(2) Community services or services - Mental health and mental retardation services required to be available in each local service area pursuant to the Texas Health and Safety Code, §534.053(a), for which TDMHMR contracts through the performance contract, and which are:

(A) 24-hour emergency screening and rapid crisis stabilization services, (e.g., crisis hotline, mobile crisis intervention, crisis walk-in, and crisis support);

(B) community-based crisis residential services;

(C) community-based assessments, including the development of interdisciplinary treatment plans (e.g., assessment treatment planning, eligibility determination, and initial enrollment assessment), and diagnosis and evaluation services;

(D) family support services, including respite care;
(E) case management services (or service coordination);

(F) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(G) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(3) Family members -

(A) Unmarried person under the age of 18 - The person, the person's parents, and the dependents of the parents, if residing in the same household.

(B) Unmarried person age 18 or older - The person and his/her dependents.

(C) Married person of any age - The person, his/her spouse, and their dependents.

(4) Gross income - Revenue from all sources before taxes and other payroll deductions.

(5) Inability to pay - A person's maximum monthly fee is zero and:

(A) the person does not have third-party coverage;

(B) the person has third-party coverage, but the person has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or

(C) the person has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(6) Income-based public insurance - Government funded third-party coverage that bases eligibility and/or co-payments and deductibles on a person's (or parents') income (i.e., Medicaid and CHIP).

(7) Local authority - An entity designated by the TDMHMR commissioner in accordance with the Texas Health and Safety Code, §533.035(a).

(8) Local match - Funds or in-kind support from a local authority as required by the Texas Health and Safety Code, §534.066.

(9) Performance contract - The contract between TDMHMR and a local authority in which TDMHMR agrees to pay the local authority a specified sum and in which the local authority agrees to provide local match, for, at a minimum, ensuring and/or monitoring the provision of specified mental health and mental retardation services in a local service area.

(10) Person - A person in the priority population who is seeking or receiving services through a local authority.

(11) Priority population - Those groups of persons with mental illness or mental retardation identified in TDMHMR's current strategic plan as being most in need of mental health and/or mental retardation services.

(12) Rate - A fixed price for a service that represents the service's monetary value.

(13) Third-party coverage - A public or private payor of community services that is not the person (e.g., Medicaid, Medicare, private insurance, CHIP, CHAMPUS).

§412.104. Principles.

TDMHMR supports the following principles:

(1) Persons are charged for services based on their ability to pay.

(2) Procedures for determining ability to pay are fair, equitable, and consistently implemented.

(3) Paying for services in accordance with his/her ability to pay acknowledges the dignity of the person.

(4) Paying for services in accordance with his/her ability to pay reinforces the role of the person as a customer, having the right and responsibility to influence the provision of those services.

(5) Earned revenues are optimized.

§412.105. Accountability.

(a) Prohibition from denying services. Local authorities are prohibited from denying services:

(1) to a person because of the person's inability to pay for the services;

(2) to a person in a crisis or emergency because a financial assessment has not been completed, financial responsibility has not been determined, or the person has a past-due account; or

(3) pending resolution of an issue relating solely to payment for services, including failure of the person (or parent) to comply with any requirement in subsections (b)-(e) of this section.

(b) Requirement to apply for Medicaid benefits. Parents whose children may be eligible for Medicaid and persons who may be eligible for Medicaid must apply for Medicaid or provide documentation that they have been denied Medicaid or that their Medicaid application is pending.

(c) Requirement to enroll in CHIP. Parents of children who may be eligible for the Childrens Health Insurance Program (CHIP) must enroll in CHIP or provide documentation that they have been denied CHIP benefits or that their CHIP enrollment is pending.

(d) Financial documentation. If requested by the local authority, persons (or parents) must provide the following financial documentation:

(1) annual or monthly gross income/earnings, if any;

(2) extraordinary expenses (i.e. major medical or health related expenses; major casualty losses; child care expenses for the previous year or projections for the next year);

(3) number of family members; and

(4) proof of any third-party coverage.

(e) Permission to bill third-party coverage. Persons with third-party coverage must execute an assignment of benefits (i.e., give the local authority permission to bill the third-party coverage).

(f) Failure to comply. A person's (or parent's) failure to comply with any requirement in subsections (b)-(e) of this section will result in the person (or parent) being charged the standard rate(s) for services, established in accordance with §412.107(a) of this title (relating to Rates), unless the person's interdisciplinary or multidisciplinary team makes a clinical determination that failure to comply is related to the person's mental illness or mental retardation or enforcement of the requirement would result in a reduction in functioning of the person or

the person's refusal or rejection of the needed services. This determination requires clinical documentation and must be reassessed by the team at least every three months.

§412.106 Determination of Ability to Pay.

(a) Financial assessment. A financial assessment must be completed and documented for each person within the first 30 days of services and updated at least annually, or whenever significant financial changes occur, as long as the person continues to receive services. The financial assessment is accomplished using the financial documentation listed in §412.105(d) of this title (relating to Account-ability), which represents the finances of the:

- (1) person who is age 18 or older and the person's spouse;
or
(2) parents of the person who is under 18 years of age.

(b) Maximum monthly fee. A person's maximum monthly fee is based on the financial assessment and calculated using the Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit A in §412.112 of this title (relating to Exhibit). The calculation is based on the number of family members, annual gross income reduced by extraordinary expenses paid during the past 12 months or projected for the next 12 months. No other sliding scale is used.

(1) A maximum monthly fee that is greater than zero is established for persons who are determined as having an ability to pay. If two or more members of the same family are receiving services, then the maximum monthly fee is for the family.

(2) A maximum monthly fee of zero is established for persons who are determined as having an inability to pay.

(c) Third-party coverage.

(1) A person with third-party coverage that will pay for needed services is determined as having an ability to pay for those services.

(2) If the person's third-party coverage will not pay for needed services because the local authority provider is not an approved provider, then the local authority will refer the person to his/her third-party coverage to identify a provider for which the third-party coverage will pay.

(3) An exception to the provision described in paragraph (2) of this subsection is if the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(d) Social Security work incentive provisions. A person has an ability to pay if the person identified payment for a needed service or services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*). Persons are not required to identify payment for any service for which they may be eligible as part of their approved plan for utilizing the Social Security work incentive provisions.

(e) Notification. Written notification is provided to the person (or parents) that includes:

- (1) the determination of whether the person (or parent) has an ability or an inability to pay;
(2) a copy of the financial assessment form that is signed by the person (or parent) and a copy of the Monthly Ability-to-Pay Fee Schedule, with the applicable areas indicated (i.e., annual gross income, number of household members, etc.);
(3) the amount of the maximum monthly fee;

(4) a statement that the person (or parent) may discuss with the interdisciplinary or multidisciplinary team any concerns the person (or parent) may have regarding the information contained in the written notification; and

(5) a statement that the person (or parent) may voluntarily pay more than the maximum monthly fee.

§412.107. Standard Rates.

(a) Each local authority must establish, at least annually, a reasonable standard rate for each community service.

(b) The rate for a service provided to a Medicaid recipient that is reimbursed by Medicaid is the current approved Medicaid rate for the service. The rate for the same service provided to a person who is not a Medicaid recipient may not be less than the current approved Medicaid rate, but may be more if the current approved Medicaid rate does not cover the actual cost of the service.

§412.108. Billing Procedures.

(a) Monthly services charge. All services provided during a month, and the standard rates for those services, are listed as the person's monthly services charge. Each service listed is identified as being covered by third-party coverage or as not being covered by third-party coverage. If a person has exceeded the maximum benefit of a particular covered service, then that service is identified as not being covered by third-party coverage.

(b) Billing third-party coverage. The third-party coverage is billed the monthly services charge for covered services.

(1) Third-party coverage that is not income-based public insurance.

(A) If the local authority has a contract with the person's third-party coverage, then payment made by the third-party coverage for a covered service plus any applicable co-payment made by the person is full payment for that service.

(B) If the local authority does not have a contract with the person's third-party coverage and if a balance remains after payment from the third-party coverage or if the third-party coverage will not pay for a covered service because the deductible hasn't been met, then the balance or deductible is applied toward the person's maximum monthly fee.

(2) Income-based public insurance. Payment made by income-based public insurance for a covered service plus payment made by the person for any applicable co-payment and/or deductible is full payment for that service, (i.e.,:

(A) for Medicaid recipients, Medicaid reimbursement is full payment; and

(B) for CHIP recipients, CHIP reimbursement plus the recipient's co-payment and/or deductible payment is full payment).

(c) Billing the person (or parents).

(1) No third-party coverage. If the monthly services charge amount:

(A) exceeds the person's maximum monthly fee, then the amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(B) is less than the person's maximum monthly fee, then the person (or parent) is billed the amount.

(2) Third-party coverage that is not income-based public insurance.

(A) If the local authority has a contract with the person's third-party coverage and:

(i) the amount of all co-payments described in subsection (b)(1)(A) of this section exceeds the person's maximum monthly fee, then the amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee. The person (or parent) is not billed for services not covered by third-party coverage, if any; or

(ii) the amount of all co-payments described in subsection (b)(1)(A) of this section does not exceed the person's maximum monthly fee, then the monthly services charge amount for services not covered by third-party coverage is added to equal the total amount. If the total amount:

(I) exceeds the person's maximum monthly fee, then the total amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(II) is less than the person's maximum monthly fee, then the person (or parent) is billed the total amount.

(B) If the local authority does not have a contract with the person's third-party coverage, then the balance or deductible applied toward the person's maximum monthly fee as described in subsection (b)(1)(B) of this section is added to the monthly services charge amount for services not covered by third-party coverage to equal the total amount. If the total amount:

(i) exceeds the person's maximum monthly fee, then the total amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(ii) is less than the person's maximum monthly fee, then the person (or parent) is billed the total amount.

(3) Income-based public insurance.

(A) If the amount of all co-payments and deductibles described in subsection (b)(2) of this section exceeds the person's maximum monthly fee, then the person (or parent) is billed the amount. The person (or parent) is not billed for services not covered by third-party coverage, if any.

(B) If the amount of co-payments and deductibles described in subsection (b)(2) of this section does not exceed the person's maximum monthly fee, then the monthly services charge amount for services not covered by third-party coverage is added to equal the total amount. If the total amount:

(i) exceeds the person's maximum monthly fee, then the total amount is reduced to equal the maximum monthly fee and the person (or parent) is billed the maximum monthly fee; or

(ii) is less than the person's maximum monthly fee, then the person (or parent) is billed the total amount.

(4) Social Security work incentive provisions. A person may be charged for specific services listed on the monthly services charge if the person identified payment for such services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).

(d) Statements.

(1) Persons (and parents) who have been determined as having the ability to pay are sent monthly or quarterly statements that include:

(A) an itemized list, at least by date and by type, of all services received;

(B) the standard rate for each service;

(C) the total charge for the period;

(D) the amount paid (or to be paid) by third-party coverage, if any;

(E) the amount that is being reduced, if any; and

(F) the amount to be paid.

(2) Unless requested, statements are not sent to persons with an ability to pay if they maintain a zero balance (i.e., the person does not currently owe any money).

(3) Unless requested, statements are not sent to persons who have been determined as having an inability to pay.

§412.109. Payment and Exemptions.

(a) Payment.

(1) Persons (and parents) are expected to promptly pay all charges owed.

(2) If a person (or parent) claims, and provides documentation, that financial hardship prevents prompt payment of all charges owed, then the local authority may arrange for the person (or parent) to pay a lesser amount each month. Although the person (or parent) will pay a lesser amount each month because a portion of the charges will be deferred, the person (or parent) is still responsible for paying all charges owed.

(b) Receipts. Receipts must be provided for all cash payments.

(c) Waiver of charges. If a person's interdisciplinary or multi-disciplinary team makes a clinical determination that being charged for services and receiving statements will result in a reduction in the functioning level of the person or the person's refusal or rejection of the needed services, then charges will cease and statements will no longer be sent. This determination requires clinical documentation and must be reassessed by the team at least every three months.

(d) Termination of services for cause. A person's services may be terminated in accordance with this subsection.

(1) Irresponsible actions by a person that result in resources being wasted (e.g., missing multiple appointments without canceling, consistently losing medications) shall be referred to the person's interdisciplinary or multidisciplinary team. The team is responsible for making reasonable efforts to assist the person in stopping or reducing the irresponsible actions. (For example, if the team determines that the actions are related to the person's mental illness or mental retardation, then the team may modify the person's treatment. If the team determines that the actions are related to external circumstances, such as unreliable transportation, then the team may assist the person (or parent) in accessing reliable transportation.) If the team makes a clinical determination that the actions are not related to the person's mental illness or mental retardation and the team has been unsuccessful in assisting the person in stopping or reducing the actions, then the team may decide to terminate the person's services. The team may not terminate the person's services if termination is clinically contraindicated or if the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(2) Past-due accounts of persons (or parents) who are not making payments are referred to the persons' interdisciplinary or multidisciplinary teams. The team is responsible for addressing the issue of non-payment with the person (or parent) and making reasonable efforts that will result in the person (or parent) making payments. (For example, if the team determines that non-payment is related to the person's mental illness or mental retardation, then the team may modify

the person's treatment to address the non-payment. If the team determines that non-payment is related to financial hardship, then the team may assist the person (or parent) in making arrangements to pay a lesser amount each month in accordance with subsection (a) of this section.) If the team makes a clinical determination that non-payment is not related to the person's mental illness or mental retardation and, despite the team's efforts, the person (or parent) does not pay, then the team may decide to terminate the person's services. The team may not terminate the person's services if termination is clinically contraindicated or if the local authority is identified as being responsible for providing court-ordered outpatient services to the person.

(3) If the team decides to terminate the person's services, then:

(A) the team must provide clinical documentation that justifies its decision, including the basis for determining that termination is not clinically contraindicated; and

(B) the person (or parent) shall be notified in writing of the decision and provided an opportunity to appeal the decision in accordance with §401.464 of this title (relating to Notification and Appeals Process). The notification shall prescribe the time frames and process for requesting an appeal and include a copy of this subchapter. If the person (or parent) requests an appeal within the prescribed time frame, then the person's services may not be terminated while the appeal is pending.

(4) If a person (or parent) is dissatisfied with the decision of the appeal as described in paragraph (3)(B) of this subsection, then the person (or parent) may request a review by the Office of Consumer Services and Rights Protection - Ombudsman at TDMHMR Central Office.

(A) The person (or parent) must request a review within 10 working days of receipt of notification of the appeal decision.

(B) The person (or parent) may choose to have the staff conducting the review:

(i) conduct the review by telephone conference with the person (or parent) and a representative from the local authority and make a decision based upon verbal testimony made during the telephone conference and any documents provided by the person (or parent) and the local authority; or

(ii) conduct the review by making a decision based solely upon documents provided by the person (or parent) and the local authority without the presence of any of the parties involved.

(C) The review:

(i) will be conducted no sooner than 10 working days and no later than 30 working days of receipt of the request for a review unless an extension is granted by the director of the Office of Consumer Services and Rights Protection - Ombudsman;

(ii) will include a review of the pertinent information concerning termination of the person's services and may include consultation with TDMHMR clinical staff and staff who oversee implementation of this subchapter;

(iii) will result in a final decision which will either uphold, reverse, or modify the original decision to terminate the person's services; and

(iv) is the final step of the appeal process for termination of services for cause.

(D) Within five working days after the review, the staff who conducted the review will send written notification of the final decision to the person (or parent) and the local authority.

(e) Prohibition of financial penalties. Financial penalties may not be imposed on a person (or parent).

(f) Debt collection. Local authorities must make reasonable efforts to collect debts before an account is referred to a debt collection agency. Local authorities must document their efforts at debt collection.

(1) Local authorities must incorporate into a written agreement or contract for debt collection provisions that state that both parties shall:

(A) maintain the confidentiality of the information and not disclose the identity of the person or any other identifying information; and

(B) not harass, threaten, or intimidate persons and their families.

(2) Local authorities will enforce the provisions contained in paragraph (1) of this subsection.

§412.110. Training.

All local authority staff who are involved in implementing or explaining the content of this subchapter must annually demonstrate competency in accordance with a prescribed training program developed by TDMHMR, in consultation with local authorities and consumer representatives.

§412.111. Information for Persons.

Persons and families must be provided TDMHMR-approved information on TDMHMR's policy of charges for community services contained in this subchapter prior to entry into services except in a crisis or emergency.

§412.112. Exhibit.

Exhibit A - The Monthly Ability-To-Pay Fee Schedule, is referenced in this subchapter. Copies of Exhibit A are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX 78711-2668. The Monthly Ability-To-Pay Fee Schedule is based on 150% of the current Federal Poverty Guidelines. TDMHMR may revise the Monthly Ability-To-Pay Fee Schedule, based on any changes in the Federal Poverty Income Guidelines, to be effective on September 1 of the next state fiscal year. TDMHMR will distribute the revised fee schedule to all local authorities, who are responsible for ensuring that their affected contractors are provided a copy.

§412.113. References.

Reference is made to the following statutes:

(1) Texas Health and Safety Code, §534.067;

(2) Social Security Act, Section 1902(a)(17)(B); and

(3) Omnibus Budget Reconciliation Act (OBRA) of 1987, as amended by OBRA 90.

§412.114. Distribution.

This subchapter is distributed to:

(1) all members of the Texas Board of Mental Health and Mental Retardation;

(2) executive, management, and program staff of TDMHMR Central Office;

(3) executive directors of all local authorities; and

(4) advocacy organizations.

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 March 5, 2001.

TRD-200101271

Andrew Hardin

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 206-5216



PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER A. HOSPITAL DISCHARGE DATA RULES

25 TAC §§1301.11-1301.13, 1301.16-1301.20

The Texas Health Care Information Council (Council) proposes to amend §§1301.11-1301.13 and §§1301.16-1301.19. The Council proposes new §1301.20 Scientific Review Panel. The Council is required by its enabling legislation in Chapter 108 of the Health and Safety Code, specifically §108.006, to "develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care." The proposed amendments to the existing sections establish the uniform physician identifier characters, provide clarification, or removes version specific language that is amended frequently or is no longer applicable within the rules. Section 1301.20 is proposed new to establish guidelines for the Scientific Review Panel (Panel). The Panel will make decisions regarding the release of data elements that were not either summarized or modified in the public use data file to qualified researchers for predetermined projects.

The amendments to the Hospital Discharge Data Rules proposed hereby results from 1) House Bill 1513 and Senate Bill 1591 enacted by the 76th Texas Legislature, 2) input from the Council's Hospital Discharge Data Committee, 3) input from the Council's Health Information Systems Technical Advisory Committee (HIS TAC), and 4) comments from the providers of the data and the public.

The Council proposes to amend the definition of "Discharge File" to delete the exception clause for submitting one or more files for newborn. Section 1301.12(b)(1) is amended also to require separate discharge files for newborns and the mother.

The Council proposes to amend the definition of "Ethnicity" to include the ethnic types to from which to report: Hispanic or Non-Hispanic. The amendment corresponds with the language defining "Race".

The Council proposes to amend the definition name of "Geographic Identifier" to "Geographic Identifiers" to clarify that more than one geographic identifier will be assigned to the data.

The Council proposes to amend the definition of "Required minimum data set" to establish consistent language with in the rules and clarify that for each inpatient discharge file regardless of the payer source the required minimum data set must be submitted to the Council.

The Council proposes a new definition of "Research Data File" to describe the customized data file that qualified researchers may request and purchase provided the Scientific Review Panel grants authorization. The file will contain data element that were received by the Council, were not on the list of public use data elements, and probably have not been checked for errors.

The Council proposes a new definition of "Scientific Review Panel" to describe the Council's appointed committee or contracted agent to review, deny or grant authorization of requests from qualified researchers for data elements that are not included on the public use data file.

The Council proposes a new definition of "Treating Physician" to describe the "Physicians" or "Other health professionals" that are reported in the fields of the approved formats that are not reported or labeled as the "Attending physician", such as "Operating or other physician", "Other physician #1" or "Other physician #2".

The Council proposes to amend the definition of "Uniform facility identifier" to clarify the language and provide an objective measure for the assignment of separate identifiers for hospitals with multiple facilities included under one license number assigned by the Bureau of Facility Licensing, Texas Department of Health.

The Council proposes to delete the definition of "Uniform other health profession identifier" because the "Physicians" and "Other health professionals" are included in the definition of "Uniform Physician identifier" and therefore provides a greater pool of individuals to decrease the risk of "Physician" and "Other health professional identification".

The Council proposes to amend the definition of "Uniform Patient Identifier" by deleting the word "number" and replacing it with "identifier" to clarify that a unique identifier will be assigned and that it is not limited to numeric characters.

The Council proposes to amend the definition of "Uniform Physician Identifier" to establish consistent language in the rules, clarify the language by deleting the word "admitting" and replacing it with the word "attending", and specify the type of characters to be used in response to §108.011(c) of the Texas Health and Safety Code.

The Council proposes to amend §1301.12(a) to clarify that data on all discharged inpatients that are attended or treated by physicians must be submitted to the Council and that hospitals may submit discharges on patients attended or treated by "Other health professionals".

The Council proposes to amend §1301.12(b)(1) to require hospitals to submit separate discharge files for the mother and each newborn for all newborn deliveries.

The Council proposes to amend §1301.12(b)(2) to delete the words "bills" and "bill" are replaced with "discharge files and "discharge file", respectively to establish consistent language within the rules.

The Council proposes to delete §1301.12(b)(3). This will remove the conditions for submitting multiple discharge files for patients who were served in more than one unit within the hospital. The amended section requires that hospitals submit one discharge

file for the patients stay regardless of how many service units or payer types.

The Council proposes to amend §1301.12(b)(4). The amended section removes the language and requirement to submit any additional data elements other than the required data elements specified in §1301.19.

The Council proposes to amend §1301.12(b)(5). The amended section removes the requirement to submit any additional data elements other than the required data elements specified in §1301.19 and deletes the word "bill", and replaces it with "discharge file" to establish consistent language within the rules.

The Council proposes to amend §1301.12(f). The amended section clarifies that a hospital must notify the Council 30 "calendar" days prior to any change in submission agent or submitters.

The Council proposes to remove §1301.13(b) because this subsection is no longer valid.

The Council proposes to amend §1301.16(c)(2). The amended paragraph removes the requirement to submit a written justification during the correction prior to certification phase. The written justification would be required during the certification phase of the proposed amendment to §1301.17(b). The amended paragraph, also provides for the option for the hospital to mark a discharge file to be "accepted as is" if the data cannot be corrected using the Council supplied Data Correction Software.

The Council proposes to amend §1301.16(c)(3). The amended paragraph removes the requirement to submit a written explanation during the correction prior to certification phase. This would be required during the certification phase of the proposed amendment to §1301.17(b). The amended paragraph also establishes specific dates for returning corrected data and establishes that no individual hospital extension will be granted, but the executive director could grant an extension for all hospitals.

The Council proposes to add a new §1301.16(c)(4) to establish which additional discharge files may be submitted and the deadlines for their submission.

The Council proposes to amend §1301.16(e). The amended section clarifies that civil penalties may be assessed if errant data is not corrected or commented on regarding the errors.

The Council proposes to amend §1301.17(a). The amended subsection clarifies that the executive director is returning one or more files, which includes reports to the hospitals for the hospital's review and usage for certifying the data. The amended section also clarifies some terminology usage in the rules, the word "admitting is removed and the word "attending" replaces it.

The Council proposes to amend §1301.17(b). The amended subsection provides an option for the chief executive officer's designee to sign for the chief executive officer and clarifies that the chief executive officer or their designee shall respond to the statements on the certification form and return the form by the date specified in §1301.17(d). Section 1301.17(b) is also amended by establishing the option to provide comments about errant data or requesting in writing to correct data if the chief executive officer or their designee does not believe the data submitted accurately reflects their hospital. Dates for submitting corrections are also established. Notices are also provided to warn hospitals, that do not correct or comment on errors or elect to not certify the data, does not prevent the data from being published in the public use data file.

The Council proposes to amend §1301.17(c) by deleting the original text and rewriting the subsection, including inserting paragraphs that explain what a signed certification form represents and that the data has been corrected or comments have been made stating the problems in the data and why the could not be corrected. The amended subsection also requires that the hospital has provided the physicians an opportunity to review and comment on the patients that the hospital assigned them to on the reported discharge files. The amended subsection also requires the chief executive officer or designee to provide a written explanation of any unresolved issues concerning the accuracy and completeness of the data. These are to be included on the certification form when submitted.

The Council proposes to amend §1301.17(d). The amended subsection establishes specific dates for the return of the signed certification forms. The proposed dates are approximately 30 days longer than the current rule. Also included in amended §1301.17(d) is the authorization for the Executive Director to extend the established deadline and the clarification that individual hospital requests for extension will not be granted.

The Council proposes to amend §1301.17(e) to synchronize the deadline for returning the comments with the deadline for submitting the signed certification forms.

The Council proposes to amend §1301.17(f) to clarify that the certification form must be signed and returned on or prior to the deadlines established in §1301.17(d).

The Council proposes new §1301.17(g), establishing the Councils authority to pursue civil penalties if either corrections are not submitted on or prior to the dates specified in §1301.17(b) or comments are not submitted on or prior to the dates specified in §1301.17(d).

The Council proposes to amend §1301.18(c)(5) by establishing that alphanumeric characters will be used for creating and assigning uniform physician identifiers as required by §108.011(c) and §108.013(c) of the Health and Safety Code.

The Council proposes to amend §1301.18(e) to provide for the option to release the public use data file on electronic or optical media.

The Council proposes to amend §1301.18(e)(1) by referencing the dates specified in §1301.17(d) as the deadline for returning the certification forms to the Council. The Council also proposes to remove the rule-imposed requirement on the executive director from withholding data from the public use data file if the data contains material errors because the executive director with the recommendation from the Hospital Discharge Data Committee may suppress one or more data elements for a particular quarter. The amended paragraph also removes the inclusion of the number of discharge files from each hospital and the number of discharge files included in the public use data file for the hospital. The Council cannot reasonably ascertain how many times discharge files that are corrected through the Council's Data Correction Software or are deleted by contract and resubmitted by the hospital.

The Council proposes to amend §1301.18(e)(2) to include language that specifies that the Council will only accept previously unsubmitted discharge files for discharged inpatients for the same calendar year and the prior calendar year only through the first quarter of the following calendar year. Discharge files of corrected data for previously submitted discharge files will not be processed or appended to existing public use data files.

The Council proposes to delete §1301.18(e)(4). The deleted paragraph is no longer applicable.

The Council proposes to amend §1301.18(f) to establish the requirement that other state agencies abide by the data users agreement.

The Council proposes to add a new §1301.18(l) and six paragraphs with new language to establish criteria for the potential release of a research data file with the approval of the Council's Scientific Review Panel as established in §108.135, Health and Safety Code.

The Council proposes to amend §1301.19(a)(1) and (2) to remove references to specific HCFA UB92 electronic versions and establish that the Council will accept data in the approved formats and versions from hospitals that are currently accepted by HCFA or was accepted by HCFA for the dates of service on the claim.

The Council proposes to amend §1301.19(b) to require hospitals to submit data according to data element specifications that are required by HCFA at the time of submission or the data elements specifications acceptable by HCFA at the time of discharge.

The Council proposes to amend §1301.19(c) and the subparagraphs to remove references to specific HCFA UB92 electronic versions to prevent multiple rule amendments with version upgrades and removes references to the Texas UB-92 Manual. Also inserted is information that the data element content, format and locations may change in regards to Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA) Administrative Simplification.

The Council proposes to amend §1301.19(c)(4) to clarify that the primary and secondary payer source codes are required to be submitted. These codes will include "Non-Standard" Source of Payment codes for HCFA UB92 data format submissions, if applicable. The "Non-Standard" Source of Payment code positions are located on the "22 Record".

The Council proposes to delete §1301.19(c)(5) to remove a data element that is no longer in use.

The Council proposes to amend §1301.19(e) to remove the option that hospital should submit what they submit to their payers and maintain a consistent requirement throughout the rules. The Council requires that the required minimum data set be submitted on all patients.

The Council proposes to amend §1301.19(e)(12) to clarify that the "Source of Payment Codes" include "Standard" codes and may include "Non-standard" codes depending on the payer type for submissions on the accepted HCFA Formats.

The Council proposes to amend §1301.19(e)(39), (40) and (41) that the State License number is required to be submitted for "Physicians" and "Other health professionals" in the appropriate locations as required by the acceptable electronic formats specified in §1301.19. This amendment establishes a clear standard for submitting "Physician" and "Other health professional" data.

The Council proposes to amend §1301.19(e)(42), (43) and (44) to establish that hospitals should submit the name of the "Physicians" and "Other health professionals", as reported to the state licensing boards in the appropriate locations on acceptable electronic formats. This amendment establishes a clear standard for submitting "Physician" and "Other health professional" data.

The Council proposes to add a new §1301.19(e)(48)--"Reason for no Social Security number". This data element is required when a default value for Social Security number is submitted to the Council (For example, all X's, all 9's or all 0's).

The Council proposes to amend §1301.19(g) and remove specific HCFA UB92 electronic version language, as the two versions listed are no longer acceptable.

The Council proposes new §1301.20 to establish guidelines for evaluating the release of data elements that are collected by the Council that are not considered as public use data and may be included in a customized research file. Also added are guidelines for membership, meetings, decision-making guidelines and reports the Scientific Review Panel will perform for the Council.

Jim Loyd, Executive Director, has determined that for the first five-year period that the proposed sections are in effect, there will be the following anticipated costs (\$65,978) for the State in regards to the implementation of the following amended sections: §1301.12(b)(4), a one-time programming cost of \$44,000 (\$71/hr times 160/hrs) for having the computer systems at Commonwealth Clinical Systems remove the extraneous data; §1301.20 will incur anticipated recurring costs of \$3,600 (an estimate of four (4) request for the Research data file each year will require a cost of \$500 dollars for the review of these by the Scientific Review Panel and anticipated four (4) meetings in which THCIC staff will be required to attend and travel costs are estimated to be \$400 for each meeting) for holding the meetings in open forum as required by §108.004, Health and Safety Code. A ten percent increase each year is estimated to the first year cost for holding the meetings (Second year--\$3,960, Third year--\$4,356, Fourth year--\$4,792, Fifth year--\$ 5,271).

Mr. Loyd has also determined that for the first five-year period the proposed sections are in effect there, will be the following anticipated costs to local government affected by as a result of enforcing or administering the amended section §1301.19(e)(12), the Council anticipates a one-time cost of \$11,695. The Council estimates that the one-time programming costs associated with the requirements in the following sections: §1301.19(e)(12) and §1301.19(e)(39)-(44) to be \$8,960 (Estimating a cost of programmers to be \$28 per hour {40% above the average hourly salary of programmers in 1999 in Texas} times an estimated 320 hours of programming) to hospitals for assuring the submission of secondary non-standard codes when applicable. The Council estimates recurring costs for maintaining the physician reference file to be \$2,735 (\$448 for the first year this is based on estimate 4 hours per quarter times 4 quarters times (Estimating a cost of programmers to be \$28 per hour {40% above the average hourly salary of programmers in 1999 in Texas}. This assumes ten percent increase per year: (Second Year--\$493, Third Year--\$542, Fourth year--\$596, Fifth year--\$656))

Mr. Loyd also has determined that for each year the of the first five year period the rules are in effect the costs to persons or hospitals who are required to comply with the amended and new sections is \$11,695. The Council estimates that the one-time programming costs associated with the requirements in the following sections: §1301.19(e)(12) and §1301.19(e)(39-44) to be \$8,960 (Estimating a cost of programmers to be \$28 per hour {40% above the average hourly salary of programmers in 1999 in Texas} times an estimated 320 hours of programming) to hospitals for assuring the submission of secondary non-standard codes when applicable. The Council estimates recurring costs for maintaining the physician reference file to be \$2,735 (\$448 for the first year this is based on estimate 4 hours per quarter times

4 quarters times (Estimating a cost of programmers to be \$28 per hour {40% above the average hourly salary of programmers in 1999 in Texas}. This assumes ten percent increase per year: (Second Year--\$493, Third Year--\$542, Fourth year--\$596, Fifth year--\$656))

Mr. Loyd also has determined that for each year of the first five-year period that the proposed sections are in effect the anticipated public benefit will be a more accurate data picture of health care in Texas that includes rural hospitals be released in the public use data file so that consumers can review and analyze unbiased data and make decisions regarding health care services offered, and established guidelines for protecting the confidentiality of patients and physicians.

Comments on the proposed sections may be submitted to Jim Loyd, Executive Director, Texas Health Care Information Council, Two Commodore Plaza, 206 East 9th Street, Suite 19.140, Austin, Texas 78701 no later than 30 calendar days from the date that these proposed sections are published in the *Texas Register*.

The Council will entertain requests for a public hearing until the 25th day after the date the rules are published in the *Texas Register*.

The amendments and new section are proposed under the Health and Safety Code, §108.006 and §108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data dissemination requirements. The Council interprets §108.009 as authorizing the Council to adopt rules regarding the collection of data from hospitals in uniform submission formats in order for the incoming data to be substantially valid, consistent, compatible and manageable.

The Health and Safety Code, §§108.002, 108.006, 108.009, 108.011, 108.012 and 108.013 are affected by these amendments and new section.

§1301.11. Definitions.

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

(1)-(9) (No change.)

(10) Discharge file--A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) relating to a specific patient. [~~Except for some normal newborn infants there will be one or more discharge files for each inpatient.~~]

(11)-(14) (No change.)

(15) Electronic filing--The submission of computer records in machine readable form by modem transfer from one computer to another (EDI) or by recording the records on a nine track magnetic tape, computer diskette or other magnetic media acceptable to the executive director.

(16) (No change.)

(17) Ethnicity--The status of patients relative to Hispanic background. Hospitals shall report this data element according to the following ethnic types: Hispanic or Non-Hispanic.

(18) (No change.)

(19) Facility Type Indicators--An indicator that provides information to the data user as to the type of facility or the primary health services delivered at that facility (e.g. Teaching, Acute Care,

Rehabilitation, Psychiatric, Pediatric, Cancer, Skilled Nursing or other Long Term Care Facility). [-] A facility may have more than one indicator. Hospitals may request updates to this field.

(20) Geographic identifiers[identifier]--A set of codes indicating the public health region and county in which the patient resides.

(21)-(32) (No change.)

(33) Required minimum data set--The list of data elements which hospitals are required to submit in a discharge file for each inpatient stay in the hospital [regardless of whether or not the hospital would have prepared a bill for the inpatient]. The required minimum data set is specified in §1301.19(d) of this title (relating to Discharge Reports--Records, Data Fields and Codes).

(34) Research data file--A customized data file, which includes the data elements in the public use file and may include data elements other than the required minimum data set submitted to the Council, except those data elements that could reasonably identify a patient or physician. The data elements maybe released to a requestor when the requirements specified in §1301.18(f) of this title (relating to Hospital Discharge Data Release) are completed.

(35) [~~34~~] Risk adjustment--A statistical method to account for a patient's severity of illness at the time of admission and the likelihood of development of a disease or outcome, prior to any medical intervention.

(36) [~~35~~] Rural provider--A health care facility located in a county with a population of not more than 35,000 as of July 1 of the most recent year according to the most recent United States Bureau of the Census estimate; or located in a county with a population of more than 35,000 but with 100 or fewer licensed hospital beds and not located in an area that is delineated as an urbanized area by the United States Bureau of the Census; and is not state owned, or not managed or directly or indirectly owned by an individual, association, partnership, corporation, or other legal entity that owns or manages one or more other hospitals. A health care facility is not a rural provider if an individual or legal entity that manages or owns one or more other hospitals owns or controls more than 50% of the voting rights with respect to the governance of the facility.

(37) Scientific Review Panel--The Council appointees or agent who have experience and expertise in ethics, patient confidentiality, and health care data who review and approve or disapprove requests for data or information other than the public use data. Described in §1301.20 of this title (relating to Scientific Review Panel).

(38) [~~36~~] Service Unit Indicator--An indicator derived from submitted data (based on Bill type or Revenue Codes) and represents the type of service unit or units (e.g., Coronary Care Unit, Detoxification Unit, Intensive Care Unit, Hospice Unit, Nursery, Obstetric Unit, Oncology Unit, Pediatric Unit, Psychiatric Unit, Rehabilitation Unit, Sub acute Care Unit or Skilled Nursing Unit) where the patient received treatment.

(39) [~~37~~] Severity adjustment--A method to stratify patient groups by degrees of illness and mortality.

(40) [~~38~~] Submission--A set of computer records as specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) that constitutes the discharge report for one or more hospitals.

(41) [~~39~~] Submitter--The person or organization, which physically prepares discharge reports for one or more hospitals and submits them to the Council. A submitter may be a hospital or an agent designated by a hospital or its owner.

(42) ~~[(40)]~~ THCIC Identification Number--A string of six characters assigned by the Council to identify health care facilities for reporting and tracking purposes.

(43) Treating Physician--For the purposes of this title, the person licensed under the Medical Practice Act or any other health professional licensed by the state who has been reported as having treated the patient or who has consulted on the patient's case. The term includes any physician or other health professional listed on the discharge file other than the attending physician.

(44) ~~[(41)]~~ Uniform facility identifier--A unique number assigned by the Council to each health care facility licensed in the state. For hospitals this will include ~~[be]~~ the hospital's state license number. For hospitals operating~~[Where a hospital operates]~~ multiple facilities under one license number and duplicating services, the Council will assign a distinguishable uniform facility identifier~~[suffix]~~ for each separate facility. The relationship between facility identifier and the name~~[-]~~ and license number~~[-]~~ and assigned suffix of the facility is public information.

~~[(42)]~~ Uniform other health professional identifier--A unique number assigned by the Council to an individual other health professional who is reported as admitting or treating a hospital inpatient, and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals. The relationship of the identifier to the health professional-specific data elements used to assign it is confidential.

(45) ~~[(43)]~~ Uniform patient identifier--A unique identifier ~~[number]~~ assigned by the Council to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals and inpatient admissions. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(46) ~~[(44)]~~ Uniform physician identifier--A unique identifier~~[number]~~ assigned by the Council to a ~~[any]~~ physician or other health professional who is reported as attending ~~[admitting]~~ or treating a hospital inpatient and which remains constant across hospitals. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.

(47) ~~[(45)]~~ Validation--The process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification.

§1301.12. Collection of Hospital Discharge Data.

(a) All hospitals in operation for all or any of the reporting periods described in §1301.13 of this title (relating to Schedule for Filing Discharge Reports) shall submit discharge files as specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) on all discharged inpatients attended or treated by physicians to the Council. Hospitals may also submit discharge files on all discharged inpatients treated by other health professionals to the Council. Hospitals owned by the federal government and hospitals exempted as rural providers may submit hospital discharge files.

(b) All inpatient discharges shall be reported. Except as noted in paragraphs (1)-(5) of this subsection, one or more discharge files shall be submitted for each patient for each discharge covering all services and charges from admission through discharge.

(1) Separate discharge files shall ~~[normally]~~ be submitted for mothers and newborns. ~~[Hospitals are not required to create a separate discharge file for a normal newborn infant if the delivery is covered by a third party payer and the third party payor does not require separate bills for the mother and the infant. For any birth where there is~~

~~no third party coverage, separate discharge files are required for the mother and the infant.]~~

(2) Hospitals shall either submit separate discharge files corresponding to each interim, revised, or final discharge files ~~[bills]~~ or submit a single consolidated final discharge file ~~[bill]~~ for each discharged patient.

~~[(3)]~~ Where a patient has been served in multiple units of a hospital (e.g. acute care, skilled nursing care, comprehensive medical rehabilitation, substance abuse) during a single continuous stay, some third party payers require that separate bills be prepared for services in acute and sub-acute units while others do not. Where a patient has third party coverage, the discharge files submitted by the hospital shall correspond to the bills submitted to the payer. Where a patient has no third party coverage, the hospital shall submit a separate discharge file for each unit.]

(3) ~~[(4)]~~ For all patients for which the hospital prepares one or more bills for inpatient services, the hospital shall submit a discharge file corresponding to each bill containing the required data elements required by §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) ~~[and all other data elements included on the bill whether included because of the requirements of third party payers or because of hospital policy].~~ For all patients for which the hospital does not prepare a bill for inpatient services, the hospital shall submit a discharge file containing the required minimum data set.

(4) ~~[(5)]~~ For all patients that are covered by 42 USC 290dd-2 and 42 CFR Part 2.1, a hospital shall submit a discharge file~~[bill]~~ containing the required data elements specified ~~[required]~~ by §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) ~~[and all other data elements included on the bill, whether included because of the requirements of third party payers or because of hospital policy].~~ The hospital shall replace the patient identifying information with the default values specified in §1301.19(f) of this title (relating to Discharge Reports--Records, Data Fields and Codes) or submit the patient identifying information if release of patient identifying information is authorized in writing by the patient or patient's guardian.

(c)-(e) (No change.)

(f) Hospitals may submit discharge reports, or may designate an agent to submit the reports. If a hospital designates an agent, it shall inform the Council of the designation in writing at least 30 calendar days prior to the agent's submission of any discharge report. The hospital shall inform the Council in writing at least 30 calendar days prior to changing agents or making the submissions itself. Designation of an agent does not relieve the hospital of responsibility for compliance with this chapter or other related law.

(g) (No change.)

§1301.13. Schedule for Filing Discharge Reports.

(a) (No change.)

~~[(b)]~~ On or before May 31, 1998, hospitals shall submit a discharge report drawn from inpatient discharges occurring between January 1, 1998, and March 31, 1998, inclusive. This discharge report shall be used for test and certification purposes only. The discharge report may include all discharges for the quarter, but the hospital is only required to submit discharge files covering discharges for any consecutive 30 days of the quarter.]

(b) ~~[(c)]~~ Extensions to processing due dates may be granted by the executive director for a maximum of ten working days in response to a written request signed by the hospital's chief executive officer.

Requests must be in writing, must be received at least five working days prior to the due date and must be accompanied by adequate justification for the delay.

(c) ~~[(d)]~~ Failure to file a discharge report on or before the due date without an extension, is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

§1301.16. *Acceptance of Discharge Reports and Correction of Errors.*

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

(c) Correction of Errors.

(1) The executive director shall review all discharge reports accepted for processing and will process all discharge files against the editing criteria established by ~~[the]~~ this section and by the executive director. Within 30 days of receipt of an accepted discharge report the executive director shall notify the hospital in detail of all errors detected in the discharge report.

(2) Within 30 days of receiving initial notice of errors in a discharge report, the hospital shall correct all discharge files containing errors, add any discharge files determined to be missing from the initial discharge report and resubmit the corrected and previously missing discharge files. If the hospital disagrees with any identified error, the hospital may indicate that the discharge file is as accurate as it can be or cannot be corrected~~[shall submit written justification of the correctness or completeness of its data]~~. Each hospital shall submit such modified and/or additional discharge files as may be required to allow the chief executive officer or the chief executive officer's designated agent to certify the quarterly discharge report as required by §1301.17 of this title (relating to Certification of Discharge Reports). Corrections to a discharge report shall be submitted on approved media~~[in the same medium]~~ and formats~~[format]~~ as specified in §1301.14 of this title (relating to Instructions for Filing Discharge Reports) and §1301.19 of this title (relating to Discharge Reports-Records, Data Fields and Codes)~~[the original discharge report]~~ unless the executive director approves another medium or format.

(3) Within ten days of receiving corrections to a discharge report from a hospital, the executive director shall notify the hospital of any remaining errors. The hospital shall have ten days from receipt of this notice to correct the errors noted or indicate submit a written explanation of why the data should be deemed acceptable ~~[correct]~~ and complete. This process may ~~[shall]~~ be repeated until the ~~[executive director is satisfied that the]~~ data ~~[submitted by the hospital]~~ is substantially accurate and ~~[until]~~ the hospital is able to certify the discharge report as required by §1301.17 of this title (relating to Certification of Discharge Reports) or the deadline for submitting corrections prior to certification is reached. Corrected data is required to be submitted on or before the following dates for the respective quarter's discharges: Quarter 1--July 15, Quarter 2--October 15, Quarter 3--January 15, Quarter 4--April 15. No individual hospitals will be granted extensions to the dates. The executive director may grant an extension to all hospitals when deemed necessary.

(4) Discharge files that have not been previously submitted shall be submitted prior to June 1 of the following year. Correction and certification of these previously missing or additional discharge files for the prior calendar year shall be made according to the deadlines established for Quarter 1 data in §1301.13(a)(1) of this title (relating to the Schedule for Filing Discharge Reports), paragraph (3) of this subsection (relating to the Acceptance of Discharge Reports and Correction of Errors) and §1301.17 (b) and (d) of this title (relating to the Certification of Discharge Encounter Data). Corrections to discharge files previously submitted or have a discharge date prior to January 1 of the prior calendar year will not be processed.

(d) (No change.)

(e) Failure to correct or comment on a discharge report which has been filed but contains errors or omissions within the due dates in §1301.13 of this title (relating to Schedule for Filing Discharge Reports) is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

§1301.17. *Certification of Discharge Reports.*

(a) Within 120 days after the end of each reporting quarter the executive director shall compile one or more~~[an]~~ electronic data files~~[file]~~ for each reporting hospital using all discharge files received from each hospital. The file shall have one record for each patient discharged during the reporting quarter and one record for any patient discharged during a previous reporting quarter for whom additional discharge files have been received. This file will include all data submitted by the hospital which the executive director intends to use in the creation of the public use data file. The data files, including reports and any additional information returned to the hospital, allows the hospital to~~[file will]~~ provide physicians and other health professionals the opportunity to review, request correction of, and comment on records of discharged patients for whom they are shown as attending ~~[admitting]~~ or treating. The executive director shall determine the format and medium in which the quarterly file will be delivered to hospitals.

(b) The chief executive officer or chief executive officer's designated agent of each hospital shall indicate whether the hospital is certifying or not certifying the discharge encounter data specified in subsection (a) of this section, sign and return the form corresponding to ~~[certify that]~~ the discharge report for each quarter ~~[is accurate]~~ using forms supplied by the Council. The certification form may be signed by a person designated by the chief executive officer and acting as the officer's agent. Designation of an agent does not relieve the chief executive officer of personal responsibility for the certification. If the chief executive officer or chief executive officer's designated agent does not believe the quarterly file is accurate, the officer shall provide the executive director with detailed comments regarding the errors or submit a written request (on a form supplied by the Council) and provide the data~~[and data]~~ necessary to correct any inaccuracy and certify the file subject to those corrections being made prior to the deadlines specified in this subsection. Corrections to certification discharge data shall be submitted on or prior to the following schedule: Quarter 1--September 15; Quarter 2--December 15; Quarter 3--March 15; Quarter 4--June 15. Chief Executive Officers or designees that elect not to certify shall submit a reasoned justification explaining their decision to not certify their discharge encounter data and attach to the certification form. Election to not certify data does not prevent data from appearing in the public use data file. Data that is not corrected and submitted by the deadline may appear in the public use data file.

(c) The signed certification form shall represent that: [The certification shall represent that a complete review of hospital records was accomplished to assure the accuracy of the discharge report and any corrections submitted, that all errors and omissions known to the hospital have been corrected, and that to the best of their knowledge and belief, the data submitted is accurate and complete. The certification shall also represent that the hospital has provided physicians and other health professionals on its medical staff a reasonable opportunity to review the discharge files for which they were the admitting or treating physician or other health professional prior to certification, have corrected any errors brought to the hospital's attention and have included with the discharge report any comments on the accuracy of the data submitted by physicians or other health professionals. Written explanation of any unresolved disagreements with the executive director concerning the accuracy and completeness of the data at the time of the certification shall be attached to the certification form.]

(1) policies and procedures are in place within the hospital's processes to validate and assure the accuracy of the discharge encounter data and any corrections submitted; and

(2) all errors and omissions known to the hospital have been corrected or the hospital has submitted comments describing the errors and the reasons why they could not be corrected; and

(3) to the best of their knowledge and belief, the data submitted, accurately represents the hospital's administrative status of discharged inpatients for the reporting quarter; and

(4) the hospital has provided physicians and other health professionals a reasonable opportunity to review and comment on the discharge data of patients for which they were reported in one of the available physician number and name fields provided on the acceptable formats specified in §1301.19 of this title (relating to Discharge Reports--Records, Data Fields and Codes) (for example, "attending physician", "operating or other physician", "other physician #1" or "other physician #2 positions"). The physicians or other health professionals may write comments and have errors brought to the attention of the chief executive officer or the chief executive officer's designated agent and the chief executive officer or the chief executive officer's designated agent, shall address any comments by the physicians or other health professionals.

(5) if the chief executive officer or the officer's designee elects not to certify the discharge encounter data for a specific quarter, a written justification of any unresolved data issues concerning the accuracy and completeness of the data at the time of the certification shall be included on the certification form. Discharge data that has been edited, returned to hospital and is not certified may be released and published in the public use data file.

(d) Each hospital shall submit[~~must file~~] its certification form for [of] each quarter's data to[with] the Council by the first day of the eighth month (Quarter 1--November 1; Quarter 2--February 1; Quarter 3--May 1; Quarter 4--August 1)[within six months] following the last day of the reporting quarter as specified in §1301.13 (a) (1)-(4) of this title (relating to Schedule for Filing Discharge Reports) . Individual hospital requests for an [Extensions] extension to these deadlines[~~this period~~] will not be granted. The executive director may extend the deadline for all hospitals when deemed necessary.

(e) Hospitals, physicians or other health professionals may submit concise written comments regarding any data submitted by them or relating to services they have delivered which may be released as public use data. Comments shall be submitted to the Council on or before the dates specified in subsection (d) of this section, regarding the submission of the certification form[~~no later than six months following the last day of the reporting quarter~~]. Commenters are responsible for assuring that the comments contain no patient or physician identifying information. Comments shall be submitted electronically using the method described in §1301.14(a) and (b) of this title (relating to Instructions for Filing Discharge Reports).

(f) Failure to submit[~~timely file~~] a signed certification form that is supplied by the Council on or before the dates specified in subsection (d) of this section corresponding to [of] discharge data previously submitted is punishable by a civil penalty pursuant to Health and Safety Code, §108.014.

(g) Failure to either correct a discharge report which has been submitted and contains errors or omissions on or prior to the dates specified in subsection (b) of this section or to address in the comments the errors contained in the data and return the comments on or prior to the dates specified in subsection (d) of this section is punishable by a civil penalty pursuant to Health and Safety Code, §108.014(b).

§1301.18. Hospital Discharge Data Release.

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

(c) Creation of public use data file. The executive director will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1)-(11) of this subsection:

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

(5) delete physician and other health professional names and numbers and assign an alphanumeric uniform physician identifier for the physicians and other health professionals who were reported as attending or treating discharged patients;

(6) (No change.)

(7) the minimum cell size required by §108.011(i)(2) of the Health and Safety Code shall be five, unless the executive director determines that a higher cell size is required to protect the confidentiality of an individual patient or physician. When determining a higher cell size, the executive director shall consider comments submitted by a hospital and recommendations submitted by the technical advisory committee as identified in the Texas Health and Safety Code §108.003(g)(5)[-];

(8)-(11) (No change.)

(d) (No change.)

(e) The executive director will make available a public use data file on electronic, magnetic or optical media for each quarter:

(1) The executive director shall release public use data from hospitals that have certified the data as required by §1301.17 of this title (relating to Certification of Discharge Reports). A hospital's failure to execute the certification form by the dates specified in §1301.17(d) of this title, or elects to not certify the discharge encounter data [after six months] shall not prevent the executive director from releasing the hospital's data if the director believes the data submitted is reasonably accurate and complete. The executive director, [shall not include in the public use data file records derived from hospital discharge files which contain material errors and] with the recommendation of the Hospital Discharge Data Committee, may suppress for any quarter's data one or more data elements if deemed necessary to comply with provisions of the statutes. If an element is ordered suppressed by a judicial authority the executive director [Executive Director] may suppress the element without the recommendation of the Hospital Discharge Data Committee. [The executive director will include with the public use data file information on the number of discharge files received from each hospital and the number of discharge files from each hospital included on the public use data file.]

(2) If additional discharge files (not previously submitted as specified in §1301.16(c)(4) of this title (relating to Acceptance of Discharge Reports and Correction of Errors) , excluding replacement, adjustments and void/cancel discharge files) become available after the initial release of the public use data file for any quarter, the executive director will add the discharge files, that are received on or prior to the date specified in §1301.13(a)(1) of this title (relating to Schedule for Filing Discharge Reports) of the following year,[these records] to the public use data file and make the additional records available to the public.

(3) (No change.)

{(4) The first public use data file available for release will cover discharges for the first and second quarter of 1999. The Council will initially release six months of data in order to provide a more

reliable body of data for analysis and decision-making and to make available public use data files on a quarterly schedule thereafter.]

(f) [The Council shall not charge] Texas State agencies that request [a fee for] data [requested] solely for [the] internal use in accordance [of the agency to comply] with Health and Safety Code, §108.012(b) shall abide by the data users agreement. [Prior to filing the request of a state agency without fee, the executive director shall secure an interagency agreement imposing restrictions on distribution, republication or reuse of the data in ways that would diminish user fees to the Council.]

(g)-(k) (No change.)

(l) A research data file may be released provided the following criteria are met:

(1) the Texas Health Care Information Council Research Data Request Form is completed and submitted to the Council's executive director; and,

(2) the requestor has made payment according to the Council's fee schedule. The Council's fee includes a non-refundable "Review of Request Fee"; and,

(3) the Scientific Review Panel reviews the research request and has determined the proposed research outcome can be achieved with the requested data; and

(4) the Council's Scientific Review Panel grants authorization to the request or restricts access to specified data elements determined to be inappropriate for the research proposal in accordance with this subsection of this title (relating to Scientific Review Panel); and,

(5) the requestor agrees to dispose of the research data using authorized methods by the established end date stated on the written data release agreement.

(6) the requestor has signed a written data release agreement.

§1301.19. Discharge Reports--Records, Data Fields and Codes.

(a) Hospitals that have not obtained an exemption letter authorized by §1301.15 of this title (relating to Exemptions from Filing) shall submit discharge reports in one of the following formats as listed in paragraphs (1)-(3) of this subsection:

(1) electronically in the national standard flat file format for inpatient hospital bills defined by the United States Department of Health and Human Services, Health Care Finance Administration (HCFA), commonly known as the HCFA UB-92 Electronic Format [(Versions 005.0 and 004.1)]. HCFA updates this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or versions accepted [in the immediately preceding version or as mandated] by HCFA at the service end date specified in the discharge file or at the time of submission. [For the purposes of this paragraph and the immediately preceding version is version 004.1 (HCFA's Program Memorandum to Intermediaries, Department of Health and Human Services, HCFA, Transmittal No. A-98-29, October 1998, Change Request No. 655, Subject: UB92-claims that are not millennium compliant, states that Fiscal Intermediaries will allow the submission of HCFA UB-92 Electronic Format Versions 005.0 and 004.1 until June 30, 1999 at which time only Version 005.0 will be accepted.) The Council will make detailed specifications for these formats available to submitters and to the public for the cost of reproduction;]

(2) electronically in the file format for inpatient hospital bills defined by the American National Standards Institute (ANSI), commonly known as the ANSI X12N [X-12] form 837. ANSI updates

this format from time to time by issuing new versions. The Council will accept discharge reports in the latest version or in a [the immediately preceding] version approved by HCFA at the service end date specified in the discharge file or at the time of submission. [As of October 1, 1997, the latest version will be version 30.70 and the immediately preceding version will be version 30.51. The Council will make detailed specifications for these formats available to submitters at no charge and to the public for the cost of reproduction;]

(3) (No change.)

(b) Except as otherwise provided in this section, discharge reports shall be submitted using the [national uniform billing] data element specifications as required by HCFA [developed by the National Uniform Billing Committee (NUBC) as published by the State Uniform Billing Committee (SUBC) with instructions specific to Texas third party fiscal intermediaries in the Texas UB-92 Manual. The NUBC revises these data element specifications from time to time and the SUBC publishes revisions showing the effective date for changes to each data element]. Hospitals shall submit discharge reports using the data element specifications in effect as of the date of the discharge or as of the date submitted. The Council will make detailed specifications for these data elements available to submitters and to the public.

(c) In addition to the data elements contained in the Texas UB-92 Manual, the Council has defined the following data elements shown in this subsection and has defined the location in the HCFA UB-92 Electronic Format [(Versions 005.0 and 004.1)] where each element is to be reported. Data element content, format and locations may change as federal and state legislative requirements change in regards to Public Law 104-191, Health Insurance Portability and Accountability Act of 1996 (HIPAA) is implemented.

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

(4) Source of payment code--This data element shall be reported at Record 30, Field 04, Beginning Position 25 as an alphanumeric value. Primary and secondary payer source codes shall be submitted when the hospital submits claim data for the patient to more than one payer.

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

{(5) Submission purpose code--This data element shall be reported at Record 01, Field 20.8, Beginning Position 183 as an alphanumeric value. Acceptable codes are C = Claim, D = Discharge Statement, and B = Both. This code is required if a hospital bill clearinghouse is utilized in the data collection effort. Once published these codes and formats may not be changed without 90 days prior notice to hospitals required to submit discharge reports to the Council.]

(5) [(6)] Facility Name--This data element shall be the name of the hospital where the services were rendered and shall be reported at Record Type 10, Field 12.

(6) [(7)] Facility Address--This data element shall be the actual physical address of the hospital where the services were rendered and shall be reported at Record Type 10, Field 13.

(7) [(8)] Facility City--This data element shall be the name of the city where the hospital that rendered the services is located and shall be reported in Record Type 10, Field 14.

(d) (No change.)

(e) Hospitals shall submit the required minimum data set for all patients for which a discharge file is required by this title. [For patients with any form of insurance, hospitals shall submit to the Council all data elements submitted to any third party payer in addition to data elements in the required minimum data set.] The required minimum

data set includes the following data elements as listed in paragraphs (1)-(48) [(47)] of this subsection:

- (1)-(11) (No change.)
 - (12) Source of Payment Code (Primary and Secondary payers, including standard and non-standard codes);
 - (13)-(38) (No change.)
 - (39) Attending physician number (State License Number);
 - (40) Operating or other physician number (if applicable) (State License Number);
 - (41) Other physician number (all applicable) (State License Number);
 - (42) Attending physician name (as reported to the State licensing boards);
 - (43) Operating or other physician name (if applicable) (as reported to the State licensing boards);
 - (44) Other physician name (all applicable) (as reported to the State licensing boards);
 - (45)-(47) (No change.)
 - (48) Reason for no Social Security number.
- (f) (No change.)
- (g) A submission will consist of a set of the following types of records from the HCFA UB-92 Electronic Format [~~Versions 004.1 and 004.0~~] specification as shown in paragraphs (1)-(13) of this subsection.

(1)-(13) (No change.)

§1301.20. Scientific Review Panel.

(a) The Council establishes the Scientific Review Panel (Panel) for the purposes of:

(1) evaluating applications for various measures or variables that are found in the Council's hospital discharge data "research" file; and

(2) deciding whether the data requests should be granted.

(b) The Scientific Review Panel is abolished at such time as the Council ceases to maintain a hospital discharge data "research" file.

(c) The Council may establish the scientific review function through a contract with an existing institutional review board that meets federal guidelines or by appointing a separate review panel.

(d) Membership, if scientific review panel is appointed.

(1) A person interested in membership on the Scientific Review Panel must submit an application, on a form specified by the Council, to the Executive Director of the Council.

(2) The Scientific Review Panel will consist of five members.

(3) The Council's Appointments Committee shall review all applications for membership and make recommendations to the Council. When making its recommendations, the Appointments Committee shall consider the qualification criteria in the Health and Safety Code, §108.0135 for each member and the restrictions on composition of committees in Government Code §2110.002.

(4) The Council, at its discretion, shall appoint persons to the Scientific Review Panel. Members shall have experience and expertise in ethics, patient confidentiality, and health care data.

(5) Members shall be appointed for three-year terms, except that for the initial appointees, the terms of one-third of the members shall be for three years, another one-third for two years, and the remaining members for one year. The Appointments Committee shall assign the initial term of each member or position so as to provide for a staggered system of terms.

(6) The Council may remove a member from the Scientific Review Panel if he or she is absent from three consecutive meetings. The Chair of the Scientific Review Panel may recommend the removal of a member for non-attendance to the Council's appointments committee which shall review the matter and make a recommendation to the Council.

(7) If a vacancy on the Scientific Review Panel occurs, the Council shall appoint an individual to serve the unexpired portion of that term.

(8) The Chair of the Scientific Review Panel is designated by the Chair of the Council from current members of the Panel. This person shall serve in that capacity at the pleasure of the Council Chair.

(e) Meetings.

(1) The Scientific Review Panel shall meet as necessary to conduct business, but in any case, at least once every two months if applications for all or part of the research file are pending.

(2) A simple majority of the members of the Scientific Review Panel shall constitute a quorum for the purpose of transacting business. All action of the Panel must be approved by majority vote. Each member shall have one vote and may not vote by proxy or *in absentia*.

(3) Meetings of the Panel or Subcommittees of the Panel shall be posted and conducted in accordance with the Texas Open Meets Act, Government Code, Chapter 551. All meetings of the Panel or any Subcommittee will be recorded.

(4) Minutes of all Panel and Subcommittee meetings shall be maintained by Council staff and shall include the names of members in attendance and a record of all formal actions and votes taken.

(5) Council staff shall provide administrative support for the Panel and any Subcommittees, including making of meeting arrangements. Each Panel or Subcommittee member shall be informed of a meeting at least ten days prior to a meeting.

(6) The Panel and Subcommittees 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.

(f) Decision-Making Guidelines.

(1) Requests should reasonably identify and justify the requested data elements. Requesters who have detailed information that would assist in justifying the records request are urged to provide such information in order to expedite the handling of the request. Envelopes in which written requests are submitted should be clearly identified as Open Records requests. Requests should include the fee or request determination of the fee.

(2) Fee structures for the public use data file and the research file shall be set by the Executive Director, in consultation with the Council.

(3) Waiver or reduction of the fees charged for the public use data file or the research file may be made upon a determination by the Executive Director when such waiver or reduction is in the Council's interest.

(4) All requests for data must be submitted in writing, either on the form provided by the Council or on a similar form containing all of the same information. Denials of written requests will be in writing and will contain the reasons for the denial including, as appropriate, a statement that a document or data element requested is nonexistent or not reasonably described, or is subject to one or more clearly described exemption(s). Denials will also provide the requester with appropriate information on how to exercise the right of appeal.

(5) In cases where there is an alleged conflict between the Texas Open Records Act and the Council's procedures, the Executive Director will refer the issue to the Office of the Attorney General.

(6) Records will not be created by compiling selected items from the files, and records will not be created to provide the requester with such data as ratios, proportions, percentages, per capita, frequency distributions, trends, correlations, and comparisons. If such data have been compiled and are available in the form of a record, the record may be made available as provided herein.

(g) Reports to the Council. The Chair of the Scientific Review Panel shall file with the Executive Director of the Council a written report of all action taken at any meeting of the Panel or a Subcommittee within 3 working days of such meeting, including a detailed list of how each participating member voted.

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 March 5, 2001.

TRD-200101267

Jim Loyd

Executive Director

Texas Health Care Information Council

Earliest possible date of adoption: March 15, 2001

For further information, please call: (512) 482-3312



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION STANDARDS

37 TAC §§341.1 - 341.12, 341.21 - 341.23

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

The Texas Juvenile Probation Commission proposes the repeal of chapter 341, §§341.1-341.12 and §§341.21-341.23 relating to Texas Juvenile Probation Commission standards. The repeal is in an effort not to overlap with proposed new standards which provide structural and substantive changes from the current standards.

Erika Sipiora, Staff Attorney, has determined that for the first five year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the repeal is in effect, the public benefit expected as a result of the repeal and adoption of new proposed standards is consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the repeals.

Public comments on the repeal may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

These standards are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these repeals.

§341.1. *Establishing Code of Ethics for Juvenile Probation Services Personnel and Providing for Enforcement of Code.*

§341.2. *Local Juvenile Board Administration.*

§341.3. *Juvenile Probation Services.*

§341.4. *Juvenile Probation Personnel.*

§341.5. *Local Juvenile Boards--Advisory Councils.*

§341.6. *State Administration.*

§341.7. *Waiver to Standards--This Standard Is Mandatory.*

§341.8. *Vehicle Exemption--This Standard Is Mandatory.*

§341.9. *Guidelines for Informal Adjustment Fees--This Standard Is Recommended.*

§341.10. *Complaints against Juvenile Boards--This Standard Is Mandatory.*

§341.11. *Coordinated Services for Multiproblem Children and Youth--This Standard Is Mandatory.*

§341.12. *Participation in Community Resource Coordination Groups--This Standard Is Mandatory.*

§341.21. *Memorandum of Understanding on Service Delivery to Runaways.*

§341.22. *Memorandum of Understanding on Certain Abused or Neglected Children.*

§341.23. *Memorandum of Understanding Regarding Service Delivery to Dysfunctional Families.*

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 March 2, 2001.

TRD-200101248

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

The Texas Juvenile Probation Commission proposes new chapter 341, §§341.1-341.6, 341.13-341.17, 341.24-341.31, 341.38-341.42, 341.48-341.53, 341.58-341.62, 341.68,

341.75, 341.82-341.92, 341.98-341.109, 341.113, 341.114, 341.121-341.125, 341.132-341.137, 341.138-341.143, 341.150, 341.157, and 341.158 relating to Texas Juvenile Probation Commission standards. The proposed standards provide structural and substantive changes from the current standards.

Erika Sipiora, Staff Attorney, has determined that for the first five year period the new rules are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Ms. Sipiora has also determined that for each year of the first five years the new rules are in effect, the public benefit expected as a result of enforcement will be the consistent standards to all counties across the State of Texas which will provide TJPC with a more accurate account in evaluating the effectiveness and services provided within the juvenile probation system. There will be no impact on small business or individuals as a result of the new rules.

Public comments on the proposed new rules may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547.

SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

The new section is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.1. Definitions.

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

(1) Chief Administrative Officer--regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department or a multi-county juvenile judicial district.

(2) Commission---the Texas Juvenile Probation Commission

(3) Courtesy Supervision--practice where a juvenile probation department agrees to supervise a juvenile who is under the jurisdiction of another county's juvenile probation department.

(4) Financial Records--any documentation associated with the expenditure of state dollars that would be required to substantiate a purchase.

(5) Internal Controls--the process designed to provide reasonable assurance regarding the achievement of objectives in the following categories: effectiveness and efficiency of operations, reliability of financial reporting, safeguarding of assets and compliance with laws and regulations.

(6) Juvenile Justice Program--a non-residential program operated for the benefit of juveniles referred to a juvenile probation department that is either directly administered by the juvenile probation department, or is operated under contract with a juvenile board. A juvenile justice program does not include any program operated in a facility that is licensed or operated by a state agency other than the Texas Juvenile Probation Commission.

(7) Mechanical Restraint Devices--devices used for the physical restraint of juveniles including but not limited to handcuffs,

wristlets, anklets, ankle cuffs, plastic cuffs, restraint chairs, restraint jackets and waistbands.

(8) Referral--a referral to the juvenile court for conduct defined in Texas Family Code Section 51.03 that results in a face-to-face interview between the juvenile and the authorized staff of the juvenile probation department.

(9) State Aid--funds allocated by the Commission to a juvenile board to assist the board financially in achieving the purposes of Chapter 141 of the Texas Human Resources Code and in conforming to the Commission's standards or policies.

(10) Video Training--pre-recorded training materials or conferences. Video training does not include video teleconferences.

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 March 2, 2001.

TRD-200101249

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.6

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.2. Administration.

(a) Local juvenile probation services administration.

(1) The juvenile board shall employ a chief administrative officer for each autonomous juvenile probation department.

(2) The juvenile board shall specify the responsibilities and functions of the juvenile probation department as well as the authority, responsibility, and function of the position of the chief administrative officer.

(3) When probation services for adult and juvenile offenders are provided by a single probation office, the juvenile board shall ensure that the juvenile probation department policies, programs, and procedures are clearly differentiated.

(b) Referral ratio. The juvenile board shall employ at least one certified juvenile probation officer for each 100 referrals made to the juvenile probation department annually.

(c) Compliance with State and Federal Law. The juvenile board shall abide by and shall ensure that the juvenile probation department abides by all applicable state, federal and local laws including any applicable standards promulgated by the Commission.

(d) Conflict of interest. A juvenile board member shall not participate in any decision, which would create a pecuniary benefit to the individual member.

(e) Participation in Community Resource Coordination Groups. Juvenile boards shall participate in the system of community resource coordination groups and the procedures in the memorandum of understanding adopted in §341.157 of this title (relating to Coordinated Services for Multiproblem Children and Youth). The chair of the juvenile board or a judicial member of the juvenile board designated by the chair shall serve as representative to the interagency dispute resolution process described in the memorandum of understanding.

§341.3. Fiscal Responsibilities.

(a) Fiscal Policies. The juvenile board shall develop and maintain fiscal policies and procedures. These policies shall include at a minimum the following subjects: salary provisions, employee benefits, travel and reimbursement procedures, collection of probation fees and restitution funds, authorized signatures for disbursements, petty cash and bonding.

(b) Fiscal Officer. The juvenile board shall assign accounting responsibility for fiscal affairs to an appropriate county or district fiscal officer. The fiscal officer shall not be an employee of the juvenile probation department.

§341.4. Policy and Procedures.

(a) Personnel Policies. The juvenile board shall adopt written personnel policies. These personnel policies shall include but not be limited to:

(1) a salary scale for all juvenile probation department personnel. Juvenile probation department personnel shall receive all applicable benefits and allowances paid to county employees. Salary scale levels shall be reasonable and comparable with prevailing salaries in the public and private sectors for similar occupations, educational and professional requirements;

(2) an annual employee appraisal; and

(3) an employee grievance procedure.

(b) Department Policies and Procedures. The juvenile board shall adopt written department policies and procedures. These policies shall include but not be limited to:

(1) intake and preliminary investigation;

(2) detention;

(3) transportation including the use of mechanical restraint devices during transportation;

(4) deferred prosecution. The deferred prosecution policy shall at a minimum include the following policies:

(A) The maximum supervision fee for deferred prosecution cases is \$15.00 per month.

(B) The monthly fee shall be determined after obtaining a financial statement from the parent or guardian. The fee schedule shall be based on total parent/guardian income.

(C) The Chief Administrative Officer, or the Chief Administrative Officer's designee shall approve in writing the fee assessed for each child including any waiver of deferred prosecution fees.

(D) A deferred prosecution fee shall not be imposed if the juvenile court does not adopt a fee schedule and rules for waiver of the deferred prosecution fee.

(5) pre-disposition reports and social history;

(6) court procedures;

(7) sex offender registration under Code of Criminal Procedure Chapter 62 and sex offender probation under Texas Family Code Section 54.0405;

(8) progressive sanctions;

(9) probation supervision including case planning and management;

(10) restitution;

(11) community service restitution;

(12) courtesy supervision;

(13) probation modification/revocation;

(14) residential placements

(15) TYC commitments and transportation;

(16) discharge procedures, exit plans and sealing information;

(17) Interstate Compact;

(18) Juvenile Justice Information System;

(19) Volunteers and Interns. If a juvenile probation department has or develops a volunteer or internship program, the juvenile board at a minimum shall adopt the following policies for the volunteer program:

(A) a description of the authority, responsibility and accountability of volunteers who work with the department;

(B) screening including performing a criminal history check in accordance with §341.40(a) and (b);

(C) selection and termination criteria;

(D) orientation and training requirements;

(E) a requirement that volunteers meet minimum professional requirements; and

(F) a provision for a volunteer sign in log; and

(20) Mechanical Restraints Devices used in Juvenile Justice Programs. The mechanical restraint devices policy shall at a minimum include the following policies:

(A) Mechanical restraints shall only be used by a law enforcement officer, certified juvenile probation officer, certified detention officer, or certified correctional officer.

(B) Mechanical restraint devices shall not be used for punishment, discipline, or intimidation.

(C) The use of mechanical restraint devices shall be fully documented.

(D) Use of a mechanical restraint device shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury or injury to others are absent.

(21) Victims Rights. Policies and procedures shall afford victims their rights under Texas Family Code, Chapter 57.

(c) Annual Review. The juvenile board shall review all of its policies and procedures on an annual basis.

§341.5. Facilities and Support Services.

(a) Minimum facilities. Adequate office space shall be provided for all juvenile probation personnel. There shall be a private office or a place for interviewing and counseling clients. Each office shall have adequate lighting, air conditioning, heating, telephones, furniture,

equipment, and square footage to provide services. The location of the juvenile probation facility and other field offices shall be reasonably accessible to children, families, and the general community.

(b) Minimum Support Services. Juvenile probation officers shall have adequate support services and staff in order to carry out their duties and responsibilities.

§341.6. Waiver to Standards.

(a) Who May Request. Unless expressly prohibited by another standard, the juvenile board, or chief administrative officer may make an application for waiver of any standard or standards adopted by the Commission. If the chief administrative officer makes a request for waiver, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

(b) Contents of Request. The written request for waiver shall:

(1) explain why said standard or standards cannot be complied with immediately;

(2) explain the impact the waiver if granted, would have on other standards; and

(3) provide a plan to ensure compliance within a period not to exceed one year including where applicable how the health and safety of juveniles would be maintained during the duration of the waiver.

(c) Length of Waiver. Waivers granted by Commission staff under this section shall not exceed one year. The juvenile board may request one subsequent waiver.

(d) Review of Request. In the event a request for waiver is denied, the juvenile board, or chief administrative officer may request a review by the Commission. The review of the waiver request shall occur at the next regularly scheduled Commission meeting.

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

Filed with the Office of the Secretary of State, on March 2, 2001.

TRD-200101250

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §§341.13 - 341.17

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.13. Administrative Manual.

(a) The chief administrative officer shall maintain an administrative manual for the juvenile probation department. The administrative manual shall include:

(1) the policies, procedures, and regulations of the juvenile probation department as adopted by the juvenile board; and

(2) a current organizational chart depicting structure, lines of authority, and responsibility.

(b) The chief administrative officer shall provide all employees with a copy of or access to the administrative manual, update the manual on an annual basis and enforce all policies in the manual.

§341.14. Identification.

The chief administrative officer shall furnish each juvenile probation officer with proper official identification.

§341.15. Supervision.

The chief administrative officer shall ensure that all juveniles given court ordered probation or deferred prosecution are supervised by a certified juvenile probation officer.

§341.16. Treatment and Safety.

(a) Serious Incidents. The chief administrative officer shall report the death, attempted suicide, and any serious injury that requires medical treatment by a physician or physician's assistant that occurs in a juvenile justice program or juvenile probation department within 24 hours of discovering the incident.

(b) Child Abuse and Neglect. The chief administrative officer shall ensure that any allegation of abuse or neglect occurring in a juvenile justice program or juvenile probation department is reported to the Commission within 24 hours of having cause to believe a child has been abused or neglected. The chief administrative officer shall also ensure that a report is made to local law enforcement in accordance with Texas Family Code Chapter 261.

(1) Internal Investigation. The chief administrative officer shall maintain written policy and procedure requiring an internal investigation of all allegations of child abuse or neglect in the department or any juvenile justice program.

(A) The policy shall require:

(i) all staff members to fully cooperate with any investigation of alleged child abuse or neglect in the department or program;

(ii) any person alleged to be a perpetrator of child abuse or neglect be put on administrative leave or reassigned to a position having no contact with children in the department or program until the conclusion of the internal investigation;

(iii) the alleged perpetrator have no contact with the alleged victim(s) pending the conclusions of the internal investigation.

(B) At the conclusion of the internal investigation of child abuse or neglect, the chief administrative officer shall take appropriate measures to provide for the safety of children.

(C) The chief administrative officer shall submit a copy of the internal investigation to TJPC within 2 working days following the completion of the internal investigation.

(D) In the event the chief administrative officer is alleged to be a perpetrator of child abuse or neglect, the juvenile board shall :

(i) conduct the internal investigation or appoint an individual who is not an employee of the juvenile probation department to conduct the internal investigation; and

(ii) place the chief administrative officer on administrative leave, or ensure the chief administrative officer has no contact

with children in the department or juvenile justice program until the conclusion of the internal investigation.

(2) Treatment and Safety. The chief administrative officer shall ensure that juveniles under supervision of the juvenile probation department or participating in a juvenile justice program shall not be subjected to abuse or neglect as defined in Chapter 261, Texas Family Code.

§341.17. Participation in Community Resource Coordination Groups.

The chief administrative officer or the chief administrative officer's designee shall serve as the liaison to the community resource coordination group in accordance with the memorandum of understanding relating to coordinated services for multiproblem youth adopted in §341.157.

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 March 2, 2001.

TRD-200101251

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

37 TAC §§341.24 - 341.31

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.24. Accounting.

Under the guidance of the juvenile board or chief administrative officer, the fiscal officer shall oversee the business affairs of the department utilizing generally accepted accounting principles and best business practices.

§341.25. Interest on State Funds.

The fiscal officer shall ensure that state funds are held in an interest bearing account that provides for necessary protection of principle. Interest earnings on state funds shall be accounted for separately and expended for the sole benefit of the juvenile probation department.

§341.26. Purchasing.

The fiscal officer shall ensure that purchases made for the juvenile probation department are made in accordance with county procurement procedures. The fiscal officer shall ensure that written contracts are executed by the juvenile board or its designee with any public and private service provider where services are purchased in whole or in part with any funds received from the Commission.

§341.27. Expenditure of State Funds.

The fiscal officer shall ensure that all program activities and expenditures of state funds are consistent with the purposes outlined in the budget documents of all applicable financial agreements with the Commission.

§341.28. Internal Controls.

The fiscal officer shall establish and maintain the internal controls for the juvenile probation department. The fiscal officer shall ensure that all employees with access to monies are bonded.

§341.29. Financial Reporting.

The fiscal officer is responsible for completion and submission of the following in accordance with Commission guidelines:

(1) quarterly expenditure reports for grant funds received from the Commission;

(2) annual certification of local expenditure reports;

(3) annual independent financial compliance audit of all funds received from the Commission; and

(4) other financial reports as requested by the Commission.

§341.30. Refunds to the Commission.

(a) The fiscal officer shall ensure that TJPC is reimbursed immediately for each dollar of unallowable costs if unallowable expenditures are discovered by any means.

(b) Unspent grant funds at the end of each contract period shall be returned to the Commission.

§341.31. Records Retention.

The fiscal officer shall ensure that financial records are retained and made available for inspection by the Commission for a minimum of three years after the end of the applicable contract period.

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

Filed with the Office of the Secretary of State, on March 2, 2001.

TRD-200101252

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

37 TAC §§341.38 - 341.42

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.38. Qualifications for Employment.

(a) Certified juvenile probation officer qualifications for employment shall adhere to the Texas Human Resources Code §141.061(a) and any additional standards promulgated by the Commission.

(b) One Year of Graduate Study Defined. The phrase "one year of graduate study," in Texas Human Resources Code §141.061(a)(3)(A), is interpreted to mean at least 18 post-graduate credit hours earned in a behavioral science field with certification from the school of enrollment attesting that the student has an acceptable

scholastic standing. The fields of graduate study presently approved by the Commission are: criminology; corrections, counseling, law, social work, psychology, sociology, cultural anthropology, business management, public administration, and education.

(c) Internships. Internships may be counted toward meeting one year's experience, where the duties performed were related to the field of juvenile justice.

§341.39. Exemption from Qualifications.

(a) The juvenile board, or chief administrative officer shall apply to the Commission for exemption of the requirements of one year of experience or graduate study prior to the employment of any individual who is hired for the position of juvenile probation officer. If the chief administrative officer makes a request for exemption under this section, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

(b) The exemption request shall be made using the form provided by the Commission. The exemption request shall document that diligent efforts were made to employ a probation officer with one year of experience or graduate study and state why, in their opinion, the efforts were unsuccessful.

§341.40. Criminal Records Check.

Prior to employing a person as a certified juvenile probation officer, the chief administrative officer shall conduct and have returned a criminal history check in accordance with the following guidelines:

(1) A criminal records check shall be conducted in the following databases:

(A) Texas criminal history background search;

(B) Federal Bureau of Investigation fingerprint based criminal history background search;

(C) Where available, a state criminal history background search for the following states if the applicant resided in the state after turning 18 years of age unless the state begins to contribute criminal history information to the National Crime Information Center under subparagraph (B) of this paragraph:

(i) Hawaii;

(ii) Kansas;

(iii) Kentucky;

(iv) Louisiana;

(v) Maine;

(vi) Massachusetts;

(vii) New Hampshire;

(viii) Rhode Island;

(ix) Tennessee;

(x) Vermont

(xi) the District of Columbia; and

(D) Local law enforcement sex offender registration records in the city or county where the application was made.

(2) An Internet based criminal background search shall not be used to conduct the background searches required under paragraph (1)(A) or (B) of this section.

§341.41. Disqualification from Employment.

(a) A person who within the last ten years has been convicted of or placed on deferred adjudication for a felony offense under the laws of this State, another State, or the United States, is currently on either felony probation or parole, or who is registered as a sex offender under Chapter 62, Texas Code of Criminal Procedure is not eligible for employment as a juvenile probation officer. A request for waiver under §341.6 of this title may not be requested for this section unless the person received a pardon based upon proof of innocence.

(b) An individual whose certification has been revoked by the Commission shall never qualify for employment as juvenile probation officer. An individual whose certification is currently under a suspension order issued under §341.88(d)(2) shall not qualify for employment as a juvenile probation officer so long as the suspension order remains in effect. An individual whose certification is currently under a suspension order issued under §341.109(a) shall not qualify for employment as a juvenile probation officer until the Commission receives an order issued under Texas Family Code Section 232.013 staying or vacating the license suspension.

§341.42. Applicability.

This subchapter applies to all individuals hired on or after the effective date of this subchapter.

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 March 2, 2001.

TRD-200101253

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

37 TAC §§341.48 - 341.53

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.48. Persons Who Must be Certified.

The chief administrative officer of a juvenile probation department, and any person hired as a juvenile probation officer, or as a supervisor of juvenile probation officers shall obtain and maintain an active juvenile probation officer certification from the Commission.

§341.49. Certification.

(a) Eligibility. A person, including the chief administrative officer, is eligible for certification as a juvenile probation officer when the person:

(1) meets the eligibility requirements under §341.38 of this title, or has received an exemption under §341.39;

(2) has completed 40 hours of certification training in accordance with §341.60 of this title;

(3) has not within the past ten years been convicted or placed on deferred adjudication for a felony against the laws of this

state, another state, or the United States, is not currently on felony probation or parole, or is not registered as a sex offender under Chapter 62, Texas Code of Criminal Procedure. A request for waiver under §341.6 of this title may not be requested for this requirement unless the person received a pardon based upon proof of innocence;

(4) is not currently under an order of certification suspension issued under §341.88(d)(2) or §341.109(a); and

(5) has never had certified juvenile probation officer certification revoked under §341.88(d)(3) or §341.103(d).

(b) Certification Procedures.

(1) Juvenile Probation Officers and Supervisors of Juvenile Probation Officers. The chief administrative officer or the chief administrative officer's designee shall submit a certification application to the Commission for all juvenile probation officers and supervisors of juvenile probation officers. The certification application shall include verification that a criminal history check conducted in accordance with 341.40 (a)(1),(2),(4) and (b) has been returned within the 60 days prior to submitting the certification application. If the certification applicant currently resides in a state listed under 341.40(a)(3) that does not contribute criminal history information to the National Crime Information Center under §341.40(a)(2), then the criminal history verification shall also include verification that where available a criminal history background check was conducted in the state of current residence and returned within 60 days prior to submitting the certification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(2) Chief Administrative Officers. The chairman of the juvenile board shall submit the chief administrative officer's certification application to the Commission. The certification application shall include verification that a criminal history check conducted in accordance with §341.40 (a)(1),(2),(4) and (b) has been returned within the 60 days prior to submitting the certification application. If the certification applicant currently resides in a state listed under 341.40(a)(3) that does not contribute criminal history information to the National Crime Information Center under §341.40(a)(2), then the criminal history verification shall also include verification that where available a criminal history background check was conducted in the state of current residence and returned within 60 days prior to submitting the certification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(c) Length of Certification. A certification is valid for two years from the date of approval.

(d) Reinstatement of Certification after Suspension.

(1) An individual whose certification has been suspended under §341.88(d)(2) of this title may apply for certification once the suspension period has expired and the individual meets the certification eligibility requirements listed under subsection (a) of this section.

(2) An individual whose certification has been suspended under §341.109(a) of this title may apply for certification once TJPC has received an order issued under Texas Family Code Section 232.013, which either vacates or stays the suspension order and the individual meets the certification eligibility requirements listed under subsection (a) of this section.

§341.50. Recertification.

(a) Eligibility. A certified juvenile probation officer, including a supervisor of juvenile probation officers and the chief administrative officer, is eligible for recertification if the officer:

(1) has not within the past 10 years been convicted or placed on deferred adjudication for a felony offense against the laws

of this state, the laws of another state or the laws of the United States is not currently on felony probation or parole, or is not registered as a sex offender under Chapter 62, Texas Code of Criminal Procedure. A request for waiver under §341.6 of this title may not be requested for this requirement unless the person received a pardon based upon proof of innocence; and

(2) has within the two years from the date of the certification's or recertification's approval completed 80 hours of recertification training in accordance with §341.61 of this title; and

(3) does not currently have juvenile probation officer certification suspended under §341.88(d)(2) or §341.109(a).

(4) If the person applying for re-certification is the chief administrative officer, 20 hours of the required recertification training shall be in management and supervisory skills.

(b) Recertification Procedures.

(1) Submission. The chief administrative officer or the chief administrative officer's designee shall submit a recertification application to the Commission for all certified juvenile probation officers and supervisors of juvenile probation officers. The juvenile board, or the juvenile board's designee shall submit the chief administrative officer's recertification application.

(2) Timeline for Submission. Unless a request for extension has been made under paragraph (4) of this subsection, the recertification application shall not be sent more than 30 days before or 60 days after the certification expiration date.

(3) Verification of Criminal History. All recertification applications shall include verification that a criminal history check was conducted in accordance with §341.40 (a)(1),(2),(4) and (b) and returned within the 60 days prior to submitting the certification application. If the recertification applicant currently resides in a state listed under 341.40(a)(3) that does not contribute criminal history information to the National Crime Information Center under §341.40(a)(2), then the criminal history verification shall also include verification that where available a criminal history background check was conducted in the state of current residence and returned within 60 days prior to submitting the recertification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(4) Extension.

(A) Requests for Extension. The juvenile board, the chief administrative officer or either's designee may request an extension of time to allow a certified juvenile probation officer additional time to meet the recertification eligibility requirements listed in subsection (a) of this section or for the submission of recertification applications listed in paragraph (2) of this subsection. The request shall include an explanation showing cause why an extension is needed.

(B) Grants of Extension. Commission staff may grant an extension for a period not to exceed 90 days from the date the certification expired.

(C) Failure to complete the training or submission requirements within the extension period shall result in the Commission's denial of the recertification application. In the event the recertification application is denied, an applicant may apply for certification under §341.49.

(c) Length of Recertification. A recertification is valid for two years from the date of expiration of the previous certification or recertification.

§341.51. Transfer of Certification.

(a) Notification Upon Resignation or Termination. The chief administrative officer, the juvenile board or either's designee shall notify the Commission within 7 working days after a certified juvenile probation officer, including the chief administrative officer, resigns or is terminated from employment.

(b) Inactive Certifications. Upon receipt of notice under subsection (a) of this section, the Commission shall place the probation officer's, supervisor of juvenile probation officer's or chief administrative officer's certification on inactive status. A person may not perform the duties of a juvenile probation officer, including those duties listed under §341.68 of this title, while on inactive status.

(c) Transfer of Certification. When a person with an inactive certification obtains employment as a juvenile probation officer, supervisor of juvenile probation officers or a chief administrative officer, the juvenile board, the chief administrative officer or either's designee may request a transfer of certification to active status. The request for certification transfer shall be in writing and shall include a verification that a criminal history check was conducted in accordance with §341.40(a)(1),(2),(4) and (b) and returned within the 60 days prior to submitting the transfer request. If the applicant for a transfer of certification currently resides or resided in a state while on inactive status that is listed under 341.40(a)(3) that does not contribute criminal history information to the National Crime Information Center under §341.40(a)(2), then the criminal history verification shall also include verification that where available a criminal history background check was conducted in the state of current residence and returned within 60 days prior to submitting the certification application. A copy of the criminal history check shall be retained in the juvenile probation department's records.

(d) Expiration of Certification while on Inactive Status. If a juvenile probation officer's or chief administrative officer's certification expires while on inactive status, the officer will not be eligible for transfer of certification. A juvenile probation officer, supervisor of juvenile probation officers or chief administrative officer whose certification expires while on inactive status may apply for certification after obtaining employment with a juvenile probation department and meeting the eligibility requirements listed under §341.50.

(e) Transfer of Training Records. The chief administrative officer, or juvenile board shall forward a certified juvenile probation officer's, a supervisor of juvenile probation officer's or chief administrative officer's training records, upon a request from the chief administrative officer or juvenile board in the county where the certified juvenile probation officer's certification was transferred.

§341.52. Expiration of Certification While Under Certification Suspension Order.

(a) An individual whose certification expires while under a certification suspension order issued under §341.88(d)(2) of this title may apply certification once the suspension period has expired and the individual meets the certification eligibility requirements listed under §341.49(a).

(b) An individual whose certification expires while under a certification suspension order issued under §341.109(a) of this title may apply for certification once TJPC has received an order issued under Texas Family Code Section 232.013, which either vacates or stays the suspension order and the individual meets the certification eligibility requirements listed under §341.49(a).

§341.53. Applicability.

Except for §341.50(a)(3) of this title this subchapter applies to all certification and re-certifications received on or after the effective date of this subchapter. Any felony conviction or deferred prosecution occurring before the effective date of this subchapter will not disqualify a

juvenile probation officer who held an active certification on the subchapter's effective date from receiving a recertification under this subchapter. Section 341.50(a)(3) of this title does not become effective until January 1, 2002.

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

Filed with the Office of the Secretary of State, on March 2, 2001.

TRD-200101254

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

37 TAC §§341.58 - 341.62

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.58. Training Hours.

In accordance with §341.60 and §341.61, all training intended to count toward certification and recertification requirements shall be approved by Commission staff. TJPC reserves the right to refuse to grant approval for training hours that do not comply with the guidelines under this subchapter. No more than 40 training hours in one topic may count toward certification or recertification. No more than 15 hours of video training may count toward certification requirements. No more than 30 hours of video training may count toward recertification requirements.

§341.59. Training Hours for Trainers.

An individual who provides approved juvenile probation officer training under §341.58 of this title may claim up to 20 hours training credit for each hour of course development. A trainer may only claim course development one time per course topic per certification or recertification period. It is not a requirement under this section that the individual claiming training hours be employed by a juvenile probation department as a trainer.

§341.60. Certification Training.

A person applying for certification as a juvenile probation officer, a supervisor of juvenile probation officers, or a chief administrative officer shall have completed 40 hours of certification training. Certification Training shall include but not be limited to the following subjects:

- (1) role of the juvenile probation officer;
- (2) case planning and management;
- (3) officer safety;
- (4) transportation;
- (5) juvenile law;
- (6) courtroom proceedings and presentation;
- (7) law enforcement processing;

- (8) local programs and services including access procedures;
- (9) interagency collaborations and memoranda of understanding;
- (10) code of ethics, disciplinary and revocation hearing procedures.

§341.61. Recertification Training.

(a) Juvenile Probation Officers and Supervisors of Juvenile Probation Officers. A certified juvenile probation officer or supervisor of juvenile probation officers, shall receive 80 hours of recertification training every two years.

(b) Chief Administrative Officers shall receive 80 hours of recertification training every two years. Twenty of the 80 recertification hours for shall be in management and supervisory skills.

(c) Nature of Training. Recertification training shall be related to job responsibilities or the field of juvenile justice. A three-hour graduate course in any approved field of study listed in §341.38(b) of this title shall count as 40 hours of recertification training.

(d) Training hours provided in addition to the initial 40 hours required for certification shall be counted towards the initial recertification training requirements if the certification application is complete and all deficiencies are corrected within 60 days of the date the application is first received by the Commission. In the event the Commission does not notify the juvenile probation department about a deficiency in a certification application within 30 days from the date the Commission received the application, the Commission shall give the juvenile probation department an additional 30 days from the date the department was notified by the Commission to correct any deficiency.

§341.62. Applicability.

This subchapter applies to all training hours accrued on or after the effective date of this subchapter. The twenty hours of management and supervisory skills training required under §341.61(c) is not applicable until January 1, 2002.

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

Filed with the Office of the Secretary of State, on March 2, 2001.
 TRD-200101255
 Lisa Capers
 Deputy Executive Director and General Counsel
 Texas Juvenile Probation Commission
 Earliest possible date of adoption: April 15, 2001
 For further information, please call: (512) 424-6710



SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.68

The new section is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.68. Duties of Certified Juvenile Probation Officers.

In addition to any duties, responsibilities or powers granted by Title III of the Texas Family Code, the following duties and responsibilities shall be performed by only certified juvenile probation officers:

- (1) representation of the juvenile probation department in all formal court proceedings;
- (2) final approval of written social history reports;
- (3) acting as the primary supervising officer for all court ordered and deferred prosecution cases;
- (4) writing and administering case plans in accordance with the Commission's Case Management Standards;
- (5) completing any assessment instrument required to be completed by law or Commission standards; and
- (6) if authorized by the juvenile court under Texas Family Code Section 53.02, conducting intake interviews, investigations, and making release decisions.

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 March 2, 2001.
 TRD-200101256
 Lisa Capers
 Deputy Executive Director and General Counsel
 Texas Juvenile Probation Commission
 Earliest possible date of adoption: April 15, 2001
 For further information, please call: (512) 424-6710



SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

37 TAC §341.75

The new section is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.75. Code of Ethics.

The people of Texas expect of juvenile probation officers, supervisors of juvenile probation officers, and chief administrative officers unfailing honesty, respect for the dignity and individuality of human beings, and a commitment to professional and compassionate service. To this end the Commission subscribes to the following principles.

- (1) Juvenile Probation Officers shall:
 - (A) respect the authority and follow the directives of the court, recognizing at all times that they are an extension of the court;
 - (B) respect and protect the civil and legal rights of all children and their parents;
 - (C) serve each case with concern for the child's welfare and with no purpose of personal gain;
 - (D) encourage relationships with colleagues of such character to promote mutual respect within the profession and improvement of its quality of service;

(E) respect the significance of all elements of the justice and human services systems and cultivate a professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all case information which could contribute to sound decisions affecting a client or the public safety;

(H) report without reservation any corrupt or unethical behavior which could affect either a child or the integrity of the department;

(I) maintain the integrity of private information and not seek personal data beyond that needed to perform their responsibilities, nor reveal case information to anyone not having proper professional use for such;

(J) respect, serve and empathize with the victims of law violations allegedly committed by children;

(K) abide by all federal, state, and local laws and Commission standards.

(2) Juvenile Probation Officers shall not:

(A) use their official position to secure privileges or advantages; make statements critical of colleagues or their departments unless these are verifiable and constructive in purpose;

(B) permit personal interest to impair in the least degree the objectivity which is to be maintained in their official capacity;

(C) use their official position to promote any partisan political purpose;

(D) accept any gift or favor of a nature to imply an obligation that is inconsistent with the free and objective exercise of professional responsibilities;

(E) make appointments, promotions or dismissals in furtherance of partisan political interests;

(F) maintain an inappropriate relationship with juveniles assigned to their caseload, supervised by the juvenile probation department or coming under the jurisdiction of the juvenile court. An inappropriate relationship can include but is not limited to: bribery, solicitation or acceptance of gifts, favors, or services from juveniles or their families, and the appearance of an inappropriate relationship;

(G) not discriminate against any employee, prospective employee, child, child care provider, or parent on the basis of age, race, sex, creed, disability, or national origin;

(H) be designated as a perpetrator in a TJPC child abuse and neglect investigation conducted under the authority of Texas Family Code Chapter 261, and Title 37 Texas Administrative Code Chapter 349 ; and

(I) interfere with or hinder a child abuse and neglect internal investigation conducted under 341.16(b)(1) , a TJPC child abuse and neglect investigation conducted under the authority of Texas Family Code Chapter 261, and title 37 Texas Administrative Code Chapter 349, or any criminal investigation conducted by a law enforcement 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.

Filed with the Office of the Secretary of State, on March 2, 2001.

TRD-200101257

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER J. ENFORCEMENT PROCEDURES - CODE OF ETHICS

37 TAC §§341.82 - 341.92

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.82. Request for Disciplinary Hearing.

Unless the standards in Subchapter K relating to mandatory revocation or mandatory suspension apply, the chief administrative officer or juvenile board may forward a copy of an internal investigation based on a code of ethics violation to the Commission. The internal investigation shall serve as a request for a disciplinary hearing. If the chief administrative officer makes the request for a disciplinary hearing, the chief administrative officer shall in writing notify the juvenile board of the request simultaneous with the request's submission to the Commission.

§341.83. Notifications Made to the Commission.

In the event the Commission or Commission staff receive notice from an individual or entity other than the chief administrative officer or juvenile board that a certified juvenile probation officer, or the chief administrative officer has violated the code of ethics, Commission staff shall notify in writing the chief administrative officer and the local juvenile board. Upon receipt of notification from the Commission, the chief administrative officer, or the juvenile board may conduct an internal investigation and may make a request for a disciplinary hearing in accordance with §341.82 of this title.

§341.84. Effect of Request for Disciplinary Hearing .

When the Commission receives a request for disciplinary hearing under §341.82 of this title, the Commission shall give the officer alleged to have committed an ethics violation written notice and an opportunity for a hearing conducted by the Commission in accordance with the procedures set out below.

§341.85. Procedure for Hearings.

Hearings under this section shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The Commission shall have the power to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, conduct hearings and issue subpoenas or summons.

§341.86. Notice.

(a) The Commission shall provide a minimum of 10 days notice to the certified juvenile probation officer or chief administrative officer subject to a disciplinary hearing. Notice shall be sent by certified mail return receipt requested.

(b) The notice shall include:

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

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

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

(4) a short plain statement of the matters asserted.

§341.87. Right to Counsel.

An individual subject to a disciplinary hearing under this subchapter is entitled to the assistance of counsel during the revocation hearing. The officer may expressly waive the right to the assistance of counsel. The officer may also be represented by a designated person. Written notice at least five days in advance of the hearing shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

§341.88. Disciplinary Hearing.

(a) The juvenile probation officer, chief administrative officer or his/her representative, shall be given the opportunity to show compliance with the code of ethics and all requirements of the law, including Commission standards.

(b) The hearing shall be conducted in executive session with only the members of the Commission, Commission staff, the officer, the chief administrative officer, their representatives and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until it is their turn to present evidence.

(c) The conduct of the hearing shall be under the Commission chairman's control, and in general, shall be conducted in accordance with the following steps:

(1) The hearing shall begin with the presentation of investigatory findings by the designated Commission staff, supported by such proof as is deemed necessary.

(2) The officer may cross-examine any witnesses for the Commission;

(3) The officer may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the code of ethics has not been violated;

(4) The designated Commission staff may cross-examine any witnesses for the officer and offer rebuttal testimony of the officer's witnesses;

(5) Each party may make closing arguments;

(6) The hearing shall be recorded and transcribed by means including but not limited to a stenographic record of the proceedings.

(d) Ruling by the Commission. The Commission may consider only such evidence as is presented at the hearing, if the Commission determines that the evidence presented is insufficient, the Commission may ask for additional information from the officer or chief administrative officer, or Commission staff and may ask questions on their own motion. After all the evidence has been presented, the Commission must determine whether the allegation against the officer is supported by substantial evidence. Based on the Commission's ruling the Commission may assign one of the following dispositions:

(1) Reprimand. The Commission may issue a written reprimand of the juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer.

(2) Suspension. The Commission may suspend the certification of a juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer for a specified period not to exceed 24 months.

(3) Revocation. The Commission may permanently revoke the certification of the juvenile probation officer, supervisor of juvenile probation officers, or chief administrative officer.

(e) Notice of Disposition. The Commission shall notify an individual whose conduct was the subject of a disciplinary hearing. The Commission may notify the individual either in person or in by certified mail return receipt requested. The notice of disposition shall include:

(1) which acts or omissions by the officer, if any violated the code of ethics;

(2) a statement of the evidence relied upon;

(3) a statement of which section or sections of the code of ethics, if any, were violated by the acts or omissions of the officer;

(4) the commission's dispositional ruling concerning the officer's certification; and

(5) the officer's right to rehearing and appeal.

§341.89. Motion for Rehearing.

An individual wishing to appeal the Commission's ruling may file a motion for rehearing with the Commission no later than the 20th day after receiving notice of the revocation. The Commission shall rule on the Motion for Rehearing no later than the 45th day after receiving the motion.

§341.90. Judicial Review.

A person whose certification has been revoked and whose motion for rehearing has been denied by the Commission is entitled to judicial review of the Commission's Action.

§341.91. Record.

The Commission shall create a record for each hearing conducted. The record shall include:

(1) the request for disciplinary hearing received under §341.82 of this title;

(2) the transcript of the hearing, which may take the form of the minutes of the Commission meeting;

(3) any documentary proof submitted during the hearing;

(4) all staff memoranda and documentation submitted to the Commission in making its decision;

(5) a copy of the final order issued by the Commission;

(6) any motions for rehearing;

(7) the Commission's ruling on any motions for rehearing.

§341.92. Release of Information.

Upon request, the Commission shall release information relating to a disciplinary hearing conducted under this subchapter.

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 March 2, 2001.

TRD-200101258

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710

◆ ◆ ◆

SUBCHAPTER K. MANDATORY
CERTIFICATION REVOCATION AND
MANDATORY CERTIFICATION SUSPENSION

37 TAC §§341.98 - 341.109

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.98. Duty to Notify.

(a) The chief administrative officer, the juvenile board or either's designee shall in writing request a certification revocation from the Commission within 10 working days after obtaining notice that a certified juvenile probation officer, or chief administrative officer has been convicted or given deferred adjudication for any felony based on the laws of this state, the laws of another state or the laws of the United States, or who received a conviction or deferred adjudication that requires registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure. Notice provided under this section constitutes a request for certification revocation.

(b) A request for waiver under §341.6 of this title may not be requested for this section unless the certified juvenile probation officer, or chief administrative officer received a pardon based upon proof of innocence.

(c) Notifications Made to Commission. In the event the Commission, or Commission staff receive notice from an individual or entity other than the Chief administrative officer, juvenile board or their respective designees that a certified juvenile probation officer, or chief administrative officer has been convicted or given deferred adjudication for any felony based on the laws of this state, the laws of another state, or the laws of the United States, or received a conviction or deferred adjudication that requires registration as a sex offender under Chapter 62, Texas Code of Criminal Procedure. Commission staff shall in writing notify the Chief administrative officer or the juvenile board. Upon receiving notice from Commission staff the Chief administrative officer, or juvenile board shall request certification revocation in accordance with subsection (a) of this section.

§341.99. Effect of Notification.

Upon receipt of request for certification revocation under §341.92 of this title, the Commission shall conduct a hearing for certification revocation at the next regularly scheduled board meeting.

§341.100. Procedure for Certification Revocation Hearings.

Hearings for revocation under this section shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The Commission shall have the power to take depositions, administer oaths or affirmations, examine witnesses, receive evidence, and conduct hearings and issue subpoenas or summons.

§341.101. Notice.

(a) The Commission shall provide a minimum of 10 days notice to the certified juvenile probation officer or chief administrative officer subject to a revocation hearing. Notice shall be sent by certified mail return receipt requested.

(b) The notice shall include:

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

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

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

(4) a short plain statement of the matters asserted.

§341.102. Right to Counsel.

An individual subject to a revocation hearing under this subchapter is entitled to the assistance of counsel during the revocation hearing. The officer may expressly waive the right to the assistance of counsel. The officer may also be represented by a designated person. Written notice at least five days in advance of the hearing shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

§341.103. Revocation Hearing.

(a) The juvenile probation officer, chief administrative officer or his/her representative, shall be given the opportunity to show compliance with the code of ethics and all requirements of the law, including Commission standards.

(b) The hearing shall be conducted in executive session with only the members of the Commission, Commission staff, the officer, the chief administrative officer, their representatives and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until is it their turn to present evidence.

(c) The conduct of the hearing shall be under the Commission chairman's control, and in general, shall be conducted in accordance with the following steps:

(1) The hearing shall begin with the presentation of findings by the designated Commission staff, supported by such proof as is deemed necessary.

(2) The officer may cross-examine any witnesses for the Commission;

(3) The officer may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the officer has not been convicted or placed on deferred adjudication for a felony, has not been convicted or given deferred adjudication for an offense that requires sex offender registration under Chapter 62, Texas Code of Criminal Procedure or has been pardoned based upon proof of innocence;

(4) The designated Commission staff may cross-examine any witnesses for the officer and offer rebuttal of the testimony of the officer's witnesses;

(5) Each party may make closing arguments;

(6) The hearing shall be recorded and transcribed by means including but not limited to a stenographic record of the proceedings.

(d) Ruling by the Commission. The Commission may consider only such evidence as is presented at the hearing, if the Commission determines that the evidence presented is insufficient, the Commission may ask for additional information from the officer or chief administrative officer, or Commission staff and may ask questions on their own motion. After all the evidence has been presented, the Commission shall revoke the officer's certification if substantial evidence indicates the officer has been convicted or placed on deferred adjudication for a felony against this state, another state or the United States, or has been convicted or given deferred adjudication for an offense that requires registration as a sex offender under Chapter 62 Texas Code of Criminal Procedure.

(e) Notice of Disposition. The Commission shall notify an individual whose conduct was the subject of a revocation hearing of the Commission's ruling. The Commission may notify the individual either in person or by certified mail return receipt requested. The notice of disposition shall include:

- (1) the Commission's dispositional ruling
- (2) a statement of the evidence relied upon;
- (3) a statement of which section or sections of the code of ethics, or other Commission standards, if any, were violated by the acts or omissions of the officer; and
- (4) the officer's right to rehearing and appeal.

§341.104. Motion for Rehearing.

An individual wishing to appeal the Commission's disposition may file a motion for rehearing with the Commission no later than the 20th day after receiving notice of the revocation. The Commission shall rule on the Motion for Rehearing no later than the 45th day after receiving the motion.

§341.105. Judicial Review.

An individual whose certification has been revoked and whose motion for rehearing has been denied by the Commission is entitled to judicial review of the Commission's Action.

§341.106. Record.

The Commission staff shall create a record for each revocation hearing conducted. The record shall include:

- (1) the initial notification received under §341.98 of this title;
- (2) the transcript of the revocation meeting which may take the form of the minutes of the Commission meeting;
- (3) any documentary proof submitted during the hearing;
- (4) all staff memoranda and documentation submitted to the Commission in making its decision;
- (5) a copy of the final order issued by the Commission;
- (6) any motions for rehearing; and
- (7) the Commission's ruling on any motions for rehearing.

§341.107. Release of Information.

Upon request, the Commission shall release information relating to a revocation hearing conducted under this subchapter.

§341.108. Applicability.

The mandatory revocation procedures enacted in this subchapter apply to all felony convictions, felony deferred adjudications, or convictions or deferred adjudications that require sex offender registration under Chapter 62 Texas Code of Criminal Procedure that occur on or after the effective date of this subchapter.

§341.109. Mandatory Suspension for Failure to Pay Child Support.

(a) Upon receipt of an order suspending license for failure to pay child support issued under Texas Family Code Section 232.008 or 232.009, the Commission shall suspend the juvenile probation officer's, supervisor of juvenile probation officer's or chief administrative officer's certification.

(b) Notice of Suspension. The Commission shall notify the certified juvenile probation officer, supervisor of juvenile probation officers, or the chief administrative officer subject to a suspension order

received under (a) that the agency has formally suspended the individual's certification. The notice shall also instruct the individual that he or she may not perform the duties of a certified juvenile probation officer while the suspension order is in effect. The Commission shall also notify the chief administrative officer and juvenile board of the employing juvenile probation department of the suspension.

(c) Length of Suspension. A certification suspension shall remain in effect until the Commission receives either an order issued under Texas Family Code Section 232.013 that vacates or stays the certification's suspension.

(d) An individual subject to a suspension order issued under (a) may not be hired, certified, or recertified while the suspension order remains in effect. A request for waiver under §341.6 of this title may not be requested for the standards in this section.

(e) An individual subject to a suspension order issued under (a) may not appeal the suspension order to the Commission.

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

Filed with the Office of the Secretary of State, on March 2, 2001.

TRD-200101259

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §341.113, §341.114

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.113. Notice of Complaint Procedures.

The Commission staff shall prepare and distribute to each juvenile board with which it contracts a sign describing the procedures for filing a complaint against the juvenile board with the Commission. The juvenile board shall post the sign in a public area of the juvenile probation department and any facility operated by the juvenile board, or operated by a private entity through contract with the juvenile board.

§341.114. Complaint Process.

When Commission staff receives a written, signed complaint about a juvenile board, the Commission's staff shall review the circumstances surrounding the complaint to determine whether the juvenile board has violated the rules or standards of the Commission.

(1) If the Commission's staff determines the complaint is about the juvenile services within the discretion of the juvenile board, the complaint will be referred to the juvenile board. The complainant shall be notified of the referral in writing by the Commission.

(2) If the Commission's staff determines the juvenile board has violated the Commission's rules or standards, it will inform the juvenile board in writing and give the juvenile board an opportunity to

come into compliance. If, within 90 days of the date on which the juvenile board received written notice of the Commission's staff determination, the juvenile board does not propose its own means of achieving compliance which is acceptable to the Commission's staff, the Commission's staff will propose a solution to the board and attempt to negotiate a mutually agreeable solution.

(3) If the Commission's staff and the juvenile board cannot reach an agreement, the Commission's staff will give the juvenile board written notice of its intent to refuse, reduce, or suspend state aid, under authority of the Texas Human Resources Code, §141.085. The juvenile board shall have 15 days after receipt of the notice to notify the executive director how it will comply with the Commission's staff's solution, or that it appeals the staff decision.

(4) The juvenile board's appeal must be in writing, and must state specifically its differences of opinion with the Commission's staff concerning the facts in dispute and the solution necessary under the standards or rules of the Commission. The appeal must state whether the juvenile board requests a hearing before the Commission.

(5) The Commission shall set the appeal on the agenda for its next regularly scheduled meeting. If the juvenile board has requested a hearing, the juvenile board and the Commission's staff may appear and make oral presentations concerning the appeal. If the juvenile board does not request a hearing before the Commission, the Commission will make its decision based upon the record.

(6) The complainant shall be notified in writing of the progress of the investigation and resolution of the complaint at least quarterly until the complaint is resolved, and shall be notified of the resolution.

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 March 2, 2001.

TRD-200101260

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER M. CASE MANAGEMENT STANDARDS

37 TAC §§341.121 - 341.125

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.121. Definitions.

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

(1) Assessment-Assessment is the process by which relevant and valid information is compiled in order to determine the juvenile's needs, risk of offending, strengths, and weaknesses. The assessment process is intended to assist the supervising juvenile probation

field officer in developing and implementing an effective case plan, appropriate level of supervision, and utilization of appropriate resources.

(2) Case Planning-Case planning involves the process of determining the post-adjudication needs of a juvenile. This includes all appropriate and available assessment and intake information, SJS findings, preliminary investigation information, family dynamics, school history, and victim impact statements. A written case plan outlines services to be provided during the juvenile's term of court ordered probation. Case planning also includes the reassessment, reevaluation, and review of the juvenile's risks, needs and initial case plan, in order to make any subsequent changes necessary to best meet the juvenile's status and circumstances over time.

(3) TJPC Screening Instrument- An instrument developed by the Texas Juvenile Probation Commission that assesses the juvenile's needs in the areas of mental health, education and family domains and the juvenile's risk of re-offending.

(4) Formal Intake Interview-The interview with the juvenile who is the subject of the referral and the juvenile's parent, guardian or custodian wherein the intake officer or juvenile probation officer develops a dispositional recommendation for the juvenile's case. The formal intake interview occurs subsequent to the formal referral.

(5) Formal Referral-A referral of a juvenile to the juvenile court for conduct defined in Texas Family Code Section 51.03 that results in a face to face interview between the juvenile and the authorized staff of the juvenile probation department.

(6) Progressive Sanctions Assigned Level-The level of sanctions actually assigned to a juvenile by the juvenile court that corresponds with the progressive sanctions guidelines contained in Chapter 59, Texas Family Code.

(7) Exit Plan-The exit plan is the written document developed for each juvenile that identifies the juvenile's needs for post-supervision reintegration and specifies the community resources available to meet those needs. The purpose of the exit plan is to facilitate a continuum of community services to the juvenile and the juvenile's family after probation supervision ends.

(8) Strategies in Juvenile Supervision (SJS)-A case assessment and correctional management process designed to provide a structured method for gathering and organizing information about the juvenile and translating that information into appropriate case management strategies.

(9) Supervision-Supervision involves the case management of a juvenile by the assigned juvenile probation supervising field officer or designee through contacts (face to face, telephone, office, home, collateral) with the juvenile, juvenile's family, and other case planning participants.

(10) Title IV-E Standards-Standards promulgated by the Texas Juvenile Probation Commission as detailed in Chapter 347 of this title (relating to Title IV-E Federal Foster Care Program).

§341.122. Assessment.

(a) TJPC Screening Instrument. The TJPC screening instrument shall be completed for all juveniles who receive a formal referral to the juvenile probation department. If the TJPC screening instrument has been completed within the previous six months and is contained in the juvenile's case record, the department is not required to complete an additional assessment.

(1) Time of Assessment. The TJPC screening instrument shall be administered at the formal intake interview.

(2) Administration of Instrument. The TJPC screening instrument shall be administered by the officer who conducts the intake interview.

(b) SJS. A Strategies in Juvenile Supervision (SJS) worksheet may be completed for all juveniles on court ordered probation. The SJS worksheet should be completed subsequent to the disposition of the juvenile's case and shall be completed prior to the formulation of the written case plan. The juvenile probation supervising field officer should administer the SJS worksheet.

§341.123. Case Planning and Review.

(a) Case Plan. A written case plan shall be developed and implemented for juveniles assigned to Progressive Sanctions levels three through five. The written case plan shall be developed with all appropriate and available parties present and participating including, but not limited to, the juvenile, any parent, guardian, or custodian of the child and the supervising juvenile probation field officer. Written case plans for juveniles assigned to Progressive Sanctions levels three through five shall be developed within 60 calendar days of the disposition. The original case plan shall be maintained in the juvenile's case file. Copies of the written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian.

(b) Case Review. It is recommended that written case plans be reviewed every 90 days after implementation of the initial case plan or at any time when significant changes take place in the juvenile's situation. The juvenile and at least one parent, guardian or custodian shall be present for the case review. The written case plan shall be revised to address any changes in risks and needs identified during the review process. Upon acceptance a juvenile's case from other county for courtesy supervision, a review of the current written case plan shall be conducted by the receiving county in accordance with this section. All original revised case plans shall be maintained in the juvenile's case file. Copies of the revised written case plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. This does not apply to Title IV-E cases, which shall comply with Title IV-E standards. The case review, with appropriate documentation in the case file, shall discuss and consider the following:

- (1) Appropriateness of the juvenile's current level of supervision and services;
- (2) Extent of compliance with the individualized case plan;
- (3) Extent of compliance with the conditions of probation;
- (4) Extent of progress made with the juvenile and family toward solving or reducing the factors that necessitated the juvenile's placement on probation;
- (5) A projection of a likely date by which the juvenile may be ready for court-ordered release from probation supervision; and
- (6) Services accessed, offered or provided to the juvenile and family to address risks and needs identified on the TJPC screening instrument.

§341.124. Supervision.

The level of supervision provided to a juvenile by the probation department shall be defined by the results of the TJPC screening instrument, SJS (where applicable), and the juvenile's written case plan. A minimum of one face to face contact per month with the juvenile is mandatory unless otherwise noted in the case plan.

§341.125. Exit Plan.

An exit plan is to be provided following the completion of a juvenile's probation period, unless the juvenile was committed to the Texas Youth Commission. A written exit plan shall be developed prior to the juvenile's scheduled release from probation. The written exit plan shall be

formulated by all involved and available parties. The original exit plan shall be placed in the juvenile's case file. Copies of the exit plan shall be provided to the juvenile and the juvenile's parent, guardian, or custodian. The exit plan shall include a copy of the notification given to the juveniles regarding sealing rights as required by the Texas Family Code §58.003(i).

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 March 2, 2001.

TRD-200101261

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER N. DATA COLLECTION STANDARDS

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.132 - 341.137

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.132. Definitions.

The following words or terms, when used during Part I of this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) CASEWORKER-A personal computer-based tracking and case management system, developed and supported by the Texas Juvenile Probation Commission (TJPC), that provides juvenile probation officers a systematic method to track and manage juvenile offender caseloads.

(2) Data Coordinator-A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with TJPC on all matters relating to data collection and reporting.

(3) TJPC Monthly Folder Extract-An automated process to extract and submit modified case records from the department's CASEWORKER system to TJPC. The extract created by CASEWORKER follows in accordance with the Electronic Data Interchange Specifications.

(4) Comprehensive Folder Edit-A report generated in CASEWORKER that performs an extensive edit of the folder information. This report identifies incorrectly entered data, unrecoverable files, and questionable data that impact the accuracy of the reports and programs.

(5) Annual Resource Survey-A manual report designed to gather supplemental data in relation to juvenile activity and the services and/or programs that are available within the department or community. This report also captures each department's staff size, salary range and caseload.

(6) Electronic Data Interchange Specifications-document developed by TJPC outlining the data fields and file structures that each department is required to follow in submitting the TJPC monthly folder extract. The Electronic Data Interchange Specifications are published in Subchapter O, §341.150 of this title.

§341.133. Data Coordinator.

(a) Designation. Each juvenile board shall designate an employee of the juvenile probation department to serve as data coordinator to function as the primary contact with TJPC on all matters relating to data collection, reporting and the CASEWORKER system. If the designation of the data coordinator is changed by the juvenile board, TJPC shall be notified in writing within ten working days.

(b) Training Requirements. The data coordinator shall have a thorough understanding of TJPC reporting requirements and shall be trained on CASEWORKER by TJPC. Within 90 days from date of a new designation as data coordinator, the new data coordinator shall attend CASEWORKER training provided by TJPC.

(c) Duties. The data coordinator is responsible for ensuring that all data submitted to TJPC by the local juvenile probation department is accurate, timely, and consistent with TJPC reporting requirements. The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§341.134. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract shall be sent to TJPC via the Internet. The extract is due to TJPC on the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10).

§341.135. Other Reports.

(a) Annual Resource Survey. All juvenile probation departments are required to complete the Annual Resource Survey. The report must be completed in the format provided by TJPC and shall be submitted by January 31 of the following year for which the resource survey pertains.

(b) Special Requests. Information from juvenile probation departments is periodically requested by TJPC. Departments shall comply with these requests, whether on paper or electronically by e-mail or the Internet, in the format specified by TJPC.

§341.136. Accuracy of Data.

(a) Required Fields. The probation department shall fill in all applicable data fields for each referral in their CASEWORKER system to minimize missing information.

(b) Comprehensive Folder Edit. Probation departments shall run the Comprehensive Folder Edit on a monthly basis.

(c) Errors. Errors detected by the Comprehensive Folder Edit, the annual TJPC monitoring visit, or the TJPC Research and Planning Division upon analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§341.137. Security of Data.

(a) Passwords. Passwords shall be assigned by the CASEWORKER administrator or management information systems administrator for each individual user and should not be shared by employees or other persons. Each department shall have a limited number of employees that are authorized to delete information contained within CASEWORKER. Access to the department's CASEWORKER system shall be removed concurrent with the termination of the person's employment.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy for the backup and restoration procedures relating to data, requiring, at a minimum, a

system backup once per week. Departments must maintain at least five generations (copies) of data backups.

(c) Off-Site Storage. All juvenile probation departments shall store a system backup off-site to be accessible in case of a disaster at the department (fire, tornado, etc). An updated backup for off-site storage must be run at a minimum of once a month, in addition to the five generations of backup.

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 March 2, 2001.

TRD-200101262

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.138 - 341.143

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.138. Definitions.

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

(1) Data Coordinator--A person employed by a juvenile probation department who is designated by the juvenile board to serve and function as the primary contact with TJPC on all matters relating to data collection and reporting.

(2) TJPC Monthly Folder Extract--An automated process to gather data relating to all case files in the case management system designed to analyze crime and juvenile trends, program success, and profiling of juvenile offenders. The extract shall be submitted in the format specified by the TJPC Electronic Data Specifications.

(3) Electronic Data Interchange Specifications--document developed by TJPC outlining the data fields and file structures that each department is required to follow in submitting the TJPC Monthly folder extract. The Electronic Data Interchange Specifications are published in Subchapter O, §341.150 of this title.

(4) Annual Resource Survey--A manual report designed to gather supplemental data in relation to juvenile activity and the services and/or programs that are available within the department or community. This report also captures the department's staff size, salary range and caseload.

§341.139. Data Coordinator.

(a) Designation. Each juvenile board shall designate an employee of the juvenile probation department to serve as data coordinator to function as the primary contact with TJPC on all matters relating to data collection and reporting. If the designation of the data coordinator is changed by the juvenile board, TJPC shall be notified in writing within ten working days.

(b) Training Requirements. The data coordinator shall attend training, as required and deemed necessary by TJPC, relating to updates on statistical and research-based information and requirements.

(c) Duties. The data coordinator is responsible for ensuring that the data submitted to TJPC by the local juvenile probation department is accurate, timely, and consistent with TJPC reporting requirements. The data coordinator shall ensure that the TJPC Monthly Folder Extract is received on or by the applicable due date.

§341.140. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract data shall be sent to TJPC via the internet and shall include all data fields required by the TJPC Electronic Data Interchange Specifications. The extract is due to TJPC on the tenth day of each month following the reporting period (example: extract of February data is due to TJPC on March 10).

§341.141. Other Report.

(a) Annual Resource Survey. All juvenile probation departments are required to complete the Annual Resource Survey. The report must be completed in the format provided by TJPC and shall be submitted by January 31 of the following year for which the resource survey pertains.

(b) Special Requests. Information from juvenile probation departments is periodically requested by TJPC. Departments shall comply with these requests, whether on paper or electronically by e-mail or the Internet, in the format specified by TJPC.

§341.142. Accuracy of Data.

(a) Required Fields. Departments shall fill in all applicable fields as specified in the CASEWORKER Extract File Layout. If TJPC requires additional fields, each department shall update their case management system to include such information.

(b) Maintaining Accuracy. Each department shall have a written policy and procedure to maintain accuracy of data submitted and methods of correcting errors. Each department shall report data elements that are consistent with TJPC definitions.

(c) Errors. Errors detected by the department during daily operation, or by TJPC during the annual monitoring visit or by the TJPC Research and Planning Division analysis shall be corrected prior to the next submission of the TJPC Monthly Folder Extract.

§341.143. Security of Data.

(a) Passwords. Department users shall be required to obtain a password to their case management system. Each department shall have a written policy and procedure to ensure secured access and to limit the number of employees that have access to delete information from the case management system. Access to the department case management system shall be terminated for people no longer employed by the department.

(b) Backup and Restoration. All juvenile probation departments shall adopt and follow a written policy.

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 March 2, 2001.

TRD-200101263

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710

◆ ◆ ◆
SUBCHAPTER O. ELECTRONIC DATA
INTERCHANGE SPECIFICATIONS

37 TAC §341.150

The new sections is proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.150. TJPC Monthly Folder Extract.

The TJPC Monthly Folder Extract data shall include all data fields required by TJPC Electronic Data Interchange Specifications found in the figure below.

Figure 1: 37 TAC §341.150

Figure 2: 37 TAC §341.150

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 March 7, 2001.

TRD-200101370

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710

◆ ◆ ◆
SUBCHAPTER P. TEXAS JUVENILE
PROBATION COMMISSION

37 TAC §341.157, §341.158

The new sections are proposed under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

§341.157. Memoranda of Understanding-Coordinated Services for Multiproblem Children and Youth.

(a) The Texas Juvenile Probation Commission adopts by reference a joint memorandum of understanding with the Texas Commission for the Blind, Texas Department of Health, Texas Department of Protective and Regulatory Services, Texas Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Rehabilitation Commission, and the Texas Youth Commission concerning coordinated services for multiproblem children and youth which provides for the implementation of a system of community resource coordination groups.

(b) The memorandum of understanding was published in the November 15, 1988, issue of the Texas Register (13 TexReg 5727) by the Texas Department of Human Services, 40 TAC §72.701. Copies of the memorandum of understanding are available from the Texas Juvenile Probation Commission.

§341.158. Memoranda of Understanding--Service Delivery to Dysfunctional Families.

(a) The Texas Juvenile Probation Commission adopts by reference a joint memorandum of understanding with the Texas Department of Human Services and the Texas Youth Commission regarding service delivery to dysfunctional families.

(b) The memorandum of understanding was published in the Texas Register by the Texas Department of Human Services on October 29, 1991 (16 TexReg 6126). Copies of the memorandum of understanding are available from the Texas Juvenile Probation Commission.

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

Filed with the Office of the Secretary of State, on March 2, 2001.

TRD-200101264

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: April 15, 2001

For further information, please call: (512) 424-6710



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 403. OTHER AGENCIES AND THE PUBLIC

SUBCHAPTER B. CHARGES FOR COMMUNITY-BASED SERVICES

25 TAC §§403.41 - 403.53

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration proposed repeal of §§403.41 - 403.53 which appeared in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1652).

Filed with the Office of the Secretary of State on March 1, 2001
TRD-200101228

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: March 1, 2001
For further information, please call: (512) 206-5216



CHAPTER 412. LOCAL AUTHORITY RESPONSIBILITIES

SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §§412.101 - 412.114

The Texas Department of Mental Health and Mental Retardation has withdrawn from consideration proposed new rules §§412.101 - 412.114 which appeared in the February 23, 2001, issue of the *Texas Register* (26 TexReg 1652 - 1657).

Filed with the Office of the Secretary of State on March 1, 2001.
TRD-200101227

Andrew Hardin
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Effective date: March 1, 2001
For further information, please call: (512) 206-5216



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.809

The Comptroller of Public Accounts has withdrawn from consideration proposed amendment to §3.809 which appeared in the November 3, 2000, issue of the *Texas Register* (25 TexReg 10882).

Filed with the Office of the Secretary of State on February 28, 2001

TRD-200101197
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: February 28, 2001
For further information, please call: (512) 463-4062



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS SUBCHAPTER A. DEFINITIONS

37 TAC §341.1

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rule §341.1 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12907).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101232

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §§341.2 - 341.6

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rules §§341.2 - 341.6 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12907).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101233

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §§341.13 - 341.17

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rules §§341.13 - 341.17 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12909).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101234

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER D. FISCAL OFFICER RESPONSIBILITIES

37 TAC §§341.24 - 341.31

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rules §§341.24 - 341.31 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12910).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101235

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER E. EMPLOYMENT OF JUVENILE PROBATION OFFICERS

37 TAC §§341.38 - 341.42

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rules §§341.38 - 341.42 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12910).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101236

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER F. CERTIFICATION OF JUVENILE PROBATION OFFICERS

37 TAC §§341.48 - 341.52

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rules §§341.48 - 341.52 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12911).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101237

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER G. TRAINING OF JUVENILE PROBATION OFFICERS

37 TAC §§341.58 - 341.62

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rules §§341.58 - 341.62 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12913).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101238

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 2, 2001
For further information, please call: (512) 424-6710



SUBCHAPTER H. DUTIES OF CERTIFIED JUVENILE PROBATION OFFICERS

37 TAC §341.68

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new rule §341.68 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12918).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101239

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER I. JUVENILE PROBATION OFFICER CODE OF ETHICS

37 TAC §341.75

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §341.75 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12914).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101240

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER J. ENFORCEMENT PROCEDURES--CODE OF ETHICS

37 TAC §§341.82-341.92

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §§341.82-341.92 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12915).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101241

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 2, 2001
For further information, please call: (512) 424-6710



SUBCHAPTER K. MANDATORY CERTIFICATION REVOCATION

37 TAC §§341.98-341.108

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §§341.98-341.108 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12916).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101242

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER L. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §341.113, §341.114

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §341.113 and §341.114 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12917).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101243

Lisa Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Effective date: March 2, 2001

For further information, please call: (512) 424-6710



SUBCHAPTER M. CASE MANAGEMENT STANDARDS

37 TAC §§341.121-341.125

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §§341.121-341.125 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12918).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101244

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 2, 2001
For further information, please call: (512) 424-6710

◆ ◆ ◆
**SUBCHAPTER N. DATA COLLECTION
STANDARDS**

DIVISION 1. CASEWORKER SYSTEMS

37 TAC §§341.132-341.137

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §§341.132-341.137 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12919).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101245

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 2, 2001
For further information, please call: (512) 424-6710

◆ ◆ ◆
DIVISION 2. NON-CASEWORKER SYSTEMS

37 TAC §§341.138-341.143

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §§341.138-341.143 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12920).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101246

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 2, 2001
For further information, please call: (512) 424-6710

◆ ◆ ◆
**SUBCHAPTER O. ELECTRONIC DATA
INTERCHANGE SPECIFICATIONS**

37 TAC §341.150

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §341.150 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12921).

Filed with the Office of the Secretary of State on March 7, 2001.

TRD-200101369

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 7, 2001
For further information, please call: (512) 424-6710

◆ ◆ ◆
**SUBCHAPTER P. TEXAS JUVENILE
PROBATION COMMISSION**

37 TAC §341.157, §341.158

The Texas Juvenile Probation Commission has withdrawn from consideration proposed new §341.157 and §341.158 which appeared in the December 29, 2000, issue of the *Texas Register* (25 TexReg 12922).

Filed with the Office of the Secretary of State on March 2, 2001.

TRD-200101247

Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: March 2, 2001
For further information, please call: (512) 424-6710

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 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 1. GENERAL PROVISIONS

16 TAC §303.83

The Texas Racing Commission adopts an amendment to §303.83, relating to audits, financial statements, and performance measures without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 14) and the section will not be republished. The amendment will require each breed registry to submit a schedule of awards payable in a format prescribed by the executive secretary. The Racing Act requires the Commission to audit the breed registries. This amendment will increase productivity and efficiency in that process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse or greyhound racing; §6.08 and §6.09, which authorizes the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses and greyhounds respectively.

The amendment implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101283

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER B. OPERATION OF RACETRACKS

DIVISION 2. FACILITIES AND EQUIPMENT

16 TAC §309.117

The Texas Racing Commission adopts an amendment to §309.117 relating to first aid care on association grounds without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 14) and the section will not be republished. The amendment will permit the associations more flexibility in providing first aid care to patrons and licensees. The rule will no longer require certain equipment and personnel but would leave those decisions to the associations, so long as adequate care was provided. Additionally, with this amendment, the rule will now require first aid care be available whenever the facility was open to the public, not only during a live meet.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §3.021 which authorizes the Commission to regulate all aspects of greyhound and horse racing in the State, and §6.06, which authorizes the Commission to adopt rules regulating all matters relating to the operation of racetracks.

The amendment implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101282

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699

◆ ◆ ◆
SUBCHAPTER D. GREYHOUND
RACETRACKS

DIVISION 2. OPERATIONS

16 TAC §309.355

The Texas Racing Commission adopts an amendment to §309.355, relating to the grading system for greyhound without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 15) and the section will not be republished. The amendment increases the number of mixed greyhound races permitted within a one-week period. This adjustment will allow for additional races and therefore additional wagering opportunities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §6.06, which authorizes the Commission to adopt rules regulating all matters relating to the operation of racetracks; and §11.01 which authorizes the Commission to adopt rules to regulate wagering on greyhound and horse races.

The amendment implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101281

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699

◆ ◆ ◆
CHAPTER 311. OTHER LICENSES
SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.103

The Texas Racing Commission adopts an amendment to §311.103, relating to greyhound kennel owners without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 16) and the section will not be republished. The amendment will reduce the percentage of Texas-bred greyhounds required on a kennel owner's active list. This is required to address a temporary shortage of Texas-bred greyhounds.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §6.06, which authorizes the

Commission to adopt rules regulating all matters relating to the operation of racetracks; and §11.01 which authorizes the Commission to adopt rules to regulate wagering on greyhound and horse races.

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

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 March 5, 2001.

TRD-200101280

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699

◆ ◆ ◆
CHAPTER 315. OFFICIALS AND RULES FOR
GREYHOUND RACING
SUBCHAPTER B. ENTRIES AND PRE-RACE
PROCEDURES

16 TAC §315.102

The Texas Racing Commission adopts an amendment to §315.102, relating to race entry procedures for greyhounds without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 16) and the section will not be republished. The amendment will grant to the association racing secretary the discretion to allow double entries. The amendment will increase racing opportunities by permitting more eligible greyhounds to participate in a race.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to regulate every race meeting in this state involving wagering on the result of greyhound or horse racing; §6.06, which authorizes the Commission to adopt rules regulating all matters relating to the operation of racetracks; and §11.01 which authorizes the Commission to adopt rules to regulate wagering on greyhound and horse races.

The amendment implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101279

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699

◆ ◆ ◆

CHAPTER 319. VETERINARY PRACTICES
AND DRUG TESTING
SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.14

The Texas Racing Commission adopts an amendment to §319.14, relating to possession of certain substances by veterinarian on association grounds without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 17) and the section will not be republished. The amendment will add substances which are not permitted to be possessed on association grounds by veterinarians. The amendment also adds language which will delegate the authority from the executive secretary to the commission veterinarian to approve the possession of a substance upon submission of documentation of proven beneficial, therapeutic application for horses or greyhounds in veterinary journals.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to adopt rules for conducting horse or greyhound racing and for administering the Texas Racing Act; §3.021 which authorizes the Commission to regulate all aspects of horse or greyhound racing in this state with or without wagering; §3.16 which authorizes the Commission to adopt rules prohibiting the illegal influence of the outcome of a race; and §6.06 which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The amendment implements Texas Civil Statutes, Article 179e.

Filed with the Office of the Secretary of State on March 5, 2001.

TRD-200101278
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: April 1, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 833-6699

◆ ◆ ◆

SUBCHAPTER D. DRUG TESTING
DIVISION 1. GENERAL PROVISIONS

16 TAC §319.304

The Texas Racing Commission adopts an amendment to §319.304, concerning penalties on a positive test without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 17) and the section will not be republished. The amendment delegates the authority of the Commission to the executive secretary to promulgate a classification for prohibited substances and a schedule for disciplinary action. The rule will clarify the types of prohibited substances and associate appropriate punishment for each violation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to adopt rules for conducting horse or greyhound racing and for administering the Texas Racing Act; §3.021 which authorizes the Commission to regulate all aspects of horse or greyhound racing in this state with or without wagering; §3.16 which authorizes the Commission to adopt rules prohibiting the illegal influence of the outcome of a race; §6.06 which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

The amendment implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101277
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: April 1, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 833-6699

◆ ◆ ◆

DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.362

The Texas Racing Commission adopts an amendment to §319.362, concerning split specimen without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 18) and the section will not be republished. The amendment adds language which would limit the split option to an owner or trainer to the type of specimen that rendered the positive result. The amendment would also require an owner, trainer or designee to notify the executive secretary of his/her election within 48 hours of notification. Failure to do so will constitute a waiver of the split election.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to adopt rules for conducting horse or greyhound racing and for administering the Texas Racing Act; §3.021 which authorizes the Commission to regulate all aspects of horse or greyhound racing in this state with or without wagering; §3.16 which authorizes the Commission to adopt rules prohibiting the illegal influence of the outcome of a race; and §6.06 which authorizes the Commission to adopt rules relating to all aspects of pari-mutuel tracks.

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

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 March 5, 2001.

TRD-200101276

Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: April 1, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING

The Texas Racing Commission adopts the repeal of Chapter 321 relating to pari-mutuel wagering without changes to the proposed text as published in the January issue of the *Texas Register* (26 TexReg 19) in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and Government Code §2001.039. The Commission's review included an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist.

As a result of the Commission's review and meetings with the licensed associations and industry related organizations, it was determined that a complete replacement was necessary to reflect the new technology in the pari-mutuel wagering industry. Consequently, the Commission adopted the repeal of Chapter and new Chapter 321. Further details of the new Chapter 321 can be found in the "Adoptions" section of this issue.

As part of the replacement of the Commission rules, the agency is complying with the Government Code §2001.039 requirements, repealing rules that are redundant with other statutes or rules, and updating existing rules to ensure that they are consistent with current agency application and interpretation.

No comments were received regarding the repeal and replacement of Chapter 321.

SUBCHAPTER A. REGULATION AND TOTALISATOR OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.1-321.8

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of parimutuel wagering on races.

The proposal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101285
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: April 1, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 833-6699



DIVISION 2. MUTUEL TICKETS

16 TAC §§321.31-321.39

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races. .

The proposal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101353
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: April 1, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 833-6699



DIVISION 3. REGULATION OF WAGERING

16 TAC §§321.61-321.69, 321.71, 321.72

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101286
Judith L. Kennison
General Counsel
Texas Racing Commission
Effective date: April 1, 2001
Proposal publication date: January 5, 2001
For further information, please call: (512) 833-6699



SUBCHAPTER B. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §§321.101-321.119

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101287

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: October 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



SUBCHAPTER C. SIMULCAST WAGERING

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.201-321.210

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101288

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 2. SIMULCASTING AT HORSE

RACETRACKS

16 TAC §§321.232-321.235

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101289

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 4. COMMON POOL WAGERING

16 TAC §§321.271-321.277

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101290

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



SUBCHAPTER D. TOTALISATOR OPERATIONS

DIVISION 1. MUTUEL FACILITIES

16 TAC §§321.301-321.306

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101291

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 2. TOTALISATOR SYSTEM REQUIREMENTS

16 TAC §§321.321-321.337

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101292

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 3. TOTALISATOR OPERATIONAL REQUIREMENTS

16 TAC §§321.351-321.363

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §§11.01, 11.011, and 11.04, which authorizes the Commission to adopt rules to regulate all aspects of pari-mutuel wagering on races.

The repeal implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101293

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission adopts new §§321.1, 321.3, 321.5, 321.7, 321.9, 321.11, 321.13, 321.15, 321.17, 321.19, and 321.21 relating to mutuel operations; §§321.23, 321.25, and 321.27 relating to wagering explanations; and §§321.29, 321.31, 321.33-321.35, 321.37, 321.39, 321.41, 321.43, and

321.45 relating to mutuel tickets and vouchers, without changes to the proposed text as published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 23) and will not be republished. The new rules define new terminology, delineate reporting requirements, describe the duties of licensees and clarify the procedures and requirements for issuing, canceling, and cashing mutual tickets or vouchers.

The Texas Racing Commission adopts these new sections in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and the Government Code §2001.039. After review by the Commission and meetings with the licensed associations, totalisator companies and industry related organizations, the agency determined that there was a significant need to adopt a new Chapter 321. It was determined that a complete replacement of Chapter 321 would be beneficial to both the agency and the public. The repeal of the old Chapter 321 is also adopted elsewhere in this issue of the *Texas Register*. The new rules will ensure strict enforcement of pari-mutuel wagering, protect patrons and provide rules which are consistent with current terminology.

No comments were received regarding the adoption of these new sections.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.1, 321.3, 321.5, 321.7, 321.9, 321.11, 321.13, 321.15, 321.17, 321.19, 321.21

New §§321.1, 321.3, 321.5, 321.7, 321.9, 321.11, 321.13, 321.15, 321.17, 321.19, and 321.21 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

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 March 5, 2001.

TRD-200101294

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §§321.23, 321.25, 321.27

New §§321.23, 321.25, and 321.27 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and

for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101295

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §§321.29, 321.31, 321.33 - 321.35, 321.37, 321.39, 321.41, 321.43, 321.45

New §§321.29, 321.31, 321.33, 321.34, 321.35, 321.37, 321.39, 321.41, 321.43, and 321.45 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101296

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



SUBCHAPTER B. TOTALISATOR REQUIREMENTS AND OPERATING ENVIRONMENT

The Texas Racing Commission adopts new §§321.101, 321.103, 321.105, and 321.107 relating to facilities and equipment; §§321.121, 321.123, 321.125, and 321.127, relating to general management requirements; and §§321.131, 321.133, 321.135, 321.137, 321.139, 321.141, and 321.143, relating to reporting and log requirements. Section 321.131 is adopted with changes to the proposed text published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 27). Sections 321.101, 321.103, 321.105, 321.107, 321.121, 321.123, 321.125, 321.127, 321.133, 321.135, 321.137, 321.139, 321.141, and 321.143, are adopted without changes and will not be republished.

The new rules require the totalisator companies to maintain certain hardware and software capabilities for the protection of the pari-mutuel wagering system. The rules also delineate the duties of totalisator company employees, specify network requirements, and require the totalisator companies to maintain certain reports and logs to ensure the proper operation of the totalisator system.

The Texas Racing Commission adopted these new sections in accordance with the requirements of Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and the Government Code §2001.039.

As a result of the Commission's review and meetings with the licensed associations, totalisator companies and industry related organizations, it was determined that a complete replacement of Chapter 321 would be beneficial to both the agency and the public. The repeal of the old Chapter 321 is also adopted elsewhere in this *Texas Register* issue.

No comments were received regarding the adoption of these new sections.

DIVISION 1. FACILITIES AND EQUIPMENT

16 TAC §§321.101, 321.103, 321.105, 321.107

New §§321.101, 321.103, 321.105, and 321.107 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101297

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: October 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 2. OPERATIONAL REQUIREMENTS

16 TAC §§321.121, 321.123, 321.125, 321.127

New §§321.121, 321.123, 321.125, and 321.127 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101298

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: October 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 3. REPORTING AND LOG REQUIREMENTS

16 TAC §§321.131, 321.133, 321.135, 321.137, 321.139, 321.141, 321.143

New §§321.131, 321.133, 321.135, 321.137, 321.139, 321.141, and 321.143 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

§321.131. *General Requirements.*

General Requirements.

(1) A totalisator system must be able to produce hard copy reports and logs necessary to audit pari-mutuel activity and to recreate any given day of wagering in its entirety.

(2) A totalisator company shall retain the information needed to produce these reports and logs on storage devices for at least 365 days after the date the wagering occurred.

(3) A totalisator company shall provide a report or log requested by the executive secretary no later than 48 hours after the totalisator operator receives the request. A printed report must have consecutively numbered pages. Each page of the report must be headed with:

- (A) the name of the race track;
- (B) the date and time (in hours, minutes, and seconds) the report was produced;
- (C) the performance number if applicable;
- (D) the wagering site to which the report refers; and
- (E) the version of software in use.

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 March 5, 2001.

TRD-200101299

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: October 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



SUBCHAPTER C. REGULATION OF LIVE WAGERING

The Texas Racing Commission adopts new §§321.201, 321.203, 321.205, 321.207, 321.209, 321.211, 321.213, 321.215, and 321.217, relating to the regulation of live wagering; and §§321.301-321.318, relating to distribution of pari-mutuel pools without changes to the proposed text published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 35) and the sections will not be republished.

The new rules authorize the stewards and racing judges to correct posting errors, determine betting interests, and issue "stop betting" commands. The rules also establish the types of wagering pools permitted and the rules for distributing those pools under various scenarios. The new rules are necessary to ensure that pari-mutuel wagering will be strictly regulated, the patrons will be protected, and the rules will be consistent with current technology.

No comments were received regarding the adoption of these new rules.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.201, 321.203, 321.205, 321.207, 321.209, 321.211, 321.213, 321.215, 321.217

New §§321.201, 321.203, 321.205, 321.207, 321.209, 321.211, 321.213, 321.215, and 321.217 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-

mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101300

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §§321.301-321.318

New §§321.301-321.318 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101301

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



SUBCHAPTER D. SIMULCAST WAGERING

The Texas Racing Commission adopts new §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413, 321.415, 321.417, 321.419, and 321.421, relating to general provisions for simulcast wagering; §§321.451, 321.453, 321.455, 321.457, 321.459, and 321.461, relating to common pool wagering; and §§321.501, 321.503, 321.505, and §321.509 relating to simulcasting at horse racetracks with and without changes to the proposed text published in the January 5, 2001 issue of the *Texas Register* (26 TexReg 47) and the sections will not be republished. The Commission also adopts

§ 321.507 with changes. The changes from the proposed text are described below.

The new rules set forth the association requirements for receiving and sending simulcast signals, specify the duties and responsibilities of the association's mutuel and totalisator employees, and clarify the procedures for emergencies and for establishing and distributing common pools. The new rules also require the associations to negotiate with horsemen in all simulcasting matters and establish procedures for the allocation of purses and Texas-bred funds.

The adoption also incorporates a policy change to permit a non-profit county fair racetrack to offer simulcast races for wagering at times other than when the track is offering live racing. This change, in §321.507, was necessary in order to delete language previously proposed which permitted other racetracks to approve or disapprove a Class 3 track's simulcasting request to ensure the constitutionality of the rule. In another change to the rule as proposed, the Commission incorporated an additional restriction that requires a history of at least 25 years of live racing as a prerequisite to Class 3 and 4 simulcasting. Because Gillespie County Fair is the state's only Class 3 racetrack, this new restriction effectively limits the expanded simulcasting authority to that track alone.

These new rules will ensure that pari-mutuel wagering will be strictly regulated, the patrons will be protected, the rules will be consistent with the current technology, non-profit fair racetracks will have increased viability, wagering opportunities for Texas patrons will increase, purse payouts to the owners and trainers of horses racing at the affected Class 3 or 4 racetracks will increase, revenue for the Texas-bred incentive programs will increase, the distribution of the simulcast races conducted at other Texas racetracks will increase, and funds generated from wagering for the use of the owners, trainers, and breeders of race animals will be distributed fairly and accurately.

No comments were received regarding the adoption of some of these rules with the exception of §321.507. Written comments were received from state officials in support of the new rule. Oral testimony was received by the Commission at its February 27, 2001 meeting. This testimony included a representative from Retama Park who suggested a modification to the rule which would reduce the required management experience from five years to three years. This change was accepted by the Commission and incorporated into the rule as adopted. Oral testimony also included a representative from the Gillespie County Fairgrounds who reiterated its desire for an expeditious enactment of this rule.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413, 321.415, 321.417, 321.419, 321.421

New §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413, 321.415, 321.417, 321.419, and 321.421 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the

Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101302

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 2. COMMON POOL WAGERING

16 TAC §§321.451, 321.453, 321.455, 321.457, 321.459, 321.461

New §§321.451, 321.453, 321.455, 321.457, 321.459, and 321.461, are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

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 March 5, 2001.

TRD-200101303

Judith L. Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



DIVISION 3. SIMULCASTING AT HORSE RACETRACKS

16 TAC §§321.501, 321.503, 321.505, 321.507, 321.509

New §§321.501, 321.503, 321.505, 321.507, and 321.509 are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; § 3.021, which authorizes the Commission to regulate all aspects of racing in this state; §6.06, which authorizes the

Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the Commission to adopt rules to regulate pari-mutuel wagering; and §11.011 which authorizes the Commission to adopt rules to regulate pari-mutuel wagering on simulcast races.

The adoption implements Texas Civil Statutes, Article 179e.

§321.507. *Priority Of Signals.*

(a) Class 1 and Class 2 Racetracks. A Class 1 or Class 2 racetrack may offer pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the executive secretary, provided the Class 1 or Class 2 racetrack also offers all available simulcast races originating in Texas on that day.

(b) Class 3 and Class 4 Racetracks. A Class 3 or Class 4 racetrack may conduct pari-mutuel wagering on a race simulcast from another jurisdiction, subject to the approval of the executive secretary, provided the Class 3 or Class 4 racetrack:

(1) also offers all available simulcast races originating in Texas on that day;

(2) is owned or managed by an entity that has at least three years experience operating a pari-mutuel racetrack in Texas;

(3) demonstrates to the executive secretary's satisfaction that the simulcasting is necessary to provide sufficient purses to support the Texas live racing industry;

(4) demonstrates to the executive secretary's satisfaction that the live racing program offered at the racetrack provides significant support to the Texas horse breeding industry; and

(5) has conducted live horse races at its racetrack facility each year for at least 25 years before requesting to conduct pari-mutuel wagering on simulcast races.

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 March 5, 2001.

TRD-200101304

Judith Kennison

General Counsel

Texas Racing Commission

Effective date: April 1, 2001

Proposal publication date: January 5, 2001

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 151. RULES RELATING TO PRACTICE AND PROCEDURE

The Texas Appraiser Licensing and Certification Board adopts the repeal of §§151.1-151.8, 151.9-151.14 and 151.15-151.19 and 151.30, concerning General Provisions, Contested Case Hearings and Post Hearing, without changes to the proposed

text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12574) and will not be republished.

Chapter 151 is being repealed and replaced with new Chapter 157, which is contemporaneously adopted elsewhere in this issue of the *Texas Register*. Section 151.1, concerning Definitions, has been combined with the definitions in §153.1. Chapter 151 is being relocated to Chapter 157 so that Chapter 153 concerning Provisions of the Texas Appraiser Licensing and Certification Act, are the first set of rules that appear in the Texas Administrative Code.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§151.1-151.8

The repeals are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101157

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §§151.9-151.14

The repeals are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101158

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



SUBCHAPTER C. POST HEARING

22 TAC §§151.15-151.19, 151.30

The repeals are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101159

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



CHAPTER 153. PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.7-153.10, 153.13, 153.15-153.22, 153.25

The Texas Appraiser Licensing and Certification Board adopts amendments to §§153.1, 153.5, 153.7-153.10, 153.13, 153.15-153.22 and 153.25, concerning Provisions of the Texas Appraiser Licensing and Certification Act. Sections 153.1, 153.8, 153.13 and 153.18 are adopted with changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12574). Sections 153.5, 153.7, 153.9, 153.10, 153.15-153.17, 153.19-153.22 and 153.25 are adopted without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12574) and will not be republished.

Section 153.1--the words "this chapter" have been changed to "these rules" because the definitions from §151.1 and §153.1 have been combined. Section 153.1 has been updated to remove irrelevant wording and includes current information. Section 153.1 also includes new definitions for Complaining Witness, Contested Case, Day, License, Licensee, Licensing, Market Analysis, Party, Petitioner, Record, Respondent, Restricted use appraisal report and Summary appraisal report. In addition to the proposed changes, the definition for paragraph (18) "Day" is adopted with changes to include a capital A instead of a lower case a.

Section 153.5 combines old (a)(1) and (a)(2) to make the fees the same for original licensing and renewals, as they are for other categories. Section 153.5 also raises the renewal fee for the State License category from \$100 to \$125 and raises the application fee and renewal fees for appraiser trainees from \$50 to \$75 for a one year approval and includes a new fee of \$150 for temporary non-resident appraisers. This includes a "free" 150 day extension for temporary non-resident appraisers in "federally related transactions".

Section 153.7 removes the unnecessary hyphens between "state" and "certified".

Section 153.8 contains general "clean up" to remove unnecessary language and to update the rule. Section 153.8(b) and (c) contain a new paragraph (4) which would allow a residential certified appraiser to appraise non-residential properties (for the purpose of gaining experience). Section 153.8(e)(1) contains new language that reinforces the "active, personal and diligent supervision" by sponsors for appraiser trainees (as found in §153.20(a)(12)). In addition to the proposed changes, subsections (b)(4) and (c)(4) have been adopted with changes to reflect the correct title, "state certified general real estate appraiser" rather than a general certified real estate appraiser.

Section 153.9 contains a new subsection (a)(5) which "satisfies all unresolved enforcement matters and requirements with the board". Section 153.9(b)(1)-(9) removes all specific TALCB form numbers. Section 153.9(b) contains a new paragraph (10)--Extension of Non-Resident Temporary Practice Registration form. Section 153.9(e) adds non-resident temporary practice to the list. Section 153.9 contains a new subsection (f) which strengthens the language regarding denial of licensure. Section 153.9 contains a new subsection (h) regarding current operational policy.

Section 153.10(a) adds "approved", "approval" and registered to better reflect "approved appraiser trainee" classification. Section 153.10(b) adds "approval" and "registration".

Section 153.13 has been "cleaned up" to allow the rules to be clear and concise and to conform the language to AQB criteria. Section 153.13(m)(4) allows an "equivalent" USPAP course, as determined by the AQB to be acceptable and conforms to AQB policy. In addition to the proposed changes, subsection (e)(3) has been adopted with changes to add the closing parenthesis to "(relating to distance education)".

Section 153.15 updates the rule throughout to make certain that only "real estate" appraisal counts for experience. Section 153.15(d)(8) conforms to AQB criteria and removes unnecessary stop-gap language. Teaching has not been acceptable for meeting the experience requirements for the TALCB since January 1, 1998. Section 153.15(f)(4) is new and necessary to reduce confusion.

Section 153.16(a) puts the responsibility on the appraiser trainee applicant to really try to find a sponsor.

Section 153.17(a) contains the terms for appraiser trainee. Section 153.17(b) reinforces licensee's responsibility to renew in time. Section 153.17(g) is broken down to paragraphs (1)-(3) for clearer understanding.

Section 153.18(b) changes "authorization" to "approval". Paragraphs (1) and (2) have been reworded to reduce confusion. Paragraph (3) has been deleted to remove unnecessary language. Section 153.18(d)(2)(B) conforms the paragraph with §14(b) of the Act. Section 153.18(d)(2)(F)(ii) adds "or its successor". Section 153.18(d)(2)(H)(iv) allows the national USPAP Update course (when developed), or its equivalent as determined by the AQB, as an alternative. In addition to the proposed changes, subsection (d)(2)(F)(ii) is adopted with changes to include a comma after the word, "successor".

Section 153.19 has updated the section title to "Criminal Histories" rather than "Criminal Backgrounds".

Section 153.20(a)(3) is new and contains "failing to comply with USPAP" as a reason for disciplinary action. Section

153.20(a)(12) has been updated for trainees and non-resident temporary practice. Section 153.20(18) is a new paragraph and reinforces prohibition of misrepresentation of type or number of license. Section 153.20 adds a new subsection (c) and specifies what is current practice.

Section 153.21 adds "and Sponsors" to the section heading since the chapter deals with both appraiser trainees and their sponsors. Section 153.21(a) deletes hyphens between "appraiser" and "trainee". Also §153.21(a) helps tighten up the sponsor/trainee relationship by adding "active personal and diligent". Section 153.21(a)(1) updates the rule because an experience log is required for Appraiser Trainees and Provisional Licensees to renew. Section 153.21(d) changes the word "and" to "or". Section 153.21 contains new subsections (f), (g) and (h) which require sponsor and trainee to be Texas residents, contact the appraiser trainee through the sponsor's address and to make sure that an appraiser trainee does not misrepresent his/her level, and to alert the user of the appraisal service that a trainee and not a certified licensed appraiser prepared the report.

Section 153.22(a) updates the subsection to be clear and concise.

Section 153.25(d)(3) updates the rule to allow fax forms to qualify and also deletes unnecessary language.

No comments were received regarding adoption of the rules.

The amendments are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

§153.1. Definitions.

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

(1) Act--The Texas Appraiser Licensing and Certification Act.

(2) Analysis--The act or process of providing information, recommendations or conclusions on diversified problems in real estate other than estimating value.

(3) Applicant--A person seeking a certification, license, approval as an appraiser trainee, or non-resident temporary registration from the board.

(4) Appraisal--The act or process of estimating value, or an estimate or an opinion of value.

(5) Appraisal Standards Board--The Appraisal Standards Board (ASB) of the Appraisal Foundation or its successor.

(6) Appraisal Subcommittee--The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council or its successor.

(7) Appraiser Qualifications Board--The Appraiser Qualifications Board (AQB) of the Appraisal Foundation or its successor.

(8) Appraiser trainee--A person approved by the Texas Appraiser Licensing and Certification Board to perform appraisals or appraiser services under the active, personal and diligent supervision and direction of the sponsoring certified appraiser.

(9) Board--The Texas Appraiser Licensing and Certification Board.

(10) Classroom hour--Fifty minutes of actual classroom session time.

(11) Client--Any party for whom an appraiser performs a service.

(12) College--junior or community college, senior college, university, or any other postsecondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.

(13) Commissioner--The commissioner of the Texas Appraiser Licensing and Certification Board.

(14) Complaining witness--Any person who has made a written complaint to the board against any person subject to the jurisdiction of the board.

(15) Complete appraisal--An appraisal performed without invoking the departure rule.

(16) Contested case--A proceeding in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

(17) Council--The Federal Financial Institutions Examination Council (FFIEC) or its successor.

(18) Day--A calendar day unless clearly indicated otherwise.

(19) Departure rule--A limited departure from a requirement of the Uniform Standards of Professional Appraisal Practice, as defined by the USPAP.

(20) Distance education--Any educational process based on the geographical separation of learner and instructor (e.g., CD-ROM, online learning, correspondence courses, video conferencing, etc.), that provides interaction between the learner and instructor and includes testing.

(21) Evaluation--An estimate of value that is not more than a limited appraisal, may be presented in a format that is less than a self-contained report, is prepared by a certified or licensed real estate appraiser or other lawfully authorized real estate professional, and includes an estimate of a property's market value, a certification and limiting conditions, and an analysis or the supporting information used in forming the estimate of value.

(22) Feasibility analysis--A study of the cost-benefit relationship of an economic endeavor.

(23) Federal financial institution regulatory agency--The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successors of any of those agencies.

(24) Federally related transaction--Any real estate-related transaction engaged in, contracted for, or regulated by a federal financial institution regulatory agency, that requires the services of an appraiser.

(25) Foundation--The Appraisal Foundation (TAF) or its successor.

(26) Fundamental real estate appraisal course--Basic real estate appraisal courses which include the following topics, but are not limited to, principles of real estate appraisal, real estate appraisal practice, real estate appraisal procedures, highest and best use, report

writing, rural appraisal, appraisal review, residential appraisal/valuation, agricultural property appraisal, sales comparison approach, cost approach, income capitalization, discounted cash flow analysis, real estate appraisal case studies, commercial appraisal, non-residential real estate appraisal, and other courses specifically determined by the board.

(27) License--The whole or a part of any board permit, certificate, approval, registration or similar form of permission required by law.

(28) Licensee--a person certified, licensed, approved, authorized or registered by the board under the Texas Appraiser Licensing and Certification Act.

(29) Licensing--Includes the board processes respecting the granting, disapproval, denial, renewal, certification, revocation, suspension, annulment, withdrawal or amendment of a license.

(30) Limited appraisal--An appraisal in which the departure rule is invoked.

(31) Market analysis--A study of market conditions for a specific type of property.

(32) Non-residential real estate appraisal course--A course with emphasis on the appraisal of non-residential real estate properties which include, but are not limited to, income capitalization, income property, commercial appraisal, rural appraisal, agricultural property appraisal, discounted cash flow analysis, subdivision analysis and valuation, or other courses specifically determined by the board.

(33) Nonresidential property--A property which does not conform to the definition of residential property.

(34) Party--The board and each person or other entity named or admitted as a party.

(35) Person--An individual.

(36) Personal property--Identifiable tangible objects and chattels that are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery and equipment ; all tangible property that is not classified as real estate.

(37) Petitioner--The person or other entity seeking an advisory ruling, the person petitioning for the adoption of a rule, or the party seeking affirmative relief in a proceeding before the board.

(38) Provisional license--A license issued under the Texas Appraiser Licensing and Certification Act, §9A, and §153.16 of this title (relating to Provisional License), to individuals who have met the educational and examination requirements for licensing but who have not met the experience requirements.

(39) Real estate--An identified parcel or tract of land, including improvements, if any.

(40) Real estate-related financial transaction--Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of real property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

(41) Real property--The interests, benefits, and rights inherent in the ownership of real estate.

(42) Record--All notices, pleadings, motions and intermediate orders; questions and offers of proof; objections and rulings on them; any decision, opinion or report by the board; and all staff memoranda submitted to or considered by the board.

(43) Report--Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

(44) Residential property--Property that consists of at least one but not more than four residential units.

(45) Respondent--Any person or other entity subject to the jurisdiction of the board against whom any complaint has been made.

(46) Restricted use appraisal report--A written report as defined by and prepared under the USPAP.

(47) Review--The act or process of critically studying a report prepared by another.

(48) Self-contained appraisal report--A written report as defined by and prepared under the USPAP.

(49) State certified real estate appraiser--A person certified under the Texas Appraiser Licensing and Certification Act.

(50) State licensed real estate appraiser--A person licensed under the Texas Appraiser Licensing and Certification Act.

(51) Summary appraisal report--A written report as defined by and prepared under the USPAP.

§153.8. *Scope of Practice.*

(a) Certified General Real Estate Appraisers:

(1) may appraise of all types of real property without regard to transaction value or complexity; and

(2) are bound by the Competency Rule and all other provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal.

(b) Certified Residential Real Estate Appraisers:

(1) may appraise one-to-four residential units without regard to transaction value or complexity;

(2) may appraise vacant or unimproved land for which the highest and best use is for one-to-four family purposes;

(3) may not appraise subdivisions;

(4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties; and

(5) are bound by the Competency Rule and all other provisions of the USPAP in effect at the time of the appraisal.

(c) State Licensed Real Estate Appraisers:

(1) may appraise non-complex one-to-four residential units having a transaction value less than \$1 million and complex one-to-four residential units having a transaction value less than \$250,000;

(2) may appraise vacant or unimproved land for which the highest and best use is for one to four family purposes;

(3) may not appraise subdivisions;

(4) may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties; and

(5) are bound by the Competency Rule and all other provisions of the USPAP in effect at the time of the appraisal.

(d) Provisional Licensed Real Estate Appraisers:

(1) may appraise the same types of properties as a State Licensed Real Estate Appraiser; and

(2) are bound by the Competency Rule and all other provisions of the USPAP in effect at the time of the appraisal.

(e) Appraiser Trainees:

(1) may appraise those properties, under the active, personal and diligent supervision of their sponsoring certified appraiser, which the supervising certified appraiser sponsor is permitted to appraise; and

(2) shall be subject to the USPAP in effect at the time of the appraisal.

§153.13. *Educational Requirements.*

(a) General Real Estate Appraiser Certification.

(1) Applicants for General Real Estate Appraiser Certification must have successfully completed 180 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 180 classroom hours, at least 90 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application. At least 30 classroom hours of the fundamental real estate appraisal course requirements must be in courses with emphasis on the appraisal of non-residential properties.

(b) Residential Real Estate Appraiser Certification.

(1) Applicants for Residential Real Estate Appraiser Certification must have successfully completed 120 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 120 classroom hours, at least 60 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(c) Real Estate Appraiser License or Provisional License.

(1) Applicants for a Real Estate Appraiser License or Provisional License must have successfully completed 90 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 90 classroom hours, at least 40 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(d) The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(e) The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related; provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, §7(a)(1) and (2) shall be deemed appraisal-related;

(2) the course was offered by an accredited college or university, a school accredited by a real estate or appraiser certification or

licensing agency of this or another state, a professional trade association, or a service-related school such as the United States Armed Forces Institute; or the course was offered or approved by a federal agency or commission or by an agency of this state;

(3) the applicant obtained credit received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (k) of this section (relating to distance education); and

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course.

(f) For the purposes of this section, a professional trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.

(g) The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(h) Course providers may obtain prior approval of a course by filing forms prescribed by the board and submitting the following items listed in paragraphs (1)-(3) of this subsection to the board:

(1) a copy of any textbook, course outline, syllabus, or other written material used in the course;

(2) a copy of the question and answers to the written final examination, with an answer key or the correct answers indicated; and

(3) sample course completion certificate or other evidence of successful completion of the course;

(4) such prior approval of courses will remain in effect for a period of two years after the date of approval.

(i) The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(j) Teachers of appraisal courses may receive credit for meeting the educational classroom hours requirement. Teaching of appraisal courses is not acceptable for meeting the experience requirement. Applicants must provide documentation as requested by the board to establish credit for teaching appraisal courses. Education credit for teaching a particular course may be claimed only once in each three year period.

(k) Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the board and meets one of the following conditions listed in paragraphs (1)-(3) of this subsection.

(1) the course must have been presented by an accredited college or university that offers distance education programs in other disciplines, and

(A) the person has successfully completed a written examination administered to the positively identified person at a location and proctored by an official approved by the college or university; and

(B) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the requirements for qualifying education established by the Appraiser Qualifications Board of the Appraisal Foundation and is equivalent to a minimum of 15 classroom hours.

(2) The course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions (ACE PONSJ), or its successor, approval for college credit, or has been approved under the AQB Course Approval program; and

(A) the person successfully completes a written examination proctored by an official approved by the presenting entity;

(B) the course meets the requirements for qualifying education established by the Appraiser Qualifications Board and is equivalent to the minimum of 15 classroom hours.

(3) A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(l) "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(m) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP) educational requirement, a course must:

(1) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of 15 classroom hours of instruction;

(2) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(3) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(4) utilize the "National Uniform Standards of Professional Appraisal Practice (USPAP) Course" promulgated by the Appraisal Foundation, including the Student Manual and Instructor Manual or an equivalent USPAP course as determined by the AQB.

(n) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, provided that the educational provider has notified the board of the AQB approval.

§153.18. Appraiser Continuing Education.

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 28 classroom hours of appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. Renewals shall include a minimum of seven classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP). The courses must comply with the requirements set out in subsection (d) of this section.

(b) Renewing an Appraiser Trainee Approval. As a condition for renewing an appraiser trainee authorization, a trainee must successfully complete educational courses during the one-year period preceding the expiration of the appraiser trainee authorization being renewed. The courses must comply with the fundamental education requirements for application for licensing and certification set out in §153.13(e)-(n) of this title (relating to Educational Requirements):

(1) For the first annual renewal and every other annual renewal thereafter (third, fifth, seventh, etc.), a total of 45 classroom hours which shall include a minimum of 30 classroom hours of fundamental real estate appraisal courses and 15 classroom hours in a course devoted to the USPAP. The courses must specifically be approved by the board and shall include successful completion of an examination.; and

(2) for the second annual renewal and every other annual renewal thereafter (fourth, sixth, etc.), a minimum of 30 classroom hours of fundamental real estate appraisal courses specifically approved by the board, which shall include the successful completion of an examination.

(c) The appraiser continuing education requirement as set forth in §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas are deferred until the next renewal of a license or certification provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period.

(d) In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A)-(L) of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that complies with the guidelines of the AQB and is recognized by the Appraisal Subcommittee that a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;

(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13(e)(2) of this title (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;

(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education, and which specifically has been approved by the board.

(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.

(F) Distance education courses, provided that the course is approved by the board and meets one of the following conditions listed in clauses (i)-(iv) of this subparagraph:

(i) the course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the AQB; or

(ii) the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has received either the American Council on Education's Program on Non-collegiate Sponsored Instruction (ACE/PONSI), or its successor, approval for college credit or the AQB's approval through the AQB Course Approval Program; and the course meets the following requirements listed in subclauses (I)-(II) of this clause:

(I) the course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the Appraisal Qualifications Board; and

(II) the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation with demonstrated mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and

(iv) a minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(H) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of seven classroom hours of instruction;

(ii) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(iv) At a minimum be based on topics covered by the Appraisal Standards Board (ASB) Instructor's Manual. This section does not limit additional USPAP related topics to be covered in the course, or utilize the national USPAP Update course, or its equivalent as determined by the AQB.

(I) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation are acceptable for meeting ACE requirements.

(J) As part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(K) Copies of transcripts or course completion certificates from the course provider must accompany the Application for Renewal form.

(L) Appraiser continuing education credit may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

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 February 26, 2001.

TRD-200101160

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



CHAPTER 155. RULES RELATING TO STANDARDS OF PRACTICE

22 TAC §155.1

The Texas Appraiser Licensing and Certification Board adopts an amendment to §155.1, concerning Standards of Practice, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12586) and will not be republished.

The rule is amended to add a new subsection (b) to assert an exception from complying with Standards Rule 3 when reviewing disciplinary and experience audits for both Board members and staff.

No comments were received regarding adoption of the rules.

The amendment is adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101161

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

The Texas Appraiser Licensing and Certification Board adopts new §§157.2-157.8, 157.9-157.14 and 157.15-157.19 and 157.20, concerning General Provisions, Contested Case Hearings and Post Hearing, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12587) and will not be republished.

Chapter 151 is repealed and replaced with new Chapter 157. The repeal of Chapter 151 is contemporaneously adopted elsewhere in this issue of the *Texas Register*. Section 151.1, concerning Definitions, has been combined with the definitions in §153.1. Chapter 151 is being relocated to Chapter 157 so that Chapter 153 concerning Provisions of the Texas Appraiser Licensing and Certification Act, are the first set of rules that appear in the Texas Administrative Code.

No comments were received regarding adoption of the rules.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §§157.2-157.8

The new sections are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101162

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §§157.9-157.14

The new sections are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101163

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



SUBCHAPTER C. POST HEARING

22 TAC §§157.15-157.20

The new sections are adopted under the Powers and Duties of the Board, Texas Appraiser Licensing and Certification Act, §5, (a) (1), (2), (3), and (7) (Texas Civil Statutes, Article 6573a.2), and §14(c), Certificate and License Renewal.

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 February 26, 2001.

TRD-200101164

Renil C. Linér

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: April 1, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 465-3950



TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 1. TEXAS BOARD OF HEALTH

SUBCHAPTER A. PROCEDURES AND POLICIES

25 TAC §1.6

The Texas Department of Health (department) adopts an amendment to §1.6 concerning procedures and policies of the Board of Health (board) without changes to the proposed text as published in the December 1, 2000, issue of the *Texas*

Register (25 TexReg 11860), and therefore the section will not be republished.

Specifically, the section addresses actions requiring board approval. The amendment requires that certain employee appointments made by the Commissioner of Health (commissioner) be subject to the approval of the Texas Board of Health (board). The amendment will ensure the board's oversight of the hiring of executive management positions.

No comments were received during the comment period.

The amendment is adopted under the Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for its procedures and for the performance of each 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 February 27, 2001.

TRD-200101180

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: December 1, 2000

For further information, please call: (512) 458-7236



CHAPTER 103. INJURY PREVENTION AND CONTROL

25 TAC §§103.1, 103.10-103.24

The Texas Department of Health (department) adopts an amendment to §103.1 and new §§103.10-103.24 concerning the injury reporting system. Section 103.11 and §103.23 are adopted with changes to the proposed text as published in the September 22, 2000, issue of the *Texas Register* (25 TexReg 9361). Sections 103.1, 103.10, 103.12-103.22, and 103.24 are adopted without changes and therefore the sections will not be republished.

Government Code §2001.039, added by Chapter 1499, Art. 1, §1.11(a), 76th Legislature (1999), requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 103.1-103.9 have been reviewed and the department has determined that reasons for adopting the sections continue to exist. Section 103.1 is amended and §§103.10-103.24 are adopted as new rules.

The amendment and new sections implement Health and Safety Code, §92.002 which requires the Board of Health to adopt rules necessary to implement a system of injury reporting and Health and Safety Code, Chapter 773, Subchapter E, concerning the establishment of a trauma reporting and analysis system, implemented by Title 25, Texas Administrative Code §157.129. The trauma reporting and analysis system has been maintained by the Trauma Registry program which moved from the Bureau of Emergency Medical Services to the Bureau of Epidemiology in 1993.

Specifically, the amendment to §103.1 clarifies the effective date of §§103.1-103.9.

New §103.10 adds language regarding the establishment of a trauma reporting and analysis system and clarifies the effective date of §§103.10-103.24. New §103.11 defines words and terms to clarify the intent of the rules. New §§103.12-103.24 clarify injury reporting requirements effective January 1, 2002, describe reporting requirements, and clarify the Technical Advisory Committee on Injury Reporting. These sections specify who is to report, type of data to be reported, procedure for reporting, frequency of reporting, general control measures for reportable injuries, powers and duties of the department, confidential nature of case reporting, investigations, and clarify the operations of the Technical Advisory Committee on Injury Reporting. New §103.12 adds trauma patients and pre-hospital provider calls as reportable conditions.

New §103.21 updates the chapter number of the Injury Prevention and Control Act of the Health and Safety Code from Chapter 87 to Chapter 92, to be consistent with the renumbering of this statute by the legislature; adds language relating to the authority of the department to contact entities attending a person with a case or suspected case of a reportable injury; and adds language regarding the department's authority to provide summary data to local and regional health departments. New §103.22 includes the new name Texas Trauma Registry instead of State Trauma Registry and adds language concerning the provision of data to reporting health care entities and other department bureaus. New §103.23 correctly identifies the Texas Workers' Compensation Commission instead of the Texas Workforce Commission.

New §103.24 revises provisions relating to the operation of the Technical Advisory Committee on Injury Reporting. Specifically, language is revised to refer to the Government Code; to continue the committee until November 1, 2003; to clarify that members hold over until their replacement is appointed; to state that the presiding and assistant presiding officers shall be appointed by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; and to require the committee's annual report in November. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

The department published a Notice of Intention to Review the sections as required by Government Code §2001.039 in the *Texas Register* on December 17, 1999, (24 TexReg 11541). There were no comments received due to the publication of the Notice.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §103.11(23), one commenter recommended adding "concussion and including" after the word "including" so that it would read: "An acquired injury to the brain, including concussions and including brain injuries caused by anoxia."

Response: The department agrees, and has added the suggested language.

Comment: Concerning §103.12(c), one commenter recommended adding "including concussions" so that it would read: "Traumatic brain injuries, including concussions."

Response: The department disagrees, and considers the proposed language to accurately include concussions in the definition. The diagnostic codes for concussions (850.0-850.9) are included in the definition of traumatic brain injury. No change was made as a result of this comment.

Comment: Concerning §103.14(c), one commenter requested adding "not included in paragraph (a) or (b) above" so that it would read: "For information on trauma patients, not included in paragraph (a) or (b) above."

Response: The department disagrees with the commenter. The definition of "trauma patient" is clearly stated in §103.11(21). No change was made as a result of this comment.

Comment: Concerning §103.19(c), one commenter requested adding "which shall in all cases conform with rules of the department."

Response: The department disagrees with proposed language since this is redundant with the wording of the rules. No change was made as a result of this comment.

Comment: Concerning §102.23(d), one commenter suggested correctly identifying the appropriate state agency (Texas Workers' Compensation Commission) and deleting reference to the Texas Workforce Commission.

Response: The department agrees and has added the suggested language.

Comment: Concerning the rules in general, two commenters suggested that the rules consistently require, from all reporting entities, documentation on name, address, social security number, address of injury, and results alcohol and drug testing. This should not be limited to just one type of injury.

Response: The department disagrees with the commenters. The department can specify who is to report, type of data to be reported, and frequency and procedure of reporting and it is recognized that there may be various levels of reporting. The department has received feedback from some hospitals who have raised concerns about the confidentiality, logistics, availability and usefulness of these data elements, and the burden to report those data elements to the state. The proposed rules specify the type of data required to be reported, but reporting entities are not limited to those data elements. For instance, name and social security number reporting are optional data which may be reported by hospitals. No change was made as a result of this comment.

The commenters were the Texas Brain Injury Advisory Council of Texas, Brain Injury Association of Texas, and the Texas Workers' Compensation Commission. The commenters were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The amendment and new sections are adopted under Health and Safety Code, §92.002, which requires the board to adopt rules necessary to implement the reporting of injuries; Health

and Safety Code, §§773.112(c) and 773.113(a)(3), which require the department to adopt rules necessary to implement a trauma reporting and analysis system; and Health and Safety Code, §12.001, which allows the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§103.11. *Definitions.*

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

- (1) Board--The Texas Board of Health.
- (2) Case--A person in whom an injury is diagnosed by a physician, medical examiner, or justice of the peace, based upon clinical evaluation, interpretation of laboratory and/or roentgenographic findings, and an appropriate exposure history.
- (3) Commissioner--The commissioner of the Texas Department of Health.
- (4) Department--The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3180.
- (5) Director--The director of the Texas Department of Health, who is the commissioner.
- (6) Health authority--A physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act, Health and Safety Code, Chapter 121. The health authority, for purposes of these sections, may be the chief administrative officer of a public health district or a local health department, or the physician who is to administer state and local laws relating to public health.
- (7) Health care entity--A health care entity that is capable of treating an injured person. Health care entities include, but are not limited to, emergency medical service providers, hospitals, and rehabilitation facilities.
- (8) Hospital Reporting Guidelines--The Texas Trauma Registry's manual for hospitals which documents reporting procedures and format. A copy of the current guidelines can be obtained from the Trauma Registry, Bureau of Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.
- (9) Injury--Damage to the body that results from intentional or unintentional acute exposure to thermal, mechanical, electrical, or chemical energy, or from the absence of essentials such as heat or oxygen.
- (10) Pre-hospital Provider--A licensed Emergency Medical Services (EMS) provider which is a person who uses, operates, or maintains EMS vehicles and EMS personnel to provide EMS.
- (11) Pre-hospital Reporting Guidelines--The Texas Trauma Registry's manual for pre-hospital providers which documents reporting procedures and format. A copy of the current guidelines can be obtained from the Trauma Registry, Bureau of Epidemiology, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.
- (12) Program--The Injury Epidemiology and Surveillance Program.
- (13) Regional Trauma Registry--The organization which receives and collects trauma data for a designated area of the state and maintains the system by which the collected information is reported to the department.
- (14) Reportable injury--Any injury or condition required to be reported under this chapter.

(15) Report of an injury--The notification to the appropriate health authority of the occurrence of a specific injury in a human, including all information required by the rules and forms promulgated by the Board of Health.

(16) Spinal cord--That portion of the central nervous system which extends from the foramen magnum to the cauda equina. All nerve roots within the spinal canal are included.

(17) Submersion injury--A drowning (a death resulting from suffocation within 24 hours of submersion in water) or near-drowning (survival for at least 24 hours after suffocation from submersion in water).

(18) Suspected case--A case in which an injury is suspected, but the final diagnosis is not yet made.

(19) Texas Trauma Registry--A statewide database administered by the Injury and Epidemiology and Surveillance Program which documents and integrates medical and system information related to the provision of trauma care by health care entities.

(20) Trauma--An injury or wound to a living body caused by the application of an external force or violence, including burn injuries. Poisonings, near-drownings and suffocations, other than those due to external forces, are to be excluded from this definition.

(21) Trauma patient--A patient that meets the following criteria: Has sustained at least one injury International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM) diagnostic codes between 800.0 and 959.9, excluding 905-909, 910-924, and 930-939, and admitted to a hospital inpatient setting (for more than 48 hours), or died after receiving any evaluation or treatment or was dead on arrival, or transferred into or out of the hospital. For subsequent editions of the International Classification of Diseases, equivalent codes should be used.

(22) Trauma service area--A multi-county area in which an emergency medical services and trauma care system has been developed by a Regional Advisory Council and has been recognized by the department.

(23) Traumatic brain injury--An acquired injury to the brain, including concussions and including brain injuries caused by anoxia due to near drowning. The term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma. The following International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM) diagnostic codes are to be used to identify cases of traumatic brain injury: 800.0-801.9, 803.0-804.9 and 850.0-854.1. The ICD-9-CM diagnostic code to be used to identify traumatic brain injury caused by anoxia due to near drowning is 348.1 or 994.1. For subsequent editions of the International Classification of Diseases, equivalent codes should be used.

(24) Traumatic spinal cord injury--An acute, traumatic lesion of the neural elements in the spinal canal, resulting in any degree of sensory deficit, motor deficits, or bladder/bowel dysfunction. The neurologic deficit or dysfunction can be temporary or permanent. The following International Classification of Diseases 9th Revision Clinical Modification (ICD-9-CM) diagnostic codes are to be used to identify cases of traumatic spinal cord injury: 806.0-806.9 and 952.0-952.9. For subsequent editions of the International Classification of Diseases, equivalent codes should be used.

§103.23. *Investigations.*

(a) The Texas Department of Health (department) shall investigate the causes of injuries and methods of prevention.

(b) The commissioner or the commissioner's designee may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in the commissioner's duty to prevent an injury.

(c) The commissioner or the commissioner's designee may not enter a private residence to conduct an investigation about the causes of injuries without first receiving permission from a lawful adult occupant of the residence.

(d) When the department investigates work-related injuries, the Texas Workers' Compensation Commission shall be informed at the earliest opportunity.

(e) When the department investigates traumatic spinal cord injuries and traumatic brain injuries, the Texas Rehabilitation Commission shall be informed at the earliest opportunity.

(f) When the department investigates traumatic brain injuries, the Texas Traumatic Brain Injury Advisory Board shall be informed at the earliest opportunity.

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 February 27, 2001.

TRD-200101177

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



CHAPTER 141. MASSAGE THERAPISTS

The Texas Department of Health (department) adopts the repeal of §§141.1 and 141.3-141.23 and new §§141.1-141.3, 141.5-141.7, 141.10-141.17, 141.20-141.47, 141.50-141.55, and 141.60-141.66 concerning the regulation and registration of massage therapists, massage therapy instructors, massage schools, and massage establishments. Sections 141.1-141.3, 141.5, 141.7, 141.11-141.12, 141.15, 141.21, 141.29, 141.32-141.34, 141.40, 141.42, 141.43, and 141.54 are adopted with changes to the proposed text as published in the September 22, 2000 issue of the *Texas Register* (25 TexReg 9377). The repeals and new §§141.6, 141.10, 141.13-141.14, 141.16-141.17, 141.20, 141.22-141.28, 141.30-141.31, 141.35-141.39, 141.41, 141.44-141.47, 141.50-141.53, 141.55, and 141.60-141.66 are adopted without changes, and therefore the sections will not be republished.

The Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department reviewed Chapter 141 in its entirety and determined that all sections of the chapter should be repealed and new sections proposed. The review revealed that the sections needed reorganization and renumbering, had obsolete rules, had rules that did not reflect current board procedures, and had rules that did not reflect current legal and policy considerations.

Additionally, new rules are required by House Bill (HB) 2085 (relating to the continuation and functions of the Texas Department of Health, including the operation of certain boards and councils administratively attached to the department) and HB 3155 (relating to a nonsubstantive revision of provisions of the existing statutes applicable to the licensing and regulation of certain professions and business practices) passed by the 76th Legislature. The new rules have been edited and restructured to correct grammatical errors; eliminate subsection titles; update legal citations in accordance with HB 3155; delete repetitive, ambiguous, obsolete, unenforceable, and unnecessary language; and to include new provisions required by HB 2085. Each section has been edited in an effort to improve draftsmanship and make the rules more accessible, understandable, and usable.

New Subchapter A, §141.1 (relating to Definitions), numbers each definition, includes clarifying introductory language, and removes unnecessary definitions.

New Subchapter A, §141.2 (relating to Fees), establishes fees for the registration and renewal of massage therapists, massage therapy instructors, massage schools, massage establishments and providers of continuing education. Fees relating to time periods for late renewals are calculated based on the renewal fee and the length of time between registration expiration and late renewal, in accordance with HB 2085. Persons renewing within 90 days of the expiration date will pay a fee that is equal to one and one-half times the annual renewal fee. Persons renewing after 90 days but within one year of the expiration date will pay a fee that is two times the annual renewal fee. Previously, renewal fees for massage schools have been calculated based on the income generated by the school. Also, independent massage therapy instructors have paid less for the annual renewal. The renewal process, including an inspection of documents and physical locations, is the same for all registered massage schools and independent massage therapy instructors. Therefore, one fee is established which more accurately reflects the actual costs involved for the renewal process. HB 2085 requires the department to recognize, prepare, or administer continuing education programs for its registrants. A fee is established to cover costs associated with the annual approval of continuing education providers. The fees are necessary to cover the costs of operating the massage therapy registration program.

New Subchapter A, §141.3 (relating to Processing Applications), establishes procedural responsibilities relating to reimbursement and appeal.

New Subchapter B, §§141.5-141.7 (relating to Code of Ethics), identifies related categories of ethical conduct and includes language regarding initial consultations, billing practices, changes of name and address, and advertising practices by massage schools.

New Subchapter C, §§141.10 - 141.17, organizes and clarifies requirements pertaining to massage therapists including qualifications for registration, application procedures and documentation, temporary registration, examination, massage therapy certificates, and active military duty. Additionally, new language incorporates requirements for provisional registration and registration renewal.

New Subchapter D, §§141.20-141.25 (relating to Continuing Education Requirements), establishes continuing education approval and reporting requirements in accordance with HB 2085.

New Subchapter E, §§141.26-141.47 (relating to Massage Schools and Massage Therapy Instructors), reorganizes, renumbers and clarifies requirements pertaining to massage schools and instructors, including application procedures and documentation, personnel, massage therapy instructors, financial stability, change of ownership, locations, curriculum and internship for the basic course of instruction, admission requirements, enrollment procedures, tuition and fees, conduct policy, cancellation and refund policy, minimum progress standards, attendance standards, equipment and facility requirements, transcripts and records, student grievances, fire safety, sanitation and registration renewal.

New Subchapter F, §§141.50-141.55 (relating to Massage Establishments), reorganizes, renumbers and clarifies requirements pertaining to massage establishments including application procedures and registration, general requirements, sanitation, annual renewal, exemptions and change of ownership.

New Subchapter G, §§141.60-141.66 (relating to Violations, Complaints, and Disciplinary Actions), reorganizes, renumbers and clarifies requirements pertaining to the filing and investigation of complaints, grounds for registration denial or disciplinary action, formal hearings, suspension of registration for failure to pay child support, and registration of persons with criminal backgrounds. Additionally, new language adds reprimands and probated suspensions to the types of disciplinary actions the department may take against persons who violate the law, Texas Occupations Act, Chapter 455 (the Act), or the department's administrative rules, 25 TAC, Chapter 141 in accordance with HB 2085.

The department is making the following minor changes due to staff comments to clarify the intent and improve the accuracy of the section.

Change: Concerning the definition of "Act", language has been changed from "Texas Civil Statutes" to "Texas Revised Civil Statutes" to reflect the correct citation.

Change: Concerning the definition of "massage therapy", language in the first sentence has been reorganized to more correctly reflect the language in the Act. The modification does not alter the definition.

Change: Concerning §141.3(a)(4), language has been added to reflect the current procedures for processing applications. The department issues a letter of acceptance or a letter of deficiency within 30 working days of the receipt of an application for massage school, massage therapy instructor, or massage establishment registration.

Change: Concerning §141.11(d)(6), language has been deleted requiring applications to be notarized because the department plans to allow applicants to submit applications on-line in the future.

Change: Concerning §141.12(a), language has been added to cross-reference subsection (e) of that section.

Change: Concerning §141.15(f), the department has replaced the language "been lost in the mail" to "not been received by a registrant". The new language is a more accurate reflection of the situation under which a registrant may request a duplicate certificate or card at no charge.

Change: Concerning §141.21(a) and (b), language has been added to set out that acceptable continuing education will include

advanced bodywork techniques acceptable to the department and that presenters of advanced bodywork techniques must be licensed, registered, or have education in the technique being presented. Addition of this language is necessary because of modifications made to the definition of "massage therapy" which deleted the list of advanced techniques from the definition.

Change: Concerning §141.32(g), "registration renewal card" was changed to "registration renewal certificate". Massage therapy educational programs will receive a new certificate each year. One of the sentences was deleted for further clarification.

Change: Concerning §141.33(b), a change was made to clarify that the course of instruction is the 300 hour supervised course of instruction required for massage therapy registration.

Change: Concerning §141.33(d), a change was made to clarify that the department will "approve" rather than "allow" a massage therapy educational program to begin operation at an additional location prior to inspection under specific circumstances.

Change: Concerning §141.40(b)(4), two changes have been made. The phrase "not more than 18 months in length" is removed to clarify that the requirement pertains to any massage therapy educational program. Language was added to clarify that the school is only required to calculate refunds based on the tuition made by the student.

Change: Concerning §141.40(f), language was modified to clarify that the department may pursue any disciplinary action authorized by the Act for violations of the rules.

Changes made to the proposed text resulted from comments received during the comment period. The details of the changes are described in the summary of comments that follow. Other minor editorial changes were made for clarification purposes.

The following comments were received concerning the proposed rules. Following each comment is the department's response and any resulting change(s).

Comment: Concerning the rules in general, one commenter expressed full support for the rules as proposed.

Response: The department agrees and no modifications were made as a result of this comment.

Comment: One commenter requested that the words "purpose" and "ethic" be defined in 141.1.

Response: The department responds that unless otherwise specified, all words have the meaning assigned in their normal usage. Any variance from normal usage would be specified and based on the appropriate source, such as Webster's Dictionary, Black's Legal Dictionary, or other recognized dictionaries. No change was made as a result of the comment.

Comment: Concerning the definition of "massage therapy", two commenters suggested creating two boards, one for Swedish massage and one for alternative techniques and modalities. Additionally, one commenter suggested the establishment of a board of complimentary and alternative therapies.

Response: The department responds that the creation of boards to regulate specific professions requires legislative enactment. No change was made as a result of the comment.

Comment: Concerning the definition of "massage therapy", 19 commenters stated opposition to the inclusion of reflexology in the definition of massage therapy; one commenter opposed the inclusion of shiatsu in the definition of massage therapy; three

commenters opposed the inclusion of the Trager® approach; three commenters opposed the inclusion of Rolwing® in the definition of massage therapy and stated reflexology, shiatsu, Trager®, and Rolwing® are not the manipulation of soft tissue for the purpose of body massage; one commenter noted Rolwing® does involve the manipulation of soft tissue; one commenter proposes to exclude all forms of "bodywork" that are not for the purpose of body massage; and one commenter opposed including all modalities and techniques as massage therapy so individuals will have choices in seeking alternative methods of healing.

Response: The department agrees in part with the commenters. The definition of massage therapy was proposed to include reflexology, Rolwing®, Shiatsu, Tellington Touch on humans, and the Trager® approach. As a result of meetings with stakeholders and comments received during the comment period, the department determined that including specific modalities in the definition is not appropriate because some of the techniques and modalities may not involve the manipulation of soft tissue for the purpose of body massage and the types of advanced techniques and modalities are too numerous to provide an inclusive list. Additionally, the definition of "massage therapy" in the Act does not include a list of specific modalities. The department will continue to study alternate techniques and modalities on an individual basis to determine whether each constitutes the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The definition of massage therapy has been modified to delete references to specific techniques or modalities.

Comment: Concerning the definition of "massage therapy", one commenter recommended excluding individuals practicing non-massage titled hands-on practices for which national standards exist and suggested the department require: (1) the regulation of only massage-titled practices; (2) educational requirements that pertain only to massage-titled practices; (3) specific definition of each massage-titled practice; (4) only massage-titled diplomas be issued by registered massage therapy schools; and (5) full and fair disclosure of definitions and educational attainment be posted in the massage therapy workplace.

Response: The department disagrees. The Act mandates registration for anyone who engages in the practice of massage therapy and defines massage therapy as the manipulation of soft tissue for the purpose of body massage. The Act establishes regulations for the practice of massage therapy as defined in the Act and does not grant the department the authority to regulate only massage-titled practices. Massage therapy schools and instructors are not prohibited by the Act from offering courses in advanced or alternate techniques if those advanced or alternate techniques are not otherwise regulated; therefore, the department would not have the authority to require only massage-titled diplomas be issued by registered schools. No changes were made as a result of this comment.

Comment: Concerning the definition of "massage therapy", four commenters noted support for the language in the definition of massage therapy that excludes Reiki and Therapeutic Touch and one commenter suggested that any form of "energetic manipulation" or energy work be excluded from the definition of massage therapy.

Response: The department responds that as a result of stakeholder meetings and other comments on the proposed rules, the department has removed references to specific alternate techniques and modalities. Techniques, modalities, or practices

which do not involve the manipulation of soft tissue for the purpose of body massage will not be considered as the practice of massage therapy.

Comment: Concerning the definition of "massage therapy", one commenter indicated that if techniques such as reflexology should be included in the definition of massage therapy, then those techniques should be regulated as reflexology. The commenter is concerned that the educational requirements for massage therapy are not sufficient to ensure that persons practicing reflexology are adequately trained. Additionally, the commenter stated that if reflexology is not regulated under massage therapy, then the practice needs to be regulated somehow to make sure standards are higher.

Response: The department agrees in part with the commenter. As a result of stakeholder meetings and other comments on the proposed rules, the department has removed references to specific alternate techniques and modalities. Techniques, modalities, or practices which do not involve the manipulation of soft tissue for the purpose of body massage will not be considered as the practice of massage therapy. The Act establishes educational requirements for registration under the Act and does not authorize the department to establish educational requirements for specific techniques or practices. No changes were made as a result of this comment.

Comment: Concerning the definition of "massage therapy", one commenter suggested adding "but not limited to" when listing techniques, modalities, or practices that are considered the practice of massage therapy.

Response: The department responds that the sentence the commenter suggested amending has been deleted as a result of other comments and no change was necessary as a result of the comment.

Comment: Concerning the definition of "massage therapy educational program", one commenter suggested changing the term to the "educational program for registration".

Response: The department responds that there is not a sufficiently significant difference in the two phrases to change the term throughout the sections. No change was made as a result of this comment.

Comment: Concerning the definition of "massage therapy instructor", one commenter suggested inserting the word "registered" before massage therapy instructor.

Response: The department responds that the term "massage therapy instructor" is defined in the Act and that the definition in the rules mirrors the definition in the Act. The department agrees the term refers to registered massage therapy instructors and no change was made as a result of the comment.

Comment: Concerning the definition of "owner", one commenter noted that school is referenced but not defined. The commenter also suggests including other legal entities and LLCs in the definition of owner.

Response: The department has modified the language to reference a massage therapy educational program rather than school and added language to include any other legal business entity.

Comment: Concerning the definition of "physiology", one commenter stated that there is no such thing as circulatory secretion.

Response: The department agrees and has added punctuation to clarify the definition of physiology.

Comment: Concerning the definition of "physiology", one commenter suggested removing the words "normal" and "vital" from the definition of physiology because schools need to teach enough about pathology to assist with recognizing contraindications to massage as a whole and to specific techniques.

Response: The department responds that the definition of "physiology" is not the only direction provided to massage therapy educational programs concerning the 25 hours of physiology required for registration. The department provides a curriculum to educational programs they are to follow and the programs are allowed to select the textbook to be used. Defining physiology does not limit an educational program from teaching pathology necessary to assist in recognizing contraindications to massage. No change was made as a result of this comment.

Comment: Concerning the definition of "state-approved educational institution", one commenter noted that the definition is not clear that it refers to a school, and the commenter suggested that massage school needs to be defined. The commenter also opposed any requirement that massage schools be regulated by the Texas Education Agency (TEA).

Response: The department responds that the definition of "state-approved educational institution" does not refer to massage schools, which are defined in the Act. The Act, §455.156(b) sets out that state-approved educational institutions are alternative methods for obtaining the 300 hour course of instruction. State-approved educational institution is not defined in the Act so defining it by rule is necessary. Additionally, the term is currently defined in existing rules using the same definition and the department confirms that massage schools and massage therapy educational programs are regulated by the department. No change was made as a result of this comment.

Comment: Concerning §141.2(d)(3), one commenter suggested the fee for a new certificate based on a name change has, in the past, and should now apply to all registrants, not just the 300 hour massage therapy educational programs.

Response: The department agrees and has moved §141.2(d)(3) to new subsection (i). The paragraphs under subsection (d) have been renumbered.

Comment: Concerning §141.5(a), one commenter suggested adding "under the auspices of" to the language in subsection (a).

Response: The department disagrees because it does not add to the ability to enforce the proposed language. No change was made as a result of this change.

Comment: Concerning §141.5(e), one commenter stated that requiring an initial consultation and documentation will create unnecessary paperwork that has no value, especially for massage therapists who specialize in relaxation massage.

Response: The department disagrees. The massage therapy registration program has noted a growing number of complaints that staff believes could have been avoided had the massage therapist communicated more completely with the client about the issues listed in §141.5(h) and if the client had been better informed about what he or she should expect from the massage therapy session. No change was made as a result of the comment.

Comment: Concerning §141.5(e), one commenter suggested that maintaining records for a minimum of three years on a potential one time client is excessive and recommended modifying the requirement to one year from the last visit.

Response: The department agrees in part. Three years may be longer than necessary to maintain the record of a client who becomes a one-time client. However, because there is no statute of limitations on filing a complaint against a registrant, it is in the interest of the massage therapist to maintain the records for more than one year. The language has been modified to reflect that the records should be maintained for a minimum of two years.

Comment: Concerning §141.5(d), (e), (g), (h), (i), (k), and (r), one commenter noted that while the requirements reflect good and ethical business practices, it is not appropriate or necessary to extend rules into the business and financial aspects at that level of detail.

Response: The department disagrees. The Act requires that rules relating to massage therapists must contain minimum standards for the practice of a massage therapist including the records kept by the massage therapist. The requirements in (k) and (r) are currently in effect for massage therapists and are not new requirements. Additionally, the requirement in (k) is set out in the Health Professions Council Act, Occupations Code, Chapter 101, and applies to all health professions regulated by any regulatory agency that is a member of the Health Professions Council, including the health licensing division of the Texas Department of Health (Professional Licensing and Certification Division). No change was made as a result of the comment.

Comment: Concerning §141.5(f), one commenter suggested that "minor" should be defined.

Response: The department agrees and has modified the language in subsections (f) and (g) to clarify that minor refers to persons under the age of 17.

Comment: Concerning §141.5(g), one commenter stated the requirement for documentation is excessive, burdensome, and unnecessary and noted that doctors, physical therapists, occupational therapists, nurses, and others are not required to maintain and provide the same documentation.

Response: The department disagrees and responds that the Health Professions Council Act, Occupations Code, §101.202, requires that health care professionals provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. The Health Professions Council Act applies to all health professions regulated by any regulatory agency that is a member of the Health Professions Council, including the health licensing division of the Texas Department of Health (Professional Licensing and Certification Division), physicians, physical therapists, occupational therapists, nurses, and others. No change was made as a result of the comment.

Comment: Concerning §141.5(h)(1)-(6), two commenters stated opposition to all elements of a consultation form. One stated that the records identifying the techniques to be used during a massage session were meaningless to most clients; that listing the parts of the body to be massaged is pointless documentation and excessive paperwork; that breast massage is appropriate and indicated related to lymph flow, surgery, or implants; that therapists should be trusted to use professional judgement and clients should be informed users of services; that draping should

not be legislated; that massage therapists are professionals not prostitutes; that the draping requirement is too vague; and the requirement creates too much paperwork without enhancing quality of work or ethical behavior. One of the commenters objected to the requirement of an initial consultation and documentation and considers the requirement to be "insulting", "demeaning", and "reactionary"; that it does not accomplish anything and is time consuming; that it may be useful in some settings, but is unnecessary in others; and that there is no need for professionals to be mistrusted by requiring written consent for breast massage.

Response: The department disagrees. The requirements for the initial consultation and consultation form were developed after a meeting with massage therapists who indicated that they do provide consultation to clients. The department's decision to require a written version that both the therapist and the client can sign resulted from consumer complaints received during the last two years that may have been avoided had there been better communication between the massage therapist and the client. No change was made as a result of the comments.

Comment: Concerning §141.5(h), one commenter asked for clarification concerning which clients the requirement applies to; whether all techniques could be listed for all clients because the therapist does not always know which techniques will be used; how specific does the therapist need to be when identifying the parts of the body to be massaged; and how detailed the consultation form should be when listing indications and contraindications to massage. The commenter is concerned about the amount of paperwork a massage therapist will be required to generate and maintain.

Response: The department disagrees. The requirements for the initial consultation and consultation form were developed after a meeting with massage therapists who indicated they do provide consultation to clients. The department's decision to require a written version that both the therapist and the client can sign resulted from consumer complaints received during the last two years that may have been avoided had there been better communication between the massage therapist and the client. No change was made as a result of the comment.

Comment: Concerning §141.5(h), one commenter stated that the requirement for an initial consultation and documentation form is too much paperwork for massage therapists whose practice is limited to general wellness massage. The commenter also opposed the additional paperwork for massage therapists whose practice is based on medical referrals because the chart notes would be required and used in that situation. An initial consultation and documentation form would be duplicative.

Response: The department disagrees. The requirements for the initial consultation and consultation form were developed after a meeting with massage therapists who indicated they do provide consultation to clients. The department's decision to require a written version that both the therapist and the client can sign resulted from consumer complaints received during the last two years that may have been avoided had there been better communication between the massage therapist and the client. Massage therapists who maintain chart notes for medical referrals would not necessarily be required to maintain two separate documents. The intent of the requirement is that registrants provide clients with information so the client knows what to expect. No change was made as a result of the comment.

Comment: Concerning §141.5(i), one commenter stated that the cross reference to subsection (h)(1)-(6) should be amended to (h)(1)-(4) since the information required in paragraphs (5) and (6) will not change from one session with a client to the next.

Response: The department agrees and has modified the language to cross reference subsection (h)(1)-(4).

Comment: Concerning §141.5(h)(1)-(4) and (i), one commenter suggested modifying the language to clarify that the initial consultation does not require a separate session or consultation and is opposed to requiring discussion and documentation of the techniques to be used and the body parts that may be massaged. The commenter believes the requirements are demeaning and requests the department to indicate other health care professionals who are required to follow these same practice requirements. The commenter is also opposed to discussing draping practices and preferences with the client. Concerning subsection (i), the commenter agrees it may be reasonable to require records kept in relation to changes in a client's needs, however, it is unreasonable to require written modifications to parts of the body being massaged. The commenter suggests changing the subsection to allow discussion with client regarding the techniques the therapist anticipates using rather than written documentation.

Response: The department disagrees. The massage therapy registration program has noted a growing number of consumer complaints that staff believes could have been avoided had the massage therapist communicated more completely with the client about the issues listed in §141.5(h) and if the client had been better informed about what he or she should expect. No change was made as a result of the comment.

Comment: Concerning §141.5(h) and (i), one commenter stated opposition to a consultation document that requires the therapist to discuss specific body parts, and stated that a discussion and consultation document may cause clients to have concerns they would not have otherwise had. The commenter is also concerned the requirement will create a bureaucratic paperwork nightmare for the conscientious, hard-working, ethical registrants who already follow the rules.

Response: The department disagrees. The massage therapy registration program has noted a growing number of consumer complaints that staff believes could have been avoided had the massage therapist communicated more completely with the client and if the client had been better informed about what he or she should expect. No change was made as a result of the comment.

Comment: Concerning §141.5(h) and (i), four commenters considered that an initial consultation may put chair massage therapists out of business because chair massages are based on convenience and affordability; chair massages are often conducted in public venues; clients are not required to remove clothing; the average chair massage takes only 15 to 20 minutes; and neither therapists nor clients will want to take the time for an interview before each chair massage session. One of the commenters stated that at sporting events, a person is out of a race or game temporarily and needs immediate attention. Requiring the consultation in that situation would be impossible. One of the commenters requested an exemption for chair massage.

Response: The department disagrees with the commenters. Massage therapists are trained in the indications of and contraindications to massage for clients, or the benefit of massage and specific conditions the client may have that would indicate the client is not a candidate for any type of massage. While

chair massage is fairly routine, the fact that it is convenient, brief, conducted in public and provided to fully clothed clients does not alter the massage therapist's responsibility to ensure that any massage technique is appropriate for each prospective client. Massage therapists may create a document that provides the information required in §141.5(h) and allow the client a few minutes to read the information. The document could list specific contraindications to massage so the client can decide whether the chair massage will be beneficial or whether a condition exists that would indicate the client should not receive massage. Because the client's reason for seeking a chair massage would not change and because the nature of chair massage does not rely solely on repeat business, each consultation could be handled as an initial consultation and would not automatically require that §141.5(i) be applied. No change was made as a result of the comments.

Comment: Concerning §141.5(i), one commenter suggested that a client is much more likely to remember he or she wishes some different or additional massage therapy service after they are already on the massage table being treated by the therapist and that the need to modify a technique may only become apparent during the session. The commenter further suggests that most clients would consider it ludicrous to interrupt the session to fill out more paperwork.

Response: The department agrees; however, §141.5(i) does not prohibit modification of the consultation document after a subsequent massage therapy session. No change was made as a result of the comment.

Comment: Concerning §141.5(h)(1), one commenter suggested that requiring registrants to list the type of techniques he or she anticipates using could result in registrants simply creating a form that lists all of the modalities he or she knows. The commenter believes that providing the information after the first session would result in a more realistic assessment.

Response: The department disagrees. The intent of the requirement is to ensure first time clients understand what to expect during a massage session. No change was made as a result of the comment.

Comment: Concerning §141.5(h)(2), one commenter recommends that instead of listing the parts of the body that will be massaged that it would be easier and shorter to list the parts of the body the client wishes the therapist to avoid. The commenter also suggests that clients who simply wish to have a massage may consider it an invasion of their privacy to require them to give the therapist the necessary information to make the correct determination as to the true indications for massage.

Response: The department agrees in part and has modified the language to allow for either a list of the areas of the body to be massaged or the areas to be avoided to be included on the consultation document. The intent of the requirement is to ensure that the therapist and client discuss expectations, are in agreement about what the massage will involve, and document their agreement. Section 141.5(h)(2) does not require a client to provide information the client feels may violate his or her privacy. The intent of the requirement is that the registrant provide information to the client about indications and contraindications to massage and that the information and the client's responses, if any, be documented. If a client does not provide information to the registrant that would allow the registrant to identify indications or contraindications, then that would be reflected on the form signed by both the registrant and the client.

Comment: Concerning §141.5(h)(3), one commenter suggested having a potential client initial a release or request statement on the consultation form if they wish to have breast massage, rather than requiring a signature.

Response: The department disagrees. The intent of the consultation and documentation of the consultation is to ensure that the therapist and the client discuss expectations, that they are in agreement about what the massage will involve, and that they document their agreement. No change was made as a result of the comment.

Comment: Concerning 141.5(h)(3), one commenter suggested the need to clarify whether the requirement for written consent to breast massage applied to both women and men.

Response: The department agrees and has modified the language to be consistent with §141.6(a)(2). Written consent of female clients is required for breast massage.

Comment: Concerning §141.5(k), one commenter stated that the department has no jurisdiction over the pricing of massage services and assumes the prohibition of persistent or flagrant overcharging is aimed at discriminatory practices. The commenter suggests the department clarify the language. Additionally, the commenter indicated the portion of the subsection that prohibits over treating a client would be difficult to define because client needs and wishes vary.

Response: The department disagrees. The requirements in §141.5(k) exist in the current massage therapy rules and the language is clear that the prohibition for overcharging and over treating apply to unscrupulous practices. Additionally, this requirement is set out in the Health Professions Council Act, §101.203, which applies to all health professions regulated by any regulatory agency that is a member of the Health Professions Council, including the health licensing division of the Texas Department of Health (Professional Licensing and Certification Division). No change is made as a result of the comment.

Comment: Concerning §141.5(r)(1) and (2), one commenter suggested these paragraphs should end with the word "or".

Response: The department disagrees. The correct Texas Register format is used and the "or" appears between paragraphs (3) and (4). No change was made as a result of the comment.

Comment: Concerning §141.6, one commenter suggested that the phrase "during a session" is too ambiguous and needs to be better defined.

Response: The department disagrees and considers "during a session" to adequately reflect a session during which a client seeks out or receives massage therapy services from a registrant. No change was made as a result of the comment.

Comment: Concerning §141.6(a)(1)-(7), one commenter opposed defining sexual misconduct in explicit terms and suggested using the language that "a registrant shall not engage in unprofessional or inappropriate contact with a client."

Response: The department disagrees. The suggested language is too vague and ambiguous to be enforceable. The department must be able to identify a specific act if an investigation results in the pursuit of disciplinary action. No change was made as a result of the comment.

Comment: Concerning §141.6(a)(2), one commenter objects to the written consent for breast massage and asks what other health care professionals are required to do this.

Response: The department disagrees. The existing massage therapy rules currently prohibit a massage therapist from massaging the breasts of a female client without the client's consent. The department has resolved consumer complaints over the years through informal agreements and agreed orders requiring the therapist to obtain the written consent of a female client before providing breast massage. Requiring written consent will decrease the number of misunderstandings between massage therapists and clients that result in complaints being filed with the department. Other health care professionals are not specifically authorized to perform body massage and may have varying protocols for similar situations. No change is made as a result of the comment.

Comment: Concerning §141.6(a)(5), a commenter suggested that the word "deviate" should be changed to "deviant".

Response: The department responds that the language in paragraph (5) is taken from the Texas Penal Code and that deviate is the correct word in this context. No change is made as a result of the comment.

Comment: Concerning §141.7(a), one commenter suggested adding continuing education providers to the language prohibiting the use of the word "massage" by unregistered persons.

Response: The department responds that continuing education providers would be covered as a "person". No change was made as a result of the comment.

Comment: Concerning §141.7(b)(4), four commenters disagree and believe the use of testimonials from actual clients is appropriate, and two believe this requirement treats massage therapists different from other health care professionals.

Response: The department disagrees. The provisions in §141.7(b) concerning advertisements are required by the Health Professions Council Act, Occupations Code, §101.201, and apply to all health professions regulated by any regulatory agency that is a member of the Health Professions Council, including the health licensing division of the Texas Department of Health (Professional Licensing and Certification Division). Additionally, the advertising requirements set out in §141.7 are required in the existing massage therapy rules. No change was made as a result of the comments.

Comment: Concerning §141.7(b)(8), three commenters stated the language is unclear, arbitrary, not definable and is unenforceable. Two considered it odd to use the term patient rather than client.

Response: The department agrees in part. The language in §141.7(b)(8) was taken verbatim from the Health Professions Council Act, Occupations Code, §101.201, and applies to all health professions regulated by the regulatory agencies that are members of the Health Professions Council. The term patient is more commonly used among the professions; however, the department has defined and uses the term client in its proposed rules and has modified the language in this paragraph for consistency. The department does not agree that the language is unclear or arbitrary.

Comment: Concerning §141.7(d)-(h), a commenter asked if the advertising requirements apply to massage schools teaching programs for registration or continuing education providers.

Response: The department responds that §141.7(d)-(h) applies to the massage schools and massage therapy educational programs providing instruction in the 300 hour course of instruction

for registration. The advertising requirements and prohibitions found in §141.7(b)(1)-(9) would apply to continuing education providers. No change was made as a result of this comment.

Comment: Concerning §141.7(i), two commenters disagree with prohibiting massage schools from the use of statements indicating the school has been accredited unless the accreditation is that of an accrediting agency listed by the United States Office of Education because the United States Office of Education does not include nationally recognized agencies that accredit massage therapy programs, such as the Commission on Massage Therapy Accreditation (COMTA).

Response: The department agrees in part and the language in §141.7(i) has been changed to delete the reference to the United States Office of Education. However, the department is concerned that advertisements and statements concerning accreditation be clear to prospective students and the general public. Therefore, the language in §141.7(i) has also been modified to require the name of the nationally recognized accrediting agency in any statement or advertisement related to accreditation.

Comment: Concerning §141.11(c), which sets out that registration applications not completed within 30 days after the date of notice of deficiency will be voided, one commenter suggested clarifying whether the 30 days applies to the postmark date or the date the department receives the additional documentation.

Response: The department responds that the postmark date will be used; however, the language in subsection (c) does not require modification. No change was made as a result of the comment.

Comments: Concerning §141.11(d)(4), which requires applicants to sign a statement that he or she understands fees are non-refundable, one commenter suggested adding the language "except as provided in section §141.3(c)" which allows for the refund of fees under certain circumstances.

Response: The department disagrees. Section 141.11(d) sets out information required on an application form and to include the suggested language would be nonsensical in that context. Additionally, §141.3(c) sets out procedures for an applicant to request a refund only in circumstances where the department has failed to process an application within stated time frames. The language in §141.3 clearly sets out procedures for requesting a refund and it is not necessary to reference that section in §141.11(d). No change was made as a result of the comment.

Comments: Concerning §141.14(i), one commenter stated that it should not take 30 days for the department to grade an examination and send the results to the examination candidates.

Response: The department disagrees. The Act, Texas Revised Civil Statutes, Article 4512k, §7E, establishes 30 days as the maximum time frame for grading examinations and notifying candidates of the results. No change was made as a result of the comment.

Comments: Concerning §141.14, one commenter suggested the department should establish more examination dates.

Response: The department neither agrees nor disagrees with the commenter. The proposed language in §141.14(h) allows the department to establish examination dates and locations; and currently, the department administers three examinations per year. Current resources prohibit holding more than three examinations per year. No changes are necessary as a result of the comment.

Comment: Concerning Subchapter D and the continuing education requirements in general, one commenter is concerned that massage therapists who specialize in Rolwing® will be forced to take continuing education that does not relate to their specialization. Additionally, the commenter is concerned that the requirements create a restriction of free trade and limits Rolfers from teaching rolwing techniques.

Response: The department disagrees. The continuing education requirements allow credit for advanced and alternate bodywork techniques and does not prohibit the instruction of advanced and alternate bodywork techniques. No changes were required as a result of this comment.

Comment: Concerning 141.20(a)(1), one commenter stated the six hours per year required for continuing education is a reasonable amount.

Response: The department agrees and no change was made as a result of the comment.

Comment: Concerning §141.20(a), one commenter does not think that massage therapists who have had extensive training in massage therapy will benefit from the continuing education requirements and should not be required to participate in the continuing education requirements.

Response: The department disagrees. The Act, Texas Revised Civil Statutes, Article 4512k, §7G, requires the department to recognize, prepare, or administer continuing education programs for its registrants. It is not possible or appropriate for the department to establish different requirements for specific categories of registrants. No change was made as a result of the comment.

Comment: Concerning §141.20(a), one commenter stated that six hours of continuing education is a burden on massage therapists; that continuing education requirements penalize persons who engage in the practice of massage therapy on a part time basis; and that the department should regulate the costs of continuing education.

Response: The department disagrees. The department established a six hour requirement so that compliance with continuing education requirements would not be unnecessarily burdensome for registrants. The department will accept attendance at a variety of activities that can be obtained locally at minimal costs to massage therapists such as local meetings of professional association affiliates, health related or business courses taught at or through community colleges or universities, and courses such as first aid and CPR. The department is authorized to establish continuing education requirements for its registrants, but is not authorized to regulate the cost of programs, seminars, workshops, activities, etc. No changes were made as a result of this comment.

Comment: Concerning §141.20, one commenter asked if massage therapy schools will need to develop a different form for documenting continuing education and asked how the schools would issue credit to a person who takes six hours of a 12 hour workshop.

Response: The department neither agrees nor disagrees and the comment does not require changes to the proposed language. The department will accept the same transcripts schools currently provide to students or will accept any documentation the school decides to use to verify attendance at programs, courses, workshops, seminars etc. A school is not required to provide a certificate of attendance to a person who attends a

portion of a course nor is the school prohibited from doing so. No changes were made as a result of the comment.

Comment: Concerning §141.20, one commenter asked for clarification of the conversions set out in (b)(1)-(3), and suggested changing subsection (c) to read "one clock hour of classtime constitutes one hour of continuing education" rather than "a clock hour is equal to 50 minutes". The commenter also indicated confusion regarding continuing education units.

Response: The department responds that all of the criteria used in determining continuing education credit are standard conversion criteria. "Continuing education unit" is a specific educational term used by some organizations in describing and assigning credit. Organizations that use the continuing education unit or CEU formula assign credit as one (1) unit represents 10 clock hours, therefore, one clock hour would convert to 0.1 units or one-tenth of a unit. The department has used clock hours rather than units or the CEU formula for assigning credit. Defining one clock hour as 50 minutes is also a standard educational criteria. No changes were made as a result of the comment.

Comment: Concerning §141.20(b) and §141.22(4), one commenter stated that requiring attendance at continuing education events and not allowing independent study as a means to meet the continuing education requirements, creates a hardship on massage therapists. A second commenter asked that independent study be accepted.

Response: The department disagrees. The department considered many factors in establishing the continuing education requirements to ensure that the requirements would not be unnecessarily burdensome for registrants. The number of hours was set at six so that in most cases, overnight travel and accommodations would not be required. The pre-approved provider category was established in part so that registrants would not be required to obtain the continuing education hours from a massage therapy school. Additionally, the department will accept many courses that can be obtained locally for the majority of massage therapists, such as local meetings of professional association affiliates, health related or business courses taught at or through community colleges or universities, and courses such as first aid and CPR. No changes were made as a result of the comments.

Comment: Concerning §141.20(a), one commenter stated that the only reason for requiring continuing education is to insure the safety of the client and that he believes there is a profound lack of incidents in which a client has been injured by massage therapists. Therefore, the commenter is concerned that the continuing education requirements will only benefit instructors who will charge whatever they want for the training and that massage therapists will have no option but to pay.

Response: The department disagrees because there are several avenues available to massage therapists for obtaining the continuing education, such as professional association meetings and courses offered by colleges and universities. Additionally, some prospective continuing education providers have indicated to department staff that they are interested in ensuring affordable programs will be provided. The requirements are intended to maintain and improve the quality of services provided to the public by massage therapists. No change was made as a result of this comment.

Comment: Concerning §141.20(a), two commenters support the continuing education requirements and one suggests a maximum number of hours be established.

Response: The department agrees with the commenters and responds that §141.20(a) does set a required number of hours at six per year. No change was made as a result of the comments.

Comment: Concerning §141.20(a), three commenters suggested limiting the years of continuing education by not requiring continuing education for massage therapists after 20 or 25 years.

Response: The department disagrees. The massage therapy registration requirements have been in effect since 1985 without continuing education requirements and the department was careful to establish a minimum requirement that would fairly and consistently meet the statutory requirements without imposing an undue burden on registrants. No change was made as a result of these comments.

Comment: Concerning §141.21, one commenter supports the rules relating to continuing education requirements and would not support rules that required continuing education be provided only by massage therapy schools. Additionally, the commenter believes schools will be able to sufficiently compete with individual presenters.

Response: The department agrees and no changes were made as a result of the comment.

Comment: Concerning §141.21(a), one commenter asked for clarification of the term "participation in or completion of" continuing education programs or activities and one commenter requested clarification regarding who determines an approved program.

Response: The department agrees and has modified the proposed language to read "attendance at and completion of" continuing education programs or activities. Additionally, the department confirms that the department is responsible for approving or recognizing continuing education programs approved by other organizations. No change was made as a result of these comments.

Comment: Concerning §141.21 and §141.24, two commenters are concerned that the requirements for continuing education presenters do not afford sufficient quality assurance of continuing education presentations. Additionally, the commenters suggest that since massage schools go through rigorous requirements to maintain quality, that at least the continuing education originating in-state be channeled through the massage therapy schools.

Response: The department disagrees. The department reviewed continuing education requirements for many other professions during its consideration and establishment of requirements for approximately 17,000 registered massage therapists. The majority of those reviewed allow a great deal of flexibility with regard to continuing education and allow the regulated persons the ability to seek out workshops, programs, and events of personal interest in areas related to the profession. To require that the hours be offered by and obtained through registered massage schools may create difficulties for massage therapists in rural areas to complete the requirements.

Comment: Concerning §141.21(b), one commenter asked the department to clarify whether the language referring to out-of-state presenters being licensed to practice nursing means RNs or LVNs.

Response: The department disagrees. The terms RN and LVN are terms used and regulated in Texas. The language in §141.21

refers to persons licensed, registered, or certified in other states and the more generic language is appropriate. No change was made as a result of this comment.

Comments: Concerning §141.21(b), one commenter suggested interchanging the order of paragraphs (2) and (3) and adding the word "or" between the two. The commenter suggested that otherwise, paragraph (1) makes paragraph (3) illegal.

Response: The department disagrees and responds that paragraph (3) pertains only to out-of-state presenters. No change was made as a result of the comment. Comment: Concerning §§141.21-141.22, one commenter recommends the department accept research and independent study to meet the continuing education requirements.

Response: The department disagrees. The proposed requirements afford a great deal of flexibility without imposing an undue burden on registrants. If the hour requirement were to be raised from the six hours proposed, then it might be more appropriate to consider allowing a portion from research or independent study. No change was made as a result of the comment.

Comment: Concerning §141.24, one commenter stated that the proposed "loosening" of the approval process for workshops is "too loose, too fast" and that approved massage schools should serve as gatekeepers for all continuing education offered other than that which is taught in TEA approved educational institutions or state or national conferences. The "gatekeeper" role would (1) examine and analyze all proposed continuing education from out-of-state presenters to ensure proper content, removing such burdens from the department; (2) ensure quality of continuing education by facilitating appropriate and effective curriculum, instruction, and environment; and (3) schools can be more accountable to the department than out-of-state presenters, ensuring better protection for the registrants in terms of monetary losses and unauthorized continuing education. The commenter also sets out the benefits to the department if the schools act as "gatekeepers" as (1) fewer providers to oversee; (2) registrants are protected by the schools from "fly-by-night" schemes; (3) schools will have more integrity, limiting the "selling" of certificates; (4) schools are responsible for offering only approved continuing education; and (5) the department can verify what schools are offering through random audit. Additionally, the commenter is concerned that registrants may register and pay for a certain workshop, seminar, or activity and attend believing he or she will receive credit for the workshop. The registrant may not learn until the time of audit that the activity will not be accepted by the department for credit.

Response: The department disagrees. The Act authorizes the department to recognize, prepare, or administer continuing education programs for its registrants. Many factors were considered in establishing the continuing education requirements. The department reviewed continuing education requirements for other professions during its consideration and establishment of requirements for approximately 17,000 registered massage therapists. The majority of those reviewed allow a great deal of flexibility with regard to continuing education and allow the regulated persons the ability to seek out workshops, programs, and events of personal interest in areas related to the profession. To require that the hours be offered by and obtained through registered massage schools may not afford the same flexibility for massage therapists in rural areas to complete the requirements. Additionally, the continuing education requirements proposed do not create a burden on the department for the recognition, preparation, or administration of the requirements. The flexibility of choosing

programs of interest also creates a responsibility on the part of each registrant to ensure the activities he or she chooses will be accepted by the department. The department will maintain lists of pre-approved providers, massage schools, and approved programs, and make the lists available to registrants. No change was made as a result of the comment.

Comments: Concerning §141.25, a commenter supported the need to monitor continuing education through a random audit system, but is concerned that the process as proposed would allow registrants to wait until the last minute and if not selected for audit would be able to renew without complying with the continuing education requirements. If the notice of audit is sent with the renewal application, there is enough time for the registrant to take a quick workshop, complete the audit satisfactorily, and renew on time. The commenter suggests instead that each registrant sign a statement of assurance at the time of renewal and then the notice of audit be sent with the annual renewal card.

Response: The department disagrees. Each registrant will sign a document at the time of renewal indicating whether he or she has completed the hour requirements and listing the activity or activities attended. If a registrant receives notice that he or she has been selected for audit, the registrant will also include copies of certificates of attendance. The purpose of renewal is to ensure that a registrant has met all requirements of law to continue to hold a registration. If an audit after the renewal showed the registrant had failed to meet the continuing education requirements, the department would then be required to pursue disciplinary action against the registrant, instead of simply denying the renewal. No change was made as a result of the comment.

Comment: Concerning §141.28, one commenter is concerned that the language requiring each massage therapy educational program to designate a person as the director of the program is not consistent with the Act which allows the 300 hour course of instruction be taught by a single massage therapy instructor.

Response: The department disagrees. Section 141.28(a) clearly states that in the case of a massage therapy instructor operating the educational program independently, the director is the massage therapy instructor. No change is made as a result of this comment.

Comment: Concerning §141.29(a)(3), four commenters recommended increasing the training hours for massage therapy instructors; with one suggesting the department require two (2) years and 1,000 hours of hands-on practice and one suggesting 1,000 hours in a one (1) year period.

Response: The department disagrees. The new rules did increase the requirements for massage therapy instructors. Previously, instructors have been required to attend a course on or have experience in teaching adult learners, but no hour requirement was established. Massage therapists were also required to be registered as massage therapists for two years or one year if licensed or registered in another health care field, such as nursing, physical therapy, athletic training, etc, but did not require that the massage therapist engage in the practice of massage therapy. The new rules for massage therapy instructors require a registrant to be registered a minimum of one year, with at least 250 hours of hands-on experience, and to have completed a 30-hour course in teaching adult learners or document equivalent experience or training. Additionally, §141.29(a)(4) sets out that after January 1, 2002, applicants for massage therapy instructor will have to complete a 30-hour course in teaching adult

learners. The department will not accept an equivalent experience or training after January 1, 2002. No changes were made as a result of this comment.

Comment: Concerning §141.29(a)(3), one commenter indicated concern that the proposed rules allow that hands-on practice accumulated during the time a person holds a temporary registration could be used to meet the requirements, although the temporary registration is issued prior to the time the person has satisfactorily sat for the massage therapy examination which is required for registration.

Response: The department agrees. A temporary registration is issued to individuals after completion of the 300 hour educational requirement and allows individuals to work until the next examination is offered. The temporary registration expires when the examination results are determined and persons who fail are not eligible for an extension or a second temporary registration. The proposed language has been modified to reflect that the 250 hours of hands-on massage required to be eligible for a massage therapy instructor must be obtained after the person has been issued a permanent registration.

Comment: Concerning §141.29(a)(4), one commenter stated that a 20 hour course in teaching adult learners is inadequate. The commenter also suggested a need for the department to clarify that demonstrated competency in teaching adult learners through experience in formal educational setting should include the preparation of lesson plans and other activities associated with formal education.

Response: The department agrees and has modified the proposed language to require the completion of a course in teaching adult learners that is at least 30 clock hours and to reflect that to demonstrate competency an applicant for massage therapy instructor must verify experience in the development of lesson plans and assessment methods.

Comment: Concerning §141.30(b), one commenter requested the department needs to tighten up the fiduciary responsibility of massage schools and require certified audits rather than compilations.

Response: The department agrees; however, the language in §141.30(a) and (b) does require audited financial documents for all business entities other than sole proprietorships and does not allow for compilations. No change was made as a result of the comment.

Comment: Concerning §141.30(e), one commenter suggested requiring financial statements at the time of renewal which are audited and certified by certified public accountants or public accountants are cost prohibitive for any but the largest massage schools and educational programs. The commenter also indicates that reviewed financial statements are only of value if the owner of the educational program is honest and truthful with regard to the information provided to the accountant. The commenter suggests financial reports do not protect the public from fraudulent business activities and that the requirement actually penalizes the public by increasing the cost of massage training programs.

Response: The department disagrees. Financial statements and records are required so the department can reasonably determine that a massage school or educational training program is solvent. The department understands that the submission of financial records does not always guarantee a massage school will not close without warning to the students; however, in most

cases, it is a fair and reasonable gauge of a school's financial stability. No change was made as a result of the comment.

Comment: Concerning §141.31, one commenter suggested using the Texas Education Agency model for change of ownership requirements to ensure that the continuity of the training programs exists when a massage school is sold.

Response: The department disagrees. The department acknowledges that previous requirements created a cumbersome process for the sale of a massage school and that transitions from one owner to another created difficulties. However, the department believes the proposed language, modeled after the requirements for proprietary schools, does allow for a smoother transition at the time of sale and allows the department flexibility in processing changes of ownership. No change was made as a result of the comment.

Comment: Concerning §141.34, one commenter suggested that some direction should be provided to massage schools to ensure that students are able to complete the educational program in the time set out in the pre-enrollment information. The commenter also recommended restoring language which prohibited evening classes from extending beyond a reasonable time.

Response: The department agrees and has added subsection (i) to §141.34 to ensure that students can complete the educational program in the time stipulated and that evening classes do not extend beyond a reasonable time.

Comment: Concerning §141.34(h), one commenter indicated that massage schools with two or more locations in close proximity, such as in major metropolitan areas, often have students who enroll at one location for the classroom hours, but want to attend the internship portion of the educational program at another site because the hours work better for that student's schedule, because it is closer to the student's residence but the classroom hours were not scheduled at a time that met the student's schedule, or for a variety of other reasons. The commenter suggests that students should be allowed that flexibility, if possible. Another commenter suggests deleting the subsection because it could create a problem for students if a school had to close due to fire or insolvency causing the student to start over at another school.

Response: The department agrees that students should be allowed some flexibility when it is in their interest to do so and when it does not cause an undue burden on a school; however, the department is also concerned that a student be provided with the training at the location for which he or she enrolls if the student does not choose to do otherwise. The language in §141.34(h) has been modified to allow students to complete the internship portion of the 300 hour training program at a different location if both the student and the massage school agree.

Comment: Concerning §141.34(h), one commenter states that location leases can and are likely to be up for renewal at times that do not coincide with the completion of a class and that leases are not always renewable, in which case the students that are currently enrolled would not be able to complete the program at that location. The commenter asks for clarification as to whether this subsection requires an educational program to terminate that class and issue refunds of the unearned tuition.

Response: The department disagrees that the rule needs clarification. Section 141.33(e) prohibits massage schools, educational training programs, and instructors from providing instruction of the 300 hour course of instruction at any location that has

not been approved by the department. It is the responsibility of the massage school or the educational program to negotiate a lease in a timely manner so that approval of a new location can be accomplished without discontinuing classes. No change was made as a result of the comment.

Comment: Concerning §141.35, one commenter suggests that a massage therapy instructor who instructs the 300 hour course of instruction independently should be allowed to hire additional instructors to teach advanced course work.

Response: The department agrees. No modification to the language in §141.35 is necessary because the rules does not prohibit independent instructors who are approved by the department to instruct the 300 hour course of instruction required for registration from having other instructors teach advanced courses at the location of the educational program.

Comment: Concerning §141.35(b), one commenter suggested the department clarify the word "diagnosis" to indicate that the practice of evaluation (assessment) and observation are fundamentally different skills and should not be prohibited in the training or practice of massage therapy.

Response: The department disagrees. The Act, §455.002(b), clearly states that therapy or therapeutic procedures related to massage do not include the diagnosis or treatment of illness or disease; or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. It is appropriate to clarify this with regard to advanced training. No change was made as a result of the comment.

Comment: Concerning §141.37(a)(16)(A), one commenter asked that if a person who enrolls in the massage therapy educational program would be permanently barred from registration if at a young adult age, the person was convicted of public indecency even though rehabilitation and adequate time to mature has transpired.

Response: The department responds that public indecency and public lewdness are listed in the Penal Code as sexual offenses and the statutory language does indicate a permanent bar to registration. No change was made as a result of the comment.

Comment: Concerning §141.42(e), one commenter suggested the department clarify how the required termination of students after absences of 15% of the total clock hours in a program should be applied to students who enroll in portions of the 300 clock hour education program required for registration.

Response: The department agrees and has modified the language to clarify that students must be terminated if they accumulate absences of more than 15% of the total clock hours in a program or 15% of a portion of the program if the student enrolls in less than the total 300 hours.

Comment: Concerning §141.43(g)(2), one commenter suggested changing the maximum ratio of 35 pupils to 1 instructor to 36 pupils to 1 instructor to be consistent with Texas Education Agency requirements.

Response: The department agrees and has modified the language. The maximum ratios in §141.43(g)(1) and (2) are recommendations and the language in subsection (g) specifically allows each massage therapy educational program to vary the ratios to conform to specific conditions.

Comments: Concerning §141.54 which establishes exemptions to registrations for massage therapy establishments, a commenter suggests creating exemptions for chair massage being offered on-site in which the business has no fixed location.

Response: The department disagrees. The Act, §455.155(c) allows the department to establish exemptions to registration for massage establishments if the advertising or provision of massage therapy services is incidental to the primary enterprise of a person or business enterprise. Massage therapy services provided by massage therapists are not incidental to the primary enterprise of the therapist. No change was made as a result of the comment.

Comment: Concerning §141.54(9) and (10), a commenter noted that primary athletic and fund raising functions may reasonably last more than 24 hours, such as telethons or public television fund drives. The commenter also suggested changing the reference to registered massage therapy school in paragraph (10) to read massage therapy educational program.

Response: The department responds that athletic and fund-raising functions that anticipate lasting more than 24 hours in a calendar year are not prohibited from requesting exemptions, which will be considered at the time of request. No modification to the rule is necessary as a result of the comment. Concerning the exemption for registered massage therapy schools, the language in paragraph (10) has been modified to reference massage therapy educational program.

The commenters were the Texas Massage School Coalition, the Texas Association of Massage Therapists, and numerous individuals. 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.

25 TAC §§141.1, 141.3 - 141.23

The repeals are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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 February 27, 2001.

TRD-200101169

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



SUBCHAPTER A. THE DEPARTMENT

25 TAC §§141.1 - 141.3

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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.

§141.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Texas Occupations Code, Chapter 455 (the Act relating to the regulation of massage therapy) shall have the same meaning in this chapter as assigned in the Act.

(1) Act--Texas Occupations Code, Chapter 455 and Texas Revised Civil Statutes, Article 4512k, relating to the regulation of massage therapists, massage therapy instructors, massage therapy schools and massage establishments.

(2) Anatomy--The study of the structure of the human body including the following areas: bones, joints and muscles, the skin, blood and blood vessels, cells, tissues and membranes, the heart, the brain, spinal cord and nerves, the lymphatic system, the digestive system, the respiratory system, the urinary system, the reproductive system, glands and hormones.

(3) Business practices and professional ethics standards--The study of standard bookkeeping and accounting practices, office practices, and advertising, and ethical guidelines for massage therapists established by law or the department.

(4) Client--An individual or patron seeking or receiving massage therapy services.

(5) Department--Texas Department of Health.

(6) Health and hygiene--The study of recognized methods of sanitation and cleanliness including prophylaxis or disease prevention as applied to massage therapy services and current knowledge of elements of healthy life styles.

(7) Hydrotherapy--The use of generally accepted methods of external application of water for its mechanical, thermal, or chemical effect.

(8) Instructor--A person employed at a registered massage school who instructs one or more students in any section of the course of instruction, other than Swedish massage therapy techniques or the internship.

(9) Massage therapy--The manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, salt glows, heat lamps, hot and cold packs, or tub, shower, or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the massage is for therapeutic purposes. The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

(10) Massage therapy educational program--The supervised 300 hour course of instruction described in the Act, §455.156,

required for registration provided by a registered massage school or massage therapy instructor.

(11) **Massage therapy instructor**--A registered massage therapist who provides to one or more students instruction approved by the department in massage therapy.

(12) **Owner**--An owner is, in the case of a massage therapy educational program or establishment, an individual, a partnership and any partners, a corporation, or any other legal business entity.

(13) **Physiology**--The study of the normal vital processes of the human body including the processes of cells, tissues, and organs including the contractibility of muscle tissue; coordination through the nervous system; digestion; circulatory reproduction; and secretions.

(14) **Registrant**--A person or entity registered under the Act as a massage therapist, massage school, massage therapy instructor or massage establishment.

(15) **State approved educational institution**--An institution which is approved by the Texas Education Agency or which is an institution of higher education as defined in the Texas Codes Annotated, Texas Education Code, Chapter 61 or a higher education institution approved by a similar agency in another state.

(16) **Swedish gymnastics**--Passive and active joint movements, nonspecific stretches, passive and active exercise, or any combination of these.

(17) **Swedish massage therapy techniques**--The manipulation of soft tissue utilizing effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve stroke, and Swedish gymnastics.

§141.2. Fees.

(a) All fees are non-refundable and shall be submitted in the form of a personal check, certified check or money order made payable to the Texas Department of Health. Cash payments may be made in person only.

(b) The fees related to the registration of massage therapists are as follows:

(1) application fee (includes temporary & initial registration) - \$53;

(2) examination fee - to be determined by the agency approved by the department to administer the examination plus an administrative fee determined by the department at the time the applicant is scheduled for an examination;

(3) re-examination fee - to be determined by the agency approved by the department to administer the examination plus an administrative fee determined by the department at the time the applicant is to be rescheduled for an examination;

(4) written translation fee - the actual costs to the department of translating or having the examination translated into a foreign language, including salaries, travel expenses, and out of pocket expenses plus an administrative fee determined by the department;

(5) examination review fee:

(A) practical and written - \$40;

(B) practical only - \$25;

(C) written only - \$15;

(6) annual renewal fee - \$40;

(7) late renewal fees;

(A) registration expired for 90 days or less - \$60; and

(B) registration expired more than 90 days but less than one year - \$80.

(c) The fees related to massage establishments are as follows:

(1) massage establishment application and registration fee - \$150;

(2) annual renewal fee - \$150;

(3) late renewal fees;

(A) registration expired 90 days or less - \$225; and

(B) registration expired more than 90 days but less than one year - \$300.

(d) The fees related to massage therapy educational programs (massage schools and massage therapy instructors offering the 300 hour course of instruction for registration) are as follows:

(1) application and registration fee (includes inspection) - \$1,400;

(2) annual renewal fee (includes inspection) - \$1,000; and

(3) registration fee for a change of instructional address and additional locations separate from the main campus (includes inspection) - \$375.

(e) The fees related to massage therapy instructors are as follows:

(1) registration fee - \$100;

(2) annual renewal fee - \$100;

(3) late renewal fees for massage therapy instructors;

(A) registration expired for 90 days or less - \$150; and

(B) registration expired for more than 90 days but less than one year - \$200;

(f) Annual approval fee for pre-approved providers for continuing education - \$100.

(g) Registration certificate and identification card replacement fee - \$20.

(h) Returned check fee - \$25.

(i) Fee for name change - \$20.

§141.3. Processing Applications.

(a) The following periods of time shall apply from the date of receipt of an application 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:

(1) letter of acceptance of application for massage therapist registration or temporary registration - 20 working days;

(2) letter of application or renewal deficiency - 20 working days;

(3) issuance of registration renewal after receipt of documentation of all renewal requirements - 10 working days; and

(4) letter of acceptance or notice of deficiency of application for massage school, massage therapy instructor, or massage establishment registration - 30 working days.

(b) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. 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. An application is not considered complete until the required examination has been successfully completed by the applicant. The time periods are as follows:

- (1) letter of approval for examination - 20 working days;
- (2) initial letter of approval for registration - 30 days;
- (3) letter of denial of registration - 30 days; and
- (4) issuance of registration renewal after receipt of documentation of all renewal requirements - 10 working days.

(c) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. If the department 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. Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

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

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

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 February 27, 2001.

TRD-200101170

Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: March 19, 2001
Proposal publication date: September 22, 2000
For further information, please call: (512) 458-7236

◆ ◆ ◆

SUBCHAPTER B. CODE OF ETHICS

25 TAC §§141.5 - 141.7

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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.

§141.5. *General Ethical Requirements.*

(a) A registrant shall not make deceptive, untrue, or fraudulent representations in the practice of massage or employ a trick or scheme in the practice of massage, including, but not limited to, warranty of results of such services and false claims of proficiency in any field.

(b) A registrant shall not use a work area, equipment or clothing that is unclean or unsanitary.

(c) A registrant shall not practice massage therapy fraudulently, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion.

(d) A registrant shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(e) For each client, a registrant shall keep accurate records of the dates of massage therapy services, types of massage therapy and billing information. Such records must be maintained for a minimum of two years.

(f) A registrant must obtain the written consent of a parent or guardian to provide massage therapy services to a person under the age of 17.

(g) On the written request of a client, a client's guardian, or a client's parent if the client is under the age of 17, a registrant shall provide a written explanation of the charges for massage therapy services previously made on a bill or statement of the client. This requirement applies even if the charges are to be paid by a third party.

(h) A registrant shall provide an initial consultation to each client(s) prior to the first massage session and obtain the signature of the client on the consultation document. The consultation document shall include:

(1) the type of massage techniques the registrant anticipates using during the massage therapy session;

(2) the parts of the client's body that will be massaged or the areas of the client's body that will be avoided during the session, including indications and contraindications;

(3) a statement that the registrant shall not engage in breast massage of female clients without the written consent of the client;

(4) a statement that draping will be used during the session, unless otherwise agreed to by both the client and the registrant;

(5) a statement that if uncomfortable for any reason, the client may ask the registrant to cease the massage and the registrant will end the massage session; and

(6) the signature of both the client and the registrant.

(i) If the client's reason for seeking massage changes at any time and any of the information in subsection (h)(1)-(4) of this section is modified, the registrant must provide an updated consultation reflecting any changes and modifications to the techniques used or the parts of the client's body to be massaged.

(j) A registrant shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of massage therapy or massage therapy instruction.

(k) A registrant may not persistently or flagrantly overcharge or over treat a client.

(l) A registrant shall not practice in an unregistered massage establishment or massage school.

(m) A registrant shall not allow an unregistered person to engage in activity for which registration is required.

(n) A registrant shall not provide false information on material submitted to the department.

(o) A registrant shall not interfere with a department investigation by the willful misrepresentation of facts to the department or its authorized representative, or by the use of threats or harassment against any person.

(p) A registrant shall comply with any formal order issued by the department relating to the registrant.

(q) A registrant shall be subject to disciplinary action by the department if the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, §56.31.

(r) A registrant shall notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a registrant;

(2) on a sign prominently displayed in the primary place of business of each registrant;

(3) on a bill for service provided by a registrant to a client or third party; or

(4) by other written and documented method.

(s) A registrant shall keep his or her registration file updated by notifying the department, in writing, of changes of names, address, telephone number and employment.

§141.7. Advertising.

(a) A person, including a massage therapy instructor, a massage school, a massage therapist, or massage establishment that is not registered under the Act shall not use the word "massage" on any sign, display, or other form of advertising unless the person is expressly exempt from the registration requirements of the Act. Under no circumstances may a sexually oriented business use the word "massage" on any sign or other form of advertising.

(b) A registrant shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or registration of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or

(9) advertises or represents in the use of a professional name, title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) When an assumed name is used in a person's practice as a massage therapist or massage establishment, the legal name or registration number of the massage therapist must be listed in conjunction with the assumed name. An assumed name used by a massage therapist must not be false, misleading, or deceptive.

(d) A massage therapy educational program shall not make false, misleading, or deceptive statements concerning the activities or programs of another massage therapy educational program.

(e) A massage therapy educational program shall not maintain, advertise, solicit for or conduct any course of instruction intended to qualify a person for registration as a massage therapist without first obtaining registration from the department.

(f) Advertisements by a massage therapy educational program seeking prospective students must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

(g) Advertisements seeking prospective students must include the full and correct name and registration number of the massage therapy educational program.

(h) No statement or representation shall be made to prospective or enrolled students that employment will be guaranteed upon completion of any program or that falsely represents opportunities for employment.

(i) No statement shall be made by a massage therapy educational program that it has been accredited unless the accreditation is granted from a nationally recognized accrediting agency or organization. The name of the accrediting agency or organization must be used in any accreditation statement.

(j) No massage therapy educational program shall advertise as an employment agency under the same name or a confusingly similar

name or at the same location as the educational program. No representative shall solicit students for a program through an employment agency.

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 February 27, 2001.

TRD-200101171

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



SUBCHAPTER C. MESSAGE THERAPISTS

25 TAC §§141.10 - 141.17

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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.

§141.11. *Application Procedures and Documentation.*

(a) Unless otherwise indicated, an applicant for registration as a massage therapist must submit all required information and documentation of credentials on official department forms. Documents must be submitted on or before the examination deadline set by the department to be eligible for an examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(b) The application fee must accompany the application form. The department will not consider an application as officially submitted until the applicant pays the application fee.

(c) If the application is incomplete, the department will send a notice listing any additional materials required to complete the application. An application not completed within 30 days after the date of the department's notice may be voided.

(d) Applicants must provide the following information on official department forms, unless otherwise requested by the department:

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

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

(3) a statement that the applicant, if issued a registration certificate, shall return the certificate and identification cards to the department upon the expiration, revocation or suspension of the registration;

(4) a statement that the applicant understands that fees and materials submitted in the registration process are nonrefundable and nonreturnable;

(5) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any registration or the revocation of any registration issued; and

(6) the applicant's signature.

(e) Applicants must submit official transcript(s) of all relevant course work. A copy of an official transcript that has been notarized as a true and exact copy of an original may be submitted in lieu of the official transcript.

(f) Applicants applying under §141.10(a)(3) of this title (relating to Qualifications for Registration as a Massage Therapist) must submit two or more of the following to the department on official department forms, if required:

(1) an employer affidavit;

(2) client affidavit(s) which shall include the client's name, address, phone number, and copies of receipt(s) for massage therapy services rendered. This information shall be used for no other purpose than to verify the five-year experience requirements;

(3) W-2 form(s) or any other Internal Revenue Service form which reflects receipt of payment for massage therapy services;

(4) an affidavit of referral for massage therapy from a licensed health care professional; or

(5) any other documentation acceptable to the department.

§141.12. *Temporary Registration.*

(a) A temporary registration shall be issued to an individual who meets the educational and experience requirements as defined in §141.10 of this title (relating to Qualifications for Registration as a Massage Therapist) and who has not previously been issued a temporary registration. A temporary registration may be issued to persons who qualify under subsection (e) of this section.

(b) A person must file a complete application in accordance with §141.11 of this title (relating to Application Procedures and Documentation).

(c) A temporary registration is valid for six months, until the applicant is issued a massage therapy registration after successful completion of the first examination for which the applicant is eligible, or until the applicant is notified by the department that he or she has failed the first examination for which the applicant was eligible, whichever is later, and is not subject to renewal or extension for any reason.

(d) A person whose temporary registration has expired and who has never been registered as a massage therapist is not eligible to receive another temporary registration.

(e) A person who has been registered as a massage therapist and allowed the registration to expire, may be eligible for a temporary registration upon submission and approval of a new application for registration. The expiration of a temporary registration issued under this subsection will be in accordance with subsection (c) of this section.

§141.15. *Massage Therapist Registration Certificates.*

(a) The department will send each applicant whose application has been approved and who has passed the written and practical examination, a registration certificate and identification card containing a registration number. Registration certificates and identification cards remain the property of the department and must be surrendered to the department on demand.

(b) A certificate must be displayed in an appropriate and public manner in the primary office or place of employment of the registrant. In the absence of a primary office or place of employment, the registrant shall carry a current identification card.

(c) Neither the registrant nor anyone else shall display a photocopy of a certificate or carry a photocopy of an identification card in lieu of the original document.

(d) Neither the registrant nor anyone else shall make any alteration on a certificate or identification card issued by the department.

(e) The department will replace a lost, damaged, or destroyed certificate, temporary registration certificate, or identification card upon written request from a registrant and payment of the appropriate replacement fee. The request shall include a statement detailing the loss or destruction of the original certificate or identification card, or be accompanied by the damaged certificate or card.

(f) Certificates and cards that may have not been received by a registrant may be replaced at no charge if the registrant notifies the department in writing and within 30 days of the date the certificate or card was issued.

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 February 27, 2001.

TRD-200101172

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



SUBCHAPTER D. CONTINUING EDUCATION REQUIREMENTS AND DOCUMENTATION

25 TAC §§141.20 - 141.25

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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.

§141.21. *Acceptable Continuing Education.*

(a) Acceptable continuing education includes attendance at and completion of department approved or recognized programs (other than the 300 hour course of instruction required for registration), institutes, seminars, workshops, state or national conferences, advanced course work, or college and university academic courses that are:

(1) directly related to the theory or clinical application of theory pertaining to the practice of massage therapy and the manipulation of soft tissue, business practices, professional ethics, anatomy, physiology, hydrotherapy, and health and hygiene;

(2) advanced bodywork techniques acceptable to the department; and

(3) designed to increase and enhance professional knowledge, skills, or competence in the practice of massage therapy.

(b) Continuing education approved or recognized by the department must be developed and presented by qualified persons.

(1) Massage therapy techniques and courses involving the manipulation of soft tissue must be taught or presented by a massage therapy instructor. Advanced bodywork techniques must be taught or presented by persons with licensure, registration, or education in the technique being presented.

(2) Courses, other than techniques, may be taught or presented by persons with licensure, registration, education or practical experience in the subject being presented.

(3) Out-of-state instructors or presenters offering continuing education in Texas on massage therapy techniques or involving the manipulation of soft tissue must be in compliance with any licensure, registration or certification requirements for massage therapists and massage therapy instructors in the instructor or presenter's home state or be licensed to practice medicine, chiropractic, athletic training, physical therapy, or nursing. If the instructor or presenter's home state does not have licensure, registration or certification requirements for massage therapists and massage therapy instructors, the instructor or presenter must provide documentation of education or practical experience specific to the continuing education being offered.

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 February 27, 2001.

TRD-200101173

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



SUBCHAPTER E. MASSAGE SCHOOLS AND MASSAGE THERAPY INSTRUCTORS

25 TAC §§141.26 - 141.47

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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.

§141.29. *Massage Therapy Instructors.*

(a) A massage therapy instructor shall instruct the 125 hours of Swedish massage therapy and the internship portion of the required course of instruction. To qualify for registration as a massage therapy instructor, a person shall:

(1) be a registered massage therapist (not a temporary registration);

(2) have a high school diploma, a general equivalence diploma or a transcript from an accredited college or university showing successful completion of at least 12 semester hours;

(3) submit a statement of assurance that the registrant has been engaged in the practice of massage therapy for at least one-year and has conducted 250 hours of hands-on experience (does not include internship hours). Hours accumulated while holding a provisional registration can be applied to the requirements of this paragraph; and

(4) complete a 30-hour course on teaching adult learners or demonstrate competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners, a continuing education course in teaching adult learners, or an advanced program approved by the department in teaching the course of instruction. Demonstrated competency means teaching adult learners varied subjects in a formal educational setting, including the development of lesson plans and assessment methods, which may be verified by a letter of reference. Effective January 1, 2002, applicants for registration as a massage therapy instructor must complete the 30-hour course on teaching adult learners.

(b) Persons qualified to instruct courses other than massage therapy technique courses, must hold:

(1) a baccalaureate or higher degree from an accredited college or university that includes:

(A) satisfactory completion of nine semester hours or 12 quarter hours in subjects related to the subject area to be taught; or

(B) have a minimum of one year of practical experience within the last ten years in the subject area to be taught;

(2) an associate degree from an accredited college, university, or recognized post-secondary institution and must have:

(A) a minimum of one year of practical experience within the last ten years in the subject area to be taught and the associate degree must include satisfactory completion of nine semester hours or 12 quarter credit hours in subjects related to the subject area to be taught; or

(B) a minimum of two years of practical experience within the last 10 years in the subject area to be taught; or

(3) a high school diploma, general equivalency degree (GED), or proof of satisfactory completion of relevant subject(s) from a recognized post-secondary institution and practical experience of a minimum of two years within the last ten years in the subject area to be taught.

(c) Each massage therapy instructor and instructor employed by a registered massage school shall be evaluated by the school annually. A report of the evaluation shall be available for review by the department.

(d) Registered massage schools shall ensure continuity of instruction through the reasonable retention of qualified instructors.

§141.32. *Registration Renewal.*

(a) When issued, the registration of a massage therapy educational program is valid for one year beginning on the date of issuance of the initial registration. A registrant must renew the registration annually.

(b) The renewal date of a registration shall be the last day of the month in which the registration was originally issued.

(c) A complete application for renewal of a registration shall consist of:

(1) the annual renewal fee;

(2) the completed application for renewal;

(3) the complete annual financial statements for the most recent fiscal year, demonstrating the massage therapy educational program is financially stable and capable of fulfilling its commitments for instruction; and

(4) any other information deemed necessary by the department to determine compliance with the Act and this chapter.

(d) At least 30 days prior to the registration expiration date, the department shall send a notice of the expiration date and the amount of the renewal fee due. The notice will be mailed to the address in the department's records. Each massage therapy educational program must complete and return the registration renewal form to the department with the required renewal fee.

(e) The registration renewal forms for massage therapy educational programs shall require the address, the names of the owner/operator of the educational program, a statement of all misdemeanor and felony offenses for which the registrant or owner or operator have been convicted, entered a plea of nolo contendere or guilty, or received deferred adjudication.

(f) A massage therapy educational program has renewed the registration when it has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the registration. The postmark date shall be considered the date of mailing. Massage therapy educational programs should allow three to four weeks for the department to receive the registration renewal fees and documentation, and print the annual certificate.

(g) The department shall issue a registration renewal certificate to a massage therapy educational program once all requirements for renewal are met.

(h) A massage therapy educational program whose registration has expired for not more than one year may renew the registration by submitting to the department the renewal form and the fee. A massage therapy educational program that continues to operate with an expired registration may be subject to disciplinary action. Course hours taught during the time the registration is expired will not apply toward the 300 hour course of instruction. The postmark date shall be considered the date of mailing.

(i) A massage therapy educational program whose registration has expired for more than one year from the expiration date may not renew the registration.

§141.33. *Locations.*

(a) A certificate of registration shall be issued for each approved instructional location(s). Instruction shall not be provided at an additional location until the department has issued a certificate of registration for the additional location.

(b) A massage therapy educational program shall obtain approval for any additional location(s) where the 300 hour supervised course of instruction will be offered. All policies and curriculum of the original location apply to an additional location(s).

(c) A request for registration of an additional location shall include the appropriate fee and the following documents:

(1) fire inspection report, if required by the city or county;

(2) certificate of occupancy;

(3) lease agreement; and

(4) detailed floor plan.

(d) The department may approve a massage therapy educational program to begin operation at an additional location prior to inspection if an inspection of the location has been conducted by the department within the preceding 90 days or if the instruction will be conducted at a public facility, such as a hotel, hospital, university, college, etc.

(e) A request for a change of instructional location of a massage therapy educational program must be filed and approved by the department before the new location is used. Upon approval of a change of instructional location, no course work may be provided at the previous location.

(f) Any refunds due under the cancellation and refund policy must be made before the department will approve an additional location or a change of location.

§141.34. Curriculum and Internship for the Basic Course of Instruction.

(a) Each massage therapy educational program shall follow the curriculum prescribed by the department for the 300 hour supervised course of instruction.

(b) A student must complete the first 250 hours of the supervised course of instruction before the student is eligible to enter the internship program.

(c) A classroom hour shall include at least 50 clock minutes of actual classroom time and may include a maximum of 10 minutes of break time. Break time for hours which are taught consecutively in one sitting (i.e., in one evening) may be aggregated into a single break time during those consecutive hours, not to exceed 3 hour blocks of instruction, but not at the end of those hours. The 10 minutes of break time may not be accumulated and used in lieu of lunch or dinner breaks.

(d) An instructor must be physically present with the student(s) during the classroom hours taught by that instructor.

(e) An internship program must provide a student with a minimum of 40 hours of hands-on massage therapy experience at the location of the student's enrollment. A student enrolled at an additional location shall not be required to travel to another location to complete the internship.

(f) During the hands-on experience, a massage therapy instructor must be available on the premises of the educational program and be immediately available to the student(s).

(g) A massage therapy educational program shall not require a student to advertise for clients or to obtain clients as part of the internship program. At the student's option and with the educational program's permission, a student may obtain clients for the student's hands-on massage therapy experience.

(h) A massage therapy educational program must provide all 300 hours of the basic course of instruction at the site where the student enrolled, unless otherwise agreed to by both the student and the massage therapy educational program.

(i) A massage therapy educational program shall schedule classes so that the students will be able to complete the program during the length of time stipulated in the preenrollment information. No evening class may be scheduled to extend beyond a reasonable time.

§141.40. Cancellation and Refund Policy.

(a) Each massage therapy educational program shall develop and implement a cancellation and refund policy which must provide a full refund of all monies paid by a student if:

(1) the student cancels the enrollment agreement within 72 hours (until midnight of the third day excluding Saturdays, Sundays,

and legal holidays) after the enrollment contract is signed by the prospective student;

(2) the enrollment of the student was procured as the result of any misrepresentation in advertising, in promotional materials of the massage therapy educational program or by the owner, the massage school, or massage therapy instructor; or

(3) the student was not provided ample opportunity to read the information provided in §141.37(a) of this title (relating to Enrollment Procedures).

(b) The policy must provide for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter, withdraws from, or is terminated from the program at any time prior to completion. The policy must provide that:

(1) refunds for each program will be based on the program time expressed in clock hours;

(2) refunds must be consummated within 30 days after the earliest of:

(A) the effective date of termination if the student is terminated;

(B) the date of receipt of written notice from the student of withdrawal; or

(C) 10 instructional days following the first day of the program if the student fails to enter;

(3) if tuition is collected in advance of the first day of the program, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the program, not more than \$200 shall be retained by the massage therapy educational program;

(4) if a student enters a massage therapy educational program and is terminated or withdraws, the minimum refund of the tuition will be:

(A) during the first week or one-tenth of the program, whichever is less, 90% of the remaining tuition;

(B) after the first week or one-tenth of the program, whichever is less, but within the first three weeks of the program, 80% of the remaining tuition;

(C) after the first three weeks of the program, but within the first quarter of the program, 75% of the remaining tuition;

(D) during the second quarter of the program, 50% of the remaining tuition;

(E) during the third quarter of the program, 10% of the remaining tuition; and

(F) during the last quarter of the program, the student may be considered obligated for the full tuition;

(5) refunds of items of extra expense to the student, such as instructional supplies, books, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges, where these items are separately stated and shown in the pre-enrollment information, will be made in a reasonable manner;

(6) if a program is discontinued by the massage therapy educational program and this prevents the student from completing the program:

(A) all tuition and fees paid shall be refunded if the student is not provided with a transcript of all successfully completed hours within 30 days of discontinuance of the program; or

(B) in the event, an additional or changed location is 10 miles or more from the previously approved location of instruction and an enrolled student is unable to complete the program at the additional or changed location as determined by the department:

(i) all tuition and fees paid shall be refunded if the student is not provided with a transcript of all successfully completed hours within 30 days of the change of location; or

(ii) all unearned tuition and fees shall be refunded if a transcript of all successfully completed hours is provided within 30 days of the change of location.

(7) If a student did not meet the admission requirements of a program and the student does not complete the program for any reason, all tuition and fees shall be refunded.

(c) In all refund computations, leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations shall not be counted as part of the elapsed time for purposes of calculating a student's refund.

(d) A massage therapy educational program is considered to have made a good faith effort to consummate a refund if the student's file contains evidence of the following attempts:

(1) certified mail to student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address and if known.

(e) If the department determines that the method used to calculate refunds is not in compliance with this section and if the massage therapy educational program does not provide the correct refund promptly, the educational program shall submit a report of an audit conducted by a certified public accountant or public accountant of the refunds due former students. The audit report shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous four years for each former student:

(1) the name, address(es), and social security number;

(2) the last date of attendance and date of termination;

(3) the amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due; and

(4) the reason for refund.

(f) The department may take disciplinary action against the registration of a massage therapy educational program for a violation of this section; however, the department has no authority to recover a refund on behalf of a student.

§141.42. Attendance Standards.

(a) Each massage therapy educational program shall develop and implement a written policy relating to attendance for students enrolled in the 300 hour course of instruction or any portion of the course of instruction.

(b) The policy shall include requirements and fees for make-up work.

(c) An absence shall be charged for a full day when a student attends none of the scheduled classes on that day. A partial day of absence shall be charged for any period of absence during the day.

(d) School holidays shall not be considered as days of absence.

(e) The attendance policy shall require the termination of students who accumulate absences of:

(1) more than 10 consecutive school days; or

(2) more than 15% of the total clock hours in a program, or 15% of a portion of the program if a student enrolls in less than the total 300 hours.

(f) Refunds shall be made in accordance with §141.40 of this title (relating to Cancellation and Refund Policy). The effective date of termination for purposes of refunds shall be the last date of absence under subsection (e) of this section. A student whose enrollment is terminated for violation of the attendance policy may not reenter before the start of the next grading period.

(g) A massage therapy educational program may not start students after 10% of the program has been taught except in those cases where appropriate credit for previous education has been given by the department.

(h) Make-up work shall not be authorized for the purpose of removing an absence under subsection (e) of this section.

(i) A leave of absence for reasonable purposes acceptable to the massage therapy educational program shall not exceed the lesser of 30 school days or 60 calendar days.

(1) A student shall be granted only one leave of absence for each 12-month period.

(2) Attendance records shall clearly show the dates for which the leave of absence was granted. A written statement as to why the leave of absence was granted, signed by both the student and the director of the massage therapy educational program indicating approval, shall be placed in the student's file.

(3) If the student fails to return from leave, the student will be automatically terminated and a refund made in accordance with §141.40 of this title (relating to Cancellation and Refund Policy). The effective date of termination shall be the last day of the leave of absence.

(j) Each massage therapy educational program must maintain a master record of attendance which clearly indicates the number of scheduled hours each day and the hours of absence for each student. Entries to the attendance log must indicate whether or not a student was in attendance and must be permanent.

§141.43. Equipment and Facility Requirements.

(a) Each massage therapy educational training program shall provide adequate equipment in good working order. The equipment required for instruction shall be determined by the program objective(s). The equipment shall be comparable to that commonly found in the practice of massage therapy.

(b) The equipment shall be of sufficient quality to meet the maximum use requirements of the current students, as demanded by the activity patterns of the program.

(c) Equipment not in working order shall be removed from the instructional area, marked as out-of-order, or properly identified as awaiting repair.

(d) The amount of classroom and laboratory space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities or work stations, as necessitated by the activity patterns of the program.

(e) Enrollment shall not exceed the design characteristics of the student workstations.

(f) The facilities shall meet any state and local ordinances or requirements governing building and safety for the designated use.

(g) If adequate facilities and equipment are available, the following maximum ratios are recommended for the basic course of instruction, and may be varied at the discretion of the massage therapy educational program to conform to specific conditions:

- (1) laboratory - 12 tables to 1 instructor and 3 students to 1 table; and
- (2) classroom - 36 pupils to 1 instructor.

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 February 27, 2001.

TRD-200101174

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



SUBCHAPTER F. MASSAGE ESTABLISHMENTS

25 TAC §§141.50 - 141.55

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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.

§141.54. Exemptions.

(a) The following establishments are specifically exempt from the provisions of the Texas Occupations Code, Chapter 455 (the Act), regulating massage establishments:

- (1) an establishment that holds a license, permit, certificate, or other credential issued by the state under another law, and that offers or performs massage therapy under the scope of that credential;
- (2) a registered massage therapist who practices as a solo practitioner in that therapist's legal name or uses an assumed name if the person's legal name or massage therapy registration number is used in any advertisement or presentation of the assumed name;
- (3) a nonprofit organization which is tax exempt under 26 United States Codes Annotated, §501(c) (Internal Revenue Code);
- (4) a hotel, motel, or similar commercial establishment which:
 - (A) offers a sleeping room for rent for a period of time that is more than 10 hours; and
 - (B) does not allow a tenant or occupant of a sleeping room to sublease the room for a period of time that is less than 10 hours;
- (5) a business whose primary business is devoted to the sale of food and food products;

(6) a health spa in compliance with the Health Spa Act, Texas Occupations Code, Chapter 702;

(7) the office of a physician, chiropractor, physical therapist, or member of another similarly licensed or regulated profession as determined by the department if the professional is practicing within the scope of his or her license. This exemption applies to a professional who uses a registered massage therapist to practice massage therapy in the professional's office or where the professional has authority to delegate tasks under the statutory authority for that professional;

(8) an establishment owned or operated by the federal government, the state, a political subdivision of the state, or a municipality;

(9) an establishment which is operational for a period of time of no more than 24 hours in a calendar year and in which the provision of massage therapy services is incidental to the primary athletic, fund raising, or other purpose of the event sponsored by the establishment;

(10) a massage therapy educational program in compliance with the Act;

(11) a beauty shop in compliance with the Texas Occupations Code, Chapter 1602; or

(12) a barber shop in compliance with the Texas Occupations Code, Chapter 1601.

(b) An establishment may request an exemption from the registration requirements of this section where it can show that the advertising or provision of massage therapy services is incidental to the person's primary enterprise.

(c) Requests for exemptions must be in writing and must state the reasons why the exemption should be granted.

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 February 27, 2001.

TRD-200101175

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



SUBCHAPTER G. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §§141.60 - 141.66

The new sections are adopted under the Occupations Code, §455.051, which provides the board with the authority to adopt rules necessary for the performance of its duties; and the Health and Safety Code, §12.001, which provides the Board of Health (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 February 27, 2001.

TRD-200101176

Susan K. Steeg
General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: September 22, 2000

For further information, please call: (512) 458-7236



CHAPTER 229. FOOD AND DRUG SUBCHAPTER G. MANUFACTURE, STORAGE, AND DISTRIBUTION OF ICE SOLD FOR HUMAN CONSUMPTION, INCLUDING ICE PRODUCED AT POINT OF USE

The Texas Department of Health (department) adopts the repeal of existing §§229.111-229.120, and new §§229.111-229.115, concerning the manufacture, storage, and distribution of ice sold for human consumption, including ice produced at point of use. New §§229.112 and §229.115 are adopted with changes to the proposed text as published in the December 1, 2000, issue of the *Texas Register* (25 TexReg 11869). The repealed sections and new §§229.111, 229.113-229.114 are adopted without changes, and therefore will not be republished.

New §§229.111-229.115 cover general provisions; definitions; source water; labeling of packaged ice; and ice equipment. Sections 229.111-229.120 are being proposed for repeal because the rules have not been updated since 1976 and many of the sections contain outdated references or are covered under more recent rules such as 25 Texas Administrative Code (TAC), Chapter 229, Food and Drug, Subchapter N, Current Good Manufacturing Practice and Good Warehousing Practice in Manufacturing, Packing or Holding Human Food. The new sections reorganize and rewrite the requirements resulting in content that reflects current practices in the industry.

Pursuant to the Government Code, §2001.039, each state agency is required to review and consider for re-adoption each rule adopted by that agency. The current rules have been reviewed and the department has determined that reasons for adopting these sections still exist. However, the language has been updated to better reflect current industry practice and allow for better assurances for the safety of source water used in the production of ice.

The department published a Notice of Intention to Review for §§229.111-229.120 as required by Government Code, §2001.039 in the *Texas Register* on April 7, 2000 (25 TexReg 3062). No comments were received as a result of the publication of the notice.

Change: Concerning §229.112(2), an editorial change was made in the first sentence to correctly show the possessive of "plant's" published in proposed text as "plants".

The following comments were received by the department concerning the proposed sections. Following each comment is the department's response and any resulting change.

Comment: Concerning §229.115(c), one commenter stated that the requirement for drains in ice storage vaults should be specified only for producers that store ice at 32 degrees Fahrenheit or above.

Response: The department disagrees with the commenter. The purpose of the drain is for proper cleaning of the ice vault. Ice vaults are required in the same section to be kept under sanitary conditions. However, this section applies to block ice plants. The department realizes that the way the section is structured, the application of this section only to block ice plants is not clear. The department has revised §229.115(b) with "facilities" and proposed §229.115(c) with new paragraph (1) and (2).

Comment: Concerning §§229.111-229.115, one commenter requested the rules contain a section requiring sampling of finished product ice.

Response: The department disagrees with the commenter. Prior to the proposal of these rules, the department conducted a limited survey of packaged ice in varying locations throughout the state. Analyses conducted by state approved laboratories found only two of eighty surveillance samples to be positive for total coliform. Follow up samples for the two positive analyses were negative. Therefore, since there is no standard for coliform in packaged ice at the federal level, the department does not feel that the additional burden placed on Texas industry is warranted. The department also has regulatory authority to collect during inspections. In addition, the department has no knowledge of any food-borne illness outbreaks associated with packaged ice. No change was made as a result of this comment.

The commenters were: SouthWest Foods Manufacturing and International Packaged Ice Association.

25 TAC §§229.111 - 229.120

The repeals are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; 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, 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 February 27, 2001.

TRD-200101167

Susan K. Steeg
General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: December 1, 2000

For further information, please call: (512) 458-7236



25 TAC §§229.111 - 229.115

The new rules are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; 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, department, and the commissioner of health.

§229.112. *Definitions.*

The following words and terms, when used in these sections, shall pertain to ice production and shall have the following meanings unless the context clearly indicates otherwise.

(1) Approved laboratory - An approved laboratory is one which is acceptable to the department, certified by the U.S. Environmental Protection Agency (EPA), or certified by the primacy enforcement authority in any state which has been granted primacy by EPA or certified by a third party organization acceptable to a primacy state.

(2) Approved source (when used in reference to a plant's product water or operations water) - A source of water and the water there from, whether it be from a spring, artesian well, drilled well, municipal water supply, or any source, that has been inspected and the water sampled, analyzed, and found to be safe and sanitary quality according to applicable laws and regulations of State and local government agencies having jurisdiction. The presence in the plant of current certificates or notifications of approval from the government agency or agencies having jurisdiction constitutes approval of the source and the water supply.

(3) Department - The Texas Department of Health.

§229.115. *Ice Equipment.*

(a) Ice equipment. Equipment used in ice plants or as part of the facilities producing ice at point of use including, but not limited to, portable can fillers, core sucking devices, drop tubes, tank lids, ice cans, ice manufacturing, and ice dispensers shall be handled and maintained in such a manner as to prevent contamination. Equipment shall be located away from areas that could cause contamination such as toilets, vestibules, and openings to the outside. If at any time equipment is suspected as having been contaminated by improper handling, this equipment shall be sanitized.

(b) Block ice facilities.

(1) In order to minimize the possibility of contamination of ice during freezing, the operator employed on the tank floor shall use footwear which is limited to use only on the tank room floor. This footwear cannot be worn when leaving the tank room floor for any purpose. Only authorized persons are to be permitted on the tank room floor or within the ice storage rooms. Signs shall be posted stating that only authorized persons are allowed on the tank room floor and in ice storage vaults.

(2) Ice storage vaults. Ice storage vaults must be kept under sanitary conditions and shall be maintained in such a condition as to prevent possible flooding of rooms with waste material. All vaults shall be provided with suitable drains. To prevent possible contamination of ice, all accumulations of rust, fungus growth, mold, or slime shall be controlled.

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 February 27, 2001.

TRD-200101168

Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: March 19, 2001
Proposal publication date: December 1, 2000
For further information, please call: (512) 458-7236



**SUBCHAPTER N. CURRENT GOOD
MANUFACTURING PRACTICE AND
GOOD WAREHOUSING PRACTICE IN
MANUFACTURING, PACKING, OR HOLDING
HUMAN FOOD**

25 TAC §§229.211, 229.217, 229.219

The Texas Department of Health (department) adopts amendments to §§229.211, 229.217, and 229.219, concerning the current good manufacturing practice and good warehousing practice in manufacturing, packing, or holding human food. Section 229.211 is adopted with changes to the proposed text as published in the December 1, 2000 issue of the *Texas Register* (25 TexReg 11871). Section 229.217 and §229.219 are adopted without changes and therefore will not be republished.

Specifically, the sections cover definitions; sanitary facilities and controls; and production and process controls. In §229.211, a definition for approved source of food was added and the definition for sanitization was clarified. Section 229.217 clarifies the requirements for water sources to include specific information on approved sources of water and sampling requirements. Language from the Sanitation in Pecan Shelling Plants, §229.134 of this title, which has been repealed, was added to §229.219.

The department received no public comments on the proposed amendments during the comment period.

Change: The department made an editorial change concerning §229.211(14)(B) to reflect a subscript "a_w" for water activity which was incorrectly stated as "aw" in proposed rule.

The amendments are adopted under the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; 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, department, and the commissioner of health.

§229.211. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Those definitions and interpretations of terms of the Federal Food, Drug, and Cosmetic Act (the Act), §201, are also applicable when used in this subchapter.

- (1) Acid foods or acidified foods--Foods that have an equilibrium pH of 4.6 or below.
- (2) Act--Federal Food, Drug, and Cosmetic Act.
- (3) Adequate--That which is needed to accomplish the intended purpose in keeping with good public health practice.
- (4) Approved source--A supplier of food that complies with applicable state and federal laws and is licensed, if required,

and inspected by the regulatory authority having jurisdiction over the processing and distribution of food.

(5) Batter--A semifluid substance, usually composed of flour and other ingredients, into which principal components of food are dipped or with which they are coated, or which may be used directly to form bakery foods.

(6) Blanching (except for tree nuts and peanuts)--A prepackaging heat treatment of foodstuffs for a sufficient time and at a sufficient temperature to partially or completely inactivate the naturally occurring enzymes and to effect other physical or biochemical changes in the food.

(7) Control point--Any point, step, or procedure at which biological, physical, or chemical factors can be controlled.

(8) Food--Articles used for food or drink for human consumption; chewing gum; and articles used for components of any such article.

(9) Food-contact surfaces--Those surfaces that contact human food and those surfaces from which drainage onto the food or onto surfaces that contact the food ordinarily occurs during the normal course of operations. "Food-contact surfaces" includes utensils and food-contact surfaces of equipment.

(10) Lot--Food produced during a period of time indicated by a specific code.

(11) Microorganisms--Yeasts, molds, bacteria, and viruses which include, but are not limited to, species having public health significance. The term "undesirable microorganisms" includes those microorganisms that are of public health significance; that subject food to decomposition; that indicate that food is contaminated with filth; or that otherwise may cause food to be adulterated within the meaning of the Act. Occasionally in these regulations, the adjective "microbial" is used instead of using an adjectival phrase containing the word microorganism.

(12) Pests--Any objectionable animal or insect including, but not limited to, birds, rodents, flies, and larvae.

(13) Plant--The building or facility, or parts thereof, used for or in connection with the manufacturing, packaging, labeling, or holding of human food.

(14) Potentially hazardous food--A food that is natural or synthetic and requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms; the growth and toxin production of *Clostridium botulinum*; or in raw shell eggs, the growth of *Salmonella enteritidis*.

(A) The term includes a food of animal origin that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified in this definition.

(B) The term does not include an air-cooled hard-boiled egg with shell intact; a food with a water activity (a_w) value of 0.85 or less; a food with a pH level of 4.6 or below when measured at 24 degrees Celsius (75 degrees Fahrenheit); and a food, in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution. The term also does not include a food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. enteritidis* in eggs or *C. botulinum* cannot occur, such as a food that has

an (a_w) and a pH that are above the levels specified above and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms. The term also does not include a food that may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness, but that does not support the growth of microorganisms as specified in the definition of a potentially hazardous food.

(15) Quality control operation--A planned and systematic procedure for taking all actions necessary to prevent food from being adulterated within the meaning of the Act.

(16) Raw agricultural commodity--Any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(17) Rework--Clean, unadulterated food that has been removed from processing for reasons other than insanitary conditions or that has been successfully reconditioned by reprocessing and that is suitable for use as food.

(18) Safe-moisture level--A level of moisture low enough to prevent the growth of undesirable microorganisms in the finished product under the intended conditions of manufacturing, storage, and distribution. The maximum safe moisture level for a food is based on its water activity (a_w). An (a_w) will be considered safe for a food if adequate data are available that demonstrate that the food at or below the given (a_w) will not support the growth of undesirable microorganisms.

(19) Sanitization--The application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of 5 logs, which is equal to a 99.999% reduction of representative disease microorganisms of public health importance.

(20) Shall--Term to state mandatory requirements.

(21) Should--Term to state recommended or advisory procedures or identify recommended equipment.

(22) Water activity (a_w)--A measure of the free moisture in a food. The quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature.

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 February 27, 2001.

TRD-200101179

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: December 1, 2000

For further information, please call: (512) 458-7236

◆ ◆ ◆
**SUBCHAPTER X. LICENSURE OF DEVICE
DISTRIBUTORS AND MANUFACTURERS**

25 TAC §§229.432-229.436, 229.439, 229.441, 229.443

The Texas Department of Health (department) adopts amendments to §§229.432-229.436, 229.439, 229.441, and 229.443,

concerning the licensure of device distributors and manufacturers. Section 229.433 is adopted with changes to the proposed text as published in the December 1, 2000 issue, of the *Texas Register* (25 TexReg 11876). Sections 229.432, 229.434-229.436, 229.439, 229.441, and 229.443 are adopted without changes, and therefore will not be republished.

The amendments clarify and update minimum standards for device distributors and manufacturers in order to conform with changes in federal requirements made pursuant to the U.S. Food and Drug Administration (FDA) Modernization Act of 1997. In addition, the amendments reflect changes necessitated as a result of a U.S. Supreme Court ruling that upheld a previous appellate court decision effectively negating FDA's attempts to regulate cigarette and smokeless tobacco products as devices. The rules contain new language related to combination products in order to reflect certain provisions of Senate Bill 1236, passed by the 76th Texas Legislature. The rules also contain new language related to the sale of contact lenses at flea markets in order to reflect certain provisions of House Bill 749, passed by the 76th Texas Legislature. The amendments clarify existing requirements for prescription devices as well as access to and retention of records required by these rules. Finally, the amendments update licensing procedures and contact references.

Due to staff comments an editorial change was made concerning §229.433(23) to delete the incorrect section symbols published in proposed preceding "adequate directions for use cannot be prepared."

No comments were received regarding the amended sections as proposed.

The amendments are adopted under Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; 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.

§229.433. *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 Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

(2) Adulterated Device--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, §431.111.

(3) Advertising--All representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(4) Authorized agent--An employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

(5) Board--The Texas Board of Health.

(6) Commissioner--The Commissioner of Health.

(7) Department--The Texas Department of Health.

(8) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.

(9) Distributor--A person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user. The term includes an importer or an own-label distributor. The term does not include a person who repackages a finished device or who otherwise changes the container, wrapper, or labeling of the finished device or the finished device package.

(10) Electronic product radiation--Any ionizing or nonionizing electromagnetic or particulate radiation, or any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

(11) Finished device--A device, or any accessory to a device, which is suitable for use, whether or not packaged or labeled for commercial distribution.

(12) Flea market--A location at which booths or similar spaces are rented or otherwise made available temporarily to two or more persons and at which the persons offer tangible personal property for sale.

(13) Health authority--A physician designated to administer state and local laws relating to public health.

(14) Importer--Any person who initially distributes a device imported into the United States.

(15) Ionizing radiation--Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

(16) Labeling--All labels and other written, printed, or graphic matter:

(A) upon any article or any of its containers or wrappers; or

(B) accompanying such article.

(17) Manufacture--The making by chemical, physical, biological, or other procedures of any article that meets the definition of device. The term includes the following activities:

(A) repackaging or otherwise changing the container, wrapper, or labeling of any device package in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer; or

(B) initiation of specifications for devices that are manufactured by a second party for subsequent commercial distribution by the person initiating specifications.

(18) Manufacturer--A person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include a person who only distributes a finished device.

(19) Misbranded Device--Has the meaning specified in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, §431.112.

(20) Person--Includes individual, partnership, corporation, and association.

(21) Place of business--Each location at which a device is manufactured or held for distribution.

(22) Practitioner--Means a person licensed by the Texas State Board of Medical Examiners, State Board of Dental Examiners, Texas State Board of Podiatric Medical Examiners, Texas Optometry Board, or State Board of Veterinary Medical Examiners to prescribe and administer prescription devices.

(23) Prescription device--A restricted device which, because of any potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such device, and hence for which adequate directions for use cannot be prepared.

(24) Radiation machine--Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(25) Radioactive material--Any material (solid, liquid, or gas) that emits radiation spontaneously.

(26) Reconditioning--Any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards as specified in the Texas Food, Drug, Device, and Cosmetic Salvage Act, Health and Safety Code, Chapter 432, §432.003, as interpreted in the rules of the board in §229.192 of this title (relating to Definitions).

(27) Restricted device--A device subject to certain controls related to sale, distribution, or use as specified in the Federal Food, Drug, and Cosmetic Act, as amended, §520(e)(1).

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 February 27, 2001.

TRD-200101178

Susan K. Steeg

General Counsel

Texas Department of Health

Effective date: March 19, 2001

Proposal publication date: December 1, 2000

For further information, please call: (512) 458-7236



PART 16. TEXAS HEALTH CARE INFORMATION COUNCIL

CHAPTER 1301. HEALTH CARE INFORMATION

SUBCHAPTER E. TECHNICAL ADVISORY COMMITTEES

25 TAC §§1301.61-1301.69

The Texas Health Care Information Council (Council) adopts the repeal of §§1301.61-1301.69, relating to the Council's technical advisory committees (TACs), without changes to the proposed text as published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12317).

The Council adopts the repeal of §§1301.61-1301.69, in response to House Bill 1513, Acts 1999, 76th Legislature which, in part, amended Health and Safety Code §108.003 (g) to exclude the Council's technical advisory committees from the application of Chapter 2110 of the Government Code.

The Council did not hold a public hearing and none was requested on the proposed repeal of the rules. Additionally, the Council did not receive any written comments on the proposed repeal of rules.

The repeal of §§1301.61-1301.69 is adopted under the Health and Safety Code, §108.003 and §108.006. The Council interprets §108.003(g) as authorizing the Council to appoint technical advisory committees and those advisory committees shall include the technical advisory committees described in paragraphs one through five (1-5) of §108.003(g), Health and Safety Code and Government Code §2110 does not apply to these advisory committees. The Council interprets §108.006 as authorizing it to propose and adopt rules necessary to carry out Chapter 108, including proposing to repeal rules concerning the Council's advisory committees.

The Health and Safety Code, §108.003, is affected by the adopted repeal of these sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2001.

TRD-200101268

Jim Loyd

Executive Director

Texas Health Care Information Council

Effective date: March 25, 2001

Proposal publication date: December 15, 2000

For further information, please call: (512) 482-3312



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER GG. INSURANCE TAX

34 TAC §3.822

The Comptroller of Public Accounts adopts the repeal of §3.822, concerning collection of taxes, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12632).

A new §3.822, concerning the basis and reporting of surplus lines premium tax, allocating premium for surplus lines and independently procured premium tax and multiple agent transactions for surplus lines insurance, is being simultaneously proposed in

order to provide more specific tax collection information to taxpayers. The substance of the current §3.822 will be incorporated into the new proposal.

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, §111.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 28, 2001.

TRD-200101204

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs

Comptroller of Public Accounts

Effective date: March 20, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 463-4062



34 TAC §3.822

The Comptroller of Public Accounts adopts new §3.822, concerning the basis and reporting of surplus lines premium tax, the allocation of premium for surplus lines and independently procured premium tax, and multiple agent transactions for surplus lines insurance, without changes to the proposed text as published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12633).

The new section provides information on the methods for allocating premium among or between states in a multiple state surplus lines or independently procured policy; it provides details concerning the basis of taxation for surplus lines policies as either premium received or premium written; it provides information on who is responsible for the payment of tax in a multiple agent transaction; and it discusses prepayment requirements for surplus lines taxes. Current §3.822, concerning Collection of Taxes, is being simultaneously repealed. The new section identifies the type of insurance affected and purpose of the rule.

No comments were received regarding adoption of the new section.

This new section is adopted under Tax Code, §111.002, which authorizes the comptroller to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The new section implements Insurance Code, Article 1.14-2, §12, and Title 2, §101.252.

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 February 28, 2001.

TRD-200101205

Martin Cherry

Deputy General Counsel for Tax Policy and Agency Affairs

Comptroller of Public Accounts

Effective date: March 20, 2001

Proposal publication date: December 22, 2000

For further information, please call: (512) 463-4062



—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 Reviews

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for re-adoption, revision or repeal Title 25, Texas Administrative Code, Part 1, Chapter 289. Radiation Control, Subchapter E. Registration Regulations, §289.230.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or re-adopting this rule continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to this rule as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200101365
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 7, 2001



Texas Commission on Human Rights

Title 40, Part 11

The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 321, consisting of §§321.1 - 321.6, concerning General Provisions. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200101309
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Filed: March 5, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 323, consisting of §§323.1 - 323.9, concerning Commission. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for re-adoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section

of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200101308
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Filed: March 5, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 325, consisting of §§325.1 - 325.5, concerning Local Commissions. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for readoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200101307
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Filed: March 5, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 327, consisting of §§327.1 - 327.31, concerning Administrative Review. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for readoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Interim Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200101306
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Filed: March 5, 2001



The Texas Commission on Human Rights files this notice of intention to review Texas Administrative Code, Title 40, Chapter 329, consisting of §329.1, concerning Judicial Action, Chapter 331, consisting of

§331.1, concerning Reports and Recordkeeping, and Chapter 333, consisting of §333.1, concerning Conformity. This review is undertaken pursuant to Government Code, §2001.039, and the General Appropriations Act of 1997, Article IX, §167, which require state agencies to review and consider for readoption each of their rules every four years. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist.

Any questions or written comments pertaining to this notice of intention to review should be directed to Katherine A. Antwi, Executive Director, Texas Commission on Human Rights, P. O. Box 13006, Austin, Texas 78711, or by e-mail to katherine.antwi@mail.capnet.state.tx.us. Any proposed changes to rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the commission.

TRD-200101305
Katherine A. Antwi
Interim Executive Director
Texas Commission on Human Rights
Filed: March 5, 2001



Adopted Rule Reviews

Texas Juvenile Probation Commission

Title 37, Part 11

The Texas Juvenile Probation Commission adopts the review of Chapter 347 Title IV-E Federal Foster Care Program in accordance with the Appropriations Act, section 167. The proposed rule review was published in the December 29, 2000, issue of the *Texas Register* (25TexReg13011).

No comments were received regarding the adoption of this review. The agency's reason for adopting the rules contained in this chapter continues to exist.

TRD-200101231
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Filed: March 2, 2001



Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission completed its review of Chapter 321, Pari-Mutuel Wagering. This review was conducted in accordance with Chapter 1275, Acts of the 75th Legislature, 1997, Section 55 and the General Appropriations Act of 1997, Article IX, Acts of the 75th Legislature, 1997, Section 167 (167) as published in the January 5, 2001, issue of the *Texas Register* (26 TexReg 246).

As a result of the Commission's review, it has determined that there is a need to repeal and replace of the entire Chapter. Therefore, the Commission has adopted a new Chapter 321, with and without changes to the proposed text. The new amendments and repeals of Chapter 321 were published in the January 5, 2001 issue of the *Texas Register*. The amendments and repeals were necessary to incorporate the technological advances for the pari-mutuel industry and conform terminology to Commission rule style.

Changes were made to §321.507 from the proposed text to clarify the Commission's decision-making processes for simulcasting at Class 3 or 4 racetracks. Further details of this change may be found in the "Adoptions" section of this issue.

No comments were received regarding the review of Chapter 321 or the repeal and new replacement.

TRD-200101275

Judith L. Kennison
General Counsel
Texas Racing Commission
Filed: March 5, 2001



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
header	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
header	FILLER		alphanumeric	14		4	17	Blank fill	
header	Record Type	Record Identifier for Header Record.	alphanumeric	2		18	19	Blank fill	
header	Report Period Begin Date	Should specify the first day of the reporting period.	numeric	8	YYYYMMDD	20	27	Must be a valid date and specify the first day of a month.	
header	Report Period End Date	Should specify the last day of the reporting period. A multi-month period may be specified.	numeric	8	YYYYMMDD	28	35	Must be a valid date and specify the last day of the reporting period. Must be greater than or equal to the Report Period Begin Date.	
header	User's Initials	User generating this extraction process.	alphanumeric	3	left-justify, blank fill	36	38	Blank fill	CASEWORKER departments only
header	CASEWORKER Program Revision Date	Used to determine revision of CASEWORKER that created the extracted information.	numeric	8	YYYYMMDD	39	46	Zero fill	CASEWORKER departments only
header	Unique Run ID	Date and time of extraction process.	alphanumeric	14	YYYYMMDDHHMMSS	47	60		
header	Use T.J.P.C. Standard Assessment Tool	Department uses the T.J.P.C. Standard Assessment Tool (Compass)	alphanumeric	1		61	61	Y or N	
header	Date of Last Comprehensive Folder Edit (CFE)	Information extracted from CASEWORKER systems regarding the status of their last Comprehensive Folder Edit. Used by T.J.P.C. to determine future training issues.	numeric	8	YYYYMMDD	62	69	Zero fill	CASEWORKER departments only
header	Options Used on Last CFE		alphanumeric	15		70	84	Blank fill	CASEWORKER departments only
header	Number of Errors on Last CFE		numeric	5	99999	85	89	Zero fill	CASEWORKER departments only
header	Number of Warnings on Last CFE		numeric	5	99999	90	94	Zero fill	CASEWORKER departments only
header	End of Record Marker		alphanumeric	1		95	95	Must contain "I"	
header	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
header	FILLER		alphanumeric	14		4	17	Blank fill	
header	Record Type	Record Identifier for Decode Record.	alphanumeric	2		18	19	"00"	
header	Decode Type	Specifies the category of the following key (code).	alphanumeric	4	left-justify, blank fill	20	23	LIVE-Child Lives With CITZ-Citizenship DFAC-Detention Facilities DISP-Dispositions DIVR-ChildReferral Diverted To PFAC-Placement Facilities PGMT-Programs	
header	Decode Key (code)	Key (code) used by department for specified Decode Type (category).	alphanumeric	10	left-justify, blank fill	24	33	Not blank	
header	Decode Description	Informative description of the Decode Key (code).	alphanumeric	40	left-justify, blank fill	34	73	Not blank	
header	End of Record Marker		alphanumeric	1		74	74	Must contain "I"	
Child	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Child	Personal ID Number	Unique child identifier.	numeric	7	9999999	4	10	00000001..9999999	
Child	FILLER		numeric	7	9999999	11	17	Zero fill	
Child	Record Type	Record Identifier for Child Record.	alphanumeric	2		18	19	01"	
Child	Child's Name		alphanumeric	35	Lastname, Firstname MI Title left-justify, blank fill	20	54	Not blank	A-Asian American B-African American H-Hispanic I-American Indian O-Other U-Unknown W-White
Child	Race		alphanumeric	1		55	55		Cannot be Unknown (U) if the child has one or more formal or paper-formalized referrals.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Child	Sex		alphanumeric	1		56	56	M-Male F-Female U-Unknown	Cannot be Unknown (U) if the child has one or more formal or paper-formalized referrals.
Child	Date of Birth		numeric	8	YYYYMMDD	57	64	Valid date between 1/1/1900 and 12/31/2099	
Child	Citizenship	Country of legal citizenship.	alphanumeric	2		65	66	US-United States OT-Other UNK-Unknown	
Child	Social Security Number		numeric	9	999999999	67	75	000000000-999999999	
Child	Zip Code	Zip code of the child's residence.	numeric	9	999999999	76	84	000000000-999999999 5-digit zip code is acceptable with trailing zeros.	
Child	Child Lives With	Specifies the person(s) with whom the child lives with.	alphanumeric	4	left-justify, blank fill	85	88	Department specified code. For example: BOTH-Both Parents; MOTH-Mother Only; FATH-Father Only; SELF-Self; UNK-Unknown, etc.	Must include a Decode Record for each code specified.
Child	Special Education?	Has the child been diagnosed as a special education student?	alphanumeric	1		89	89	Y or N	
Child	Special Education Handicapping Condition	If the child has been diagnosed as a special education student specify the handicapping condition.	alphanumeric	2	left-justify, blank fill	90	91	ED-Emotionally Disturbed LD-Learning Disabled MR-Mentally Retarded PD-Physical Disability	Required if the Special Education field is 'Y'; otherwise blank fill.
Child	Gang Affiliation/Membership	Name of the gang or 'Y' for generic gang membership.	alphanumeric	4	left-justify, blank fill	92	95	Any value specifies membership. Blank specifies no gang affiliation/membership.	
Child	Suspected Sexual Abuser?	Child is suspected to be the victim of sexual abuse.	alphanumeric	1		96	96	Y, N, or U (unknown)	
Child	Suspected Physical Abuser?	Child is suspected to be the victim of physical abuse.	alphanumeric	1		97	97	Y, N, or U (unknown)	
Child	Suspected Emotional Abuser?	Child is suspected to be the victim of emotional abuse.	alphanumeric	1		98	98	Y, N, or U (unknown)	
Child	FILLER		alphanumeric	1		99	99	Blank fill	
Child	AFDC Receiving?	Child is receiving Aid for Dependent Children services.	alphanumeric	1		100	100	Y, N, or U (unknown)	
Child	FILLER		alphanumeric	1		101	101	Blank fill	
Child	Medicaid Receiving?	Child is receiving Medicaid services.	alphanumeric	1		102	102	Y, N, or U (unknown)	
Child	DPS SID Number	The child's State Identification Number (SID) as issued by the Department of Public Safety.	alphanumeric	8	999999999	103	110	00000000-99999999 or blank fill	
Child	FILLER		alphanumeric	77		111	187	Blank fill	
Child	End of Record Marker		alphanumeric	1		188	188	Must contain 'I'	
Referral	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001-254	
Referral	Personal ID Number	Unique child identifier.	numeric	7	9999999	4	10	0000001-9999999	
Referral	Referral Number	Unique referral identifier.	numeric	7	9999999	11	17	0000000-9999999	
Referral	Record Type	Record identifier for Referral Record.	alphanumeric	2		18	19	'03'	

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Referral Type	Formal - A child is brought to the department's attention for alleged delinquent conduct or conduct indicating a need for supervision and some face-to-face contact by visit or interview occurs between the department and the child and/or parents. Paper Complaint - A complaint that originates when the department receives paperwork for an alleged offense, but the child is not seen or taken into custody at that time. Paper Formalized - A referral that began as a paper complaint, but face-to-face contact was made, formalizing the complaint. Courtesy Supervision - Local juvenile probation departments provide services to juveniles referred from other Texas counties or through Interstate Compact. Transferred - Referrals that have been officially transferred, by the court, from one jurisdiction to another jurisdiction. Crisis Intervention - Voluntary face-to-face contact occurs with a juvenile/child or the parents, but there is no alleged criminal or status offense. These may include children under the age of 10, but no older than 16.	alphanumeric	2		20	21	FM-Formal PF-Paper Formalized PA-Paper Complaint CS-Courtesy Supervision TR-Transferred CI-Crisis Intervention	
Referral	Referral Date	The referral date is when you actually have face-to-face contact with the child and/or parents (formal, paper-formalized and crisis intervention). For paper complaints use the date the complaint was received. For transfer or courtesy supervision referrals, it is the date you actually receive the case, not the original referral date from the referring jurisdiction.	numeric	8	YYYYMMDD	22	29	Valid date between 1/1/1900 and 12/31/2099	
Referral	County Number	County where child is referred. Same as Headquarter County Number unless referred to a multi-county jurisdiction.	numeric	3	999	30	32	001, 254	County specified must be within the department's jurisdiction.
Referral	Age	Child's age as of the referral date.	numeric	2	99	33	34	10, 17	
Referral	School Status	School status as of the referral date.	alphanumeric	2		35	36	IS-in Regular School DO-Dropped Out SE-Suspended/Expelled GD-GED GR-Graduated HS-Home School AE-Alternative Education JJ-Juvenile Justice Alternative Education Program UN-Unknown	
Referral	FILLER		alphanumeric	2		37	38	Blank fill	
Referral	Last Grade Completed		numeric	2	99	39	40	00, 12	
Referral	Referral Source		alphanumeric	1		41	41	P-Police Agency S-School D-Probation Department O-Other	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Primary Alleged Offense	At intake, the most serious offense the child is alleged to have committed.	alphanumeric	8	99999999	42	49	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	An Offense Record must exist for this referral with the same offense code and the Alleged Offense Indicator field must contain "P".
Referral	Primary Alleged Offense Preparatory Code	Designates the Primary Alleged Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		50	50	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	FILLER		alphanumeric	18		51	68	Blank fill	
Referral	Primary Disposition Offense Code	The most serious offense at disposition of the referral.	alphanumeric	8	99999999	69	76	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly.	An Offense Record must exist for this referral with the same offense code and the Disposition Indicator field must contain "P".
Referral	Primary Disposition Offense Preparatory Code	Designates the Primary Disposition Offense was a preparatory (attempted, conspired or solicited) offense. Reduces offense by one degree.	alphanumeric	1		77	77	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Referral	Standard Risk Assessment Date	Required for all formalized referrals unless performed on a previous referral within the last six months.	numeric	8	YYYYMMDD	78	85	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	
Referral	Standard Risk Assessment Level	Based on the score of the risk assessment the child is categorized into this level.	alphanumeric	1		86	86	L-Low M-Medium H-High Blank fill if not applicable	Required if Standard Risk Assessment Date field completed.
Referral	FILLER		alphanumeric	8		87	94	Blank fill	Required if Disposition Date field completed.
Referral	Primary Disposition	Department defined code for disposition.	alphanumeric	4	left-justify, blank fill	95	98	Department specified code.	Must include a Decode Record for each code specified.
Referral	Primary Disposition (TJPC category)	Summarized category of Primary Disposition field as defined by TJPC.	numeric	2	99	99	100	Department Actions: 01-Dismissed or Withdrawn 02-Supervisory Caution 03-Deferred Prosecution Prosecutor Actions: 04-No Probable Cause/Dismissed 05-Refused or Non-Suited 06-Supervisory Caution 07-Deferred Prosecution Court Actions: 08-Dismissed/Not Guilty/Adjudicated with No Disposition/Transferred 09-Supervisory Caution 10-Deferred Prosecution 11-Adjudicated and Placed on Probation 12-Modified and/or Extended Probation 13-Indeterminate Commitment to TYC 14-Determinate Commitment to TYC 15-Certified as an Adult 16-Consolidated Case & Disposed in Another Case	Required if Disposition Date field completed.
Referral	Disposition Date	Date a disposition was assigned to this referral.	numeric	8	YYYYMMDD	101	108	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Controlling Disposition?	Designates the primary disposition when multiple referrals are disposed at the same time. If this is the only referral being disposed for this child on the specified date, enter 'Y'. If there are multiple referrals being disposed, enter 'Y' on the primary disposition referral and enter 'N' on all the other referrals. This indicator designates which referral in a group will contain the Progressive Sanctions Information.	alphanumeric	1		109	109	Y or N	Required if Disposition Date field completed. If the indicator is 'N', then the progressive sanctions fields (guideline level, assigned level, previously assigned level, deferred prosecution months, probation months, intensive supervision months, placement months, deviation indicator and deviation reasons) should be blank or zero depending on the its format.
Referral	TYC Delimitate Sentence Months	The total number of months if the child is committed to the Texas Youth Commission for a delimitate sentence.	numeric	3	999	110	112	001, 999 or zero fill if not applicable.	Must include a Decode Record for each code specified.
Referral	If Diverted to Where	Designates the name of the agency (outside of the juvenile justice system) where the child was diverted.	alphanumeric	4	left-justify, blank fill	113	116	0-Not Applicable - No Probable Cause - Not Applicable 0-Not Applicable - No Probable Cause - Not Applicable 1-Supervisory Caution 2-Deferred Prosecution / Probation 3-Court Ordered Probation 4-Intensive Supervision Probation 5-Residential Placement and Court Ordered Probation 6-Indeterminate Commitment to TYC 7-Delimitate Commitment to TYC/Certified as an Adult	Required for all Formal Paper Formalized and Paper Complaints disposed on or after January 1, 1999 and Controlling Disposition field is 'Y'.
Referral	Progressive Sanctions Guideline Level	Progressive Sanctions level that should be assigned to a juvenile offender in a disposition event based on the offender's offense and criminal history.	alphanumeric	1		117	117	Blank fill if not required.	Required for all Formal Paper Formalized and Paper Complaints disposed on or after January 1, 1999 and Controlling Disposition field is 'Y'.
Referral	Progressive Sanctions Assigned Level	The highest progressive sanctions level that is actually given to the juvenile in a disposition event.	alphanumeric	1		118	118	Same 0..7 options as above. Blank fill if not applicable.	If the guideline level is zero then the assigned level must be zero.
Referral	Progressive Sanctions Previously Assigned Level		alphanumeric	1		119	119	Same 1..7 options as above with addition of 'I' to be used to designate the initial Referral. Blank fill if not applicable.	Required for all Formal Paper Formalized and Paper Complaints disposed on or after January 1, 1999 and Controlling Disposition field is 'Y'.
Referral	Deferred Prosecution Months	The ordered length of supervision for deferred prosecution.	numeric	2	99	120	121	01, 99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '2'.
Referral	Probation Months	The ordered length of supervision for probation.	numeric	2	99	122	123	01, 99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '3'.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Referral	Intensive Supervision (ISP) Months	The ordered length of supervision for ISP.	numeric	2	99	124	125	01, 99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '4'. If the guideline level is zero then zero fill.
Referral	Placement Months	The ordered length of stay for a progressive sanctions level 5 placement (post adjudication, secure placement).	numeric	2	99	126	127	01, 99 or zero fill if not applicable.	Required if Disposition Date field completed and Progressive Sanctions Assigned Level is '5'. If the guideline level is zero then zero fill.
Referral	Progressive Sanctions Deviation Indicator	Specifies a progressive sanctions deviation exists between the guideline and the assigned level.	alphanumeric	1		128	128	Y or N	Required if Disposition Date field completed and Controlling Disposition field is 'Y'. Must be 'Y' if the guideline and assigned levels are different. May be 'Y' if the guideline and assigned levels are the same but a sentence length deviation exists. Must be 'N' if the guideline level is zero. Otherwise 'N' if no deviation exists.
Referral	Progressive Sanctions Deviation Primary Reason	Identifies the primary reason for deviating from the guideline level.	alphanumeric	2		129	130	1A-Pros Refused: No Complaint/Insufficient Evidence 1B-Pros Refused: Non-Suit 1C-Pros Refused: Returned To Department 1D-Diverted At Intake To Another Agency 1E-Other Drops/Diversion (explain) 2A-Family Support 2B-Treatment Needs 2C-Prior History 2D-Other Circumstances (explain) 3A-Weapon Involved 3B-Multiple Offenses 3C-Local Policy 3D-Gang Motivated Offense 3E-Mitigating/Aggravating Circumstances 3F-Other Offense Related Issues (explain) 4A-Insufficient Staffing Resources 4B-Insufficient Placement/Program Resources 4C-No Program/Facility Available 4D-Exceeded TYC Commitment Target 4E-Other Resource Related Issues (explain)	Required if Disposition Date field completed and Progressive Sanctions Deviation Indicator is 'Y'.
Referral	Progressive Sanctions Deviation	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2		131	132	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2		133	134	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2		135	136	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation	Identifies an additional reason for deviating from the guideline level.	alphanumeric	2		137	138	Choose from list above or blank fill if not applicable.	
Referral	Progressive Sanctions Deviation	Descriptive comment for deviation reasons that require explanation.	alphanumeric	35	left-justify, blank fill	139	173	Non-blank if required, otherwise blank fill.	Required for deviation reasons 1E, 2D, 3F and 4E.
Referral	FILLER		alphanumeric	28	left-justify, blank fill	174	199	Blank fill	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
-------------	------------	-------------	------	------	--------	--------------	------------	---------------	--------------

The following section provides for a subsequent disposition. This section is used **only** for children who violate the terms of their deferred prosecution and are subsequently adjudicated on the same referral; or dispositions that are appealed and are subsequently assigned a different disposition. It is not used for modifications. See descriptions and edit criteria above.

Referral	Subsequent Primary Disposition (TJPC Category)		alphanumeric	4	left-justify, blank fill	200	203		
Referral	Subsequent Primary Disposition (TJPC Category)		numeric	2	99	204	205		
Referral	Subsequent Disposition Date		numeric	8	YYYYMMDD	206	213		
Referral	Subsequent Controlling Disposition?		alphanumeric	1		214	214		
Referral	Subsequent TYC Determinate Sentence Months		numeric	3	999	215	217		
Referral	Subsequent If Diverted to Where		alphanumeric	4	left-justify, blank fill	218	221		
Referral	Subsequent Progressive Sanctions Guideline Level		alphanumeric	1		222	222		
Referral	Subsequent Progressive Sanctions Assigned Level		alphanumeric	1		223	223		
Referral	Subsequent Progressive Sanctions Previously Assigned Level		alphanumeric	1		224	224		
Referral	Subsequent Deferred Prosecution Months		numeric	2	99	225	226		
Referral	Subsequent Probation Months		numeric	2	99	227	228		
Referral	Subsequent Intensive Supervision (ISF) Months	See descriptions above.	numeric	2	99	229	230		See dependencies above.
Referral	Subsequent Placement Months		numeric	2	99	231	232		
Referral	Subsequent Progressive Sanctions Deviation Indicator		alphanumeric	1		233	233		
Referral	Subsequent Progressive Sanctions Deviation Primary Reason		alphanumeric	2		234	235		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 1		alphanumeric	2		236	237		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 2		alphanumeric	2		238	239		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 3		alphanumeric	2		240	241		
Referral	Subsequent Progressive Sanctions Deviation Secondary Reason 4		alphanumeric	2		242	243		
Referral	Subsequent Progressive Sanctions Deviation Comment		alphanumeric	35	left-justify, blank fill	244	278		
Referral	FILLER		alphanumeric	20		279	298		

End of subsequent disposition section.

Referral	End of Record Marker		alphanumeric	1		299	299	Must contain '1'	
Detention	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001, 254	
Detention	Personal ID Number	Child's Personal ID Number (PID).	numeric	7	99999999	4	10	0000001, 9999999	
Detention	Referral Number	Specifies the referral for which this secure detention applies.	numeric	7	99999999	11	17	0000001, 9999999	
Detention	Record Type	Record identifier for Detention Record.	alphanumeric	2		18	19	"DN"	
Detention	Detention Sequence Number	Uniquely identifies this detention record from all other detention records for the specified Personal ID Number.	numeric	6	9999999	20	25	000001, 999999	
Detention	FILLER		alphanumeric	3		26	28	Blank fill	
Detention	Detention Facility	TJPC registered facility identification number for secure detention facilities in Texas or department defined code for facilities outside of Texas.	alphanumeric	7	left-justify, blank fill	29	35	If facility is within Texas then code must be a TJPC registered facility identification code, otherwise a department specified code.	If facility is not in Texas then include a Decode Record for each code specified.
Detention	Date Detained		numeric	8	YYYYMMDD	36	43	Valid date between 1/1/1900 and 12/31/2099.	
Detention	Time Detained		numeric	4	HHMM	44	47	HH between 00, 24 and MM between 00, 59.	
Detention	Date Released		numeric	8	YYYYMMDD	48	55	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Date Detained. Zero fill if not applicable.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Detention	Time Released		numeric	4	HHMM	56	59	HH between 00:24 and MM between 00:59 0000 or 2400 considered midnight. Must contain "	Required if Date Released field completed.
Detention	End of Record Marker		alphanumeric	1		60	60		
JJAEP	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001:254	
JJAEP	Personal ID Number	Child's Personal ID Number (PID)	numeric	7	9999999	4	10	0000001:9999999	
JJAEP	FILLER		numeric	7	9999999	11	17	Zero fill	
JJAEP	Record Type	Record Identifier for JJAEP Record.	alphanumeric	2		18	19	"JJ"	Used in conjunction with the PID Number to determine unique JJAEP event. Once assigned it should not be changed.
JJAEP	JJAEP Sequence Number	Uniquely identifies this JJAEP record from all other JJAEP records for the specified Personal ID Number.	numeric	6	999999	20	25	000001:999999	
JJAEP	Entrance Date	Child's first attendance day in the JJAEP.	numeric	8	YYYYMMDD	26	33	Valid date between 1/1/1900 and 12/31/2099.	
JJAEP	Expulsion Date	The date the child was officially expelled by the school district.	numeric	8	YYYYMMDD	34	41	Valid date between 1/1/1900 and 12/31/2099 for expelled children. Zero fill if not applicable.	Expelled children are those with Expulsion Offenses other than voluntary school placement, probation department placement or court ordered placement.
JJAEP	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number from which the child was expelled. If not expelled, the campus number of the most recently attended school. May be obtained from the local campus, school district or Texas Education Agency (TEA).	numeric	9	999999999	42	50	000000000:999999999 or zero fill if not applicable	
JJAEP	Expulsion Offense	Reason the child was officially expelled or other reason the child was placed in the JJAEP.	alphanumeric	10	left-justify, blank fill	51	60	37.007a1a-Firearm 37.007a3-Felony Drug 37.007a1b-Illegal Knife 37.007b1a-Misdemeanor Marijuana/Controlled Subs 37.007a1c-Club 37.007b1b-Misdemeanor Dangerous Drug 37.007a1d-Prohibited Weapon 37.007b1c-Misdemeanor Alcohol 37.007a2a-Aggravated Assault Aggravated Sex Assault, Sex Assault 37.007b2-Glue Or Aerosol Paint 37.007a2b-Arson 37.007c-Serious/Persistent Misbehavior 37.007a2c-Murder, Capital Murder, Attempted Murder 37.007d-Retaliation 37.007a2d-Indecency With A Child 37.007e-Federal Firearm 37.007a2e-Aggravated Kidnapping 37.007f-Felony Criminal Mischief 37.007b3-Assault on a School Employee VOL.PLACE-Voluntary School Placement PROB.CO-Probation Placement/Court Order	A valid TJPC-DPS offense code. A current list of codes may be obtained from TJPC's website or by contacting TJPC directly. J-Juvenile Court A-Adult Court Blank fill for not applicable 01:12
JJAEP	DPS Offense	Specifies the DPS offense for which the child was officially expelled.	alphanumeric	8	99999999	61	68		
JJAEP	Court Status	Indicates whether the child's case is being handled in the juvenile or adult court.	alphanumeric	1		69	69		
JJAEP	Grade Level	Current enrolled grade.	numeric	2		70	71		
JJAEP	Enhance Tested Grade Level for Math	Reflects the tested grade level equivalent for math upon entrance into the JJAEP.	numeric	4	99.99	72	75	00.01:12.90 or zero fill if not tested	
JJAEP	Enhance Tested Grade Level for Reading	Reflects the tested grade level equivalent for math upon entrance into the JJAEP.	numeric	4	99.99	76	79	00.01:12.90 or zero fill if not tested	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
JJAEP	Exit Raw Score for Math	Reflects the actual raw score for math upon entrance into the JJAEP.	numeric	4	999.9	80	83	000.0, 100.0 or zero fill if not applicable	
JJAEP	Exit Raw Score for Reading	Reflects the actual raw score for reading upon entrance into the JJAEP.	numeric	4	999.9	84	87	000.0, 100.0 or zero fill if not applicable	
JJAEP	Special Education / Section 504?	Has the child been diagnosed as a special education student or the child is protected under the 1973 Rehabilitation Act (Public Law 93-112 section 504)?	alphanumeric	1		88	88	Y or N	
JJAEP	Special Education Type	If the child has been diagnosed as a special education student specify the type of special education.	alphanumeric	4	left-justify, blank fill	89	92	ED-Emotionally Disturbed LD-Learning Disabled MR-Mentally Retarded PD-Physical Disability 504-Protection Of Handicapped Individuals OTHR-Other	Required if the Special Education / Section 504 field is 'Y', otherwise blank fill.
JJAEP	Exit Date	Child's last attendance day in the JJAEP.	numeric	8	YYYYMMDD	93	100	Valid date between 1/1/1900 and 12/31/2099. Zero fill if not applicable.	
JJAEP	Juvenile Court Disposition	Reflects the juvenile court disposition for the offense which the student was placed in JJAEP upon exit from the JJAEP.	alphanumeric	4	left-justify, blank fill	101	104	ADLT-Adult-Not Applicable DEFP-Deferred Prosecution DISM-Dismissed By Court NOTG-Court Found Not Guilty PEND-Pending PROB-Adjudicated-Placed On Probation REFU-Prosecution Refused SPV-C-Supervisory Caution N/A-Not Applicable	Required if Exit Date field completed.
JJAEP	Exit Tested Grade Level for Math	Reflects the tested grade level equivalent for math upon exit from the JJAEP.	numeric	4	99.99	105	108	00.01, 12.90 or zero fill if not tested	Required if Exit Date field completed.
JJAEP	Exit Tested Grade Level for Reading	Reflects the tested grade level equivalent for math upon exit from the JJAEP.	numeric	4	99.99	109	112	00.01, 12.90 or zero fill if not tested	Required if Exit Date field completed.
JJAEP	Exit Raw Score for Math	Reflects the actual raw score for math upon exit from the JJAEP.	numeric	4	999.9	113	116	000.0, 100.0 or zero fill if not applicable	Required if Exit Date field completed.
JJAEP	Exit Raw Score for Reading	Reflects the actual raw score for reading upon exit from the JJAEP.	numeric	4	999.9	117	120	000.0, 100.0 or zero fill if not applicable	Required if Exit Date field completed.
JJAEP	Expulsion Ended?	Term of expulsion ended?	alphanumeric	1		121	121	Y or N	Required if Exit Date field completed.
JJAEP	Supervision Ended?	If the child was placed on probation or deferred prosecution has the term ended?	alphanumeric	1		122	122	Y, N or blank fill if not applicable.	Required if Exit Date field completed.
JJAEP	Exit Reason	Reason the child left the JJAEP program.	alphanumeric	4	left-justify, blank fill	123	126	EXPX-Completed-Expulsion Expired GED-Successful GED Completion GRAD-Graduated PRBX-Completed-Probation Expired RTRS-C-Completed-Returned To Home School District UNSC-Unsuccessful Completion OTHR-Other (Moved, Death, Medical, Non-Being)	Required if Exit Date field completed.
JJAEP	Number of Days Attended	Actual number of days the student attended while enrolled in the JJAEP.	numeric	4	9999	127	130	0001, 9999	Required if Exit Date field completed.
JJAEP	Number of Days Absent	Actual number of days the student was counted as absent while enrolled in the JJAEP.	numeric	4	9999	131	134	0000, 9999 or zero fill if not applicable	Required if Exit Date field completed.
JJAEP	End of Record Marker		alphanumeric	1		135	135	Must contain 'I'	

Offense	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001, 254	
Offense	Personal ID Number	Child's Personal ID Number (PID)	numeric	7	99999999	4	10	00000001, 99999999	
Offense	Referral Number	Specifies the referral for which this offense applies.	numeric	7	99999999	11	17	00000001, 99999999	
Offense	Record Type	Record identifier for Offense Record.	alphanumeric	2		18	19	*OF*	Used in conjunction with the PID Number and Referral Number to determine unique offense event. Once assigned it should not be changed.
Offense	Unique Offense Number	Uniquely identifies this offense record from all other offense records for the specified Personal ID Number.	numeric	6	9999999	20	25	0000001, 9999999	
Offense	FILLER		alphanumeric	8		26	33	Blank fill	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Offense	Alleged Offense Date	Used to specify multiple occurrences (counts) of the same offense and incident.	numeric	8	YYYYMMDD	34	41	Valid date between 1/1/1900 and 12/31/2099.	
Offense	Alleged Offense Counts	Used to designate the DPS offense code for the alleged offense.	alphanumeric	2	99	42	43	01, 99	
Offense	Alleged Offense Code	Used to designate the DPS offense code for the alleged offense.	alphanumeric	8	99999999	44	51	A valid T.JPC-DPS offense code. A current list of codes may be obtained from T.JPC's website or by contacting T.JPC directly.	
Offense	Alleged Offense Preparatory Code	Used to designate the Alleged Offense was a preparatory offense.	alphanumeric	1		52	52	A-Attempted C-Conspired S-Solicited Blank fill if no modification	
Offense	Alleged Offense Indicator	Designates the status of the offense at time of intake. An offense may be designated as a primary or secondary offense. However, if during disposition the child is being disposed on an offense not originally listed, enter a new offense and designate it as 'added at disposition' or 'revised at disposition'.	alphanumeric	1		53	53	P-Primary alleged offense S-Secondary alleged offense R-Revised offense at time of disposition A-Added offense at time of disposition	Only one offense within a referral may be designated as the primary alleged offense.
Offense	Disposition Indicator	Designates the status of the offense at time of disposition.	alphanumeric	1		54	54	P-Primary disposition offense C-Consolidated with primary offense D-Dismissed (not included in the disposition)	Only one offense within a referral may be designated as the primary disposition offense.
Offense	FILLER		alphanumeric	13		55	67	Blank fill AM-Ammunition BK-Brass Knuckles CL-Club or other similar device EX-Explosive/Explosive Weapon FA-Firearm HB-Hoax Bomb KN-Knife MA-Mace or other chemical dispensing device OT-Other NA-Not Applicable-no weapon was used	
Offense	Weapon Used	Specifies the type of weapon used during the commission of the offense.	alphanumeric	2		68	69	F-Ammunition H-Bomb A-Cannon D-Disguised Gun E-Electric Shock Gun G-Grenade M-Machine Gun I-Milne J-Missile O-Mortar P-Pistol R-Rifle C-Rifle Shotgun Combination K-Rocket S-Shotgun Q-Shotgun Pistol V-Silencer B-Submachine Gun or Machine Pistol Z-All Other Weapons	Required if Weapon Used field is 'FA'.
Offense	Firearm Code	Specifies the type of firearm used during the commission of the offense.	alphanumeric	1		70	70		
Offense	Gang Related Offense?	Did involvement with a gang cause and/or contribute to the commission of this offense.	alphanumeric	1		71	71	Y or N	
Offense	Substance Abuse Related Offense?	Did involvement in substance abuse cause and/or contribute to the commission of this offense.	alphanumeric	1		72	72	Y or N	
Offense	Type of Substance Abuse Detected	Specify the type(s) of substance abuse detected.	alphanumeric	4	left-justify, blank fill	73	76	A-Alcohol AD-Alcohol and Drugs AD-AD-Drug D-Drugs DI-Drugs and Inhalants I-Inhalants Blank fill if not applicable	Required if Substance Abuse Related Offense field is 'Y'.

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Offense	School Related Location	Specifies the offense occurred on a school campus or during a school related activity.	alphanumeric	4	left-justify, blank fill	77	80	OCAM-On Campus During School Hours SPRT-School Related Sports Activity-On/Off Campus OTHR-School Related Activity-On/Off Campus N-NO School Related	
Offense	School Campus Number	Specifies the Texas Education Agency (TEA) assigned campus number where the offense took place. If the offense occurred in transit then use the home campus number. May be obtained from the local campus, school district or Texas Education Agency (TEA)	numeric	9	999999999	81	89	000000000, 999999999 or zero fill if not applicable.	Required if School Related Location field is not 'N'.
Offense	End of Record Marker		alphanumeric	1		90	90	Must contain 'I'	

Placement	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001, 254	
Placement	Personal ID Number	Child's Personal ID Number (PID)	numeric	7	9999999	4	10	0000001, 9999999	
Placement	Referral Number	Specifies the referral for which this placement applies.	numeric	7	9999999	11	17	0000001, 9999999	
Placement	Record Type	Record Identifier for Placement Record.	alphanumeric	2		18	19	*PL*	Used in conjunction with the PID Number and Referral Number to determine unique placement event. Once assigned it should not be changed.
Placement	Placement Sequence Number	Uniquely identifies this placement record from all other placement records for the specified Personal ID Number.	numeric	6	9999999	20	25	000001, 9999999	
Placement	Placement Facility	TJPC registered facility identification number or department defined code for placement facility.	alphanumeric	7	left-justify, blank fill	26	32	If Placement Type is Secure Correctional (S) then code must be a TJPC registered facility identification code, otherwise a department specified code. E-Emergency Shelter F-Foster Care S-Secure Correctional R-Residential Treatment	If Placement Type is not Secure Correctional (S) then include a Decode Record for each code specified.
Placement	Placement Type	Type of residential placement used.	alphanumeric	1		33	33	B-Bootcamp C-Correctional S-Substance Abuse T-Therapeutic Community X-Sex Offender	Required if Placement Type field is Secure Correctional (S) or Residential Treatment (R).
Placement	Service Type	Description of the primary service delivered at the facility.	alphanumeric	1		34	34		
Placement	Cost Per Day	Specifies per day charge for this placement. Zero specifies a no-cost (free) placement. If the cost per day changes during the placement, specify the largest cost per day.	numeric	5	999.99 (implied decimal)	35	39	\$000.00, \$500.00	
Placement	Level of Care	Level of care as defined by the Texas Department of Protective and Regulatory Services (TDPRS)	alphanumeric	1		40	40	1, 6 or U for Unknown	Unknown (U) is not valid for TDPRS licensed facilities.
Placement	Funding Source	Specifies the type of funds used to pay for this placement. If multiple sources were utilized, specify the largest source.	alphanumeric	1		41	41	C-TJPC Challenge Grant P-TJPC Community Corrections (CCAP, Small County Diversionary Placement Funds, Level 5 Placement reimbursements) T-Other TJPC N-Non-TJPC (Title IV-E, local, other state/federal) X-NO Cost to Department (insurance, parents, fees)	
Placement	Placement Date In		numeric	8	YYYYMMDD	42	49	Valid data between 1/1/1900 and 12/31/2099.	
Placement	Placement Date Out		numeric	8	YYYYMMDD	50	57	Valid data between 1/1/1900 and 12/31/2099 and greater than or equal to the Placement Date In. Zero fill if not applicable.	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Placement	Discharge Reason		alphanumeric	1		58	58	S-Successful A-Handled by the Adult System C-Changing Placement Facilities F-Depletion of Funds T-TYC Commitment O-Other Unsuccessful Outcome N-Neither Successful or Unsuccessful	Required if Placement Date Out field completed. If 'C' is used a new Placement Record must exist.
Placement	FILLER End of Record Marker		alphanumeric	1		59 60	59 60	Blank fill Must contain "I"	
Program	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001,254	
Program	Personal ID Number	Child's Personal ID Number (PID)	numeric	7	9999999	4	10	0000001..9999999	
Program	Referral Number	Specifies the referral for which this program applies.	numeric	7	9999999	11	17	0000001..9999999	
Program	Record Type	Record Identifier for Program Record.	alphanumeric	2		18	19	PG*	Used in conjunction with the PID Number and Referral Number to determine unique program event. Once assigned it should not be changed.
Program	Program Sequence Number	Uniquely identifies this program record from all other program records for the specified Personal ID Number.	numeric	6	9999999	20	25	000001..999999	Must include a Decade Record for each code specified.
Program	Program Name	Department defined code for program.	alphanumeric	4	left-justify, blank fill	26	29	Department specified code	
Program	Program Type	Summarizes the program into specific categories based on its primary purpose. Definitions of these categories are available from T.J.P.C.	alphanumeric	1		30	30	N-Anger Management/Conflict Resolution B-Border Justice Project O-Challenge Grant C-C-SR K-Early Intervention/First Referral U-Educational/Mentor E-Electronic Monitoring T-Experiential Education D-Extended Day Program/Day Boot Camp F-Family Preservation H-Female Offender G-Gang Prevention/Intervention I-Intensive Supervision L-Life Skills M-MH/MR R-Runaway/Traffic S-Sex Offender P-Substance Abuse Prevention/Intervention J-Substance Abuse Treatment V-Victim Mediation Z-Vocational O-Other Valid date between 1/1/1900 and 12/31/2099. Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Program Begin Date. Zero fill if not applicable.	
Program	Program Begin Date		numeric	8	YYYYMMDD	31	38		
Program	Program End Date		numeric	8	YYYYMMDD	39	46		
Program	Program Outcome	Specifies the program outcome.	alphanumeric	1		47	47	A-Transferred to the Adult System P-Adjudicated to Probation T-Committed to TYC O-Other Unsuccessful Outcome Must contain "I"	Required if Program End Date field completed.
Program	End of Record Marker		alphanumeric	1		48	48		
Supervision	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001,254	
Supervision	Personal ID Number	Child's Personal ID Number (PID)	numeric	7	9999999	4	10	0000001..9999999	
Supervision	Referral Number	Specifies the referral for which this supervision applies.	numeric	7	9999999	11	17	0000001..9999999	
Supervision	Record Type	Record Identifier for Supervision Record.	alphanumeric	2		18	19	SV*	

Record Specifications:

Record Type	Field Name	Description	Type	Size	Format	Begin Column	End Column	Edit Criteria	Dependencies
Supervision	Supervision Sequence Number	Uniquely identifies this Supervision record from all other supervision records for the specified Personal ID Number.	numeric	6	9999999	20	25	0000001..9999999	Used in conjunction with the PID Number and Referral Number to determine unique supervision event. Once assigned it should not be changed.
Supervision	Supervision Type	Specifies the type of supervision.	alphanumeric	4	left-justify, blank fill	26	29	PROB-Court Ordered Probation DEFP-Deferred Prosecution CREL-Conditional Release from Detention TEMP-Temporary Pre-Court Monitoring	
Supervision	Supervision Begin Date		numeric	8	YYYYMMDD	30	37	Valid date between 1/1/1900 and 12/31/2099.	
Supervision	Supervision End Date		numeric	8	YYYYMMDD	38	45	Valid date between 1/1/1900 and 12/31/2099 and greater than or equal to the Supervision Begin Date. Zero fill if not applicable.	
Supervision	Supervision Outcome	Specifies the supervision outcome.	alphanumeric	1		46	46	S-Successful A-Transferred to the Adult System P-Adjudicated to Probation T-Committed to TYC O-Other Unsuccessful Outcome	Required if Supervision End Date field completed. An outcome of 'P' can only be used for Deferred Prosecution Supervisions.
Supervision	End of Record Marker		alphanumeric	1		47	47	Must contain 'I'	
Delete	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Delete	FILLER		alphanumeric	14		4	17	Blank fill	
Delete	Record Type	Record Identifier for Delete Record. A request to delete a Child Record will cause all records for the specified PID Number to be removed.	alphanumeric	2		18	19	'XC'	
Delete	Delete Record Type	A request to delete a Referral Record will cause all records attached to the referral (i.e. detentions, offenses, placements, etc) to be removed. All other delete requests will remove only the requested record.	alphanumeric	2		20	21	01-Child 03-Referral DN-Detention JJ-JAEP OF-Offense PL-Placement PG-Program SV-Supervision	
Delete	Delete Personal ID Number	Specifies the personal identification number of the record to be deleted.	numeric	7	9999999	22	28	0000001..9999999	Required for all delete transactions.
Delete	Delete Referral Number	Specifies the referral number of the record to be deleted.	numeric	7	9999999	29	35	0000001..9999999, zero fill if not applicable	Required for all delete transactions except '01'-Child.
Delete	Delete Sequence Number	Specifies the sequence number of the record to be deleted.	numeric	6	9999999	36	41	000001..999999, zero fill if not applicable	Required for all delete transactions except '01'-Child and '03'-Referral.
Delete	End of Record Marker		alphanumeric	1		42	42	Must contain 'I'	
Trailer	Headquarter County Number	County where department headquarters is located.	numeric	3	999	1	3	001..254	
Trailer	FILLER		alphanumeric	14		4	17	'ZZZZZZZZZZZZZZ'	Must be last record in the file.
Trailer	Record Type	Record Identifier for Trailer Record.	alphanumeric	2		18	19	'ZZ'	
Trailer	Total Record Count		numeric	8	99999999	20	27		Compared to calculated number of records to ensure complete file was transmitted.
Trailer	End of Record Marker		alphanumeric	1		28	28	Must contain 'I'	

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas State Affordable Housing Corporation

Notice of Public Hearing

TEXAS STATE AFFORDABLE HOUSING CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS (AGAPE ASHTON/WOODSTOCK DEVELOPMENT) SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on April 16, 2001 at 11:30 a.m. at City Hall, Council Chambers, 101 West Abram Street, First Floor, Arlington, Texas, 76010, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in the aggregate amount not to exceed \$15,000,000, the proceeds of which will be loaned to Agape Ashton/Woodstock, Inc., a corporation exempt under Section 501(c) of the Internal Revenue Code, to finance the acquisition, construction, rehabilitation and equipment of two separate multifamily housing projects (the "Projects") located in Arlington and Galveston, Texas. The public hearing, which is the subject of this notice, will concern the Woodstock Apartments containing 128 units, located at 2121 Washington Circle, Arlington, Texas 76011. The Project will be owned by Agape Ashton/Woodstock, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or request for additional information may be direct to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda Houchin David, ADA Responsible Employee, at 1-888-638-3555, ext.417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda Houchin David at 1-888-638-3555, ext. 417, at least

five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at downen@tsahc.com.

TRD-200101371

Daniel C. Owen

Vice President

Texas State Affordable Housing Corporation

Filed: March 7, 2001



Notice of Public Hearing

TEXAS STATE AFFORDABLE HOUSING CORPORATION
MULTIFAMILY HOUSING REVENUE BONDS (AGAPE ASHTON/WOODSTOCK DEVELOPMENT) SERIES 2001

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") on April 17, 2001 at 11:30 a.m. at the McCullough Room, Rosenberg Public Library, 2310 Sealy Avenue, Galveston, Texas, 7550-2296, with respect to an issue of multifamily housing revenue bonds (the "Bonds") to be issued by the Issuer in one or more series in the aggregate amount not to exceed \$15,000,000, the proceeds of which will be loaned to Agape Ashton/Woodstock, Inc., a corporation exempt under Section 501(c)(3) of the Internal Revenue Code, to finance the acquisition, construction, rehabilitation and equipment of two separate multifamily housing projects (the "Projects") located in Arlington and Galveston, Texas. The public hearing, which is the subject of this notice, will concern the Ashton Place Apartments containing 172 units, located at 6904 Lasker Drive, Galveston, Texas 77551. The Project will be owned by Agape Ashton/Woodstock, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or request for additional information may be direct to Daniel C. Owen at the Texas State Affordable Housing Corporation, 1715 West 35th Street, Austin, Texas 78703; 1-888-638-3555 ext. 404.

Persons who intend to appear at the hearing and express their views are invited to contact Daniel C. Owen in writing in advance of the hearing.

Any interested persons unable to attend the hearing may submit their views in writing to Daniel C. Owen prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Glenda Houchin David, ADA Responsible Employee, at 1-888-638-3555, ext.417 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require child care to be provided at this meeting should contact Glenda Houchin David at 1-888-638-3555, ext. 417, at least five days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to Daniel Owen at dowen@tsahc.com.

TRD-200101372

Daniel C. Owen

Vice President

Texas State Affordable Housing Corporation

Filed: March 7, 2001

Alamo Area Council of Governments

Request for Proposal--Household Hazardous Waste Collection
RFP 2001-004

Note: The complete Request for Proposal is available through the AACOG website at <http://www.aacog.com> under the RFP hotlink.

DUE DATE: March 28, 2001 4:00 p.m.

Alamo Area Council of Governments

Natural Resources/Transportation Department

Solid Waste Division

8700 Tesoro Dr., Suite 700

San Antonio, TX 78217

(210) 362-5200

Requests for Proposals (RFP) are issued under the authority of Government Code, Chapter 2254, Subchapter B, that delineates the statutory requirements governing invitations for proposals and request for offers by state agencies.

The Alamo Area Council of Governments (AACOG) is requesting the collection of household hazardous waste services for the counties and cities in the AACOG region by qualified companies.

This announcement of the RFP will be posted in the Texas Register on March 16th, 2001. We request that responses to the RFP be prepared as soon as possible and sent to AACOG's office listed below. Proposals received after 4:00 p.m. CST on March 28th, 2001 will not be considered. Seven (7) copies and one (1) original, signed in blue ink, are to be submitted in a sealed envelope bearing the RFP number located on the first page to:

Al J. Notzon, III, Executive Director

Re: Collection of Hazardous Household Waste

Alamo Area Council of Governments

8700 Tesoro Dr., Suite 700

San Antonio, Texas 78217

Telephone: (210) 362-5200

Fax: (210) 225-5937

Proposers who want additional information or clarification should submit requests in writing only, by both fax at (210) 225-5937 and email carredondo@aacog.com, **no later than Friday, March 23rd 2001, 12:00 noon**. Responses will be made in writing only and furnished to all parties requesting this request proposal.

Proposals should be sent through the mail or hand delivered. Telefax and email proposal offers will not be accepted. Finalists will be notified by **Thursday, March 29th, 2001** and will be required to present their proposals in San Antonio on **Tuesday, April 3rd, 2001**, beginning at 10:00 a.m. Presentations should be 30 minutes in length with 15 minutes following for questions from the evaluation committee.

The complete Request for Proposal is available by contacting AACOG through Al J. Notzon, III, Executive Director or through the internet website, at <http://www.aacog.com> under the RFP hotlink.

Scope of Work

The contractor is requested to submit a proposal for the collection, transportation and disposal of household hazardous waste (HHW). Two different service scenarios are detailed in the Cost Proposal below. The first involves provision of HHW collection, transportation and disposal services for 1-day collection events. The second involves the provision of HHW collection, transportation and disposal services for a permanent HHW facility. No minimum quantities of wastes are guaranteed by AACOG. No minimum level of local government ("End User") participation is guaranteed by AACOG.

The intent of this RFP is to procure the collection, transportation and disposal of HHW within the twelve (12) county region. Proposals for any area less than the region will not be acceptable.

Proposers are advised that AACOG will serve as the designated purchasing agent for specific End User units of government. The successful proposer under contract with AACOG shall be responsible for the collection, transportation, and disposal of HHW from the End User, according to the requirements of these specifications, the contract with AACOG, and the purchase order issued from the End User, as well as all applicable federal, state, and local laws.

Overall project administration shall be provided by the Natural Resources/Transportation Department, Georgia Zannaras, telephone (210) 362-5287, fax (210) 225-5937, or email gzannaras@aacog.com.

Specifications

1. The contractor shall ensure that all packaging and transportation of hazardous and non-hazardous materials shall be in accordance with Department of Transportation (DOT) Regulations.

2. The contractor shall comply with all state and local requirements of transportation, storage and disposal, including obtaining all necessary permits, licenses and approvals. In this regard, the contractor shall present to the AACOG project administrator evidence of being a Texas Natural Resource Conservation Commission (TNRCC) licensed and registered Hazardous Waste Transporter if this task is performed by the contractor. Contractor shall present to the AACOG project administrator evidence that all treatment, storage and disposal facilities used by the contractor are Environmental Protection Agency (EPA)-licensed and registered. Contractor shall provide evidence that the primary treatment disposal facility is owned by the contractor. Contractor shall notify the project administrator of any changes in the status of the license or registration.

3. The contractor shall at no time utilize a subcontractor for any task, including, but not limited to transport, treatment, storage or disposal,

that is not EPA and/or TNRCC-licensed and/or registered to perform such tasks if EPA and/or TNRCC license or registration is required.

4. The contractor shall provide information demonstrating that during the past five (5) years that there has been no litigation regarding hazardous waste collection, categorization, packaging, transportation or disposal.

5. All disposal sites and treatment methods used by the contractor shall be approved by End User. Any changes in disposal site or treatment method without obtaining prior approval of End Users shall constitute a material breach of this contract. In all instances, the contractor must adhere to EPA treatment standards for treatment and disposal of wastes.

6. The contractor shall comply with the waste management priorities established by the End User.

7. AACOG and/or End User reserves the right to conduct audits and/or inspections of any transportation, storage or disposal facilities used by the contractor.

Note: The complete Request for Proposal is available through the AACOG website at <http://www.aacog.com> under the RFP hotlink.

TRD-200101223

Al J. Notzon III

Executive Director

Alamo Area Council of Governments

Filed: March 1, 2001

Office of the Attorney General

Contract Award

This publication is filed pursuant to Texas Government Code, Section 2254.030. The Request for Proposal was published in the December 29, 2000, issue of the *Texas Register* (25 TexReg 13037- 13040).

DESCRIPTION OF ACTIVITIES OF PRIVATE CONSULTANT:

The Office of the Attorney General of Texas ("the OAG") has entered into a major consulting services contract for the following services:

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. The OAG recoups its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS"). Contractor will review the indirect cost methodologies of the OAG to determine areas of cost recovery which will maximize revenue from the recovery of indirect costs and will develop indirect cost rates throughout the OAG, as appropriate. Contractor will prepare Indirect Cost Allocation Plans for FY00 (based on actual expenditures) and for FY02 (based on budgeted expenditures) in accordance with OMB Circular A-87, for submission to HHS for federal approval and will negotiate approval of those plans with HHS. Contractor will also analyze existing legal billing rates of the OAG for purposes of reconciling those existing rates with actual costs of the OAG in providing the legal services and will provide to the OAG a report of that reconciliation. Contractor will develop the FY02 billing rates for legal services. Contractor will negotiate with HHS for approval of the FY02 billing rates. Finally, Contractor will provide guidance to the OAG in the implementation of these plans and billing rates.

NAME AND BUSINESS ADDRESS OF PRIVATE CONSULTANT:

The private consultant engaged by the OAG for these activities is DMG-Maximus, Inc., whose business address is 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

TOTAL VALUE AND TERM OF THE CONTRACT:

The total value of the contract is \$48,000. The term of the contract began on February 23, 2001, and will terminate on August 31, 2001, unless federal approval is still pending for the plans. In such case, the contract will continue until August 31, 2002 for the sole purpose of obtaining the necessary federal approval.

DATES ON WHICH REPORTS ARE DUE:

The Indirect Cost Allocation Plans must be submitted to HHS no later than June 29, 2001. The final report regarding the FY02 billing rates for legal services must be submitted to the OAG no later than August 17, 2001.

For further information, please call Julie Geeslin at 512 475-4495.

TRD-200101230

Susan D. Gusky

Assistant Attorney General

Office of the Attorney General

Filed: March 2, 2001

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 February 17, 2001 through March 2, 2001.

Total amount of state ceiling remaining unreserved for the \$325,809,688 subceiling for qualified mortgage bonds under the Act as of March 2, 2001: \$112,791,708

Total amount of state ceiling remaining unreserved for the \$143,356,262 subceiling for state-voted issue bonds under the Act as of March 2, 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 March 2, 2001: \$74,742,906

Total amount of state ceiling remaining unreserved for the \$215,034,394 subceiling for residential rental project bonds under the Act as of March 2, 2001: \$10,549,394

Total amount of state ceiling remaining unreserved for the \$136,840,069 subceiling for student loans bonds under the Act as of March 2, 2001: \$31,840,069

Total amount of state ceiling remaining unreserved for the \$384,455,431 subceiling for all other issue bonds under the Act as of March 2, 2001: \$23,855,431

Total amount of the \$1,303,238,750 state ceiling remaining unreserved under the Act as of March 2, 2001: \$397,135,770

Following is a comprehensive listing of applications, which have received a Certificate of Reservation pursuant to the Act from February 17, 2001 through March 2, 2001: None

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 February 17, 2001 through March 2, 2001:

Issuer: Harris County HFC

User: Eligible Borrowers

Description: Single Family Mortgage Revenue Bonds

Amount: \$25,000,000

Following is a comprehensive listing of applications, which were either withdrawn or cancelled pursuant to the Act from February 17, 2001 through March 2, 2001: None

Following is a comprehensive listing of applications, which released a portion or their entire reserved amount pursuant to the Act from February 17, 2001 through March 2, 2001:

Issuer: Port of Corpus Christi Authority of Nueces County, Texas

User: Koch Petroleum Group

Description: All Other Issue--Corpus Christi, Texas

Amount: \$12,900,000

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-200101325

Steve Alvarez

Program Administrator

Texas Bond Review Board

Filed: March 6, 2001

◆ ◆ ◆
Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were received for the following projects(s) during the period of January 25, 2001, through February 15, 2001. The public comment period for these projects will close at 5:00 p.m. on March 19, 2001.

FEDERAL AGENCY ACTIONS

Applicant: Davis Petroleum Corporation; Location: The project site is located in East Bay, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Stephenson, Texas. Approximate UTM Coordinates: Zone 15; Easting: 337261; Northing: 3268292. CCC Project No.: 01-0054-F1; Description of Proposed Action: The applicant proposes to install a 10-inch pipeline in State Tracts 150, 151, and 163. The proposed pipeline has been oriented to maintain a 500-foot distance from the locations of the Oyster Leases and Reefs that are within the Project Area. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: US Army Corps of Engineers; Location: The project site is located anywhere within the regulatory jurisdiction of the Galveston District. CCC Project No.: 01-0057-F1; Description of Proposed Action: The US Army Corps of Engineers, Galveston District proposes to

modify and extend the time for General permit 19088 to be used by all parties engaged in the construction of artificial wave barriers in waters of the United States to protect transplanted vegetation. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: US Fish and Wildlife Services; Location: The project site is located on Clam Lake, Ten Mile Cut, and Wild Cow Bayou on the McFaddin National Wildlife Refuge, in Jefferson County, Texas. CCC Project No.: 01-0065-F1; Description of Proposed Action: The applicant proposes to perform a wetland enhancement project on the McFaddin National Wildlife Refuge. Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899.

Applicant: Texas General Land Office; Location: The project site is located in Nueces Bay in the vicinity of Whites Point, Nueces County, Texas. Whites Point is located approximately 6.6 miles west of the causeway over Nueces Bay on SH 181, upstream within Nueces Bay. The project can be located on the U.S.G.S. quadrangle map entitled: Corpus Christi, Texas. Approximate UTM Coordinates: Zone 14; Easting: 650000; Northing: 3081700. CCC Project No.: 01-0066-F1; Description of Proposed Action: The applicant proposes to create an island within Nueces Bay that will range in size from 2-acres to 5-acres. Approximately 50,00 cubic yards would be dredged from a nearby borrow area to construct the island. The shoreline of this reconstructed island will be protected with a rock revetment/berm system. A temporary turbidity control curtain will be placed around the restored island area during placement of the island interior fill to minimize movement of suspended and bottom sediments.

Type of Application: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899. 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-200101367

Larry R. Soward

Chief Clerk, General Land Office

Coastal Coordination Council

Filed: March 7, 2001

◆ ◆ ◆
Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapter 2254, Chapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #118a) was published in the January 5, 2001, issue of the *Texas Register* (26 TexReg 254).

The consultant will assist Comptroller in conducting management and performance reviews of the San Angelo, Christoval, Grape Creek, Veribest, Wall and Water Valley Independent School Districts.

The contract was awarded to: Gibson Consulting Group, Inc., P.O. Box 163356, Austin, Texas 78716-3356. The total amount of the contract is not to exceed \$399,100.00. The project will culminate in final reports due no later than June 18, 2001.

The term of the contract is March 5, 2001 through August 31, 2001.

TRD-200101379

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 7, 2001



Notice of Contract Award

Pursuant to Chapter 2254, Chapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award.

The notice of request for proposals (RFP #117a) was published in the December 22, 2000, issue of the *Texas Register* (25 TexReg 12834).

The consultant will assist Comptroller in conducting management and performance reviews of the Karnes City, Kenedy, Falls City, and Runge Independent School Districts.

The contract was awarded to: International Business Machines Corporation, Inc., 400 West 15th Street, Austin, Texas 78701. The total amount of the contract is not to exceed \$249,907.00. The project will culminate in final reports due no later than June 11, 2001.

The term of the contract is March 2, 2001 through August 31, 2001.

TRD-200101380

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 7, 2001



Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) from qualified, independent firms to serve as Financial Advisor to the Comptroller. The Comptroller desires to obtain the services of Financial Advisor in connection with two tasks. Task A is related to the document preparation, issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes). Task B involves research and related matters pertinent to bond and securities issues. The successful respondent will be expected to begin performance of the contract on or about June 1, 2001.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, March 16, 2001, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours

thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, March 16, 2001, 2:00 p.m. (CZT).

Questions: All questions concerning the RFP must be in writing and submitted no later than Monday, April 2, 2001, 2:00 p.m. Questions must be faxed to (512) 475-0973, Attn: Thomas H. Hill, Assistant General Counsel, Contracts. On or before Monday, April 9, 2001, the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice of the issuance of this RFP. The address of the Texas Marketplace is www.marketplace.state.tx.us.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Monday, April 23, 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 Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 16, 2001, 2:00 p.m. CZT; Questions Due - April 2, 2001, 2:00 p.m. CZT; Answers to Questions Posted - on or before April 9, 2001, or as soon thereafter as practical; Proposals Due - April 23, 2001, 2:00 p.m. CZT, Contract Execution - May 4, 2001, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2001.

TRD-200101373

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 7, 2001



Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with two tasks. Task A involves a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes). Task B involves advice and legal research on matters related to bond and securities issues. The successful respondent will be expected to begin performance of the contract on or about June 1, 2001.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78744, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, March 16, 2001, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, March 16, 2001, 2:00 p.m. (CZT).

Questions: All questions concerning the RFP must be in writing and submitted no later than Monday, April 2, 2001, 2:00 p.m. Questions must be faxed to (512) 475-0973, Attn: Thomas H. Hill, Assistant General Counsel, Contracts. On or before Monday, April 9, 2001, the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice of the issuance of this RFP. The address of the Texas Marketplace is www.marketplace.state.tx.us.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Monday, April 23, 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 Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 16, 2001, 2:00 p.m. CZT; Questions Due - April 2, 2001, 2:00 p.m. CZT; Answers to Questions Posted - on or before April 9, 2001, or as soon thereafter as practical; Proposals Due - April 20, 2001, 2:00 p.m. CZT; Contract Execution - May 4, 2001, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2001.

TRD-200101374

Pamela Ponder

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 7, 2001

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 §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/12/01 - 03/18/01 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.09 for the period of 03/12/01 - 03/18/01 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200101311

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 6, 2001

Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on January 26, 2001, the Texas Court Reporters Certification Board certified to the Supreme Court of

Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.

MACHINE SHORTHAND:

MARIA BLATNIK--LEWISVILLE, TX

WENDY KESSLER--GLENSHAW, PA

TRD-200101229

Sheryl Jones

Director of Administration

Court Reporters Certification Board

Filed: March 2, 2001

Deep East Texas Council of Governments

Request for Qualifications

The Deep East Texas Council of Governments (DETCOG) is requesting qualifications submittals for Consultant Services.

Services required are:

Internal Audit, Writing of Policies and Procedures, Quality Assurance Review, Grant and Contract Administration, Knowledge of various federal and state programs, (i.e. HUD, EDA, DOJ) and Staff Development and Training.

Knowledge of OMB Circular 133, Audits for State and Local Governments.

Qualification statements are due Monday, March 26th promptly at 4:00 p.m. 2 copies typewritten, bound/stapled, and signed are required. All copies should be submitted to the attention of Walter G. Diggles, Executive Director, DETCOG, 274 East Lamar Street, Jasper, Texas 75951.

TRD-200101330

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: March 6, 2001

Finance Commission of Texas

Requests for Proposals to Perform a Comprehensive Survey and Analysis of Small Business Lending in Texas

Pursuant to the Government Code, Chapter 2254, Subchapter B, the Finance Commission of Texas (finance commission) invites consultants to provide offers of consulting services as described in and subject to the terms of the Request for Proposals (RFP) described in this notice. Interested consultants may obtain a complete copy of the RFP from the web site of the finance commission at <http://www.fc.state.tx.us/>, from the Electronic State Business Daily at <http://www.marketplace.state.tx.us/1380> or by contacting Randall S. James, Banking Commissioner (commissioner), 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 475-1300, during business hours, or by e-mail to RJJames@banking.state.tx.us.

This study is authorized and mandated by Finance Code, §11.305, which requires the finance commission to conduct research on (1) the availability, quality and prices of financial services, including lending and depository services, offered to agricultural businesses, small businesses, and individual consumers in this state; and (2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers

in this state. Due to the breadth of required research, studies are being conducted in phases. The finance commission is appropriated \$100,000 per year to perform and publish the required studies. Phase I, a study of consumer depository and cash services, was performed by Empirical Management Services and completed in December 1998. Phase II, conducted by Analytica, Inc., focused on home equity lending in Texas and a final report was issued in December 1999. Phase III, also conducted by Analytica, Inc., analyzed statewide consumer lending practices and was completed in September 2000. Copies of the prior studies are available upon request and are published on the finance commission web site, <http://www.fc.state.tx.us>.

The selected consultant will perform the fourth phase of the study, a comprehensive survey and analysis of the availability, quality, and prices of nonagricultural small business loans and the practices of business entities in the state that provide nonagricultural small business loans, and the final report is intended to provide results valuable to the Texas Legislature in evaluating public policy questions relating to small business lending in Texas. Proposers should include in their written proposals the period of time required to conduct the study, but are advised that the Finance Commission expects the study to be completed and ready for distribution by November 30, 2001. This factor will be taken into consideration in the final selection.

Proposals must be received by the commissioner at the above-referenced address no later than 5:00 p.m. on April 2, 2001. Proposals received after this time and date will not be considered. All proposals will be subject to evaluation by the finance commission based on the evaluation criteria set forth in the RFP. The prior consultants are eligible to submit proposals for the Phase IV study and any such proposal will be evaluated as described in the RFP, without preferential treatment. A proposer may be asked to clarify its proposal, and qualified proposers may be required to make oral presentations to the finance commission in Austin on April 19 and/or April 20, 2001. Qualified proposers may also be requested to finalize all proposed contract documentation with the commissioner prior to the meeting of April 20, 2001.

The finance commission will select the proposal which best meets the RFP criteria but could reject all proposals. If all other considerations are equal, the finance commission will, pursuant to Government Code, §2254.027, give preference to the proposer whose principal place of business is in the State of Texas or who will manage the consulting contract wholly from an office in the state.

The finance commission reserves the right to accept or reject any or all proposals submitted. The finance commission is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the finance commission to pay for any costs incurred prior to the execution of a contract.

TRD-200101225
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Filed: March 1, 2001

Golden Crescent Workforce Development Board

Public Notice

The Golden Crescent Workforce Development Board, Inc. is accepting applications from training providers for Golden Crescent Workforce Center Youth Services via individual referrals to recognized tuition-based Classroom Training in occupational skills which are in Targeted Occupations. Training packages must be commercially available to the

general public for off-the-shelf prices. RFA packets may be picked up at 120 South Main, Suite 501, Victoria, Texas. Applications must be returned by April 30, 2001, in order to be considered for Training Agreements effective June 1, 2001. For further information, call Sandy Heiermann at (361) 576-5872.

TRD-200101363
Isabel Simmons
Administrative Clerk
Golden Crescent Workforce Development Board
Filed: March 7, 2001

Public Notice

The Golden Crescent Workforce Development Board, Inc. announces the availability of their Strategic & Operational Plan Modification for public comment beginning March 22 - April 20, 2001. The plan can be viewed at the GCWDB office at 120 South Main, Suite 501, Victoria, Texas, (361) 576-5872. Programs provided by the GCWDB are Wagner-Peyser Employment Services (formerly Texas Employment Commission) and Career Center services for the general public; Workforce Investment Act (formerly JTPA) services for adults, dislocated workers, and youth; Temporary Assistance for Needy Families CHOICES program; Welfare-to-Work; Food Stamp Employment & Training; Child Care Management Services, Communities In Schools, and AmeriCorps Promise Fellowships Program for an operation period of July 1, 2001, to June 30, 2002. Eligible program beneficiaries who reside in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, and Victoria Counties may be provided appropriate employment and educational services through these programs. All persons wishing to view and comment on the Plan should do so at the above address no later than April 20, 2001.

TRD-200101364
Isabel Simmons
Administrative Clerk
Golden Crescent Workforce Development Board
Filed: March 7, 2001

Office of the Governor

Notification of Consultant Award

The Governor's Office of Budget and Planning furnishes this notice of a consulting services contract award, under the provisions of the Government Code, Chapter 2254, to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' Consolidated Statewide Cost Allocation Plan for the fiscal year ending August 31, 2002 and to prepare a full cost recovery plan under the provisions of state law. The notice for request for proposals was published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12511).

Description of Services. The contractor will develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs and ascertain indirect costs from state funds to provide state services.

Effective Date and Value of Contract. The contract will be effective from March 1, 2001 until August 31, 2002. The total cost of the contract is \$44,775. The due date of the plan is June 15, 2001.

Name of Contractor. The contract has been awarded to DMG-Maximus, 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

Persons who have questions concerning this award may contact Denise Francis, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 305-9415.

Issued in Austin, Texas, on March 2, 2001.

TRD-200101265

Claudia Nadig

Assistant General Counsel

Office of the Governor

Filed: March 2, 2001



Notification of Consultant Award

The Governor's Office of Budget and Planning furnishes this notice of a consulting services contract award under Government Code, Chapter 2254 to prepare a comprehensive cost analysis and cost allocation plan for the State Comptroller's Office data processing services to be incorporated into the State of Texas' Consolidated Statewide Cost Allocation Plan. The notice for request for proposals was published in the December 15, 2000, issue of the *Texas Register* (25 TexReg 12511).

Description of Services. The contractor will perform all work necessary to accomplish the submission of the federally-required data processing cost allocation plan.

Effective Date and Value of Contract. The contract will be effective from February 14, 2001 until August 31, 2002. The total cost of the contract is \$49,875. The due date of the plan is June 15, 2001.

Name of Contractor. The contract has been awarded to DMG-Maximus, 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

Persons who have questions concerning this award may contact Denise Francis, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 305-9415.

Issued in Austin, Texas, on March 2, 2001.

TRD-200101266

Claudia Nadig

Assistant General Counsel

Office of the Governor

Filed: March 2, 2001



Notice of Request for Grant Applications for Local Law Enforcement Block Grant Fund

The Criminal Justice Division of the Governor's Office is soliciting applications for Local Law Enforcement Block Grant (LLEBG) funds from local units of government with sheriff or police departments.

Purpose: The purpose of the grants is to provide local law enforcement agencies with the opportunity to procure equipment directly related to law enforcement functions.

Eligible projects are those that will use the Local Law Enforcement Block Grant to purchase equipment that is not standard issue and not for general agency use. The equipment must be directly related to law enforcement functions and for the preservation of public safety.

Available Funding: Local Law Enforcement Block Grant funding is made available through an LLEBG aggregate award to the Criminal Justice Division (CJD) which is the State Administrative Agency appointed by the governor to administer Texas' portion of LLEBG funds. The source of funding is an annual grant from the Office of Justice Programs. All LLEBG awards made by CJD under RFA will have a

\$10,000 maximum grant award amount and will require a minimum of 10% grantee cash match.

Standards: Grantees must comply with the applicable grant management standards adopted under Title I, Part I, Chapter 3, Texas Administrative Code.

Prohibitions: Grantees may use grant funds only for the purchase of equipment that is not standard issue and not for general agency use. The equipment must be directly related to law enforcement functions and for the preservation of public safety. The following equipment is specifically prohibited: firearms, tanks, armored vehicles, fixed-wing aircraft, limousines, real estate, and yachts.

Eligible applicants include any county sheriff's department or city police department that is neither receiving nor eligible for a direct Local Law Enforcement Block Grant award from the Office of Justice Programs (OJP). All agencies identified as eligible for LLEBG funds from OJP are contacted by OJP directly.

Beginning Date: The LLEBG - Equipment Only grants must begin on May 1, 2001.

Application Process: Interested applicants should call or write the Criminal Justice Planner of their respective Council of Government (COG), for information on submission requirements. Detailed information is in the application kits, which are available from the Criminal Justice Planner at the regional COG.

Closing Date for Receipt of Applications: All applications are due in the Criminal Justice Division no later than April 15, 2001. Information on submission deadline to the COGs may be obtained from the Criminal Justice Planner at the COG.

Grant End Date: All grants awarded under this specific RFA will have an ending date of August 31, 2001. All funds must be expended and drawn from the Criminal Justice Division no later than August 31, 2001. A final expenditure report must be submitted to CJD on the September 30, 2001 report. These grants will not be eligible for renewal.

Selection Process: COGs will review the applications for eligibility, reasonableness, and cost-effectiveness. Three applications will be selected by each COG and forwarded to CJD for final review, approval, and award.

Contact Person: If additional information is needed contact the Criminal Justice Planner at the regional COG or Taylor G. Petty in the Criminal Justice Division at (512) 463-2822.

TRD-200101224

Claudia Nadig

Assistant General Counsel

Office of the Governor

Filed: March 1, 2001



Texas Department of Health

Designation of Medstaff, Inc. as a Site Serving Medically Underserved Populations

The Texas Department of Health (department) is required under the Occupations Code §157.052 to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Medstaff Inc., 905 North Gulf

Boulevard, Freeport, Texas 77541. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Bruce Gunn, Ph.D., Director, Health Professions Resource Center, Office of Policy and Planning, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200101318

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: March 6, 2001



Licensing Actions for Radioactive Materials

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	Amendment #	Date of Action
Dallas	Texas Scottish Rite Hospital	L05379	Dallas	00	02/23/01
Dallas	Cardiology & Internal Medicine Association	L05412	Dallas	00	02/26/01
Ferris	Fred Maese MD PA DBA Ferris Heart Center	L05409	Ferris	00	02/22/01
Houston	Advanced Cardiovascular Care Center PA	L05413	Houston	00	02/16/01
McGregor	Rice Inspection Inc	L05390	McGregor	00	02/04/01
Throughout TX	Peachtree Construction Co	L05401	N Richland Hills	00	02/16/01
Throughout TX	Wrangler Wireline Inc	L05404	Sour Lake	00	02/26/01

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alice	Physicians and Surgeons Hospital of Alice LP	L02390	Alice	27	02/20/01
Amarillo	Northwest Texas Healthcare System	L02054	Amarillo	59	02/20/01
Austin	US Oncology DBA Austin Cancer Center MLK	L01761	Austin	44	02/26/01
Austin	Seton Medical Center	L02896	Austin	56	02/28/01
Borger	Chevron Phillips Chemical Company LP	L05181	Borger	06	02/16/01
College Station	Texas A & M University Envir Health & Safety	L00448	College Station	106	02/15/01
College Station	College Station Hospital LP	L02559	College Station	34	02/16/01
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	15	02/20/01
Dallas	Texas Oncology PA	L04878	Dallas	17	02/22/01
Deer Park	Shell Oil Products Deer Park Refining Equilon	L04554	Deer Park	15	02/23/01
Denton	Network Cancer Care of Denton	L05348	Denton	02	02/16/01
El Paso	Providence Memorial Hospital	L02353	El Paso	65	02/14/01
El Paso	Cardiology Care Consultants	L05045	El Paso	03	02/26/01
Ft Worth	Heart Center of North Texas PA	L05338	Ft Worth	02	02/26/01
Harlingen	Heart Clinic Inc	L04514	Harlingen	12	02/26/01
Houston	Institute of Biosciences and Technology	L04681	Houston	13	02/14/01
Houston	Health Images Texas Inc	L05005	Houston	06	02/13/01
Houston	Sisters of Charity of the Incarnate Word	L02279	Houston	43	02/13/01
Houston	Medical Clinic of Houston LLP	L01315	Houston	28	02/09/01
Houston	Kelsey Seybold Clinic PA	L00391	Houston	53	02/12/01
Houston	Cardiovascular Ventures of West Houston Inc	L04882	Houston	10	02/15/01
Houston	Harris County Hospital District	L04412	Houston	25	02/22/01
Houston	Memorial Hermann Hospital	L00439	Houston	70	02/26/01
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	38	02/27/01
Houston	Memorial Hermann Healthcare System	L04655	Houston	14	02/27/01
Irving	Mobile Diagnostic Systems	L03212	Irving	25	02/21/01
Lubbock	Covenant Health System	L04881	Lubbock	19	02/22/01
Lubbock	Covenant Health System DBA Covenant Med Ct	L01547	Lubbock	64	02/28/01
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	66	02/15/01
Odessa	Ector County Hospital District	L01223	Odessa	69	02/26/01

(CONT) AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Pasadena	Marathon Ashland Pipe Line LLC	L05303	Pasadena	01	02/16/01
Pasadena	Syngenta Crop Protection Inc	L02216	Pasadena	24	02/23/01
Port Arthur	Gulf Coast Cardiology Group PA	L05393	Port Arthur	01	02/27/01
Richardson	Richardson Hospital Authority	L02336	Richardson	34	02/16/01
San Antonio	Baptist Imaging Center	L04506	San Antonio	25	02/14/01
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	58	02/26/01
Throughout TX	City of Amarillo Department of Engineering	L02320	Amarillo	15	02/28/01
Throughout TX	Savage-Tolk Corporation	L02672	Amarillo	17	02/28/01
Throughout TX	Paragon Wireline Inc	L05367	Bryan	01	02/15/01
Throughout TX	Rone Engineers	L02356	Dallas	19	02/15/01
Throughout TX	JRJ Paving Inc	L05307	Dallas	01	02/16/01
Throughout TX	Housing Authority of the City of El Paso	L05154	El Paso	02	02/16/01
Throughout TX	METCO	L03018	Houston	108	02/27/01
Throughout TX	CB&I Constructors Inc	L01902	Houston	44	02/13/01
Throughout TX	Petrochem Inspection Services	L04460	Houston	52	02/22/01
Throughout TX	Rayco Oilfield Services Inc	L05256	Houston	01	02/23/01
Throughout TX	Protechnics Division of Core Laboratories Inc	L03835	Houston	39	02/26/01
Throughout TX	Longview Inspection Inc	L01774	Houston	161	02/27/01
Throughout TX	Petrochem Inspection Services	L04460	Houston	53	02/28/01
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	86	02/26/01
Throughout TX	Southern Services Inc	L05270	Lake Jackson	12	02/21/01
Throughout TX	Granite Construction Company	L04923	Lewisville	05	02/16/01
Throughout TX	PMI Specialist Inc	L04686	Liberty	08	02/28/01
Throughout TX	Eagle X-Ray	L03246	Mont Belvieu	65	02/26/01
Throughout TX	Technical Welding	L02187	Pasadena	135	02/21/01
Throughout TX	Conam Inspection	L05010	Pasadena	32	02/22/01
Throughout TX	All American Inspection Inc	L01336	San Antonio	37	02/28/01
Tyler	East Texas Medical Center	L00977	Tyler	83	02/16/01
Tyler	Trinity Mother Frances Health System	L01670	Tyler	82	02/22/01
Weslaco	Knapp Medical Center	L03290	Weslaco	30	02/13/01
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	78	02/21/01
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	34	02/22/01

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Big Springs	ALON USA LP	L04950	Big Spring	03	02/23/01
Dallas	Radiological Consultants Inc	L04309	Dallas	06	02/28/01
DFW	GE Lighting	L03819	DFW	13	02/28/01
Houston	Advanced Cardiac Care Assoc	L04936	Houston	13	02/21/01
Houston	Cardiovascular Clinic of Texas Inc	L04963	Houston	03	02/26/01
La Porte	OXY Vinyls LP	L02469	La Porte	16	02/16/01
Laredo	Mercy Regional Medical Center	L01306	Laredo	47	02/23/01

(CONTINUED) RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	MEDLAB	L04824	San Antonio	05	02/26/01
Sequin	American Biological Technologies Inc	L04265	Sequin	04	02/16/01
Throughout TX	Professional Services	L02476	El Paso	14	02/16/01
Throughout TX	Arias & Kezar Inc	L04964	San Antonio	14	02/23/01
Waco	Hillcrest Baptist Medical Center	L00845	Waco	67	02/23/01

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Champions MRI & Diagnostic Center	L04859	Houston	11	02/21/01
Throughout TX	Ecology and Environment Inc	L05133	Dallas	03	02/26/01
Throughout TX	HIS Geotech & CMT Inc	L05148	San Antonio	01	02/26/01
Tyler	The University of Texas at Tyler	L02785	Tyler	08	02/28/01

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Title 25 Texas Administrative Code (TAC) Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who 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-200101354
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001

The Texas Department of Health (department) amends the Notice of Request for Proposals for Human Immunodeficiency Virus (HIV) Administrative Agencies published in the January 12, 2001, issue of the *Texas Register* (26 TexReg 721) under TRD 200009069.

Amendment

The following announcement is being amended so that letters of intent to apply must be received by the department) by March 23, 2001.

Introduction and Purpose

◆ ◆ ◆
Notice of an Amendment to the Request for Proposals for Human Immunodeficiency Virus Administrative Agencies

The department announces the availability of grant funds to provide administrative services within five HIV Planning Areas, (see Planning Area information at the website at <http://www.tdh.state.tx.us/hivstd/pdf/planarea.pdf>), as follows:

(1) El Paso Texas Planning Area: includes the El Paso HIV Service Delivery Area (HSDA);

(2) PanWest Planning Area: includes Amarillo HSDA, Lubbock HSDA, and Permian Basin HSDA;

(3) East Texas Planning Area: includes Beaumont/Port Arthur HSDA, Houston HSDA, Texarkana HSDA, Lufkin HSDA, Tyler HSDA. (Galveston HSDA is excluded.);

(4) Central Texas Planning Area: includes Temple-Killeen HSDA, Waco HSDA, Bryan-College Station HSDA, Austin HSDA and San Angelo HSDA; and

(5) South Texas Planning Area: includes San Antonio HSDA, Uvalde HSDA, Victoria HSDA, Corpus Christi HSDA, Laredo HSDA and Brownsville HSDA.

Administrative Agencies (AA) will provide administration of the following grant programs of the department:

Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 2000, as amended;

HIV State Health and Social Services (State Services); and

Housing Opportunities for Persons with AIDS (HOPWA).

The department will enter into contracts with the selected AAs on or about September 1, 2001. In addition, the department will contract with one of the selected AAs in each Planning Area to provide:

Area Planning Body Coordination.

The primary role of an AA is to apply for and manage department funds and programs for the provision of HIV services within the Planning Area. One entity selected to serve as the Administrative Agency for each Area Planning Body (formerly Consortium) will also serve as the administrative body to coordinate the planning functions of the Area Planning Bodies and will receive additional department funding for those activities.

Eligible Applicants

Eligible applicants are public or private nonprofit organizations within the affected HIV Planning Area. Agencies that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply. An administrative agency may be a state or county health department, a community foundation, a public trust, a community-based organization, an AIDS services organization, or an incorporated nonprofit agency. To be eligible, entities must demonstrate core administrative agency competencies as listed in the Site Review Tool for Assessing Administrative Agency Core Competencies.

To Apply

A letter of intent to apply must be received by the department by March 23, 2001. Please follow the instructions in the RFP for submittal of the letter of intent. Proposals must be received by the department by 5:00 p.m., Central Daylight Saving Time, April 2, 2001. Interested parties may obtain a copy of the RFP at the website: <http://www.tdh.state.tx.us/hivstd/grants/default.htm>; or, contact Laura Ramos at (512) 490-2525 or by e-mail at laura.ramos@tdh.state.tx.us. No copies of the RFP will be released prior to January 31, 2001.

TRD-200101312

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001



Notice of Emergency Impoundment Order on Highland Medical Center

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Highland Medical Center of Lubbock to immediately allow the bureau to impound all sources of radiation owned by South Plains Radiology Associates (registrant-R21747) located at its facility. The bureau determined that the inadequate storage of the radiation sources by the registrant at Highland Medical Center constitutes an immediate threat to public health and safety, and the existence of an emergency.

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-200101316
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001



Notice of Emergency Impoundment Order on Lubbock Wrecker Service

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Lubbock Wrecker Service of Lubbock to immediately allow the bureau to impound all sources of radiation owned by South Plains Radiology Associates (registrant-R21747) at its facility. The bureau determined that the inadequate storage of the radiation sources by the registrant at the Lubbock Wrecker Service facility constitutes an immediate threat to public health and safety, and the existence of an emergency.

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-200101315
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001



Notice of Emergency Impoundment Order on South Plains Radiology Associates

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered South Plains Radiology Associates (registrant-R21747) of Lubbock to immediately allow the bureau to impound the Porta Ray x-ray unit (Model Number 1160, Serial Number 3040F) and the Dyna Ray x-ray unit (Model Number 1170, Serial Number 3049). The bureau determined that inadequate storage of the radiation sources, and the lack of an individual licensed to practice the healing arts and to direct the use of the sources of radiation constitute an immediate threat to public health and safety, and the existence of an emergency.

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-200101317
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001



Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to North Texas Lithotripsy, L.P.

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 North Texas Lithotripsy, L.P. (registrant-R25878) of Dallas. A total penalty of \$16,000 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-200101314
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001



Notice of Revocation of the Industrial Radiographer Identification Card of Michael L. Crow

The Texas Department of Health, having duly filed a complaint pursuant to 25 Texas Administrative Code §289.205, has revoked the following industrial radiographer identification card: Michael L. Crow, El Paso, Texas Industrial Radiographer Identification Card audit number 07677, February 15, 2001.

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-200101313
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: March 6, 2001



Texas Health and Human Services Commission

Public Notice

State Medicaid Office

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 00-20, Amendment Number 585.

The amendment clarifies that home health services, except for expendable medical supplies and durable medical equipment, are reimbursed using the cost reimbursement principles used in computing reimbursement for comparable services under Title XVIII (Medicare) prior to October 1, 2000. The amendment is effective October 1, 2000.

If additional information is needed, please contact Marianna Zolondek, Texas Department of Health, at 512-338-6521.

TRD-200101215
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: February 28, 2001



Texas Department of Insurance

Insurer Services

Application for admission to the State of Texas by HALLMARK INSURANCE COMPANY, INC., a foreign fire and casualty company. The home office is in Milwaukee, Wisconsin.

Application for admission to the State of Texas by NATIONAL SECURITY LIFE AND ANNUITY CORPORATION, a foreign life company. The home office is in Binghamton, New York.

Application to change the name of UNIFIED LIFE INSURANCE COMPANY to AMERICOM LIFE AND ANNUITY INSURANCE COMPANY, a foreign life company. The home office is in Overland Park, Kansas.

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-200101366
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 7, 2001



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Superior Risk Administrators, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200101368
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: March 7, 2001



Texas Natural Resource Conservation Commission

Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of February 21, 2001

APPLICATION AND PRELIMINARY DECISION. Hudspeth County, P.O. Box 68, Sierra Blanca, Hudspeth County, Texas, 79851, has applied to the Texas Natural Resource Conservation Commission (TNRCC) to amend its existing Type I arid exempt (AE) municipal solid waste landfill Permit No. MSW-957 to continue the Type I-AE municipal solid waste landfill facility and to designate a portion of the facility as a Type IV-AE. The amended permit would authorize the disposal of municipal solid waste, construction demolition waste, yard waste, rubbish, and certain special wastes; and would allow an expansion of the permitted area from approximately 14.359 acres to a total acreage of 136.803 acres, which will be used for disposal operations. This facility is located along FM-1111, approximately 3.5 miles south of the town of Sierra Blanca in Hudspeth County, Texas. This permit amendment application was submitted to the TNRCC on May 8, 2000. The TNRCC executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Hudspeth County Judges's office at 109 Milligan, Sierra Blanca, Texas 79851. The telephone number of the County Judge's office is (915) 369-2321.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TNRCC permits in the county.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TNRCC will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing

request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at www.tnrcc.state.tx.us. Further information may also be obtained from Mr. James E. Tompkins, P.E., West Texas Consultants, (Consulting Engineer for the applicant), 3300 North "A" Street, Bldg. 1, Suite 200, Midland, Texas 79705, or by calling Mr. Tompkins at (915) 685-3800.

TRD-200101217

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: February 28, 2001



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 **April 16, 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 April 16, 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: Mr. Allen Tari dba Car Company of Plano; DOCKET NUMBER: 2000-1261- AIR-E; IDENTIFIER: Air Account Number CP-0440-V; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Code, §382.085(b), by offering for sale to the general public a 1992 Mazda B2200 pickup with missing or inoperable emission control devices; PENALTY: \$300; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(2) COMPANY: Mr. Sunil Kumar Patel dba Country Corner; DOCKET NUMBER: 2000-0908- PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0040926; LOCATION: Balch Springs, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1), (3), and (6), and the Code, §382.085(b), by failing to maintain a copy of the California Air Resources Board Executive Order, maintain a maintenance log for all repairs and/or replacements conducted at the station, and maintain records of daily inspections on hoses, nozzles, and operating instructions; 30 TAC §115.245(1) and the Code, §382.085(b), by failing to successfully complete all applicable tests; and 30 TAC §115.248(1) and the Code, §382.085(b), by failing to ensure at least one station representative received approved training and instruction in the operation and maintenance of the Stage II vapor recovery system; PENALTY: \$2,520; ENFORCEMENT COORDINATOR: Wendy Cooper, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010- 6499, (817) 588-5800.

(3) COMPANY: Crosstex/WRA Gas Services; DOCKET NUMBER: 2000-0999-AIR-E; IDENTIFIER: Air Account Number LK-0071-O; LOCATION: Three Rivers, Live Oak County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §116.110(a)(4) and the Act, §382.085(a), by failing to satisfy the conditions for exempt facilities; 30 TAC §122.121 and the Act, §382.054 and §382.085(b), by failing to obtain a Title V federal operating permit authority; and 30 TAC §122.130(a)(2) and the Act, §382.054 and §382.085(b), by failing to submit a federal operating permit application; PENALTY: \$5,400; ENFORCEMENT COORDINATOR: Carol McGrath, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: E. I. DuPont De Nemours and Company, Inc.; DOCKET NUMBER: 2000- 0974-AIR-E; IDENTIFIER: Air Account Number OC-0007-J; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: polyethylene production plant; RULE VIOLATED: 30 TAC §117.213(f)(2) and (3), §117.520(a)(1), and the Code, §382.085(b), by failing to monitor diluent oxygen or carbon dioxide using a predictive emissions or continuous emission monitoring system and meet the requirements of 40 Code of Federal Regulations (CFR) §75, Subpart E; 30 TAC §117.211(c) and (f)(2), §117.520(a)(1), and the Code, §382.085(b), by failing to verify operational status and demonstrate initial compliance with emission specifications; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: R. L. Eldridge Construction Inc. dba Gabby's Dock; DOCKET NUMBER: 2000-1373-AIR-E; IDENTIFIER: Air Account Number JE-0581-M; LOCATION: Sabine Pass, Jefferson County, Texas; TYPE OF FACILITY: ship maintenance and repair; RULE VIOLATED: 30 TAC §116.110(a)(4), §106.452(2)(A), and the Code, §382.085, by failing to satisfy the conditions for exempt facilities or obtain a permit prior to operating a dry abrasive cleaning facility; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Engineered Carbons, Incorporated; DOCKET NUMBER: 2000-0972-AIR-E; IDENTIFIER: Air Account Number OC-0020-R; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: carbon black production; RULE VIOLATED: Air Permit Number 9403B, 30 TAC §116.115(b)(2)(G) and (c), §101.20(3), and the Code, §382.085(b), by failing to comply with the permitted nitrogen oxide emission limits, maintain a file of maintenance records,

performance evaluation, and weekly calibration and adjustment check records, and maintain records of the date and reason for any maintenance and repair; PENALTY: \$78,750; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Mr. Glen Enos dba Jim Enos Motors; DOCKET NUMBER: 2000-1256-AIR-E; IDENTIFIER: Air Account Number TA-1791-R; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Code, §382.085(b), by allegedly offering for sale a 1983 Chevrolet Silverado with missing three way catalyst and a broken fresh air intake line and a 1990 Dodge Ram with a disconnected heat riser; PENALTY: \$600; ENFORCEMENT COORDINATOR: Judy Fox, (817) 588-5800; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(8) COMPANY: EOG Resources, Inc.; DOCKET NUMBER: 2000-1134-AIR-E; IDENTIFIER: Air Account Number AG-0002-Q and Operating Permit Number O-00751; LOCATION: Jourdanon, Atascosa County, Texas; TYPE OF FACILITY: natural gas compressor station; RULE VIOLATED: 30 TAC §122.146(2) and the Code, §382.085(b), by failing to submit an annual permit compliance certification; and 30 TAC §122.145(2)(C) and the Code, §382.085(b), by failing to submit a deviation report; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Malcolm Ferris, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Akber Allauddin dba E-Z Seven Food Mart; DOCKET NUMBER: 2000-1133- PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0035114; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; PENALTY: \$4,375; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(10) COMPANY: Few Ready Mix Concrete Company; DOCKET NUMBER: 2000-1347-AIR-E; IDENTIFIER: Air Account Number JC-0060-V; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a)(4), Permit by Rule 30 TAC §106.201(1), (formerly Special Condition One of Standard Exemption 71), and the Code, §382.085, by failing to maintain the stockpile sprinkler system; PENALTY: \$500; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: FFP Marketing Company, Incorporated; DOCKET NUMBER: 2000-1443- AIR-E; IDENTIFIER: Air Account Number EE-1961-R ; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.252(2) and the Code, §382.085(b), by allowing a transfer of gasoline from a storage vessel with an Reid Vapor Pressure greater than seven pounds per square inch absolute; PENALTY: \$750; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(12) COMPANY: Ashfaq Ahmed and Kulsoom Yousuf dba Fina; DOCKET NUMBER: 2000- 1139-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 0006274; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience

store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(5) and the Code, §382.085(b), by failing to maintain a record of the results of Stage II equipment testing; PENALTY: \$800; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(13) COMPANY: Grape Creek/Pulliam Independent School District; DOCKET NUMBER: 2000-1178-MWD-E; IDENTIFIER: Expired Water Quality Permit Number 0013859-001; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.63(a) and §305.125(2), by failing to renew their permit and operating without authorization; and the Code, §26.121, by failing to prevent the unauthorized discharge of sewage; PENALTY: \$4,800; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(14) COMPANY: City of Hamlin; DOCKET NUMBER: 2000-1235-PWS-E; IDENTIFIER: Public Water Supply Number 1270002; LOCATION: Hamlin, Jones County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(b), (formerly 30 TAC §290.105(b)), by exceeding the maximum contaminant level (MCL) for total coliform bacteria; 30 TAC §290.122(b), (formerly 30 TAC §290.103(5)), by failing to provide public notice for exceeding the MCL for total coliform bacteria; and 30 TAC §290.109(c)(3), (formerly 30 TAC §290.106(b)(1)), by failing to take the appropriate number of repeat bacteriological samples; PENALTY: \$3,125; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: Hardin County Water Control and Improvement District No. 1; DOCKET NUMBER: 2000-1008-MWD-E; IDENTIFIER: Water Quality Permit Number 10678-001; LOCATION: Sour Lake, Hardin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5) and Water Quality Permit Number 10678-001, by failing to ensure that all its systems of collection, treatment, and disposal are properly operated as evidenced by the presence of sludge in the receiving stream and a five foot sludge blanket in the clarifier, a high amount of bulking sludge, accurately calibrate all automatic flow measuring devices, report effluent violations, and meet permitted effluent limitations; 30 TAC §312.68 and Water Quality Permit Number 10678-001, by failing to submit an annual sludge report; and 30 TAC §319.11(a) and (b), §305.125(1), and Water Quality Permit Number 10678-001, by failing to utilize test procedures for the analysis of pollutant; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Jacintoport International LP; DOCKET NUMBER: 2000-0942-IWD-E; IDENTIFIER: Enforcement Identification Number 15242; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: cold storage warehouse; RULE VIOLATED: the Code, §26.121, by failing to obtain authorization or a permit to discharge industrial waste; and 30 TAC §305.64, by failing to submit a transfer application to transfer the permit; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Arend Jensema; DOCKET NUMBER: 2000-0261-AGR-E; IDENTIFIER: Water Quality Permit Number 03722; LOCATION: Cumby, Hopkins County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31(a), §321.39(f)(2) and (19)(F), Permit Number 03722, and the Code, §26.121, by failing to maintain

the sump, pump, and pipe used to transport waste and wastewater; and 30 TAC §321.42(a) and Permit Number 03722, by failing to sample and notify the TNRCC of the wastewater discharge; PENALTY: \$600; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Lilly Grove Special Utility District; DOCKET NUMBER: 2000-0837-PWS-E; IDENTIFIER: Public Water Supply Number 1740014; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), (M), and (O), by failing to provide a vent screen, provide a sample tap on the well discharge, and provide a proper intruder resistant fence; 30 TAC §290.43(c)(3) and (8), and (d)(3), by failing to provide a flap valve on the overflow pipe, maintain the exterior coating on the 0.040 million gallon ground storage tank, and provide an air-water volume indicator for the pressure tank; 30 TAC §290.42(e)(4), (formerly 30 TAC §290.42(e)(5), and (7)), by failing to provide a readily accessible bottle of ammonia and provide properly installed ventilation fans for the chlorination room; the Code, §341.036(g), by failing to maintain the probe entry point for the 0.100 million gallon storage tank; 30 TAC §290.46(w), by failing to provide a legible sign; and 30 TAC §290.45(b)(1)(D), by failing to provide an elevated storage capacity of 100 gallons per connection; PENALTY: \$2,656; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Midway Petroleum, LP; DOCKET NUMBER: 2000-1341-PWS-E; IDENTIFIER: Public Water Supply Number 1700619; LOCATION: near Cleveland, Montgomery County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c), (formerly 30 TAC §290.106(a)), by failing to collect and submit routine monthly water samples for bacteriological analysis; PENALTY: \$938; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Mobil Oil Corporation; DOCKET NUMBER: 2000-0530-AIR-E; IDENTIFIER: Air Account Number JE-0067-I; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §117.205(b)(1) and the Code, §382.085(b), by exceeding the applicable nitrogen oxides emission limits for gas fired boilers; 30 TAC §117.211(a), §117.219(c), and the Code, §382.085(b), by failing to perform initial demonstrations of compliance testing and report the respective test results and timely report test results of the initial demonstration of compliance testing; 30 TAC §117.213, §117.219(c), and the Code, §382.085(b), by failing to install, certify, and operate continuous emissions monitoring system for carbon monoxide and timely report the results; and 30 TAC §117.215(a) and the Code, §382.085(b), by failing to submit a complete final control report; PENALTY: \$129,600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Mountain Man, Inc.; DOCKET NUMBER: 2000-0990-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12670-001; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12670-001, and the Code, §26.121, by failing to comply with permit limits for ammonia nitrogen and dissolved oxygen; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: North Orange Water and Sewer, L.L.C. dba Longford Place; DOCKET NUMBER: 2000-1013-MLM-E; IDENTIFIER: Public Water Supply Number 1810015 and TPDES Permit Number 11155-001; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: public water supply and wastewater treatment; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(iv) and Rate Tariff Order Application Numbers 31991-G and 31992-G, by failing to provide pressure tank capacity of 20 gallons per connection; 30 TAC §290.41(c)(1)(F), by failing to deed record in the records at the county courthouse sanitary control easements; and 30 TAC §305.125(1), TPDES Permit Number 11155-001, and the Code, §26.121, by failing to comply with permitted effluent limitations; PENALTY: \$1,375; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: OFS, Inc.; DOCKET NUMBER: 2000-1015-IHW-E; IDENTIFIER: Solid Waste Registration Number 74896; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: refurbishing for oil drilling pipes and equipment; RULE VIOLATED: 30 TAC §335.4 and the Code, §26.121, by allegedly having discharged industrial waste into soil without authorization; PENALTY: \$6,250; ENFORCEMENT COORDINATOR: Catherine Sherman, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Our Water Supply Corporation; DOCKET NUMBER: 2000-1294-PWS-E; IDENTIFIER: Public Water Supply Number 2200282; LOCATION: Burleson, Tarrant County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e)(2), (formerly 30 TAC §290.120(e)(2)), by failing to conduct reduced monitoring tap sampling for lead and copper; 30 TAC §290.51(a)(3), by failing to pay public health service fees; and 30 TAC §290.76, by failing to pay regulatory assessment fees; PENALTY: \$313; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(25) COMPANY: The City of Pampa; DOCKET NUMBER: 2000-1097-PWS-E; IDENTIFIER: Public Water Supply Number 0900003; LOCATION: Pampa, Gray County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.115(b), (formerly 30 TAC §290.116(a)), by failing to control levels of total trihalomethanes; 30 TAC §290.42(a), by failing to operate the water treatment plant within design capacities; 30 TAC §290.43(c)(3) and (8), by failing to provide a liquid level indicator and maintain exterior coating systems; PENALTY: \$19,775; ENFORCEMENT COORDINATOR: Shawn Hess, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(26) COMPANY: Petro, Inc.; DOCKET NUMBER: 2000-1045-IWD-E; IDENTIFIER: Water Quality Permit Number 0003026; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.126, Water Quality Permit Number 0003026, and the Code, §26.121, by failing to give notice prior to installing an irrigation system; and 30 TAC §305.121 and Water Quality Permit Number 0003026, by failing to have readily available self-monitoring records, comply with the discharge limitations, conduct required chlorine residual testing, maintain monitoring equipment, and properly store human excreta extracted from the bar screen; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(27) COMPANY: Ranger Aviation Enterprises, Inc.; DOCKET NUMBER: 2000-1141-IHW-E; IDENTIFIER: Solid Waste Registration Number 23714; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: aircraft repainting and restoration; RULE VIOLATED: 30 TAC §335.62 and 40 CFR §262.11, by failing to perform a hazardous waste determination; and 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii) and §265.193(a)(1), by failing to provide secondary containment for the hazardous waste tank; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Mark Newman, (915) 655-9479; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(28) COMPANY: City of Raymondville; DOCKET NUMBER: 2000-0823-MWD-E; IDENTIFIER: Water Quality Permit Number 10365-001 and National Pollutant Discharge Elimination System (NPDES) Permit Number TX0024546; LOCATION: Raymondville, Willacy County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), Water Quality Permit Number 10365-001, and the Code, §26.121, by failing to keep the sludge in the clarifier from overflowing into the receiving stream; and 30 TAC §§319.7(a)(5), 319.6, and 319.11, and Water Quality Permit Number 10365-001, by failing to perform the analysis of chlorine duplicate samples or standards daily, compare dissolved oxygen meter measurements, correct chlorine sample measurements, and keep the dissolved oxygen meter quality assurance records; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(29) COMPANY: Resort Water Services, Inc.; DOCKET NUMBER: 2000-1018-SLG-E; IDENTIFIER: Transporter Registration Number 21831 and Beneficial Land Use Site Registration Number 710701 (Expired); LOCATION: near Mabank, Henderson County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.142(c), by failing to have a copy of the transporter registration in the cab of their truck; 30 TAC §312.143, §312.4(e), and the Code, §26.121, by continuing to dispose of water treatment plant sludge at expired beneficial land use site number 710701; 30 TAC §312.144(d), by failing to have sight gauges on the tank of the truck; and 30 TAC §312.145(b)(2), by failing to have five years of trip tickets readily available at the time of the inspection; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 588-5800.

(30) COMPANY: Star Mountain Water Supply Corporation; DOCKET NUMBER: 2000-0944-PWS-E; IDENTIFIER: Public Water Supply Number 2120021; LOCATION: Winona, Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 30 TAC §290.45(b)(1)(D)(i), (iii), and (iv), by failing to provide two or more wells with a total well capacity of 0.6 gallons per minute per connection, provide two or more service pumps with a total rated capacity of two gallons per minute per connection, and provide the minimum elevated storage of 100 gallons per connection or pressure storage capacity of 20 gallons per connection; and 30 TAC §290.46(f)(3), (formerly 30 TAC §290.46(p)), by failing to make copies of annual ground storage tank and pressure storage tank inspection records available for review; PENALTY: \$788; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(31) COMPANY: City of Thornton; DOCKET NUMBER: 2000-0658-MWD-E; IDENTIFIER: Water Quality Permit Number 10824-001, NPDES Permit Number TX0075639, and TPDES Permit Number 10824-001; LOCATION: Thornton, Limestone

County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10824-001, Water Quality Permit Number 10824-001, NPDES Permit Number TX0075639, and the Code, §26.121, by failing to comply with permit limits for total suspended solids, biochemical oxygen demand, dissolved oxygen minimum concentrations and minimum chlorine residual, and prevent the discharge of sewage from the wastewater treatment facility; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Sherry Smith, (512) 239-0572; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(32) COMPANY: TXU Electric Company; DOCKET NUMBER: 2000-0861-IWD-E; IDENTIFIER: TPDES Permit Number 01309; LOCATION: Fairfield, Freestone County, Texas; TYPE OF FACILITY: steam power generating plant; RULE VIOLATED: TPDES Permit Number 01309 and the Code, §26.121, by failing to comply with permitted minimum total residual chlorine; PENALTY: \$4,800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: Wharton County Water Control and Improvement District No. 2; DOCKET NUMBER: 2000-0905-MWD-E; IDENTIFIER: TPDES Facility Identification Number 14019-001; LOCATION: East Bernard, Wharton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14019-001, and the Code, §26.121, by failing to comply with permit limits for total suspended solids, biochemical oxygen demand, chlorine residual, and dissolved oxygen; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: The City of Whitehouse; DOCKET NUMBER: 2000-0179-PWS-E; IDENTIFIER: Public Water Supply Number 2120025; LOCATION: Whitehouse, Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and (iv), by failing to have two or more service pumps with a total rated capacity of two gallons per minute per connection and have an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.43(c)(8), by failing to meet maintenance requirements for elevated storage tanks; PENALTY: \$5,075; ENFORCEMENT COORDINATOR: Bill Davis, (512) 239-6793; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(35) COMPANY: Darryl Winstead and Winstead Properties Inc. dba San Gabriel River Ranches and Indian Springs Water System; DOCKET NUMBER: 2000-0920-PWS-E; IDENTIFIER: Public Water Supply Numbers 2460046 and 2270210; LOCATION: Austin, Williamson, and Travis Counties, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.117(e)(2), (formerly 30 TAC §290.120(e)), by failing to conduct reduced tap monitoring sampling for lead and copper; PENALTY: \$626; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200101319
Paul Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: March 6, 2001



Notice of Public Hearings and Opportunity for Comment

The Texas Natural Resource Conservation Commission (Commission) will conduct two hearings to receive evidence from the public on actions the Commission should take to protect the Edwards Aquifer from pollution, as required under Texas Water Code, §26.046. This requirement assists the Commission in its shared responsibility with local governments such as cities and underground water conservation districts to protect the water quality of the aquifer.

This year's annual hearings on the Edwards Aquifer Protection Program (EAPP) and the Commission's rules addressing regulated development over the designated contributing, recharge, and transition zones of the Edwards Aquifer, pursuant to 30 Texas Administrative Code (TAC) Chapter 213, will be held on the following dates:

1. **April 17, 2001.** The public hearing to be held at 7:00 p.m. in San Antonio, Texas at the City of San Antonio Municipal Council Chambers, located at 103 Main Plaza.
2. **April 24, 2001.** The public hearing to be held at 7:00 p.m. in Austin, Texas at the TNRCC Complex, in Building E, Room 201S, located at 12100 Park 35 Circle (North IH-35).

These hearings will be held to receive evidence in the form of oral or written comments from the public on actions the Commission should take to protect the Edwards Aquifer from pollution. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearings; however a TNRCC staff member will be available to discuss the program 30 minutes prior to the hearings.

Written comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, MC 201, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. Comments must be received by **5:00 p.m., May 15, 2001**. All comments should reference the EAPP. For further information or questions concerning these hearings, please contact Mr. Kerry Niemann, Field Operations Division, (512) 239-0483.

General EAPP information, the Edwards Aquifer rules, guidance manuals, and administrative application forms relating to the EAPP are available on the TNRCC's Web Site at: <http://www.tnrcc.state.tx.us/EAPP/>.

Persons with disabilities who have special communication or other accommodations needs who are planning to attend the hearings should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200101284
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: March 5, 2001



Notice of Revised Water District Applications

Petitioner filed a petition for creation of BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 23 (District) with the Texas Natural Resource Conservation Commission (TNRCC). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TNRCC. The petition states that: (1) the petitioner is the owner of a majority in value of the land to be included in the proposed District;

(2) there are no lienholders on the land to be included in the proposed District ; (3) the proposed District will contain approximately 542.817 acres located within Brazoria County, Texas and Harris County, Texas; and (4) the proposed District is within or will be within the boundaries of the City of Pearland, Texas, and is not within such jurisdiction of any other city. By City of Pearland Resolution No. R2000-116, the City of Pearland, effective October 9, 2000, passed, approved and gave its consent to create District, and has given its authorization to initiate proceedings to create such political subdivision within its jurisdiction. The petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately \$19,700,000.

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-200101216

LaDonna Castañuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: February 28, 2001



Notice of Water Rights Applications

UPPER GUADALUPE RIVER AUTHORITY (UGRA), applicant, 125 Lehmann Drive, Suite 100, Kerrville, Texas 78028 seeks an amendment to Water Use Permit No. 5394A, pursuant to §11.122, Texas Water Code, and Texas Natural Resource Conservation

Commission Rules 30 TAC §§ 295.1, et seq. Permit No. 5394A, authorizes permittee to divert not to exceed 2,000 acre-feet of water per annum from a point on the Guadalupe River authorized under City of Kerrville's Water Use Permit No. 3505 (Application No. 3769). Permit No. 5394A authorizes the total amount of water to be used for municipal purposes and/or injected into Hosston-Sligo Aquifer of the Lower Trinity Formation for subsequent retrieval for municipal purposes. Of the 2000 acre-feet of water authorized under the permit, 1661 acre-feet of the municipal water may be contracted by entities other than the City of Kerrville, either from the Guadalupe River or from water injected into the aquifer and subsequently retrieved, and the remaining 339 acre-feet of water may only be used for injection into the aquifer for storage to maintain the firm yield of the system. Water authorized for use under permit 5394A is included in a subordination agreement between the Guadalupe Blanco River Authority and the Upper Guadalupe River Authority and may be diverted at a maximum rate of 15.5cfs in combination with Permit No. 3505 and the City of Kerrville's Permit No. 5394B, subject to numerous restrictions, including special conditions allowing for water to be diverted only when the reservoir authorized under Permit No. 3505 is above 1608 M.S.L., and that between October and May water may only be diverted when the flow of the Guadalupe River downstream of aforesaid reservoir exceeds 40 cfs, and that between June and September permittee can only divert water when the flow of the Guadalupe below the reservoir exceeds 30 cfs. Also, if inflows in the reservoir are at or above 50 cfs, permittee can only divert if a flow of 50 cfs passes the reservoir. Pursuant to a Water Supply Agreement between Upper Guadalupe River Authority and Buckhorn Golf, Ltd., dated April 10, 2000, applicant seeks to authorize use of 160 acre-feet of water per annum of the "municipal" water for irrigation of 110 acres out of approximately 187.276 acres consisting of three tracts, being a 88.126 acre tract, a 2.15 acre tract, and a 97 acre tract of land out of the Justa Esqueda Survey No. 25, Abstract 157, Kendall County. Kendall County Water Control and Improvement District No. 1 owns 90.276 acres of the land to be irrigated and Buckhorn Golf II, Ltd owns the other 97 acres of land to be irrigated as evidenced by a deed recorded in Volume 598, Page 514 of the Deed Records of Kendall County. Buckhorn Golf II, Ltd. leases the 90.276 acres owned by the "District" in a lease agreement dated April 13, 1999. Buckhorn Golf II, Ltd. also has easement agreements with Lewis B. Schmitz, et ux and Lion's Lair Limited Liability Company for use of land needed to convey the water to the land to be irrigated. The applicant seeks to establish a diversion point in Kendall County, approximately 25 river miles downstream of the presently authorized diversion point on the Guadalupe River in Kerr County. The water will be diverted from a point on the left, or north bank of the Guadalupe River, located approximately 200 yards downstream of the Interstate Highway 10 bridge, approximately one mile east of the City of Comfort, Texas, also bearing South 41.2° East, 8217.92 feet from the USGS published Benchmark/Triangulation Station known as "Comfort 2", at 29.97° N Latitude and 98.88° W. Longitude. The water diverted under the Water Supply Contract will be diverted at a maximum rate of 1.1 cfs (500 gpm). The applicant does not seek an increase in the presently authorized rate of diversion in Permit No. 5394, as amended, of 15.5 cfs. Therefore, the combined rate of diversion at both the old and new diversion points will not exceed 15.5 cfs. Applicant seeks to maintain the same stream flow restrictions currently embodied in Permit 5394, as amended. This notice is being sent to the Guadalupe Blanco River Authority and to you as owner of one of 82 water rights with a diversion point in the Guadalupe River Basin Watershed between the diversion point authorized under Water Use Permit No. 5394A and the requested diversion point.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in

the information section below by March 14, 2001. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by March 14, 2001. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by March 14, 2001. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200101218
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 28, 2001

Nortex Regional Planning Commission

Request for Proposal

Nortex Regional Planning Commission is soliciting proposals for new copier equipment, installation of the equipment, training and maintenance service.

Request for Proposal packages may be obtained by contacting April Young, Administrative Assistant, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas, 76307, (940) 322-5281.

The proposals received will be reviewed by the Nortex staff for contract award on the basis of:

- (1) the bidder's system and the suitability of the needs of Nortex;
- (2) firm's level of experience and financial stability;
- (3) price quoted for the system presented;
- (4) the firm's prior performance, personnel experience, training and service record with similar projects.

All proposals must be received in the offices of Nortex Regional Planning Commission no later than 12:00 noon, CST, March 30, 2001. Proposals received after the specific date and time will not be considered. Nortex reserves the right to reject all bids.

TRD-200101269
Dennis Wilde
Executive Director
Nortex Regional Planning Commission
Filed: March 5, 2001

North Central Texas Council of Governments

Request for Proposals to Prepare a Rail Planning and Implementation Study for the Dallas/Fort Worth International Airport

CONSULTANT PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant firm to undertake the development of a rail planning and implementation study for the Dallas/Fort Worth International Airport. This project will include a comprehensive look at all possible passenger rail connections to and through DFW, providing service to employees, air passengers, and other commuters in the North Central Texas region. The primary goal of the consultant's portion of the project is to identify the best method for connecting DFW to the regional rail system. However, the review of rail should not be limited to what has already been adopted in regional plans, but rather be a comprehensive review of possibilities. Bus transit options, public involvement, and other Major Investment Study requirements will be completed by the study team which is made up of public sector entities and the selected consultant.

Due Date

Proposals must be submitted no later than 5 p.m. Central Time on Friday, April 6, 2001, to Greg Royster, P.E., Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. A pre-proposal meeting is scheduled for 10:00 a.m. on March 21, 2001, at the NCTCOG offices. For more information and copies of the Request for Proposals, contact Greg Royster at (817) 695-9285.

Contract Award Procedures

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200101326

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 6, 2001

◆ ◆ ◆
Public Utility Commission of Texas

**Notice of Application for Amendment to Service Provider
Certificate of Operating Authority**

On March 2, 2001, Enron Broadband Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPSCOA Certificate Number 60389. Applicant intends to transfer its SPSCOA to its wholly-owned subsidiary, Enron Telecommunications, Inc., thereby changing its name to Enron Telecommunications, Inc.

The Application: Application of Enron Broadband Services, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 23776.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 no later than March 28, 2001. You may contact the commission's Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7003. All correspondence should refer to Docket Number 23776.

TRD-200101362
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2001

◆ ◆ ◆
**Notice of Application for Exemption from P.U.C. Substantive
Rule §26.25**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 28, 2001, for exemption from the requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of ENMR Telephone Cooperative, Inc. for Exemption From P.U.C. Substantive Rule §26.25. Docket Number 23746.

The Application: ENMR Telephone Cooperative, Inc. (ENMR) is a telecommunications utility serving 939 customers in Texas out of 13,767 total customers. ENMR maintains its principal business office and all of its central offices in New Mexico. Approval of this application will affect ENMR's Texas business and residential customers located in the Pleasant Hill, East Glen Rio and Farwell exchanges in the Texas counties of Deaf Smith, Oldham and Parmer. The Texas access lines and customers account for less than 7.0% of the total lines and customers serviced by ENMR. ENMR asserts that it is in compliance with comparable rules of the New Mexico Public Regulation Commission and with the Federal Communications Commission's Truth-in-Billing and Billing Format requirements, and is seeking exemption from P.U.C. Substantive Rule §26.25 pursuant to P.U.C. Substantive Rule §26.3, and the reciprocity provision in P.U.C. Procedural Rule §22.263(d).

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 23746.

TRD-200101323
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2001

◆ ◆ ◆
**Notice of Application for Waiver to Requirements in P.U.C.
Substantive Rule §26.25**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 28, 2001, for waiver of certain requirements of P.U.C. Substantive Rules §§26.21-26.31.

Docket Title and Number: Application of AT&T Communications of Texas, L.P. (AT&T) for Good Cause Waiver of Certain Provisions of P.U.C. Substantive Rules §§26.21-26.31. Docket Number 23749.

The Application: On February 28, 2001, AT&T filed with the Public Utility Commission of Texas an application for temporary waiver of certain requirements concerning customer service and protection contained in P.U.C. Substantive Rules §§26.21 - 26.31. AT&T is requesting an extension of the March 1, 2001 implementation deadline so that it may be allowed sufficient time to revise its systems to comply with the new requirements. AT&T seeks waiver of P.U.C. Substantive Rule §26.31(a)(3)(B)(i) until April 1, 2001; §26.24(b)(1)(B) until May 1, 2001; and §26.24(b)(5)(D) and §26.27(b)(3)(A)(iii) until June 1, 2001. In addition, AT&T seeks permanent waiver of P.U.C. Substantive Rule §26.28(b)(6)(D), requiring that suspension and disconnection notices must be in English and Spanish.

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 23749.

TRD-200101355
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2001

◆ ◆ ◆
**Notice of Applications for Waiver to Requirements in P.U.C.
Substantive Rule §26.25**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of four applications on February 28, 2001 and March 2, 2001 respectively, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Titles and Numbers: Application of Five Area Telephone Cooperative, Inc. for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25, Docket Number 23747; Application of West Plains Telecommunications, Inc. for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25, Docket Number 23748;

Application of XIT Telecommunication & Technology, Inc. for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25, Docket Number 23771; and Application of XIT Rural Telephone Cooperative, Inc. for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23772.

The Application: Substantive Rule §26.25 requires all certificated telecommunications utilities to comply with the bill format changes required by the rule on or before February 15, 2001. Five Area Telephone Cooperative, Inc., West Plains Telecommunications, Inc., XIT Telecommunication & Technology, Inc., and XIT Rural Telephone Cooperative, Inc. (Applicants) seek a temporary waiver of P.U.C. Substantive Rule §26.25 regarding billing format for basic local service and optional local service categories. Due to technical delays beyond the Applicants' control, Applicants request that the commission allow additional time in order to effect certain of the changes required by the rule and ensure complete compliance. Applicants conservatively estimate compliance for Five Area Telephone Cooperative, Inc. and West Plains Telecommunications, Inc. by June 1, 2001; and for XIT Telecommunication & Technology, Inc. and XIT Rural Telephone Cooperative, Inc. by June 8, 2001.

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 23747, 23748, 23771, or 23772 as appropriate to the application.

TRD-200101322
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2001



Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.54(b)(3)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on February 23, 2001, for waiver of the requirements of P.U.C. Substantive Rule §26.54(b)(3), One-Party Line Service and Voice Band Data.

Docket Title and Number: Application of Valor Telecommunications of Texas, LP for Waiver of Requirements in P.U.C. Substantive Rule §26.54(b)(3). Docket Number 23733.

The Application: Valor Telecommunications of Texas, LP. (Valor or the company) seeks waiver of the requirement that by the end of 2002 it shall provide all subscribers a minimum transmission speed of at least 14,400 bits of data per second (14.4 kbps) on all switched voice circuits when connected through an industry standard modem or facsimile machine. Valor requests the commission waive the 14.4 kbps requirement for 6 exchanges: Detroit, Pecos, Fort Hancock, Centerville, Aspermont and Sunray, all of which are served through equipment that does not meet the data speed required under P.U.C. Substantive Rule §26.54(b).

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 23733.

TRD-200101222

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2001



Notice of Application for Waiver to Requirements in P.U.C. Substantive Rule §26.25

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 1, 2001, for waiver of certain requirements of P.U.C. Substantive Rule §26.25, Issuance and Format of Bills.

Docket Title and Number: Application of TXU Communications Telecom Services Company (TXU Communications) for Temporary Waiver of Certain Provisions of the Bill Formatting Requirements in P.U.C. Substantive Rule §26.25. Docket Number 23756.

The Application: Substantive Rule §26.25 requires all certificated telecommunications utilities (CTU) to comply with the bill format changes required by the rule on or before February 15, 2001. TXU Communications is requesting an extension of the implementation deadline, from February 15, 2001 to May 1, 2001, with respect to P.U.C. Substantive Rule §26.25(e)(2) and (e)(3), which require that totals for amounts charged for basic and optional local telecommunications services and for non-local services provided by the billing CTU be displayed separately on the bill. TXU Communications asserts that it is presently issuing bills to only 54 residential customers. The company states that its bill format is already in compliance with the bulk of the §26.25 standards; however, additional time beyond February 15, 2001 will be needed for extensive computer reprogramming and testing, in order to ensure the quality and accuracy of all the required revisions.

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 23756.

TRD-200101324
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2001



Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on February 28, 2001, to amend a certificate of convenience and necessity pursuant to the Public Utility Commission Substantive Rule §26.101(b)(4). A summary of the application follows.

Docket Style and Number: Application to Amend Certificate of Convenience and Necessity for Southwestern Bell Telephone Company. Docket Number 23751.

The Application: The proposed amendment will transfer a small area from the Florence exchange to the Liberty Hill exchange within Williamson County. The revision will reflect the way the exchange boundary is being administered. The customers affected by the proposed realignment are within Sprint's Florence exchange, but are

currently served by Southwestern Bell Telephone Company from its Liberty Hill exchange. Therefore, there will be no change in telephone numbers, monthly rates or calling scope to the existing subscribers.

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.

TRD-200101327
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2001



Public Notice of Workshop on the Implementation of the Capacity Auction Rule

The Public Utility Commission of Texas (commission) will hold a workshop to implement Substantive Rule §25.381, *Capacity Auctions*, on Friday, March 30, 2001, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 23774, *PUC Proceeding to Implement the Capacity Auction Rule*, has been established for this proceeding. Topics discussed at the workshop will include developing a standard purchase agreement between a successful bidder in a capacity auction and the seller of the capacity entitlement as well as the use of capacity entitlements in ERCOT's ancillary services markets.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 23774 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Eric Schubert, Senior Market Economist, Market Oversight Division, (512) 936-7398. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200101352
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 6, 2001



Request for Comments on Deemed Savings Estimates and Notice of Workshop

The Public Utility Commission of Texas (commission) proposes new deemed savings estimates that may be used by utilities to fulfill the requirements of the commission's Substantive Rule §25.181 relating to Energy Efficiency Goal. Project Number 22241 is assigned to this proceeding. The proposed deemed savings estimates will be used to implement uniform statewide energy efficiency programs, designed in compliance with §25.181 and to achieve the energy efficiency goal provision in the Public Utility Regulatory Act (PURA) §39.905.

Copies of the proposed deemed savings estimates will be available in the commission's Central Records Division, Room G-113, under Project Number 22241 or through the commission web page at www.puc.state.tx.us on March 16, 2001.

Written comments on the proposed deemed savings estimates may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 within 21 days after publication of this notice. All comments should refer to Project Number 22241.

The commission will hold a public workshop on the proposed deemed savings estimates on Monday, April 9, 2001, at 10:00 a.m. in Hearing Room Gee at the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Any questions pertaining to the proposed deemed savings estimates should be directed to Nieves López at (512) 936-7307 or nieves.lopez@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200101221
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: March 1, 2001



Texas Department of Transportation

Notice of Public Hearing

Pursuant to the Texas Coastal Waterway Act, Transportation Code, Section 51.006, the Texas Transportation Commission will conduct a public hearing to receive data, evidence, comments, views, and testimony concerning the acquisition, by donation, purchase, or condemnation, of property or an interest in property environmentally suitable for use as disposal sites for materials dredged from the main channel of the Gulf Intracoastal Waterway.

The location of the proposed site to be considered by the commission is more specifically described as follows:

Galveston County - one site of 215 acres more or less out of the Port Bolivar Townsite, in the Samuel Parr Survey, Abstract 162 and being out of that certain tract or parcel of land conveyed in the Trustee's Deed record under Film Code No. 014-48-2290 in the Office of the County Clerk.

The public hearing will be held at 9:00 A.M. on Thursday, March 29, 2001, in the First Floor Hearing Room, Dewitt C. Greer Building, 125 E. 11th Street, Austin, Texas. Any interested person may appear and offer comments or testimony, either orally or in writing. However, questioning of speakers or witnesses will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content.

Maps, environmental documentation, and other displays concerning the proposed site will be exhibited at the public hearing. Prior to the public hearing, information about the proposed site will be on file and available for inspection at the Texas Department of Transportation, Transportation Planning and Programming Division, 150 East Riverside Drive, Austin. To inspect this information, please contact Raul Cantu, Jr., P.E., at (512) 416-2344.

Information concerning benefits and services available to displacees under the Texas Department of Transportation's Relocation Assistance

Program, and information about the site acquisition process are available at the Texas Department of Transportation, Right of Way Division, 118 East Riverside Drive, Austin, Texas. Please contact James Hutchinson at (512) 416-2837 for this information.

For further information, please contact Alvin R. Luedecke, Jr., P.E., Director of Transportation Planning and Programming, P.O. Box 149217, Austin, Texas 78714-9217, (512) 486-5000; or James Randall, P.E., Deputy Division Director, Transportation Planning and Programming, at (512) 486-5004.

TRD-200101219

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: March 1, 2001



Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

City of Ballinger, 700 Railroad Avenue, Ballinger, Texas, 76821, received January 31, 2001, application for financial assistance in the amount of \$5,250,000 from the Drinking Water State Revolving Fund.

Trinity River Authority of Texas, Central Regional Wastewater System, P.O. Box 240, Arlington, Texas, 76004, received January 25, 2001, application for financial assistance in the amount of \$88,225,000 from the Clean Water State Revolving Fund.

City of Waco, 300 Austin Avenue, Waco, Texas, 76701, received February 1, 2001, application for financial assistance in an amount not to exceed \$15,000,000 from the State Participation Account of the Texas Water Development Fund II.

Zavala County Water Control and Improvement District No. 1, P.O. Box 358, La Pryor, Texas, 78872, received October 31, 2000, application for financial assistance in the amount of \$4,177,658 from the Economically Distressed Areas Account of the Texas Water Development Fund.

Panhandle Regional Planning Commission, P.O. Box 9257, Amarillo, Texas, 79105, received February 16, 2001, application for financial assistance in an amount not to exceed \$329,763 from the Research and Planning Fund.

Rio Grande Council of Government, 1100 N. Stanton, Suite 610, El Paso, Texas, 79902, received February 16, 2001, application for financial assistance in an amount not to exceed \$133,730 from the Research and Planning Fund.

Brazos River Authority, P.O. Box 7555, Waco, Texas, 76714-7555, received February 16, 2001, application for financial assistance in an amount not to exceed \$286,720 from the Research and Planning Fund.

Deep East Texas COG, 274 East Lamar Street, Jasper, Texas, 75951, received February 16, 2001, application for financial assistance in an amount not to exceed \$110,000 from the Research and Planning Fund.

Upper Guadalupe River Authority, 125 Lehmann Drive, Suite 100, Ker-ville, Texas, 78028, received February 16, 2001, application for financial assistance in an amount not to exceed \$311,897 from the Research and Planning Fund.

Lower Colorado River Authority, P.O. Box 220, Austin, Texas, 78767, received February 16, 2001, application for financial assistance in an amount not to exceed \$539,894 from the Research and Planning Fund.

San Antonio River Authority, P.O. Box 839980, San Antonio, Texas, 78283, received February 16, 2001, application for financial assistance in an amount not to exceed \$189,050 from the Research and Planning Fund.

Lower Rio Grande Valley Development Council, 311 North 15th, McAllen, Texas, 78504, received February 16, 2001, application for financial assistance in an amount not to exceed \$330,000 from the Research and Planning Fund.

Nueces River Authority, 6300 Ocean Drive, NRC 3100, Corpus Christi, Texas, 78412, received February 16, 2001, application for financial assistance in an amount not to exceed \$210,000 from the Research and Planning Fund.

High Plains Underground Water Conservation District No. 1, 2930 Avenue Q, Lubbock, Texas, 79405, received February 12, 2001, application for financial assistance in an amount not to exceed \$109,500 from the Research and Planning Fund.

Lavaca-Navidad River Authority, P.O. Box 429, Edna, Texas, 77957-0429, received February 16, 2001, application for financial assistance in an amount not to exceed \$176,700 from the Research and Planning Fund.

Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P., 1700 Frost Bank Plaza, 816 Congress Avenue, Austin, Texas 78701-2443, received January 24, 2001, application for financial assistance from the Research and Planning Fund.

Daniel B. Stephens & Associates, Inc., 6020 Academy NE, Suite 100, Albuquerque, New Mexico, 87109, received January 24, 2001, application for financial assistance from the Research and Planning Fund.

Reed, Stowe and Yanke, LLC, 5806 Mesa Drive, Suite 310, Austin, Texas, 78731, received January 24, 2001, application for financial assistance from the Research and Planning Fund.

TRD-200101375

Gail L. Allan

Director of Project-Related Legal Services

Texas Water Development Board

Filed: March 7, 2001



Texas Workforce Commission

Request for Proposals Texas School-Linked Child Care Program

MARCH 2001

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (TWC) is soliciting proposals from contractors to provide care for children before and after school, on teacher in-service days, during summer vacation periods, and on school holidays. The Agency's goal in seeking contractors for this program is to provide stimulating, safe, and supportive programs for young people in their out-of-school time, thereby delivering an important support service for working parents. The purpose of the awards is to support the planning and development of school-age child care services, including the implementation of research-based reading programs, start-up for school-age child care services, and/or the expansion or enhancement of existing school-age child care services.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to issue this RFP and award contracts under Title 40, Part 20, Chapter 809, Subchapter J of the Texas Administrative Code Rules. The Agency procures these services in accordance with the Texas Labor Code, the Uniform Grants Management Standards (UGMS), and the Uniform Administrative Requirements for State and Local Governments (OMB Circular A-102) using competitive negotiation. Unlike formal advertising (i.e. sealed bids), cost is not the only factor evaluated.

C. AVAILABLE FUNDING

Approximately \$400,000 will be available for the 12-month period beginning September 1, 2001, to run through August 31, 2002.

D. ELIGIBLE APPLICANTS

Independent School Districts throughout the state of Texas that are submitting proposals must complete a Request for Proposal (RFP) Package and provide required documentation as requested in the application in order to be considered eligible.

E. PROJECT SCHEDULE

Application submission deadline is April 17, 2001. The anticipated contract effective date is September 1, 2001.

F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Proposed Project Narrative, 20 points; Project Plan Chart, 20 points; Prior Experience and Demonstrated Effectiveness, 20 points; Collaboration and Coordination, 20 points; and Reasonableness of Budgeted Costs and Cost Documentation, 20 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

TWC will use competitive negotiation to determine awards. The Agency evaluates proposals received, ranks them, and may request an oral presentation by the offerors submitting top ranked proposals covering topics identified by the Agency. After the oral presentation (if any), the Agency makes a tentative selection decision, and negotiates with the selected offerors. When negotiations are completed, a contract is executed, and the award is announced.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to request a package for RFP PPRD #01-02, contact Ernestine Sunderland, Program Coordinator, Texas Workforce Commission, Room 440T, 101 East 15th Street, Austin, TX 78778-0001, (512) 936-3222, Fax (512) 936-3420, e-mail address ernestine.sunderland@twc.state.tx.us

TRD-200101378

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: March 7, 2001



How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back

cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Texas Register

Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

Texas Natural Resource Conservation Commission, Title 30

- Chapter 285** \$25 update service \$25/year (*On-Site Wastewater Treatment*)
 Chapter 290 \$25 update service \$25/year (*Water Hygiene*)
 Chapter 330 \$50 update service \$25/year (*Municipal Solid Waste*)
 Chapter 334 \$40 update service \$25/year (*Underground/Aboveground Storage Tanks*)
 Chapter 335 \$30 update service \$25/year (*Industrial Solid Waste/Municipal Hazardous Waste*)

Update service should be in printed format 3 1/2" diskette

Texas Workers Compensation Commission, Title 28

- Update service \$25/year

Texas Register Phone Numbers

(800) 226-7199

Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

Information For Other Divisions of the Secretary of State's Office

Executive Offices	(512) 463-5701
Corporations/ Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
Information	(512) 463-5555
Legal Staff	(512) 463-5586
Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections Information	(512) 463-5650
Statutory Documents Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Uniform Commercial Code Information	(512) 475-2700
Financing Statements	(512) 475-2703
Financing Statement Changes	(512) 475-2704
UCC Lien Searches/Certificates	(512) 475-2705

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

Change of Address

(Please fill out information below)

Paper Subscription

One Year \$150 Six Months \$100 First Class Mail \$250

Back Issue (\$10 per copy)

_____ Quantity

Volume _____, Issue # _____.

(Prepayment required for back issues)

NAME _____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____

(Number for change of address only)

Bill Me

Payment Enclosed

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.

Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

Periodical Postage

PAID

Austin, Texas
and additional entry offices

